

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1353 of 2019

Arising Out of PS. Case No.-22 Year-2005 Thana- C.B.I CASE District- Patna

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Arun Sah, (Male, aged 65 years), Son of Lakhpati Raj Sah, Resident of
Village - K-15/B, Saket, P.S.- Saket, New Delhi-110017

... .. Petitioner

Versus

1. The Union of India, through the Central Bureau of Investigation.
2. The Central bureau of Investigation, Govt. of India.
3. The Superintendent of Police, Central Bureau of Investigation / Anti
Corruption Branch Patna. Bihar
4. The Deputy Superintendent of Police, Central Bureau of Investigation/ Anti
Corruption Branch, Patna.
5. The Council for Advancement of People's Action and Rural Technology,
through the Director General, CAPART, New Delhi.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Anjani Kumar-Senior Advocate Mr. Awadhesh Kumar-Advocate
For the C.B.I.	:	Mr. Bipin Kumar Sinha-S.C./ C.B.I.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

15-10-2019

Heard Mr. Anjani Kumar, learned Senior Counsel

appearing for the petitioner and Mr. Bipin Kumar Sinha, learned
Standing Counsel, C.B.I.

2. This application under Articles 226 and 227 of
the Constitution of India has been filed by the petitioner for
setting aside the order dated 31.08.2006 issued by the Director
General, Council for Advancement of People's Action and Rural
Technology, New Delhi (for short CAPART) whereby sanction
has been accorded under Section 19(1)(c) of the Prevention of



Corruption Act, 1988 for prosecution of the petitioner for the offences punishable under Sections 120B and 420 of the Indian Penal Code and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 in connection with R.C. No.22(A)/ 2005 (Special Case No.25/ 2005).

3. Mr. Anjani Kumar, learned Senior Counsel appearing for the petitioner submitted that the order impugned dated 31.08.2006 was passed by the authority, who is not competent to remove the petitioner from office. He contended that as per the CAPART Bye-Laws, it is the Executive Committee and not the Director General, CAPART, who could have accorded sanction under Section 19(1)(c) of the Prevention of Corruption Act, 1988. According to him, the grant of sanction for prosecution of the petitioner by the then Director General, who was not the appropriate or the competent authority to grant sanction for prosecution has resulted into failure of justice. Further, in view of non-appreciation of the fact that the petitioner has not performed any act, which is in violation of CAPART rules and guidelines yet is being proceeded with and is facing the rigors of trial due to perfunctory and superficial investigation, the continuation of his trial before the Court against him in absence of a valid sanction would amount to an



abuse of the process of the court.

4. Per contra, Mr. Bipin Kumar Sinha, learned Standing Counsel appearing for the C.B.I. has raised a preliminary objection regarding maintainability of the present application. He has contended that the petitioner had earlier moved before this Court challenging the order taking cognizance. He had also challenged the order by which the trial Court had declined to discharge him from the case. In both applications filed by the petitioner before this Court point of sanction was raised, but those applications were dismissed. He contended that the orders passed earlier by this Court were never challenged in appeal before the Supreme Court. In that view of the matter, those orders have attained finality. He has contended that the successive application challenging the order of cognizance on the point of illegality in grant of sanction for prosecution is impermissible in law.

5. On merits, he has submitted that in view of the ratio laid down by the Supreme Court in *Dinesh Kumar v. Chairman, Airport Authority of India and another, since reported in (2012) 1 SCC 532*, any objection relating to invalidity of sanction order is to be raised during trial and not before this Court by way of filing an application under Section



482 of the Code of Criminal Procedure. He has further contended that the trial of the case is at its fag end. Almost all the witnesses have been examined and, at this belated stage, it would not be proper for this Court to test the legality or otherwise of the order granting sanction for prosecution of the petitioner.

6. In reply, Mr. Anjani Kumar, learned Senior Counsel appearing for the petitioner submitted that the applications filed by the petitioner earlier before this Court questioning the legality of sanction order were never disposed of on merit. According to him, since those applications were not decided on merit, there would be no bar in raising the issue of illegality in the sanction order from stage to stage. He has further contended that quashing of criminal proceeding in exercise of powers conferred under Section 482 of the Code of Criminal Procedure on ground of invalidity of sanction order would not amount to review or revision of the earlier orders passed by this Court. In this regard, he has placed reliance on the judgment of the Supreme Court in *Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and others reported in A.I.R. 1975 SC 1002*. He has further contended that the earlier application filed by the



petitioner challenging the order of cognizance was dismissed as infructuous vide order dated 26.07.2011 on the ground that during pendency of the application the case had reached to the stage of framing of charge and an application for discharge filed by the petitioner had been rejected and the order rejecting the discharge application was challenged in a proceeding under Section 482 of the Code of Criminal Procedure, which is pending before the Court. Similarly, the subsequent application filed by the petitioner was dismissed as infructuous vide order dated 20.07.2012, as submission was made by the counsel for the petitioner himself that the application had become infructuous as large number of persons had already been examined in course of trial. He argued that as the applications were dismissed without testing the questions raised by the petitioner, the instant application under Articles 226 and 227 of the Constitution of India, under no circumstance, can be held to be not maintainable.

7. I have heard learned counsel for the parties and perused the materials on record.

8. On 27.09.2005, R.C. No.22/ 2005 was registered under Sections 120B, 420, 467, 468, 471 of the Indian Penal Code and 13(2) read with 13(1)(d) of the Prevention of



Corruption Act, 1988.

9. In the first information report, it is alleged that the petitioner, the then Member Convenor, CAPART, Patna while working as such during the year 2001 to 2003 entered into criminal conspiracy with Akhilesh Kumar Verma, Evaluator, CAPART, Patna, Dilip, President, Bhumika Vaishali, Ajay Kumar, Secretary, Bhumika Vaishali and Chandreshwar Rajak, Treasurer, Bhumika Vaishali. In pursuance of the said criminal conspiracy, he abused his official position and fraudulently and dishonestly recommended for sanctioning projects and released Rs.8,54,775/- in favour of the NGO Bhumika, Vaishali, Hazipur Fatikwara, Mahnar Vaishali. As per the eligibility criteria of the CAPART assistance, the NGO should give the statement of account of last three years showing the donations/ subscription/ income of the NGO in the account. So, the above mentioned functionaries of the Bhumika, Vaishali submitted details of its savings account at S.B.I., Mahnar along with their application. The Statement of account submitted with the application did not completely fulfill the said criteria.

10. It is further alleged that on the basis of pre-funding appraisal, the agenda for consideration of CAPART assistance of Rs.4,27,388/- was submitted by the office, but the



Regional Committee at the instance of the petitioner raised assistance amount to Rs.8,54,775/- and approved the proposal and the cheque of first instalment of Rs.4,27,387/- was issued on 27.05.2002 and second instalment of Rs.4,27,388/- was issued on 26.03.2003. The pay order of the said cheques was issued for paying the cheques in the account of Bhumika, Vaishali maintained at SBI, Mahnar Branch, but the cheques were not presented in the said account and the amounts were diverted/ misappropriated by the accused persons.

11. After investigation, Chargesheet No.19/ 2006 dated 26.09.2006 was submitted, finding the case to be true against the petitioner, Ajay Kumar, Secretary, Bhumika, Vaishali and Chandreshwar Rajak, Treasurer, Bhumika, Vaishali and they were sent up for trial for the offences punishable under Sections 120B and 420 of the Indian Penal Code and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

12. In the charge-sheet, it is categorically stated that sanction for prosecution against the petitioner has been obtained from the competent authority.

13. On perusal of the materials collected in course of investigation including the report submitted under Section 173(2) of the Code of Criminal Procedure, the learned Special



Judge, South Bihar, Patna vide order dated 05.02.2007 took cognizance of the offences under Sections 120B and 420 of the Indian Penal Code and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and summoned the petitioner and two others, who were sent up for trial.

14. The petitioner challenged the order taking cognizance of the offence by way of filing an application under Section 482 of the Code of Criminal Procedure vide **Cr. Misc. No.38428 of 2008**. The said application was dismissed by a Bench of this Court vide order dated 26.07.2011, which reads as under:-

“Heard Mr. Sanjay Kumar, counsel for the petitioner and the State.

This application has been filed for quashing the order, dated 5.2.2007 passed in Special Case No.25/ 2005, arising out of RC No.22(A)/ 2005 by the Special Judge, CBI, South Bihar, Patna by which cognizance has been taken.

Subsequently it appears that the discharge petition filed on behalf of the petitioner has been rejected. He has challenged the order framing charges by filing Cr. Misc. No.12980 of 2011 which is pending before another Hon’ble Bench.

In view of the aforesaid fact, this application



has become infructuous. It is dismissed as such.”

15. After dismissal of the application challenging the order of cognizance vide order dated 26.07.2011, the petitioner filed an application for discharge under Section 227 of the Code of Criminal Procedure before the trial Court. In his application besides other grounds, the ground that sanction order for prosecution of the petitioner was accorded by an authority, who is not competent to remove him from his office and hence, no ground for putting him on trial was also taken.

