

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CRM-M-33516-2016 (O&M)

Date of Decision : 28.5.2019

Charanjit Singh Mann

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arvinder Singh, Advocate
for the petitioner.

Ms.Amarjit Kaur Khurana, DAG, Punjab

Mr. Alok Jain, Advocate
for respondent No.3.

AJAY TEWARI, J.

This petition has been filed for quashing the sanction which has been granted to prosecute the petitioner.

The brief facts of the case are that an FIR No. 12 dated 17.8.2007 under Sections 13 (1) E read with Section 13 (2) of the Prevention Act, 1988 lodged at Police station Vigilance Bureau, Bathinda Range Bhatinda was filed against the petitioner. Originally, sanction for the prosecution was declined but the Court directed further investigation. Thereafter, fresh sanction was applied for and that having been granted, 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.”

The issue therefore is whether there was any fresh material on the record or not. The precise argument of the learned Senior Counsel

appearing for the petitioner is that there was no fresh material before the competent authority to review its order.

On the other hand, learned counsel for the respondent No.3 has argued that when the material was placed before the competent authority there were some expenses which the investigating agency had not placed before the competent authority (for whatever reasons). After the order of the Court for further investigation the subsequent investigating officer was able to pin point those expenses which increase the unaccounted wealth and these factors prevailed upon the competent authority to review its order. As per him, in these circumstances, the case would not come within the mischief pointed out by the Supreme Court in paragraph No. 12 (supra) but would be covered by the subsequent part of that paragraph.

Learned Senior counsel appearing for the petitioner has argued that on both the occasions certain expenses were wrongly considered. He is however not in a position to deny that on the second occasion the investigating agency had brought forthwith some expenses which were not included in the chart which had been submitted to the competent authority. As regards those expenses which as per him, were wrongly considered, that is a matter for the trial Court to see, but at this stage, it cannot be held that an unbridled power of review has been exercised. The Court could have given the details of those expenses which have been brought to the fore on the second occasion but these details are not being mentioned as to not to prejudge the issue.

The third argument of the learned Senior Counsel for the petitioner is that in the departmental enquiry the petitioner has been

exonerated. This fact also cannot influence this Court because the Supreme Court in the judgment of State (NCT of Delhi) Vs. Ajay Kuma Tyagi reported as (2012) 9 Supreme Court Cases 685 had held that issue of departmental enquiry and to whether prosecute under the Prevention of Corruption Act are two independent proceedings and the mere fact that the person is exonerated in one cannot have the effect of nullifying the other.

In the totality of the facts and circumstances of the case, I am not convinced that the present case calls for any interference.

The petition stands dismissed.

Since the main case has been dismissed, the pending criminal miscellaneous application, if any, also stands dismissed as such.

28.5.2019
anuradha

(AJAY TEWARI)
JUDGE

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