

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

CRR-211-2023 (O&M)

Date of Decision:- 13.2.2023

Alok Pant

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. R.K.Handa, Mr. Dharam Bir Bhargav, Ms. Gauri Handa,
Mr. Ajay Partap Singh and Mr. Kulwinder Bhargav,
Advocates for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana
assisted by HC Jagbir Singh.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 2.12.2022 passed by the trial Court vide which charges have been ordered to be framed against the petitioner for offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988.
2. The allegations, in nutshell, are that on 19.11.2020, the complainant Harish Kumar lodged a complaint with the Vigilance Bureau, Rohtak alleging therein that Nasir, Rent Controller, Waqf Board, Rohtak and Alok Pant, Estate Officer, Waqf Board, Rohtak were demanding an amount of Rs. 1,60,000/- as illegal gratification so as to forward his case to the Head Office at Ambala for allotment of a plot measuring 220 square yards. It is alleged that the said accused were asking him to make an initial payment of Rs.80,000/- and to pay the balance amount subsequently but the said deal

had been settled so as to pay an amount of Rs.50,000/- in the first instance and to pay the remaining Rs. 50,000/- later. Pursuant to receipt of said information, FIR was lodged and a trap was laid to catch the accused red-handed. It is further the case of prosecution that on the same evening, the complainant went to the office of Waqf Board alongwith currency notes worth Rs. 50,000/-, whose serial numbers had already been noted down and passed on the same to accused. Immediately, thereafter, the raiding party stormed into the room and an amount of Rs.50,000/- was recovered from co-accused Nasir, Rent Collector while Alok Pant was also found sitting there. The matter was investigated and challan was presented. The petitioner Alok Pant moved an application dated 11.7.2022 (Annexure P-12) before the Special Court, Rohtak seeking his discharge. The said application was dismissed vide order dated 11.10.2022 (Annexure P-13). The trial Court proceeded to frame charges against the petitioner vide order dated 2.12.2022, which has been challenged before this Court.

3. The learned counsel for the petitioner has assailed the aforesaid order dated 2.12.2022 on the following grounds :-

- (i) that the tainted currency notes were never recovered from the petitioner and that it is the co-accused Nasir, Rent Controller, who was found in possession of the same;
- (ii) that the amount of Rs. 50,000/- had been given by the complainant to co-accused Nasir as earnest money for leasing out a plot to the complainant and that as a matter of fact receipt dated 19.11.2020 (Annexure P-4) had also been issued by the co-accused to the complainant;

(iii) that when the matter was sent to the Haryana Waqf Board for according sanction to prosecute the accused, a three member fact-finding Committee was constituted, which gave a clean-chit to both the accused and vide its report dated 15.3.2021 (Annexure P-6) and accordingly wrote a letter dated 25.3.2021 (Annexure P-7) to Director General, State Vigilance Bureau Haryana to cancel the FIR lodged against officials of the Waqf Board and that in these circumstances according of sanction subsequently by the Chief Executive Officer vide order dated 17.1.2022, without there being any fresh evidence was not justified;

(iv) that the impugned order dated 2.12.2022 is a non-speaking order.

4. On the other hand, the learned State counsel has submitted that it is a case where the petitioner is specifically named in the FIR and specific allegations of demand of bribe are also there against him and that since he was present along with co-accused when co-accused was caught red handed while in possession of the currency notes, the complicity of the petitioner is clearly evident. It has further been submitted that receipt dated 19.11.2020 (Annexure P-4) on which the petitioner places reliance, is not a reliable piece of evidence and has apparently been fabricated, either by the accused or through some of their well-wishers inasmuch as neither the said receipt bears signatures of the Estate Officer nor is there any reference to any office order/allotment letter/offer letter in pursuant to which an amount of Rs. 50,000/- may have been deposited.

5. This Court has considered rival submissions addressed before this Court.

6. It is no doubt correct that recovery of amount of Rs. 50,000/- was effected from co-accused Nasir, Rent Controller and not from the petitioner, but a perusal of the FIR clearly indicates that both the accused are alleged to have connived with each other for the purpose of extracting amount from the complainant. The fact that both the accused were found together when the amount was passed on to co-accused would substantiate the case of the complainant, particularly in light of the factum of recovery of tainted currency notes from co-accused. If two persons, working in the same office, have jointly raised a demand from a complainant and the complainant, in order to fulfill the said demand, comes to the office of the accused who are present together, the complainant would normally hand over the amount to only one of the two persons at that point of time even if both are present together and would leave it for both the accused to divide and share the said illegal gratification amongst themselves as per their understanding. It is not to be expected that they would share the amount in the presence of the complainant there and then. As such, at this stage, the mere fact that the actual recovery was effected from co-accused would not be of much significance as the petitioner was very much present when the said amount was accepted by him. The submission no. (i), as such, does not carry weight and cannot be accepted.
7. Though, the learned counsel vehemently argued that the amount of Rs.50,000/- was earnest money which the complainant was to deposit for the purpose of allotment of a plot measuring about 220 square yards to him on lease and that receipt dated 19.11.2020 was also issued to complainant pertaining to said deposit but this Court finds that there is no such allotment order in favour of the complainant so as to justify the payment being a