16. The trial Court after hearing the parties, vide order dated 05.03.2011 rejected the said application of the petitioner filed for discharge under Section 227 of the Code of Criminal Procedure.

17. Being aggrieved by the order dated 05.03.2011 passed by the trial Court, the petitioner preferred an application under Section 482 of the Code of Criminal Procedure before this Court vide Cr. Misc. No.38428 of 2008. The said application was also dismissed vide order dated 20.07.2012 as the counsel for the petitioner himself submitted that the application had become infructuous as large number of witnesses had already been examined. The said order dated 20.07.2012 reads as under:-

“The counsel for the petitioner has



submitted that the present petition has been rendered infructuous as large number of persons have already been examined.

This petition is dismissed as infructuous.

This order has been passed in presence of the counsel for the C.B.I.”

18. From the discussions made above, it would be evident that specific challenge to the order of cognizance was made by the petitioner in Cr. Misc. No.38428 of 2008 on the ground that the order granting sanction for prosecution was passed by an authority not competent in law. However, the said challenge made by the petitioner got dismissed as the case had reached to the stage of framing of charge and an application for discharge filed before the trial court was already rejected. The order dated 26.07.2011 passed by this Court in Cr. Misc. No.38428 of 2008 was not challenged by the petitioner before the Hon'ble Supreme Court. However, the petitioner chose to challenge the order passed by the trial Court on his application for discharge filed under Section 227 of the Code of Criminal Procedure by way of filing another application under Section 482 of the Code of Criminal Procedure before this Court. In that application also, the plea of invalidity of sanction order was



raised. However, the said application was also dismissed as infructuous vide order dated 20.07.2012 passed by this Court on the submission made by the learned counsel for the petitioner that the application had become infructuous as large number of witnesses had already been examined.

19. Thus, on 20.07.2012 itself, the petitioner had accepted the position that the order of cognizance cannot be agitated before this Court as most of the witnesses had already been examined during trial.

20. At this stage, it would be relevant to set out Para-49 of the application filed by the petitioner herein under:-
“That presently, 45 prosecution witnesses have been examined out of 47 prosecution witnesses, while the then Director General, CAPART Smt. Veena S. Rao, has also been examined, and she has vaguely responded with regard to the Circulars, Rules and Guidelines and also with regard to the fact whether she had the knowledge that she was not the competent/ appropriate authority under the relevant Rules, for granting sanction for prosecution of the petitioner.”

21. In course of argument, learned counsel for the petitioner has submitted that due to inadvertence the digit 45 and 47 have been typed in Para-49 in place of 17 and 19.



22. Be that as it may, the fact of the matter is that out of the cited charge-sheeted witnesses, only two are left to be examined. That would mean that the trial of the case has reached to a very advanced stage.

23. In the opinion of this Court, after lapse of over eight years since the date of dismissal of the first application and over seven years since the date of dismissal of the second application of the petitioner, the instant application filed by the petitioner on 20.09.2019 raising the issue of invalidity of sanction order before this Court is totally misconceived.

24. The application is not only frivolous but also a desperate attempt to delay the disposal of the trial.

25. While drawing a distinction between absence of sanction and invalidity of the sanction, the Hon'ble Supreme Court in ***Parkash Singh Badal and another v. State of Punjab and others, since reported in AIR 2007 SC 1274***, expressed in no uncertain terms that in absence of sanction can be raised at the threshold by an aggrieved person, but where sanction order exists, but its legality is questioned, such issue has to be raised in the course of trial.

26. In ***Dinesh Kumar v. Chairman, Airport Authority of India*** (Supra) while placing reliance on ***Prakash***



Singh Badal Case (Supra) observed:-

“Of course, in Parkash Singh Badal, this Court referred to invalidity of sanction on account of non-application of mind. In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind - a category carved out by this Court in Parkash Singh Badal, the challenge to which can always be raised in the course of trial.”

27. Regard being had to the facts and circumstances of the present case and in view of the ratio laid down by the Supreme Court in ***Parkash Singh Badal and another v. State of Punjab and others*** (Supra) and ***Dinesh Kumar v. Chairman, Airport Authority of India and another*** (Supra), it can be said without any hesitation that the objection relating to invalidity of sanction should be raised by the petitioner and decided by the court after giving the prosecution



opportunity to lead evidence in support of the sanction order at the stage of argument before the trial court. The petitioner can not be allowed to agitate the issue of invalidity of sanction order again and again before this Court at a pre-trial stage.

28. Accordingly, the application is dismissed with liberty to the petitioner to raise the issue concerning validity of sanction in course of trial.

(Ashwani Kumar Singh, J)

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