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

CRM-M-14859-2023

Date of Decision: 08.08.2023

Naresh Kaushal

.....Petitioner

Versus

UT, Chandigarh and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajesh Sethi, Advocate with
Mr. Arun Biriwal, Advocate
for the petitioner.

Mr. A.M Punchhi, Public Prosecutor, U.T. Chandigarh.

ARUN MONGA, J. (ORAL)

Instant is a petition under Section 482 Cr.P.C., *inter alia*, for issuance of directions to respondents to pass an administrative order/take a decision in the matter of granting sanction to prosecute (i) Mohinder Singh, Assistant Sub Inspector posted in Police Station, Sector-19, Chandigarh; (ii) Gurmukh Singh, DSP, Chandigarh, presently posted at Police Headquarters, Sector-9, Chandigarh; (iii) Uday Pal Singh, SDPO/Northeast, Sector 26, Chandigarh; and (iv) Lakhbir Singh, EO, Police Station, Sector-17, Chandigarh.

2. Learned counsel for petitioner submits that petitioner is a citizen of Canada and is at present residing in House No.426, Sector 10, Panchkula. Vide application dated 05.10.2022 (Annexure P-1), petitioner applied for sanction to prosecute the functionaries of Police Department at Chandigarh, as mentioned above, for having committed serious/grave illegal and unlawful acts attracting penal offences under Sections 166, 166A, 167, 188, 218, 219 and 120B of Indian Penal Code, 1860 (for short 'IPC') read with Section 13 of the Prevention of Corruption Act, 1988.

2.1. Learned counsel for petitioner further submits that when no action was taken on the application (Annexure P-1), petitioner submitted second request application dated 26.12.2022 (Annexure P-3) but all in vain. Learned counsel for petitioner also points out that earlier also petitioner had filed CWP-18809-2022 followed by CWP No. 1522-2023 for directing respondents to pass an order in the matter of granting sanction to prosecute the aforesaid persons. However, CWP-1522-2023 was dismissed as later on withdrawn vide order dated 24.02.2023 (Annexure P-7).

2.2. Learned counsel for petitioner further urges that the aforesaid persons are public servants. So, in order to initiate criminal prosecution against them, sanction of the department where they are serving is mandatory. Petitioner is unable to prosecute them for lack of sanction.

3. On the other hand, learned State counsel opposes the prayer made and submits that there is no iota of evidence to indicate any extraneous or monetary considerations as alleged against them. He further submits that the complaints filed by petitioner were completely baseless and were rightly closed. No sanction is, therefore, warranted.

4. Arguments heard.

5. Reference may be first had to Section 19 of Prevention of Corruption Act which is reproduced below for ready reference:

“19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office:

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression “public servant” includes such person—

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]”

6. Status report has been filed in Court wherein it has been submitted that a private individual can seek sanction to prosecute a public servant for alleged offences under the Act, only by resorting to the requirements and fulfillment of the provisions of Section 19 of the Act of 1988 *ibid*. The representations of the petitioner are, therefore, not maintainable. Sanction to prosecute a public servant for alleged offences under the Act of 1988 is a State subject. No private citizen has any locus standi to demand sanction to prosecute a public servant except by following the process mandated under aforesaid section of law.

7. I am in agreement with the view expressed by learned Public Prosecutor and unable to persuade myself with the arguments put forth by learned counsel for the petitioner that a private citizen has locus standi to demand sanction to prosecute a public servant. Section 19 supra clearly envisages that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or authority for taking cognizance by the court of any of the offences specified unless such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted.
8. At this stage, learned counsel for the petitioner points out that the petitioner cannot file a private complaint as Section 197 of Cr.P.C. mandates prior sanction to prosecute the erring officials.
9. Be that as it may, proviso to Section 19 (i) *ibid* permits the petitioner to file a complaint in a competent Court and the further procedure is also prescribed therein, it is not for this Court to pass any order for the same. Petitioner is at liberty to take steps as per law envisaged therein.
10. Dismissed with liberty aforesaid.
11. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

AUGUST 08, 2023
Harish Kumar

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