

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 28.01.2020****Judgment Delivered on 11.02.2020****Writ Appeal No. 109 of 2020**

*{Arising out of order dated 22.01.2020 passed by the learned Single Judge in Writ
Petition (Cr) No. 1142 of 2019}*

- K.K. Vashishth, son of Late Ramkalyan Vashishth, aged about 71 years, resident of House No. 322, Saddani Chowk, Budhapara, Raipur.

---- Appellant**Versus**

1. State of Chhattisgarh, through its Secretary, Law and Legislative Affairs, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur.
2. The Secretary, Ministry of Water Resources Department, State of Chhattisgarh, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur.
3. The Anti Corruption Bureau, through the Superintendent of Police, Raipur.
4. The Deputy Superintendent of Police, State Economic Offence Investigation Bureau, Raipur.

---- Respondents

For Appellant	:	Shri B.P. Sharma and Shri M.L. Sakat, Advocates.
For Respondent/State	:	Shri Chandresh Shrivastava, Deputy Advocate General.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****CAV Judgment****Per P. R. Ramachandra Menon, Chief Justice**

1. Petitioner in Writ Petition (Cr) No. 1142 of 2019 is the Appellant. Challenge is against the order dated 22.01.2020, whereby the prayer for interim relief came to be rejected. The crux of the factual matrix as put forth by Shri B.P. Sharma, the learned counsel for the Appellant is that, when the Appellant was serving as an Executive Engineer in the erstwhile Irrigation Department (now, the Water

Resources Department) some allegations were levelled against the Petitioner and some other employees; pursuant to which Crime No. 42/1996 came to be registered against them in respect of various offences including under the relevant provisions of the Prevention of Corruption Act, 1988 (for short, 'Act of 1988'). It is stated that investigation is still going on, for more than two decades.

2. The department simultaneously initiated disciplinary action against the other employees, but no action was initiated against the Appellant/writ Petitioner in this regard. After culmination of the departmental enquiry, the other officials were found guilty of some minor lapses and accordingly, punishment of reduction of one increment without cumulative effect was imposed upon them. As there was nothing against the Petitioner/Appellant, on attaining the age of superannuation, he left the service and all the retirement benefits have been paid to him, who is continuing to draw the pension without any objection from any corners.
3. Two decades after the alleged incident, in the attempt to prosecute the Petitioner/Appellant, sanction of the parent department (Water Resources Department) was sought for. This was considered and sanction was refused by the said Department referring to the facts and figures as per Annexure P/1 order dated 16.05.2019. According to the Appellant/Petitioner, a contrary stand was taken by the Law Department/1st Respondent and sanction for prosecution was accorded in respect of various offences, including the Act of 1988 as per Annexure P/2 order dated 15.05.2019, a copy of which came to be forwarded to the Petitioner/Appellant alongwith covering letter dated 11.10.2019.
4. The contention of the Appellant/Petitioner is that, if there is a difference of opinion between the Law Department and the Administrative/Parent Department with regard to the sanction to be given, the matter requires to be referred to the competent body/committee constituted in this regard as per the

relevant norms stipulated by way of different circulars. Copies of some circulars including the circular dated 21.04.1997 have been produced as Annexure P/3 collectively.

5. The Petitioner/Appellant was subsequently let to know, as per Annexure P/4 dated 30.10.2019, that based on the sanction given, charge-sheet was going to be submitted on 15.11.2019. This made the Petitioner/Appellant to prefer a representation (Annexure P/5) dated 31.10.2019 mainly to reconsider the matter, in view of the difference of opinion between the two different departments, as to the proper course (as stipulated in circular dated 26.05.2003) to be pursued. The Appellant/Petitioner has mentioned that, he was involved earlier, while functioning in the capacity of Executive Engineer, in acquiring/amassing illegal gratification, which after investigation, came to be closed as per Annexure P/6 order dated 08.02.2011 of the Special Judge, PC Act, based on the report submitted by the Police. The non consideration of the representation (pointing out the above facts and figures) made the Appellant/Petitioner to approach this Court by filing the writ petition to quash Annexure P/2 sanction dated 15.05.2019 and also to interdict the filing of charge-sheet, simultaneously praying for a direction to the Respondents to consider and decide Annexure P/5 representation within a time frame.
6. When the matter came up for consideration before the learned Single Judge on 15.11.2019, I.A. No. 1 of 2019 seeking for stay was rejected and the matter was adjourned by two weeks to file return by the State. Subsequently, when the matter came up on 22.01.2020, the matter was heard elaborately, but instead of finalizing the matter, it was simply 'admitted', dismissing I.A. No. 1 of 2019 seeking for stay again (thus, declining to grant any interim order), but for ordering the matter to be listed for final hearing as expeditiously. This order dated 22.01.2020 is subjected to challenge in this appeal.

7. Shri B.P. Sharma, the learned counsel for the Appellant submits that the order dated 22.01.2020 under challenge cannot be considered as an interim order, as I.A. No. 1 of 2019, (which was stated as rejected as per order dated 22.01.2020) had already been rejected as per the previous order dated 15.11.2019. According to the learned counsel and as stated in paragraph 2 of the memorandum of appeal, the matter was actually 'heard for disposal' on 22.01.2020 and hence the order cannot be termed as an interlocutory order. It is pointed out that much prejudice has been caused to the Appellant as warrant is likely to be issued, once the charge-sheet is filed. Steps for prosecution after two decades from the date of registration of the crime and years after retirement from the service will amount to harassment of the Appellant and hence the challenge.
8. The learned counsel for the Appellant submits that the Respondents went wrong in applying the 'old circular of 1997' which stands superseded by the subsequent circular dated 26.05.2003 (copy of which has been produced as Annexure A/2 alongwith the return submitted by the State) which clearly stipulates that, if there is a difference of opinion between the Law Department/1st Respondent and the parent department, it is to be placed before the Committee concerned. It is also pointed out that, as per Annexure P/1 dated 16.05.2019, the parent department has categorically rejected the request for sanction, also with reference to earlier proceedings correspondence dated 12.04.2019 and 04.05.2019 and it is without any regard to the same, that the sanction has been given as per the proceedings stated as issued by the Law Department/1st Respondent on 15.05.2019, that came to be forwarded to the Petitioner/Appellant alongwith the copy of letter dated 11.10.2019. Since the sanction has been granted without following the procedure, it is *per se* wrong and unsustainable and is required to be interdicted by this Court.

