

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRA-S-1695-SB-2004 (O&M)
Date of Decision : 6.2.2019

Neelam Kumari

....Appellant

vs.

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Vishal Garg Narwana, Advocate
for the appellant.

Mr. Surender Singh, AAG, Haryana.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the conviction of the appellant in case FIR No.37 dated 12.11.2001 under Section 7, 13 (1) (d) of the Prevention of Corruption Act, 1988 (for short 'the Act').

2. The sentence awarded to the appellant is as under :-

- i. Rigorous imprisonment for a period of two years and fine of Rs.500/- for commission of offence punishable under Section 7 of the Act. Rigorous imprisonment for six months in default of payment of fine.
- ii. One year rigorous imprisonment for the commission of offence punishable under Section 13 (1) (d) of the Act.

3. The allegations against the appellant was that she had demanded a bribe of Rs.300 to process and get the pension sanctioned of sister-in-law of the complainant. Since the complainant did not want to pay the bribe he reported the matter to Vigilance Bureau, Jagadhari where after

making necessary preparation a raid was conducted. As per the complainant he and shadow witness went to the office of the appellant and there the appellant accepted bribe and then raid was conducted and tainted money was recovered from her. Having been convicted, the present appeal has been filed.

4. The main argument raised by learned counsel for the appellant is that shadow witness could not testified about the demand at the time of raid because as per him he was standing away and only reacted to the signal received from the complainant. Counsel for the appellant has taken me to the examination in chief of the shadow witness which is stated to be as follows :-

“Then we went to the office of the accused. Suresh Pal entered in her office. I was standing outside the door of her office. Suresh Pal sat on the chair near the table of the accused. They had made some conversation and then I was given signal by Suresh Pal. I gave signal to the police party by rubbing my hands over the head. Then the whole party including myself went inside the office”.

5. The perusal of this evidence clearly reveals that shadow witness did not hear the conversation between the complainant and the appellant and he reacted only on seeing the signal from the complainant and therefore the appellant could not be held liable for illegal gratification. To support his argument learned counsel has relied upon a catena of judgments.

6. The second argument raised by learned counsel for the appellant is that sanction order Exhibit PE was signed by the Director, Social Justice and Empowerment Department, Haryana, Chandigarh, but he

did not appear to testify in this behalf. In this regard he has relied upon the judgment of Kerala High Court passed in the matter of **Savithri vs. Deputy Superintendent, Vigilance and Anti-Corruption Bureau 2015(3) KLT 909**

wherein the Court has held as follows :-

*“5.Ext. P16 is the prosecution sanction granted by the Deputy Director of Education, Kozhikode. This was marked during trial by the Investigating Officer. There is no explanation why the prosecution did not examine the Deputy Director of Education to prove the prosecution sanction. As regards the necessity of proof of sanction granted under Section 19 of the P.C Act, this Court has settled the legal position, relying on various earlier decisions, that except in cases where the prosecution sanction will have sanctity or immunity under the law, the prosecution sanction will have to be proved by the person who granted the sanction. In **Antory Cardoza v. State of Kerala (2011 (1) KLT 946)**, this Court held that the essentials regarding prosecution sanction including independent application of mind in the process of granting sanction will have to be proved by the person who granted it, and this responsibility cannot be taken over by somebody else. This Court observed that when the prosecution sanction including independent application of mind is not proved, by the sanctioning authority, it cannot be said that the prosecution sanction is properly and legally proved.”*

7. Counsel for the petitioner has further relied upon the judgment of the Madras High Court passed in the matter of **D. Venkatasan v. State 1997 CriLJ 1287** where the Court has held as follows :-

“....It is well settled by the judicial pronouncements that according sanction to prosecute a Government Servant by a Competent Authority under S. 19 of the Prevention of Corruption Act is not a mere mechanical process and an empty formality but it is to be attached with every sacrosanctity in built by the statute itself for the reason that frivolous implications of the public servants, roping

in false criminal cases could be avoided and for the said avowed object in mind, legal fiction has been pronounced by the Courts of Law in according sanction for prosecution. The sanctioning authority must apply its mind in full, that would mean that he has to refer all the case records and identify the case and grounds on which the satisfaction was arrived at on the basis of which sanction has to be accorded. Looking Ex. P. 13 on the basis of the above law, I am not inclined to accept the contention of the learned Government Advocate in this regard. Of course, this plea regarding the validity of the sanction order does not appear to have been taken before the trial Court. But while looking into sub-secs. (3) and (4) of [S. 19](#) of the present Act, if the Court is satisfied with the failure of justice in non-performing a mandatory obligation on the part of the authority, then the Court is empowered to look into the same and provide the legal redressal to the aggrieved persons. Keeping in view the said principle, for want of legal sanctity, the sanction accorded under Ex. P. 13 cannot at all be considered to be a valid one in law. In this regard, I am fully constrained to endorse my view with the contentions made by C.J. Madanagopal, learned counsel appearing for the appellant and thereby to say, that Ex. P. 13 is not a valid sanction order so as to take it that the prosecution can be successfully launched against the accused. Once the prosecution fails to prove the genuineness of the sanction order and as a consequence thereof, if any failure of justice is identified to any person, then the presumption or the legal bar provided under sub-secs. (3) and (4) of [S. 19](#) of the Prevention of Corruption Act will not come and do not stand in any way in the verdict to be given in favour of the accused.”

8. Learned AAG is not in a position to cite any contrary judgment.
9. In the circumstances, the appeal is allowed and the appellant is acquitted. Bail bonds/surety bonds, if any, stand discharged.

10. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

6.2.2019
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned

- Yes/No

Whether reportable

- Yes/No