2023:PHHC:077583

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

CRM-M-25878-2023 (O&M)
Date of Decision:- 29.5.2023

Anil Kumar … Petitioner

Versus

State of Haryana and another ... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Pankaj Nanhera and Mr. Rahul Gautam, Advocates for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

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| FIR NO. | DATE | POLICE STATION | OFFENCES |
|---|---|---|---|
| 12 | 13.6.2016 | State Vigilance Bureau, Gurugram | Section 7 and 13 of the Prevention of Corruption Act, 1988. |

**<u>GURVINDER SINGH GILL, J.</u>**

1. The petitioner assails order dated 25.8.2022 (Annexure P-3) vide which the prosecution was permitted to place on record sanction order by way of supplementary report under Section 173(8) Cr.P.C. and also order dated 2.3.2023 (Annexure P-7) vide which the trial Court has ordered for framing the charges afresh for holding re-trial of the petitioner.

2. The petitioner is facing trial in a case arising out of above mentioned FIR wherein the allegations are broadly to the effect that the complainant had entered into an agreement for purchasing property from Sumeri for an amount of Rs. 45 lacs and had paid an amount of Rs. 30 lacs as earnest money and the balance amount of Rs. 15 lacs was to be paid on the date of registration of the sale deed i.e. on 10.6.2016. However, when the complainant went to the Teshil office for the purpose of getting the sale deed

registered, Sumeri did not turn up till evening and consequently, the complainant marked his attendance in the office of Tehsildar. The Reader to Tehsildar, however, asked for an amount of Rs. 20,000/- for the purpose of attestation of affidavit regarding attendance of the complainant. Upon negotiations, the amount was settled at Rs. 10,000/- and the complainant was asked to bring the said amount on 13.6.2016. The complainant, however, reported the matter to the Vigilance Bureau. A trap was accordingly laid and the petitioner was caught red-handed while accepting an amount of Rs. 10,000/- from the complainant as illegal gratification.

3. Some of the relevant facts are stated herein-under in chronological order :-

| Date | Event |
|---|---|
| 13.06.2016 | FIR lodged against the petitioner (Annexure P-1) |
| 09.01.2018 | Challan presented before the Special Court against the petitioner |
| 24.05.2018 | Charges framed against the petitioner for offences under Sections 7 and 13(d) of the Prevention of Corruption Act, 1988 (Annexure P-2) |
| 25.08.2022 | The trial Court <u>accepted an application filed by the prosecution to place on record sanction order</u> by way of supplementary report/challan under Section 173(8) Cr.P.C. (Annexure P-3). [Impugned order] |
| 15.09.2022 | After filing of sanction order, three more prosecution witnesses were examined i.e. PW-14, PW-15 and PW-16 and the evidence was closed by Public Prosecutor (Annexure P-4) |
| 29.09.2022 | Statement of petitioner/accused recorded in terms of Section 313 Cr.P.C. |
| 09.02.2023 | The matter had been fixed for defence evidence and was adjourned to 2.3.2023 for recording defence evidence as well as for arguments. |
| 02.03.2023 | Arguments were partly heard. The trial Court while observing that a sanction for prosecution is *sine-qua-non* for taking cognizance whereas there was no sanction order at the time of initial framing of charges on 25.5.2018 and it was subsequently on 25.8.2022 that the prosecution was permitted to place on record sanction order dated 18.11.2019, <u>ordered for re-framing of charges and for holding a re-trial (Annexure P-7).</u> [Impugned order] |

4. The learned counsel for the petitioner while assailing the impugned orders has raised the following submissions :-

(i) that the trial Court committed an error in permitting the prosecution to place on record the sanction order at a belated stage when a large number of PWs had already been examined;

(ii) that the trial Court by proceeding to frame the charges afresh had virtually reviewed its own order and that there is no provision for review in Cr.P.C.;

(iii) once the trial Court in its order dated 2.3.2023 has held the proceedings to be null and void so as to vitiate the trial, an order of *de-novo* trial seriously affects the right of the petitioner for a speedy trial and is prejudicial to him inasmuch as apart from the protracted trial that he would be facing, his defence has already been disclosed to prosecution which the prosecution will conveniently be able to cover up while leading evidence afresh;

(iv) that sanction order dated 18.11.2019 (Annexure P-9) shows that sanction has been accorded only for prosecuting the petitioner under Section 7 of the Prevention of Corruption Act whereas charges have been framed for Section 13(d) of the Prevention of Corruption Act as well;

(v) that sanction order dated 18.11.2019 issued under Section 19 of the Prevention of Corruption Act is violative of law laid down by Hon'ble Apex Court in *(2014) 14 SCC 295 – C.B.I. Versus Ashok Kumar Aggarwal*.