9. Shri Chandresh Shrivastava, the learned Deputy Advocate General representing the Respondent/State submits that the appeal itself is not maintainable as it will not come within the purview of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (for short, 'Act of 2006'), by virtue of the proviso to Section 2(1) of the Act of 2006.
10. With regard to the merits of the case, it is pointed out with reference to the return filed in the writ petition, that as per the relevant circulars, including the circular dated 31.05.1996 and Annexure R/1 dated 21.04.1997, sanction for prosecution of Government servants could be given directly by the Department of Law and Legislative affairs, but before granting such sanction by the Department of Law, Annexure R/1 circular dated 21.04.1997 insists to get opinion from the administrative department, fixing a time limit of 'one month' in this regard. If no opinion/consent is obtained within the said period, it is free for the Law department to accord sanctioned/approval for prosecution without the opinion of the legislative department.
11. Reference is also made to the subsequent development as per Annexure R/2 notification dated 30.05.2003 with regard to granting on prosecution in terms of the Section 197 Cr.P.C. and Section 19 of the Act of 1988. It is stated in the return that, Annexure R/3 communication dated 22.03.2019 was sent by the Law department to the Water Resources Department seeking their opinion/consent/disagreement within 'one month', which was followed by a reminder dated 23.04.2019, but there was no response. It was accordingly, that the matter was considered and sanction was given by the Law department on 15.05.2019, which forms part of Annexure P/2. This being the position, there is no violation of any procedure stipulated in this regard; submits the learned counsel.

12. After hearing both the sides, we find that the issue is still pending consideration before the learned Single Judge and the only point to be considered by this Court is with regard to the correctness or sustainability of the order dated 22.01.2020 passed by the learned Single Judge and whether the appeal is maintainable against such an order.
13. There is some force in the submission made by the Shri B.P. Sharma, the learned counsel for the Appellant to the effect that there was no need or necessity to have I.A. No. 1 of 2019 (seeking for interim relief) to be considered on 22.01.2020 and to have rejected on that day; as the said I.A. had already been considered and rejected on 15.11.2019. But, it is seen from the proceedings dated 15.11.2019, that the matter was not admitted on that day and was adjourned by two weeks for filing statement, after rejecting the I.A. No. 1 of 2019. However, as reflected from the order dated 22.01.2020, the matter was heard on 'admission' on that day and it was admitted accordingly; followed by consideration of I.A. No. 1 of 2019 for granting of interim stay. The prayer made by the learned counsel for consideration of the representation in the light of circular dated 26.05.2003 was also recorded, which was opposed by the State and it was thereafter, that the learned Single Judge held that it was not a fit case to grant any interim order at that stage.
14. The prayer in I.A. No. 1 of 2019 reads as follows:

“It is, therefore, prayed that this Hon'ble Court may be pleased to pass an order directing the respondents not to file charge sheet against the petitioner till final disposal of this petition and in the facts and circumstances of the case.”

The said prayer was rejected as per order dated 15.11.2019, but as per the last paragraph of the order dated 22.01.2020, the learned Single Judge, after admitting the writ petition, considered granting of any interim order/direction, though reference is made to hearing of I.A. No. 1 of 2019 which

was already considered and rejected earlier. Since the writ petition has been ordered to be listed for final hearing as expeditiously, after having admitted on 22.01.2020, declining to grant any interim order/direction, this Court does not find it appropriate to make any observation on merits, as the matter is still pending. The question to be considered is whether the appeal is maintainable against such an order passed on 22.01.2020.

15. Appeal is the creation of and as such, it has to be in conformity with the statute. Section 2 (1) of the Act of 2006 which provides appeal to the Division Bench reads as follows:

“2. Appeal to Division Bench of the High Court from a judgment or order of one judge of the High Court made in exercise of original jurisdiction. - (1) An appeal shall lie from a judgment or order passed by one judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court.
 Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

The proviso of Section 2(1) of the Act of 2006 clearly says that no appeal will be maintainable against an interim order passed in a proceeding under Article 226 of the Constitution of India. Scope of the said proviso had come up for consideration before a Full Bench of this Court and as per the verdict dated 25.01.2017 in Writ Appeal No. 255 of 2016, it has been declared that, it will lie only if the interim order is having final effect. The operative portion of the said judgment reads as follows:

“We therefore answer the question referred to us by holding that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 bars appeals against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finality attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it cannot be termed as interlocutory order and an appeal would lie. An appeal

would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them. The orders, effect of which cannot be undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders.”

16. On being tested with the aid of the above magnifying glass, this Court cannot have any other opinion than that appeal is not maintainable. However, because of the long pendency of the 'root cause' with regard to which a crime was registered and sanction to prosecute was sought for and stated as given after two decades and also considering the fact that the Petitioner/Appellant is a septuagenarian, having crossed the age of 70 years and further since no disciplinary proceeding was initiated against the Petitioner/Appellant and was permitted to retire from the service granting all the retirement benefits, we express our hope and desire that merit of the contention raised in the writ petition be heard and finalized as expeditiously as possible.

The appeal stands dismissed with the above observation.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge