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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.721 of 2018

Order Reserved on : 13.11.2018

Order Passed on : 8.2.2019

Ajay Kumar Kawre, S/o Yama Kawre, aged about 52 years, R/o Plot No.14, Mahavir Nagar, Dharampura, Jagdalpur, District Bastar, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Anti Corruption Bureau, Unit Bastar Division, Jagdalpur, Chhattisgarh

--- Respondent

For Applicant	:	Shri Satish Chandra Verma, Shri Peeyush Bhatia and Shri Harsh Pagaria, Advocates
For Respondent	:	Shri Sangharsh Pandey, Deputy Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the order dated 5.6.2018 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the PC Act'), Dakshin Bastar, Dantewada in Special Case No.1 of 2018, whereby the Special Judge has rejected the application submitted by the Applicant under Section 19 of the PC Act.
2. Case of the prosecution, in brief, is that at the relevant time, the Applicant had been working as a Range Officer in the Department of Forest, Government of Chhattisgarh at Sukma, District Sukma.

On 17.7.2015, an Inspector of the Anti Corruption Bureau registered First Information Report against the Applicant for an offence punishable under Sections 13(1)(e) and 13(2) of the PC Act. Thereafter, he obtained a warrant for search of the house of the Applicant situated in Jagdalpur. The search operation was conducted on 20.7.2015. At the time of conducting the search, the properties, which were not belonging to the Applicant and were in exclusive possession of his wife, were also seized by the Respondent. At that time, the Respondent had exceeded his statutory limits and seized and inquired about the private properties of others including one Pravin Masih, who is a distant relative of the Applicant and is an independent businessman. Vide letter dated 4.9.2015, the Respondent, for the first time, asked the Applicant to submit details of his properties. In the aforesaid letter, no check period was mentioned leaving the Applicant helpless and clueless about the details to be provided. The Applicant was collecting proper information for submitting before the Respondent, but the Respondent, without waiting for such details/information/explanation, directly submitted a report before the sanctioning authority for issuance of an order under Section 19 of the PC Act for prosecution of the Applicant. When the Applicant approached the Respondent for submission of details/information/explanation in Forms No.1, 2 and 3, the Respondent did not accept the same stating *inter alia* that the investigation against the Applicant has been completed. The Applicant was forced to submit the information before the sanctioning authority on 26.5.2016. The sanctioning authority, i.e., the Department of Law and Legislative Affairs, Government of Chhattisgarh, Raipur issued the sanction for prosecution vide order

dated 15.11.2016. A Writ Petition (Criminal) No.331 of 2016 was filed by the Applicant before this Court. Vide order dated 24.8.2017 passed in that writ petition, this Court directed the Respondent to take into consideration all the documents submitted by the Applicant in support of his case and the explanation offered by him before taking any decision with respect to filing of a charge-sheet or a final report, as the case may be. Thereafter, the Applicant submitted a representation in compliance with the order passed by this Court in that writ petition. The Respondent did not obey the orders of this Court nor did he consider the documents submitted by the Applicant regarding separate income of his wife and his distant relatives nor did he care to obtain a fresh sanction under Section 19 of the PC Act and the Respondent, without obtaining a fresh sanction from the sanctioning authority, submitted a final report under Section 173 of the Code of Criminal Procedure before the Special Judge on 24.1.2018. Without considering the fact of the sanction order not being final and being under review, the Special Judge took cognizance and commenced trial. The Applicant moved an application under Section 19 of the PC Act which has been rejected by the Special Judge vide the impugned order dated 5.6.2018. Hence, this revision.

3. A reply has been filed on behalf of the Respondent stating that since the order passed by the Special Judge under Section 19 of the PC Act is an interlocutory order, the instant revision is not maintainable. It has been further stated that the Applicant did not especially state as to what prejudice has caused to him by not reviewing the sanction order issued by the competent authority because as such there is no change in the investigation conducted

in accordance with the order dated 24.8.2017 passed by this Court in Writ Petition (Criminal) No.331 of 2016. It has been further stated in the reply that after the order passed by this Court on 24.8.2017, the Applicant submitted his representation on 26.8.2017. After receiving the representation, the Respondent considered the representation without any delay and also considered the documents submitted by him and thereafter issued notices under Section 91 of the Code of Criminal Procedure to the concerned authorities to submit report regarding the details of the documents of the Applicant and gathered report from the concerned D.F.Os., Branch Manager of the L.I.C., Branch Manager of Birla Sun Life Insurance Company, Smt. Laxmi Kawre who is wife of the Applicant, Manager of the Society, concerned Tahsildar, Sub-Registrar, Jagdalpur, etc. It was found that the information given by the Applicant regarding the properties of his wife and his other distant relative Pravin Masih was not found to be satisfactory and acceptable. Thereafter, a charge-sheet has been filed. Since the sanction has already been accorded by the competent authority, no fresh sanction is required to be obtained. Thus, the impugned order dated 5.6.2018 passed by the Special Judge is in accordance with law.