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

6. The scheme of Prevention of Corruption Act provides that no Court is to take cognizance unless a prior sanction to prosecute a public servant has been accorded by the competent authority. The relevant extract from Section 19 of the Prevention of Corruption Act, reads as under :-

> "19. Previous sanction necessary for prosecution.—
>
> (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—
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> (a) in the case of a person who is 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;
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> (b) in the case of a person who is 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.
>
> (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.
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> (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
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> (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
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> (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
>
> (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.
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> (4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section,—
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> (a) error includes competency of the authority to grant sanction;
>
> (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified

> authority or with the sanction of a specified person or any requirement of a similar nature."

7. The question regarding mandatory nature of requirement of prior sanction to prosecute a public servant as prescribed by Section 19 of the Act is no longer *res-integra.* Hon'ble Apex Court in *2005(8) SCC 370 State of Karnataka versus C. Nagaraja Swamy* and later also in *2015(14) SCC 186 Nanjappa versus State of Karnataka* has held that for the purpose of taking cognizance of an offence under Prevention of Corruption Act, prior sanction to prosecute such public servant is *sine-qua-non.*

8. It is the aforesaid position of law which needs to be borne in mind while examining the present case. As far as the contention of the petitioner that the trial Court fell in error in permitting the prosecution to place on record sanction order by way of supplementary challan is concerned, this Court finds that sanction order is not in the nature of any additional evidence or result of any further investigation but is in the nature of a document, which is an administrative order pertaining to according sanction which, somehow, the prosecution had not filed at an earlier stage and infact had been obtained after the challan had already been presented and charges had been framed. As such, the provisions of Section 173(8) Cr.P.C. could have been invoked by the prosecution to place on record a document which is *sine-qua-non* for initiating prosecution against a public servant. As already stated above, a sanction order is not in the nature of any evidence against the petitioner with regard to his guilt but is an administrative order which is required in terms of Section 19 of the Act to initiate the prosecution of a public servant. As such, no infirmity can be found in the order dated 25.8.2022 (Annexure P-3) and the same is upheld.

9. The contention of the petitioner that framing of fresh charges amounts to review is again rather misplaced inasmuch as the framing of charges afresh was necessitated as it came to the notice of the Court that the trial against the petitioner had proceeded without the prosecution having placed on record the sanction order. As on date when charges were framed in the year 2018 neither the sanction order was in existence nor was placed on record. The said sanction order came into existence in 2019 and was placed on record in the year 2022. As such, proceeding further with the trial would have been an exercise in futility and the trial Court has correctly chosen to frame charges afresh as the proceedings in the absence of sanction order would be questionable and *nonest* in the eyes of law. There is no bar for fresh framing of charges. Rather, the trial Court has done the right thing in immediately rectifying the error which came to its notice rather than letting the error further perpetuate and totally sabotage the trial. The said position can be discerned from the judgment rendered by Hon'ble Supreme Court in *State of Karnataka vs. C. Nagarajanswamy (2005) 8 SCC 370.* In the said case, the Hon'ble Supreme Court was dealing with two identical appeals. In the case of appellant Nagaranjanswamy, the learned Special Judge, while holding that the sanction for prosecution was invalid, had discharged the accused at a stage when entire prosecution evidence stood recorded and even statement of accused under Section 313 Cr.P.C. had been recorded. Later, a fresh charge-sheet was filed after obtaining an order of sanction which came to be challenged before the High Court by the respondent in an application filed under Section 482 of the Code.

10. In the case of second appellant M.K. Vijayalakshmi also the proceedings of trial were at fag end. Statement of accused in terms of Section 313 of the

Code had been recorded and even defence evidence had been led. The question as regards sanction accorded by the Managing Director of the Bank was raised by the accused and the trial Court held that the sanction order was invalid. Further proceedings of the case were stopped and the accused was released. A second charge-sheet was filed after almost eleven years on the ground that as the respondent has been dismissed from service, no sanction was required for her prosecution. The said accused also sought quashing of proceedings in High Court in exercise of its inherent jurisdiction under Section 482 Cr.PC.