payment towards deposit of earnest amount. The learned State counsel has today shown photocopies of about 100 receipts issued by Haryana Waqf Board, upon deposit of various amounts which not only bears the signatures of the Estate Officer as well apart from signatures of the Rent Controller but in each such receipt, there is a reference to some order, memo etc. in respect of which the amount had been deposited. However, as far as receipt No. 96 dated 19.11.2020 is concerned, neither the same bears signatures of the Estate Officer nor does it contain any particulars of any order/allotment letter etc. unlike the other receipts. The learned State counsel also pointed out that the signatures of the Rent Controller, as existing on the said receipt, are different from the signatures of the Rent Controller as are existing on several other receipts which would cast some kind of doubt regarding authenticity of the same. As such, in the absence of anything to show that any order had been passed or any letter had been issued or any offer had been made in writing to the complainant pertaining to allotment of any land on lease in his favour, this Court is unable to accept that the amount of Rs. 50,000/-, as had been given by the complainant was infact earnest money. Thus, submission no. (ii) in this regard is found to be sans merit.

8. The learned counsel has referred to a fact-finding report dated 15.3.2021 of a three members Committee pertaining to the incident in question wherein findings have been returned back that the amount of Rs. 50,000/- was infact earnest money and not bribe amount. However, a perusal of the said fact-finding report also does not refer to any document which would show that any kind of allotment of any land has been made or offer in favour of the petitioner. Pursuant to the said fact finding report dated 15.3.2021, the Chief Executive Officer, Haryana Waqf Board vide letter dated 25.3.2021

(Annexure P-7) made the following request to the Director General, State Vigilance Bureau, the relevant extract is reproduced herein-under:-

“I shall be grateful if you kindly look into the matter and issue suitable instructions to the concerned official to re-exam the whole matter and to cancel the FIR No. 10 dated 19.11.2020 lodged against the officials of the Board namely S/Sh. Alok Pant, EO and Naseer Ahmed, Officiating Rent Controller and also return the confiscated money of Rs. 50,000/- to the Board please.”

9. The learned counsel vehemently argued that vide said letter dated 25.3.2021, the sanction had been declined and that as such, there was no occasion to have accorded sanction subsequently vide order dated 17.1.2022 (Annexure P-8), particularly in the absence of any additional evidence. Upon considering the aforesaid submission, this Court finds that letter dated 25.3.2021 cannot be interpreted to be an order declining sanction and as a matter of fact the Chief Executive Officer, Haryana Waqf Board had “requested” the Director General, State Vigilance Bureau to “re-examine” the whole matter.
10. It is nowhere stated that request is declined. In any case, even if the said order is construed to be an order declining the sanction, there is no bar for the competent authority to consider the matter afresh. In this regard, a reference may be made to a judgment of Hon’ble Supreme Court in 2011(1) RCR(Criminal) 193 State of Himachal Pradesh Vs. Nishant Sareen wherein it has been held as under :-

12. It is true that the Government in the matter of grant or refusal to grant **sanction** exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not

unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent **authority**, as the case may be, it is not permissible for the **sanctioning authority** to review or **reconsider** the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of **sanction**, the matter concerning **sanction** may be reopened by such **authority** for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion *per se* on the same materials cannot be a ground for reviewing or **reconsidering** the earlier order refusing to grant **sanction**.”

11. A perusal of letter dated 25.3.2021 would show that the competent authority had only referred to the report of fact finding Committee and had not referred to any other relevant document. So much so, there is no reference to the report under Section 173 Cr.P.C. filed by the prosecution or statements under Section 161 Cr.P.C. or the factum of laying of trap. On the other hand, the sanction order dated 17.1.2022 (Annexure P-8) shows that all the relevant facts of the case have been duly considered by the competent authority and it is specifically stated therein that statement under Section 161 Cr.P.C., report under Section 173 Cr.P.C., challan papers and other documents, as forwarded by the State Vigilance Bureau, Rohtak have been examined. In this regard, it also needs to be borne in mind as to at what stage the accused can be permitted to raise objections qua the validity of the sanction.
12. A three Judge Bench of Hon’ble Supreme in State of Madhya Pradesh v. Virender Kumar Tripathi, 2009(3) RCR (Criminal) 599, while relying upon

earlier decisions of Hon'ble Supreme Court in State v. T. Venkatesh Murthy, 2004(4) RCR (Criminal) 388 and in Prakash Singh Badal v. State of Punjab, 2007(1) RCR (Criminal) 1, held that an accused cannot be discharged at the stage of framing charge even if there was error or irregularity in the grant of sanction to prosecute. It was further held that to claim discharge accused has to show that error or irregularity in sanction has resulted in failure of justice and that the stage when this failure can be established would be once the trial commenced and evidence was led.

