

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-39010 of 2017 (O&M)

Date of Decision: 12.09.2019

Ramesh Kumar Garg

... Petitioner(s)

Versus

The State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. R.S.Rai, Senior Advocate
with Mr. Karan Pathak, Advocate
for the petitioner(s).

Mr. Ashish Sanghi, Deputy Advocate
General, Haryana for the respondent.

Shekher Dhawan, J.

Present petition under Section 482 Cr.P.C. for quashing of order dated 08.09.2017 (Annexure P5), passed by the learned Additional Sessions Judge, Gurugram ordering further investigation in case FIR No. 07 dated 28.03.2014, registered under Sections 7 & 13 of the Prevention of Corruption Act, 1988 and Sections 218, 420, 120-B & 201 IPC at Police Station State Vigilance Bureau, Gurgaon.

Facts relevant for the purpose of decision of the petition that in case FIR No. 07 dated 28.03.2014, final report under Section 173 Cr.P.C. was filed against one Jagdish Chander and accused/petitioner, namely Ramesh Kumar Garg, who was posted as Superintending Engineer, Public Health Department, Palwal. The petitioner was kept in column No.2 on the ground that sanction, as required under the law to prosecute him, was not

granted by the competent authority. The learned Additional Sessions Judge, Gurugram, vide order dated 15.09.2016, had discharged the petitioner on that point. Subsequently, the learned Additional Sessions Judge passed the impugned order dated 08.09.2017 (Annexure P5) directing further investigation in the matter and to put up the same before the competent authority to reconsider the same afresh for granting sanction.

Learned senior counsel, representing the petitioner, contended that present case, on the basis of FIR, was totally false and baseless qua the petitioner as he had neither raised any demand from the complainant nor accepted any bribe from him. He has been falsely implicated in the FIR at the behest of his opponents. Learned senior counsel further contended that on the basis of investigation, papers were sent to the concerned department for granting sanction of prosecution of petitioner-Ramesh Kumar Garg and Jagdish Chander. However, sanction for prosecution was granted in the case against Jagdish Chander but it was declined qua the petitioner by passing a well reasoned order and thereafter, police submitted challan against Jagdish Chander only and petitioner was kept in column No.2. The sanction qua petitioner was declined on 08.06.2016 (Annexure P3) bearing endorsement dated 14.06.2016 observing as under:

“In this case, the Investigating Officer did not take notice of objections put up by the delinquent in writing on 03.02.2014 and in this way he was not in a position to give any financial benefit to the complainant.”

Learned senior counsel further contended that the Deputy Inspector General, State Vigilance Bureau, Gurgaon had sought prosecution

sanction against the petitioner and at that time, it was recorded as under:-

“The matter has been considered by the Government and after carefully examining the material placed on record there is no justification for issuance of sanction of prosecution against Sh. Ramesh Kumar Garg, Superintending Engineer, Public Health Engineering Circle, Palwal. Hence, the prosecution sanction against Sh. Ramesh Kumar Garg, Superintending Engineer, is hereby declined.”

On the basis of report under Section 173 Cr.P.C., learned Additional Sessions Judge passed order dated 15.09.2016 against Jagdish Chander only and petitioner was discharged by the learned trial Judge.

Learned senior counsel further contended that after passing of order dated 15.09.2016, the same learned Additional Sessions Judge passed impugned order dated 08.09.2017 directing the police to further investigate the matter and the said order is liable to be set aside as the same is not application of proper judicious mind and well settled principles of law. Firstly, there was no material justifying the passing of order because earlier, the same Additional Sessions Judge had discharged the petitioner. Secondly, after passing of the order dated 15.09.2016, thereby discharging the petitioner, neither any material had come on record nor there was any complaint nor any further investigation report under Section 173(8) Cr.P.C. was filed by the Investigating Agency. Thirdly, petitioner being a public servant was entitled to protection as envisaged under Section 197 Cr.P.C. as well as under Section 19 of the Prevention of Corruption Act. As per Section 19 of the Prevention of Corruption Act, obtaining of sanction was pre-

requisite.

Learned senior counsel for the petitioner also contended that as there was no request of the Investigating Agency, the learned trial Judge was not justified to pass such an order especially when he himself had discharged the petitioner vide order dated 15.09.2016. As such, present petition be accepted and order dated 08.09.2017 (Annexure P5) be set aside.

Learned counsel for the respondent-State has not disputed the above detailed factual position.

Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the factual position of the case that petitioner- Ramesh Kumar Garg, who was a retired Superintending Engineer and public servant and was arrayed as an accused along with Jagdish Chander. As they were public servant, case was moved for sanction of prosecution against both of them, but the competent authority did not accord sanction qua the petitioner. The Investigating Agency presented challan against Jagdish Chander, whereas petitioner was kept in column No.2. Subsequently, vide order dated 15.09.2016, petitioner was discharged.

After passing of order dated 15.09.2016, there was no material or evidence available on the file much less to say that any sanction for prosecution qua the petitioner was received and the learned Additional Sessions Judge passed the impugned order.

As per the provisions of Section 197 Cr.P.C. it is pre-requisite for the prosecution of public servant. For ready reference, Section 197

Cr.P.C. is reproduced hereunder:-

“197. Prosecution of Judges and public servants.—

(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 (save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)—

(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:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.

Explanation.—For the removal of doubts it is hereby

declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, 5 [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or

purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the Contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

More so, as per the provisions of Section 19 of the Prevention of Corruption Act, previous sanction is necessary for prosecution of public servant as no Court can take cognizance of the offence. For ready reference,

“19. Previous sanction necessary for prosecution

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge

shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.- For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the

instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

As there was no sanction for prosecution and there was no request from the Investigating Agency for any further investigation report under Section 173(8) Cr.P.C. against the petitioner, there was absolutely no reason or ground for the learned Additional Sessions Judge to pass the impugned order and to direct the Investigating Agency to obtain the sanction afresh.

Similar matter was before the Hon'ble Apex Court in ***Bikash Ranjan Rout v. State through the Secretary (Home), Government of NCT of Delhi, New Delhi (2019) 5 Supreme Court Cases 542***. In the said case, the Hon'ble Apex Court was seized of quite similar controversy and observed as under:-

“8. In the instant case, the investigating authority did not apply for further investigation and that the learned Magistrate suo moto passed an order for further investigation and directed the investigating officer to further investigate and submit the report, which is impermissible under the law. Such a course of action is beyond the jurisdictional competence of the Magistrate. Therefore, that part of the order passed by the learned Magistrate ordering further investigation after he discharges the accused, cannot be sustained and the same deserves to be quashed and set aside. Consequently, the impugned judgment and order passed by the High Court confirming such an order passed by the learned Magistrate

also deserves to be quashed and set aside. At the same time, it will always be open for the investigating officer to file an appropriate application for further investigation and undertake further investigation and submit a further report in exercise of powers under Section 173(8) Cr.PC.”

In the present case also, Investigating Agency did not apply for further investigation. The learned trial Judge had passed the *suo moto* order for further investigation and as such, the order is liable to be set aside as per the view taken by the Hon’ble Apex Court in ***Ranjan Rout’s case*** (*supra*). As such, present petition stands accepted and the impugned order dated 08.09.2017 (Annexure P5), passed by the learned Additional Sessions Judge, is set aside.

(Shekher Dhawan)
Judge

September 12, 2019
“DK”

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