11. The High Court allowed the first application under Section 482 of the Code filed by the respondent herein on the ground that when an accused faces a full-fledged trial, having regard to the provisions of the Code, the trial court must either record a judgment of conviction or acquittal and the accused cannot be discharged in terms of Section 227 of the Code after a full-fledged trial. In the second matter, the High Court was of the opinion that no fresh trial is permissible in law.

12. The State challenged the decision of Karnataka High Court which was resisted by accused on various grounds including an objection that holding a *de-novo* trial was not permissible. However, the Hon'ble Apex Court while relying upon judgments of Privy Council and other case law turned down the contentions of accused. Even the contention that the accused had already having faced ordeal of trial for long and as such it would not be in the interest of justice to put them to trial again, was held unsustainable. While accepting the appeals filed by State, the judgments of the High Court were set aside and the trial Court was requested to dispose of the matters

expeditiously, preferably within six months. The relevant extracts are reproduced herein under:

" 23. In *Mohd. Safi* this Court held:

> *'6. It is true that Mr Ganguly could properly take cognizance of the offence and, therefore, the proceedings before him were in fact not vitiated by reason of lack of jurisdiction. But we cannot close our eyes to the fact that Mr Ganguly was himself of the opinion — and indeed he had no option in the matter because he was bound by the decisions of the High Court — that he could not take cognizance of the offence and consequently was incompetent to try the appellant. Where a court comes to such a conclusion, albeit erroneously, it is difficult to appreciate how that court can absolve the person arraigned before it completely of the offence alleged against him. Where a person has done something which is made punishable by law he is liable to face a trial and this liability cannot come to an end merely because the court before which he was placed for trial forms an opinion that it has no jurisdiction to try him or that it has no jurisdiction to take cognizance of the offence alleged against him. Where, therefore, a court says, though erroneously, that it was not competent to take cognizance of the offence it has no power to acquit that person of the offence. An order of acquittal made by it is in fact a nullity.'*

24. Relying upon *Yusofalli Mulla Noorbhoy* it was held:

> *' The principle upon which the decision of the Privy Council is based must apply equally to a case like the present in which the court which made the order of acquittal was itself of the opinion that it had no jurisdiction to proceed with the case and therefore the accused was not in jeopardy.'*

25. In view of the aforementioned authoritative pronouncements, it is not possible to agree with the decision of the High Court that the trial court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Code as, even then, it would be held to have been rendered illegally and without jurisdiction.

26. x x x

27. However, the learned counsel appearing on behalf of the respondents may be right in his submissions as regards the right of an accused for a speedy trial having regard to the provisions contained in Article 21 of the Constitution that a person's fate may not be kept hanging for a long time.

28 to 30. x x x

31. Keeping in view the aforementioned principles and having regard to the facts and circumstances of this case, however, we are of the opinion that the interest of justice shall be subserved if while allowing these appeals and setting aside the judgments of the High Court, the trial court is requested to dispose of the matters at an early date preferably within six months from the date of communication of this order, subject, of course, to rendition of all cooperation of the respondents

herein. In the event the trial is not completed within the aforementioned period it would be open to the respondents to approach the High Court again. These appeals are disposed of with the aforementioned directions. No costs."

13. As regards *Ashok Kumar Aggarwal's case* (supra), on which the counsel for petitioner has placed reliance, a perusal of same would show that the judgment was delivered in light of peculiar facts of the said case and can not be treated as a precedent that in every case of invalid sanction, the proceedings have to be dropped. Even otherwise, the Supreme Court in the said case has reiterated the consistent and settled position in this regard while stating as under:

> "46. The most relevant issue involved herein is as at what stage the validity of sanction order can be raised. The issue is no more res-integra. In *Dinesh Kumar v. Chairman Airport Authority of India & Anr.*, 2012(1) RCR (Criminal) 100 : 2011(6) Recent Apex Judgments (R.A.J.) 259 , this Court dealt with an issue and placing reliance upon the judgment in *Parkash Singh Badal & Anr. v. State of Punjab & Ors*., 2007(1) RCR (Criminal) 1 : 2007(1) Recent Apex Judgments (R.A.J.) 71 , came to the conclusion as under:
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> > '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*'
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> 47. Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pretrial stage."

