

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

**CWP-20109-2018 (O&M)
Date of Decision:03.04.2019**

Sham Lal

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present: Dr. Rau P.S. Girwar, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

Petitioner who was serving on the post of Junior Engineer at the relevant point of time under the Punjab State Power Corporation Limited was implicated in FIR No.4, dated 21.05.2010 for offences under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, Bathinda on the complaint of one Hardev Singh. The relevant portion from the First Information Report reads as follows:

*“xxx.. That now yesterday on dated 20.05.2010 in the evening, Sham Lal Sharma J.E., Electricity Department Sangat Mandi along with other employees came to my above mentioned land and was digging earth for installing poles and wires, to whom I showed copy of orders passed by the Court, then above mentioned Sham Lal, J.E. asked me that I do not believe Court orders. If you would have to get installed transformer away from your land, then I will take Rs. 12,000/- as bribe. If you will not give me bribe, then I will install the transformer here itself. xxx...xxx...
xxx...xxx...I the D.S.P. got registered a case against above mentioned Sham Lal, J.E., Electricity Department, Sangat Mandi at Police Station Vigilance Bureau, Bathinda and after conducting raid upon above mentioned Sham Lal J.E. as per rules, was arrested at the spot. xxx...xxx...”*

Then on my demand, in the presence of all the witnesses, abovesaid Sham Lal J.E. after taking out all 16 notes having denomination of Rs. 500/- total amounting to Rs. 8,000/- of Indian currency bearing number 5 A.S. 069101, 8 N.A. 299214, 0 A.S. 662010, 3. A.C. 440606, 2. D.W. 745623, 8. C.E. 298777, 4. D.F. 905970, 6. M.R. 828378, 7. L.Q. 210315, 8. C.T. 193176, 1. M.M.310018, 8. C.S. 001724, 3. B.N. 079235, 5. N.D. 350908, 4. H.B. 366926 and 3. A.B. 803451 along with stay order from the front pocket of his shirt of colour maroon having checks, produced the same before me. After handing over these notes to the government witnesses named Sh. Satpal Singla A.E. and Sh. Harjit Singh A.E. and handing over the recovery memo and memo as to referred currency notes and stay order, tallied the numbers of notes mentioned in the memo with the numbers of the notes recovered, then they found same and correct. These recovered notes were took in police possession vide separate memo and the signatures of the witnesses were taken on the memo. xxx...xxx...”

Challenge in the instant writ petition is to the order dated 29.11.2017 (Annexure P-5) whereby sanction for prosecution has been granted against the petitioner.

Challenge to the impugned sanction order dated 29.11.2017 (Annexure P-5) is primarily on the ground that after conduct of detailed inquiry etc., sanction had earlier been declined and without there being any fresh material on record, the impugned sanction for prosecution that has been accorded, cannot sustain.

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.

03.04.2019

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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