

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-21971-2019 (O&M)
Date of Decision:26.08.2019**

Surender Singh

... Petitioner

Versus

Union of India & another

... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Puneet Bali, Senior Advocate with
Mr. Abhilaksh Grover, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

CM-11955-CWP-2019:

Application is allowed as prayed for.

Legible copies of the Annexures P-1, P-3 and P-8 are taken on
record.

Application is disposed of.

Main case:

Instant writ petition is directed against the order dated
16.05.2019 (Annexure P-4) whereby sanction to prosecute the petitioner for
offences under the Indian Penal Code along with Section 447 of the
Companies Act, 2013 has been granted by the Ministry of Corporate Affairs,
Government of India.

Brief factual matrix is that the first respondent formed an
opinion that investigation into the affairs of Adarsh Group of Companies is
necessary and to be conducted by the Serious Fraud Investigation Office i.e.
a statutory office established under Section 211 of the Companies Act. The

precise allegations that came forth against the petitioner pursuant to investigation report submitted by respondent No.2 is that money in the form of advances were given by Adarsh Buildstate Limited (accused No.1) to HNS Infratech Private Limited (accused No.81) and HNS Project Private Limited (accused No.82) and of which the petitioner herein was a Director, to the tune of Rs.2 crores each for the financial year 2011-12. It is alleged that such advances were for purchase of land by the afore noticed companies without there being any underlying agreement and as such the advances/loan were not genuine.

Learned senior counsel has addressed submissions against the impugned sanction order dated 16.05.2019 (Annexure P-4) primarily on the ground that the same has been accorded without any application of mind. Yet another submission raised is that the impugned sanction order is in gross violation of the provisions of the Companies Act, 2013 and Article 20 (1) of the Constitution of India. It is vehemently contended that the petitioner cannot be prosecuted for offences under Section 447 of the Companies Act, 2013 as such offence was not in existence when the act constituting the offence alleged against the petitioner is said to have been committed.

Having heard counsel for the petitioner and having perused the pleadings on record, this Court is of the considered view that no intervention in the matter is warranted.

There would be difference between 'Absence of Sanction' and 'Validity of Sanction'. Undoubtedly, the issue regarding 'Absence of Sanction' can be raised at the very inception by the aggrieved person. However, where the sanction order exists, the issue regarding its legality and

validity has to be raised only during the course of trial. In taking such view, this Court would draw support from the judgment of the Hon'ble Supreme Court in **Dinesh Kumar Vs. Chairman, Airport Authority of India and another, 2012 (1) RCR (Criminal) 100** and wherein while referring to an earlier judgment in **Parkash Singh Badal and another Vs. State of Punjab and others, 2007 (1) RCR (Criminal) 1**, it was observed as under:

*“10. The provisions contained in Section 19(1), (2), (3) and (4) of the P. C. Act came up for consideration before this Court in **Parkash Singh Badal and another**. In paras 47 and 48 of the judgment, the court held as follows:*

“47. The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard.

48. The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial.”

*11. While drawing a distinction between the absence of sanction and invalidity of the sanction, this court in **Parkash Singh Badal** expressed in no uncertain terms that the absence of sanction could be raised at the inception and threshold by an*

*aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in **Parkash Singh Badal**, this court referred to invalidity of sanction on account of non application of mind. In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind- a category carved out by this court in **Parkash Singh Badal**, the challenge to which can always be raised in the course of trial.”*

Keeping in view the dictum laid down by the Apex Court in **Dinesh Kumar's case (supra)**, this Court declines interference and grants liberty to the petitioner to raise all issues with regard to the legality and validity of the impugned sanction for prosecution during the course of trial.

Petition is accordingly dismissed.

26.08.2019

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |