

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM No.4498 of 2019 &
CRM-M-27428 of 2011 (O&M)
Date of Decision: February 26, 2019.

Pardeep Kumar

....Petitioner

Versus

Union Territory, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJAN GUPTA

Present: Mr. Salil Sagar, Sr. Advocate
with Mr.Sunil Kumar, Advocate
for the petitioner.

Mr.J.S.Toor, Advocate for U.T., Chandigarh.

Rajan Gupta, J (Oral)

CRM No.4498 of 2019

This is an application for continuation of order dated 8.9.2011
passed by this court during the pendency of this main petition.

CRM-M-27428 of 2011

With the consent of the parties, main case has been taken up
today for hearing.

Petitioner has posed a challenge to orders Annexures P/3 &
P/4 and consequent proceedings. Learned counsel for the petitioner
submits that petitioner was himself employed as Superintendent in the
department of Registrar of Companies, Jalandhar and was thus a public
servant at the relevant time. After completion of investigation,
prosecution sought sanction from the appropriate authority, which was
declined vide order Annexure P/2. However, vide impugned order,

Special Court went ahead to frame charge under Sections 8 & 12 of the Prevention of Corruption Act, 1988.

On behalf of prosecution, Mr. Toor has argued that Section 19 does not provide for any sanction to be obtained from the prosecution for an offence under Sections 8 & 12 of the Act. The trial court has rightly framed the charges. However, a perusal of order Annexure P/3 shows that it contains no discussion as to the plea raised before this court whether ingredients of Section 7 or Section 8 of the Act would be attracted in the facts of the instant case.

Stand of the petitioner is that at the time when cognizance of the offence was taken, petitioner-Pardeep Kumar himself was a public servant. Thus, Section 7 would be attracted. Learned counsel are *ad idem* that the order does not contain any discussion about the applicability of Sections 7 or 8.

In view of above, impugned orders Annexures P/3 & P/4 are hereby set-aside. Matter is remitted to the same court for decision afresh after hearing counsel for the parties.

Petition is allowed in these terms.

Learned counsel for the petitioner shall be at liberty to cite the judgments, then seek to place reliance upon.

(Rajan Gupta)
Judge

February 26, 2019.

BB

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No