4. I have heard Learned Counsel appearing for the parties and perused the material available minutely.
5. Section 19 of the Prevention of Corruption Act, 1988 runs thus:

“19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of

an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall

exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation—For the purposes of this section.—

(a) error includes competency of the authority to grant sanction,

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

6. While dealing with the issue relating to sanction for prosecution in **(2007) 1 SCC 1 (Parkash Singh Badal v. State of Punjab)**, the Supreme Court observed as follows:

“**29.** The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on “failure of justice” and that too “in the opinion of the court”. In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the “failure of justice” is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (*sic* not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626. Sub-section (3) (c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary.”

It was further observed by the Supreme Court thus:

“47. The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard.”

7. On examination of the facts and circumstances of the present case in the light of above observations of the Supreme Court, it is clear that the sanction for prosecution was obtained from the competent authority on 15.11.2016 and the charge-sheet was filed on 24.1.2018, i.e., after about 1 year and 2 months from the date of issuance of the order of sanction for prosecution. Before filing of the charge-sheet, vide order dated 24.8.2017 passed in Writ Petition (Criminal) No.331 of 2016, the Respondent/Anti Corruption Bureau was directed by this Court to take into consideration all the documents submitted by the Applicant in support of his case and the explanation offered by him before taking any decision with respect to filing of a charge-sheet or a final report. From the reply of the Respondent submitted before this Court, it is also clear that after the order dated 24.8.2017 passed by this Court in Writ Petition (Criminal) No.331 of 2016, the Applicant submitted his representation on 26.8.2017. On receipt of the representation of the Applicant, the Respondent considered the same as also the documents submitted by him and after issuing notices under Section 91 of the Code of Criminal Procedure, gathered certain information/reports from the concerned authorities regarding the

information submitted by the Applicant with regard to Forms No.1, 2 and 3, but that was not found to be satisfactory and acceptable by the Respondent. A perusal of the material available including the reply of the Respondent shows that after obtaining the order of sanction for prosecution of the Applicant on 15.11.2016, the final report in the case was filed on 24.1.2018. The material placed before this Court makes it crystal clear that a subsequent/further investigation was also carried out in the case after 15.11.2016 before filing of the final report on 24.1.2018, but the facts and circumstances emerged after the aforestated subsequent/further investigation were not placed before the sanctioning authority by the investigating agency. Therefore, the sanction order dated 15.11.2016 cannot be said to be a sanction accorded after going through the entire facts and circumstances of the case. Thus, it is evident that the sanction for prosecution obtained on 15.11.2016 is not a competent sanction. Filing of the final report by the investigating agency without placing the facts emerged after the subsequent investigation before the sanctioning authority has caused a serious prejudice to the Applicant and in my considered view, a failure of justice, within the purview of Section 19(3)(a) of the PC Act, has been occasioned thereby. Before filing of the final report, the investigating agency must have obtained a fresh sanction for prosecution based on the entire facts and circumstances of the case.

8. An objection has been raised by the Respondent that since the impugned order dated 5.6.2018 passed by the Special Judge is an interlocutory order, the instant revision is not maintainable. Since this Court has held above that a fresh sanction is required to be

obtained for prosecution of the Applicant, the present trial itself cannot be proceeded further against the Applicant and, therefore, the objection raised by the Respondent is not sustainable.

9. As a consequence, the impugned order dated 5.6.2018 passed by the Trial Court is set aside. The investigating agency shall obtain a fresh sanction for prosecution based on the entire facts and circumstances of the case. The Special Judge shall take cognizance of the offence on filing of a fresh order of sanction for prosecution.
10. The revision is allowed in the aforesaid terms.

Sd/-
(Arvind Singh Chandel)
JUDGE