

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

267

CRM-M-11994-2019 (O&M)
Date of Decision : 20.5.2019

Hari Kesh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. P.S.Ahluwalia, Advocate
for the petitioner.

Mr. Ramandeep Sandhu, Senior DAG, Punjab.

AJAY TEWARI, J. (Oral)

The present petition has been filed praying for quashing of sanction order dated 19.11.2018 which has been granted to prosecute the petitioner in case FIR No. 02 dated 10.1.2014 registered at police station Vigilance Bureau, Patiala Range, Patiala for offence under Sections 7, 13 (2) of Prevention of Corruption Act, 1988 (for short 'the Act')

Counsel for the petitioner has stated that in the first place, the competent authority that is Nagar Council has declined the sanction and now without their being any fresh material, sanction has been granted by the Executive Officer, Nagar Council who is not even a competent authority and Nagar Council which is the competent authority is by-passed. Now, sanction having been granted (by the incompetent authority) the petitioner is before this Court.

It is now beyond the pale of any controversy that the grant of sanction is an administrative order and it can be reviewed by the competent authority when fresh material is placed before it. Reference may be made to the case of **State of Himachal Pradesh Vs. Nishant Sareen** reported as **2011 AIR (SC) 404** where the Supreme Court held as follows :-

“12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.”

Reply has been filed on behalf of the respondent in which no new material has been pointed out which would may have been brought before the authority for obtaining subsequent sanction. Further, there is no explanation as to how the Executive Officer, Nagar Council is competent to grant the sanction whereas appointing authority of petitioner is Nagar Council and further proceedings have taken place without there being any valid sanction. In this regard, counsel for the petitioner has relied upon the judgment of the Supreme Court passed in **Manoranjan Prasad Chodhary v. State of Bihar** reported as **2002 (10) SCC 688** where it was held that prosecution of a 'public servant' without proper sanction from the 'competent authority' is vitiated and is liable to be quashed.

From a conspectus of the facts and circumstances of the case as well as the prevailing law, I see no reason to dismiss this petition. Consequently, the petition stands allowed and impugned sanction order dated 19.11.2018 and consequent proceedings arising therefrom are set aside.

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

20.5.2019

anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No