IN THE PUNJAB AND HARYANA HIGH CORUT AT CHANDIGARH

204 **CWP-20034-2016**
Date of Decision: 06.12.2022

NASEEB

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. S. S. Surjewala, Advocate for
Mr. Sunil Kumar Nehra, Advocate
for the petitioner.

Mr. Vivek Chauhan, AAG, Haryana.

Mr. R.S. Ghuman, Advocate
for respondents No.6.

****

VINOD S. BHARDWAJ, J. (ORAL)

The present petition seeks issuance of a writ in the nature of Certiorari for quashing of order dated 22.04.2016 (Annexure P-3) passed by the respondents-Authorities whereby the prosecution sanction of respondent No.6 – Gulab Singh Duhan has been declined.

Briefly summarized, the facts of the present case are that a complaint was submitted by the petitioner to the State Vigilance Bureau, Haryana resulting in registration of FIR No.65 dated 16.10.2015 under Sections 7 and 13 of the Prevention of Corruption Act, 1988 at Police Station State Vigilance Bureau, Rohtak against Gulab Singh Duhan (respondent No.6) and Ashok Kumar son of Het Ram (Driver of Haryana Roadways). The allegations were with regard to raising a demand of Rs.12,000/- as bribe money for selection of the petitioner as an Apprentice in the Haryana Roadways. A raid was thereafter conducted wherein Respondent No.6- Gulab Singh Duhan and co-accused Ashok Kumar were apprehended by the raiding

RAJENDER KUMAR
2022.12.21 19:51
i attest to the accuracy and
authenticity of this document

party. The tainted currency notes were, however, recovered from co-accused Ashok Kumar, Driver and not from the respondent No.6.

After conclusion of the investigation, the investigating agency submitted the evidence alongwith the statements of the witnesses recorded during the course of investigation to the competent Authority for grant of sanction to prosecute the above said accused persons namely Gulab Singh Duhan and Ashok Kumar. The prosecution sanction against co-accused Ashok Kumar (from whom the recovery was effected) was declined by the competent Authority vide order dated 08.12.2015 after considering the evidence collected and produced before it. The petitioner has specifically averred in the petition that he has no grievance against the prosecution sanction being declined against accused Ashok Kumar, Driver. Thereafter, the case of respondent No.6 was considered by the competent Authority and vide order dated 22.04.2016, the prosecution sanction against respondent No.6 was also declined after observing as under:

> *"And whereas, after careful examination of the facts of the case, the Government is of the view that in challan paper placed on file, all the three ingredients i.e. demand, acceptance, recovery of the amount of illegal gratification required for an offence are not established as the alleged bribe was received by Sh. Ashok Kumar, Driver, and events of acceptance & recovery of the amount of illegal gratification from Sh. Gulab Singh, Works Manager are missing in the challan papers, in the statement dated 17.10.2015 under Section 164 of CrPC of complaint Sh. Naseeb Singh made before the Judicial Magistrate Ist Class, Rohtak, the complainant Sh. Naseeb Singh nowhere stated that the illegal gratification of Rs. 12000/- was accepted by Sh. Gulab Singh and recovered from him.*

RAJENDER KUMAR
2022.12.21 19:51
i attest to the accuracy and
authenticity of this document

> *From the perusal of challan papers, the Government is of the view that chances of conviction of Sh. Gulab Singh are bleak. Therefore, the request made by investigating agency to grant prosecution sanction against Sh. Gulab Singh the then Works Manager, Haryana Roadways, Rohtak is hereby declined."*

The aforesaid order is now the subject matter of challenge in the present petition.

Learned counsel for the petitioner has argued that the sanction has been wrongly declined by the competent Authority by recording a finding on the admissibility of the evidence which is impermissible.

