

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.234

CRM-M-36979-2014 (O&M)

Date of decision : 01.02.2019

Balraj Singh and another

..... Petitioners

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Kanwardeep Singh, Advocate, for the petitioners.

Mr. D.R. Singla, DAG, Haryana

SUDHIR MITTAL, J. (Oral)

The petitioners seek quashing of compliant case No.106 instituted on 8.5.2013 (Annexure P1), under Sections 32 and 33 of the Forest Act, 1927 read with Forest Conservation Act, 1980 as well as summoning order dated 22.11.2013 (Annexure P27).

At the relevant time, petitioner No.1 was the Commissioner, Municipal Corporation (Improvement Trust Cell), Karnal and petitioner No.2 was the Trust Engineer (XEN). According to duties imposed upon them vide Notification dated 23.3.1993, issued by the Local Government Department of the State of Haryana (Annexure P7), notifying the sanction of the Governor of Haryana to Remodeling of the Old Mugal Canal Scheme, some activity was done in the Mugal Canal between the stretch Mela Ram School to Subzi Mandi Bridge, resulting in filing of the aforementioned complaint.

It is argued by learned counsel for the petitioners that Remodeling of the Old Mugal Canal was being done by the Improvement Trust, Karnal, pursuant to the Scheme notified vide Notification dated 23.3.1993 (Annexure P7). In case any prosecution was to be lodged against

the petitioners prior sanction of the Government under Section 197 Cr.P.C.

was essential. The sanction having not been obtained, cognizance of the complaint is barred by law and thus, the aforementioned complaint and summoning order deserve to be quashed.

Learned State counsel submits that the petitioners were carrying on activity without obtaining appropriate approvals and thus, Section 197 Cr.P.C., is not attracted. It is, however, not disputed that the alleged activity was being done in the area notified vide Notification dated 23.3.1993 (Annexure P7). Reliance is placed upon **‘Harihar Prasad Etc. Vs. State of Bihar, 1972 (3) SCC 89’, ‘Bholu Ram Vs. State of Punjab and Another, 2008(4) RCR (Criminal) 187’ and ‘State of Uttar Pradesh Vs. Paras Nath Singh, (2009) 6 SCC 372.’**

Section 197(1) Cr.P.C. is reproduced below for ready reference:-

“(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

[\(a\)](#) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

[\(b\)](#) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government”

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Sub-Section (1) of the aforementioned provision makes it mandatory that in case a public servant is required to be prosecuted for an offence allegedly committed while acting or purporting to act in the discharge of his official duties, cognizance shall only be taken by the Court after previous sanction of the concerned State Government.

It is not in dispute that the offence of which the petitioners are accused, was committed in discharge/purported discharge of their duties. Thus, it was essential for the Forest Department to have obtained previous sanction of the State Government before filing the complaint. The trial Court was also barred from taking cognizance of the complaint without the said sanction. The judgments in **Harihar Prasad's case (supra), Bholu Ram's case (supra) and Paras Nath Singh's case (supra)**, are not applicable in this case as the ratio thereof is that an offence in the nature of cheating, forgery etc. allegedly committed by a public servant cannot be said to be an offence committed in the discharge/purported discharge of his official duties and therefore, prior sanction for prosecution is not essential. In the present case, there is no allegation that the petitioners acted in personal interest or did something in furtherance thereof.

In this view of the matter, the prosecution of the petitioners is not sustainable in law. The petition is allowed and complaint case No.106 instituted on 8.5.2013 (Annexure P1), under Sections 32 and 33 of the Forest Act, 1927 as well as summoning order dated 22.11.2013 (Annexure P27) are quashed.

(SUDHIR MITTAL)
JUDGE

01.02.2019

Ramandeep Singh

Whether speaking / reasoned

Whether Reportable

Yes / No

Yes/ No