

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CRM-M No.5527 of 2017 (O&M)

Date of Decision: 01.02.2019

Jagdeep Singh

....Petitioner

Versus

Central Bureau of Investigation and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Munish Thakur, Advocate
for the petitioner.

Ms. Ramandeep Kaur, Advocate
for Mr. Sumeet Goel, Advocate
for respondent No.1-CBI.

Mr. Gaurav Garg Dhuriwala, Sr. D.A.G., Punjab.

Mr. R.S. Bains, Advocate
for respondent No.3.

DAYA CHAUDHARY, J.

Crl. Misc. No.3926 of 2019

This application has been moved for placing on record the counter affidavit of the complainant, photocopies of Annexures A-1 to A-5 and also for exemption from filing certified copies of the same.

Criminal Misc. Application is allowed as prayed for.

Counter affidavit as well as documents Annexures A-1 to A-5 are taken on record.

CRM-M No.5527 of 2017

Petitioner, Jagdeep Singh has approached this Court by way of filing the present petition under Section 482 Cr.P.C for quashing of

impugned order dated 25.01.2017 (Annexure P-10) passed by the Special Judge, CBI, Patiala, whereby, the revision petition filed by him against order dated 15.10.2016 (Annexure P-9) passed by the Special Judicial Magistrate, CBI, Patiala dismissing the application for discharge under Section 239 of the Cr.P.C was dismissed.

At the very outset, learned counsel for respondent No.1-CBI submits that same issue was there before this Court in **CRM-M No.41790 of 2016** and other connected petitions, which were dismissed in terms of order dated 20.12.2017 passed by the Co-ordinate Bench of this Court in **CRR No.3854 of 2016**.

Learned counsel for the petitioner has not disputed this fact.

The issue for determination in aforesaid petitions was as to whether the trial Court has committed any error by declining applications of the petitioners for their discharge or whether pendency of criminal proceedings against the petitioners was against law for want of sanction as per provisions of Section 6 of the Punjab Disturbed Areas Act, 1983 (as amended in 1989).

The relevant extract of order dated 20.12.2017 passed in **CRR No.3854 of 2016** is reproduced as under :-

“92. It has been repeatedly observed by Hon'ble Apex Court that the protection under Section 197 Cr.P.C is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. The official duty implies that the act or omission must have been done by the public servant within the scope and range of his official duty for seeking protection of Section 197 Cr.P.C or any other statute, which require prior sanction before prosecution. Same

proposition of law is applicable for sanction as per spirit of Section 6 of the Act of 1983 and the petitioners are required to make out on file that their act in each case is covered by the provisions of Sections 4 & 5 of the Act of 1983 and prosecution version is incorrect or false. At the start of trial, the Court as per observations of Hon'ble Apex Court has prima facie to proceed on the basis of prosecution version.

93. In view of my above discussion, I find no legal or factual infirmity in impugned orders declining applications of their discharge filed by petitioner(s). However, learned trial Court has observed that at this stage, there is nothing on file to suggest that act of accused was in the discharge of their official duties or provisions of Section 6 of the Act of 1983 are attracted. As per directions of Hon'ble Apex Court in the case of Devinder Singh (supra), the trial Court has prima facie to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to notice of the Court that there was reasonable nexus of the incident with discharge of official duty, the Court shall re-examine the question of sanction and take decision in accordance with law. The above directions nowhere means that the trial Court has to wait till the final decision of the trial. In the event of any such evidence/material coming to its notice even at prior stage, the same can be looked into to re-examine the question of sanction. The observation of trial Court in impugned order(s) that it will look into the question of sanction at the final stage stands modified in the above terms. Revision petitions have no merits, as such, dismissed with above observations. However, applications if any, filed by petitioners under Section 6 of the Act of 1983 or Section 197 Cr.P.C can be kept

pending by trial Court by passing a brief order if it is of the opinion that the evidence on file do not suggest nexus of the incident with the discharge of official duties of petitioners or calling for sanction as per provisions of Section 6 of the Act of 1983 and decide the same at appropriate stage.

94. Before parting it will be relevant to take a note of the fact that after filing of charge-sheet in these cases a long period has elapsed and the prosecution evidence is yet to start. It is neither in the interest of prosecution nor petitioners that sword of prosecution keep on hanging over their heads for such a long period. The trial court is directed to proceed further in the matter expeditiously and frame a schedule for recording evidence of prosecution at the earliest and then to allow petitioners to lead defence evidence, if required, in support of their plea.”

Accordingly, the present petition is dismissed in view of order dated 20.12.2017 passed by the Co-ordinate Bench of this Court in **CRR No.3854 of 2016**.

01.02.2019
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No