13. In view of the discussion made above, this Court does not find any ground to concur with the submissions raised by the learned counsel for the petitioner in this regard. Submission no. (iii) is found to be shorn of merit and cannot be accepted.
14. It may here, however, be mentioned that the petitioner by way of filing a separate petition i.e. CWP No. 27953 of 2022 has challenged the sanction order while raising a ground that the name of the petitioner does not figure in the audio-conversation between the complainant and the co-accused. It shall be open to the petitioner to pursue with the aforesaid writ on the basis of the aforesaid ground or any other ground, as may be available to him in accordance with law.
15. As far as submission no. (iv) regarding the impugned order dated 2.12.2022, being non-speaking is concerned, a perusal of the said order does show that it is not a very detailed order. However, it needs to be pointed out here that as a matter of fact the petitioner had submitted a very detailed application dated 11.7.2022 seeking his discharge before the Special Court, Rohtak. The said application was dismissed by an equally detailed order dated

11.10.2022 (Annexure P-13). The operative portion of the said order dated 11.10.2022 reads as follows :-

“Consequently, the request of learned counsel for accused-applicant that he be discharged is hereby declined. As a result thereof, the application moved by accused-applicant is dismissed. Let, the case be taken up on 18.10.2022 for framing of charges against the accused.”

16. A perusal of the aforesaid concluding portion of order dated 11.10.2022 clearly shows that the application for discharge had been declined and the trial Court, while dismissing the same, had adjourned the matter to 18.10.2022 for ‘framing of charges’ against the accused. Though, the petitioner challenged the aforesaid detailed order dated 11.10.2022 in this Court by filing CRR No. 2482-2022 but there is no reference to the same in this petition. The zimni order dated 18.11.2022 as well as order dated 24.11.2022 wherein aforesaid revision petition was dismissed by this Court are reproduced herein-under :-

Order dated 18.11.2022 passed in CRR-2482-2022

“Learned counsel for the petitioner(s) restricts his challenge to the extent that once the sanction was declined, the second sanction could not have been granted.

On request, adjourned to 24.11.2022.”

Order dated 24.11.2022 passed in CRR-2482-2022

“Learned counsel for the petitioner(s), on specific instructions from the clients, seeks permission to withdraw the present petitions with liberty to avail remedies in accordance with law.

Dismissed as withdrawn with liberty as prayed for.”

17. The order dated 11.10.2022 passed by the trial Court has somehow not been referred to anywhere in this revision petition. It appears that the matter was,

thereafter, adjourned by the trial Court and when the charges were framed on 2.12.2022, the trial Court again passed a short order for framing of charges against the accused though a formal order was not required on the said date. It appears that the trial Court overlooked the factum of passing of order dated 11.10.2022. In any case, the order dated 11.10.2022 is a lengthy and a detailed order and the petitioner was not even able to get it set aside even though the same had been challenged in this Court. In these circumstances, even if *zimni* order dated 2.12.2022 is a short order, the same cannot be said to have prejudiced the petitioner in any manner, as no fault can be found in order dated 11.10.2022, which is a detailed order wherein all the material facts have been discussed and the contentions raised on behalf of the petitioner have also been taken note of. In any case, as already mentioned above, the quality of evidence is not to be meticulously assessed at that stage.

18. In State of M.P. v. Mohanlal Soni, 2000(3) RCR (Criminal) 452, Hon'ble Supreme Court while defining the scope of consideration at the stage of framing charges has held as under :

"7. The crystallised judicial view is that at the stage of framing charge, the court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

19. Hon'ble Supreme Court in 2020(2) SCC 290 State of NCT of Delhi Vs Shiv Charan Bansal & Ors. has held that while framing charges, if the material placed before Court discloses grave suspicion against accused, the Court will be justified in framing charges against accused and that at the stage of considering framing of charges, the evidence is not to be weighed as if trial

is being conducted. In another instance the Hon'ble Supreme Court in **2021(2) RCR(Criminal) 871 State of Rajasthan Vs Ashok Kumar Kashyap,** held that defence of accused is not to be considered at time of framing charges or discharge application.

20. In the present case, this Court finds that there is sufficient evidence on record to presume that the petitioner alongwith co-assused Nasir had demanded an illegal gratification of Rs. 1.60 lacs and it was agreed that the petitioner would initially pay Rs. 50,000/- and that when both the petitioner as well as co-accused Nasir were sitting together, the complainant paid an amount of Rs. 50,000/- which was recovered from co-accused Nasir. The factum of recovery is not disputed by the accused. Rather, a justification has been put forth that the said amount was earnest money for the purpose of allotment of a plot to the complainant. However, the receipt relied upon by the petitioner is not free from doubt and in any case would form part of his defence. As such, this Court does not find any ground to set aside the impugned order.
21. Finding no merit in the revision petition, the same is hereby dismissed.
22. Since, in the present case, the petitioner has placed much reliance upon the receipt dated 19.11.2020, this Court deems appropriate that the State should consider the feasibility of getting the said receipt examined from a handwriting expert and to place on record the same alongwith any other document which has a relevance to the factum of issuance of receipt. In case, there is any order/letter indicating allotment of any plot in favour of the complainant in respect of which the complainant claims to have deposited Rs. 50,000/-, the same be also placed on record immediately.

23. The petition stands dismissed accordingly.

13.2.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No