Written statement on behalf of the respondent No.1 i.e. the State has been filed, wherein the respondent-State has taken a specific stand that the evidence collected by the investigating agency did not show any proof of acceptance of illegal gratification by respondent No.6 and no recovery was effected from the respondent No.6 as well. There was also no iota of evidence to prove that the demand, acceptance and receipt of the tainted currency notes were at the instance of or at the level of respondent No.6. The relevant extract of the reply is reproduced hereinafter below:

> *"3. That the documents submitted before the competent authority revealed that there was no proof of acceptance of the illegal gratification or recovery of the same from respondent No.6. Even, the document reflected that the amount was recovered from Sh. Ashok Kumar, co-accused (a fact admitted by the petitioner in para No. 2 (1) of the petition). There was not an iota of evidence proving that demand, acceptance and recovery was at level of respondent No.6. The linking evidence to prove the fact that the respondent No. 6 directed the co-accused to accept the amount or the demand from the petitioner was neither on file nor the evidence collected by the investigation agency to prove the same.*

RAJENDER KUMAR
2022.12.21 19:51
i attest to the accuracy and
authenticity of this document

A copy of the notings where the decision was taken to decline the prosecution sanction is placed it Annexure R-1. Therefore, there was no justifiable reason to conclude that the public servant (Sh. Gulab Singh) has committed any offence, as alleged by the complainant/petitioner.

4. That the object underlying section 19 of Act is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations. The allegations against respondent No. 6 were found to be unsubstantiated since the evidences submitted before the competent authority were not leading to the conclusion that the case was fit for prosecution or framing of the charge by the criminal court. Mere statement of co-accused before police/confession of the accused before police and recovery of the alleged amount from the co-accused, that too without corroborating evidence, were no ground for grant of sanction. The evidences were not of nature to frame the charge or the case was not prime facie to lead to such conclusion, hence it was the case of bleak and prime facie of no case for framing of the charge.

In view of lack of evidence(s), the impugned order of rejecting the sanction order is legal."

Separate written statement has also been filed on behalf of the State Vigilance Bureau, wherein they have reiterated the stand of the State. It has also been pointed out that the cancellation report already stands accepted by the Illaqa Magistrate vide order dated 27.07.2016.

Reply on behalf of respondent No.6- Gulab Singh Duhan has also been filed, in which he denied the allegations levelled against him. The relevant extract of said reply reads thus:

"3. That at the very outset it is relevant to give brief facts of the case, as far as the allegations against the Answering Respondent

RAJENDER KUMAR
2022.12.21 19:51
i attest to the accuracy and
authenticity of this document

regarding demand of bribe are concerned it is submitted that the list of the students selected for apprentice was displayed on the notice board on 16.10.2015 at 10.30 AM in which name of Naseeb-petitioner was at Sr. No.17 of the selected students for apprentice. The petitioner-Naseeb maliciously gave false complaint to Vigilance Department regarding alleged demand of illegal gratification at 4.00 PM on 16.10.2015. On the said complaint FIR No. 65 dated 16.10.2015 u/s. 7, 13 of P.C. Act was registered at police station SVB Rohtak and the raiding party constituting 6 members of vigilance department besides two shadow witnesses alongwith the complainant with signed currency notes with Phenolphthalein solution thereon conducted the raid. The tainted currency notes were handed over to one Ashok Kumar a driver in the transport department. Said Ashok Kumar was apprehended Red Handed by the raiding party. It is relevant to submit here that the Ashok Kumar is not driver of Answering Respondent. The Answering Respondent was arrested from his office situated at First Floor. No tainted currency was either paid nor was recovered from possession of Answering Respondent. Thus clearly indicating that the hapless Answering Respondent was not even remotely connected with the alleged demand or recovery of the tainted money. The Answering Respondent has no connection with the said Ashok Kumar in the alleged incident. As said earlier since, the list of the students selected for apprentice was already displayed on the notice board on 16.10.2015 at 10.30 AM in which name of Naseeb-petitioner was at Sr. No.17 of the selected students for apprentice, there was no question of any demand of any money for selection of petitioner subsequent thereto. For reference a copy of the selection list is annexed herewith as Annexure R6/1.

4. That it is relevant to submit here that in this case Ashok Kumar a driver in the transport department was caught red handed with the tainted money and was arrested on the spot in the presence of shadow witnesses. The fact of malicious allegations against the

RAJENDER KUMAR
2022.12.21 19:51
i attest to the accuracy and
authenticity of this document

Answering Respondent and nexus/connivance between petitioner and said Ashok Kumar is further proved from the fact that the petitioner himself gave affidavit that he do not want any action against said Ashok Kumar. Not only this, the sanction for prosecution of said Ashok Kumar was declined by the competent authority vide order dated 8.12.2015 (Annexure P-4) and the petitioner had earlier filed CWP 19620 of 2016 challenging the said order but the petitioner withdrew the same vide order dated 21.9.2016 (Annexure P-6) by saying that he do not want to challenge the same. Even, in the instant writ petition that fact is admitted. Hence, under the facts and circumstances, it safely be presumed that the Answering Respondent is innocent and is a victim of malicious and vexatious prosecution. The petitioner has himself chosen to not to proceed against Ashok Kumar the only link evidence in the instant case. Thus, on this ground alone the instant petition is liable to be dismissed."

Learned counsel for the respondents have argued that the petitioner has been pursuing the instant petition maliciously and notwithstanding the fact that the competent Authority has examined the evidence collected by the investigating agency and has found no evidence to reflect the involvement of respondent No.6 in the commission of the alleged offence. In the absence of any evidence to connect respondent No.6 with the commission of the offence and taking into consideration the fact that the co-accused Ashok Kumar, from whom the tainted currency notes were recovered and against whom the prosecution sanction has already been declined, there was no purpose in prosecuting the respondent No.6 in the present petition as well.

RAJENDER KUMAR
2022.12.21 19:51
i attest to the accuracy and
authenticity of this document

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

It is evident from the perusal of the impugned order that the competent Authority has noticed the brazen absence of necessary ingredient for commission of offences as are necessary for prosecuting respondent No.6 and as such, its satisfaction recorded by the competent Authority for declining the prosecution sanction cannot be misconstrued as an opinion on the evidentiary value. The petitioner could not refer to any material collected by the investigating agency, on the basis whereof it can be assumed that the investigation itself was tainted or that the finding recorded by the competent Authority was not based on due consideration of evidence collected by the investigating agency. In the absence of any material to show that the foundation of declining the prosecution sanction was misconceived or based upon gross misreading and/or misappreciation of the evidence and/or upon non-consideration of the pre-requisites for commission of offence punishable under the Prevention of Corruption Act, 1988, I fail to find any fault in the order passed by the competent Authority. The reasons given and a conclusion recorded with regard to laying foundation for the satisfaction of the authority itself and is not a finding on the evidentiary value of such evidence. The submissions of the petitioner as well as his reliance on a Division Bench Judgment of the Allahabad High Court passed in the matter of ***'Pancham Lal Vs. State of U.P'***. bearing ***Criminal Misc. Writ Petition No.2424 of 1998 decided on 12.11.1998*** is, thus, misconceived and is not applicable to the facts and circumstances of this case. The competent authority has not recorded on the admissibility of the evidence, but has referred to absence of the evidence at

RAJENDER KUMAR
2022.12.21 19:51
i attest to the accuracy and
authenticity of this document

all and that the evidence available is not sufficient. Suffering of evidence and its significance can be examined and the competent Authority has not doubted the admissibility of evidence but observed that the said evidence is grossly deficient to fulfill the ingredients of the offence.

Besides, prosecution sanction qua the person from whom recovery was effected had earlier been declined and the same is not disputed. The only obligation against respondent No.6 is that the co-accused has received money on the asking of and at the behest of respondent No.6. The investigation apparently failed to extract any evidence which could establish such link and the case rested solely on the allegation levelled by the petitioner- devoid of any connecting evidence.

A person is not to be forcibly subjected to prolonged criminal prosecution despite absence of evidence in support of the allegations, more so, when investigation is not alleged to be faulty and petitioner has failed to refer to any evidence to contradict the reasons recorded by the competent Authority. High Court would not ordinarily substitute opinion of the competent Authority unless such opinion is based on misleading and/or non-appreciation of evidence or is infested with perversity, illegality, malice or impropriety.

The present petition is accordingly dismissed and the order dated 22.04.2016 (Annexure P-3) passed by the competent Authority is hereby affirmed.

(VINOD S. BHARDWAJ)
JUDGE

06.12.2022.
rajender

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

RAJENDER KUMAR
2022.12.21 19:51
i attest to the accuracy and
authenticity of this document