

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 1085 of 2022

Petitioner :- Harish Chandra

Respondent :- Union Of India Thru. Secy. Railway Board And Another

Counsel for Petitioner :- Jyotinjay Verma

Counsel for Respondent :- Shiv P. Shukla

Hon'ble Rakesh Srivastava,J.

Hon'ble Saurabh Lavania,J.

Heard Shri Jyotinjay Verma, learned counsel for the Petitioner and Shri Shiv P. Shukla, learned counsel for the State-Respondents.

The Petitioner was initially appointed as Junior Research Assistant (Chemical) at Research Design and Standard Organisation, Lucknow in the year 1989. In the year 2008, the Petitioner was appointed in the Indian Railway Service as Chemist and Metallurgist and his services came to be governed by Ministry of Railways. In the year 2014, the Central Bureau of Investigation registered Case No.954 of 2017 (R.C. No. 0062014A0024) under Sections 120-B read with Sections 420, 468, 471, 201 IPC and Sections 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

On 04.08.2017, the sanctioning authority granted sanction to prosecute the Petitioner for the offences indicated above. The said sanction order was assailed by the Petitioner in Criminal Misc. Application No.1668 of 2018, *Harish Chandra vs. Union of India* filed by him under Section 482 CrPC. The said application was dismissed as not maintainable vide order dated 09.11.2021. The order dated 09.11.2021 is extracted below :

"Heard the learned counsel for the parties and perused the record.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of the Sanction order dated 04.08.2017 saying that the same has been passed in an arbitrary manner without application of mind and the summoning order has been issued.

It has been submitted that the recommendatory authority had given recommendation against giving of such sanction. However, sanction has been given by the President rejecting

the recommendation of the Enquiry Officer. It has also been argued that in the disciplinary enquiry the petitioner was exonerated on similar facts.

Learned counsel appearing for the C.B.I. says that after the sanction order was passed, cognizance has already been taken by the learned Trial Court and the petitioner has also been summoned for framing of charge, the petitioner has not challenged the cognizance or the summoning order in this petition under Section 482 Cr.P.C. He has only challenged the order giving sanction. In such matters, the writ petition under Article 226 of the Constitution of India may be maintainable, before the Division Bench.

This petition is dismissed as not maintainable leaving it open for the petitioner to approach the appropriate Forum against the grant of sanction order."

(emphasis supplied)

The petitioner has now preferred the present writ petition challenging the sanction order mentioned above.

Learned counsel for the Petitioner has contended that with respect to the charges levelled against the Petitioner, a departmental enquiry was held in which the Petitioner was exonerated. It is contended that the charges leveled against the Petitioner are absolutely false and concocted. The counsel contends that the impugned sanctioned order has been passed without application of mind.

Shri Shiv P. Shukla, on the other hand has contended that in this case, after investigation, a charge sheet has been filed by the CBI against the Petitioner as the trial court has taken cognizance. He has contended that mere validity of the sanction order has been sought to be challenged on the ground of non-application of mind. He contends that such a challenge can only be made in the trial court. In support of his contention, he has placed reliance on the case of *Dinesh Kumar vs. Airport Authority of India and others reported in (2012) 1 SCC 532*.

In *Dinesh Kumar (Supra)*, the Apex Court after placing reliance on the case of *Parkash Singh Badal* has held as under :

7. This Court has in *Mansukhlal Vithaldas Chauhan (1997) 7 SCC 622* considered the significance and importance of sanction under the PC Act. It has been observed therein that the sanction is not intended to be, nor is an empty formality but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and it is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty. This Court highlighted that validity of a sanction order would depend upon the material placed before the sanctioning authority and the consideration of the material implies application of mind.

8. The provisions contained in Sections 19(1), (2), (3) and (4) of the PC Act came up for consideration before this Court in *Parkash Singh Badal*. In paras 47 and 48 of the judgment, the Court held as follows: (SCC p.37)

"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."

9. *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.*

10. *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.

* * * *

13. In our view, having regard to the facts of the present case, now since cognizance has already been taken against the appellant by the trial Judge, the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the trial Court and giving liberty to the appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of this Court in *Parkash Singh Badal* and not unjustified."

(emphasis supplied)

In the case in hand, the sanction order has been assailed by the Petitioner on the ground that the same has been passed without application of mind. Moreover, the application moved by the Petitioner under Section 482 CrPC was dismissed by this Court as not maintainable with liberty to him to approach the appropriate forum against the grant of sanction order. Instead of approaching the trial Court, the Petitioner has preferred the present writ petition.

In view of the dictum of the Apex Court, in the case of *Dinesh Kumar (Supra)*, the impugned order does not call for any interference. It is open to the Petitioner to raise the issue regarding the validity of the sanction order in the course of trial.

Accordingly, the Writ Petition is dismissed.

Order Date :-4.3.2022

Pks

(Saurabh Lavania,J) (Rakesh Srivastava,J)