14. Although, in *Ashok Kumar Aggarwal's case* (supra), where validity of the sanction was in issue, and the accused therein had challenged the same even before charges were framed, the Hon'ble Supreme Court ordered for closing of the proceedings but it was ordered so while observing that the matter was

about 15 years old and also while noticing another distinct feature which is being described in the discussion which follows.

15. In *Ashok Kumar Aggarwal's case* (supra), the accused had initially questioned the validity of the sanction order before the Special Court but the same was dismissed while observing that the issue could be examined during trial. The accused challenged the said order by way of filing a criminal revision before the High Court. The High Court set aside the order of the Special Judge and remanded the case back to the Special Judge so as to record a finding on the question of any "failure of justice" in according sanction and to examine the sanctioning authority as a witness at pre-charge stage, if it deemed fit. The trial Court examined the witness pertaining to sanction order and upon considering the matter regarding validity of sanction, turned down the contentions raised on behalf of the accused. The witness summoned by the Special Judge, in compliance of order passed by the High Court, i.e. the sanctioning authority had furnished his affidavit dated 3.11.2001. The relevant extract of which is reproduced herein-under :

> "4. I confirm the statement of facts in Paragraphs 8 and 24 of the order of the Hon'ble High Court. No statements of witnesses or the documents relied in the charge-sheet are ordinarily forwarded to the Finance Minister of the day. What is sent is a draft order, whereafter sanctioning by the Minister in normally a routine acceptance of that draft. What was considered by me was only that which was sent or recommended to me.
>
> 5. If the obligation was to consider more than which was sent, then that has not been done, therefore, unwittingly prejudice might have been caused and justice miscarried. I leave it to the Court to decide the matter."

16. The High Court while accepting the case of the accused/petitioner had observed in Para 8 of its judgment as follows :-

> "8. Further, it is contended that the charge sheet relies upon 366 witnesses, whereas the list annexed to the SP's report mention only 278 witnesses. 88

witnesses were not even mentioned in the list and the statement of not even a single witness, out of 366 witnesses was sent to the sanctioning authority. Moreover, the charge sheet refers to 1220 documents, whereas the list attached to the SP's report only mention 282 documents. Thus, 938 documents were withheld from the sanctioning authority including documents consisting of income tax record of the petitioner. The Apex Court has held in DSP Chennai v. K. Inbasagaran, (2006) 1 SCC 420 that:

"Income tax return and assessment orders are relevant in a case of disproportionate assets."

17. Hon'ble Supreme Court while noticing the aforesaid peculiar facts observed as under in Paras 48 and 49 of the said judgment :-

"48. However, in the instant case, the fact-situation warrant a different course altogether as the impugned order had already been partly complied with before filing the petition before this Court. The appellant admittedly did not disclose the material facts in this petition. Had the said facts been disclosed perhaps this Court would not have entertained this petition and the matter could have been concluded by the Trial Court much earlier. The affidavit filed by the sanctioning authority may tilt the balance in favour of the respondent if duly supported by the deponent and not disclosing the material fact i.e. filing of such an affidavit by the sanctioning authority before the Special Judge, indicates serious and substantial prejudice to the respondent. The material on record reveals that it could be a case of serious prejudice to the respondent so far as the decision making process by the sanctioning authority is concerned. The benefit of interim protection granted in favour of the appellant where the appellant has not disclosed the material facts, should be neutralized.

49. We do not find any force in the submission made by Shri Jethmalani, learned senior counsel that as the matter is about one and a half decade old and the respondent has already suffered because of protracted legal proceedings at various stages before different forums, it is warranted that prosecution against him be closed altogether."

18. A perusal of the above extracts show that it was in the peculiar facts of the case where the trial Court pursuant to directions issued by High Court had examined the Officer according sanction and had returned its findings coupled with the fact that the case by that time had become 15 years old,

that the Hon'ble Supreme Court chose to drop the proceedings. Hon'ble Supreme Court has nowhere held in the said judgment that the matter pertaining to sanction is to be considered mid-trial or at any intermediate stage so as to scuttle short the proceedings.

19. During the course of arguments, the learned counsel for the petitioner submitted that although the petitioner as per the original charge and also as per the amended charge is being tried for offences under Sections 7 and 13(d) of the Prevention of Corruption Act but the sanction order is only in respect of offence under Section 7 of the Prevention of Corruption Act and as such the proceedings, in any case, which are for offence under Section 13(d) of the Prevention of Corruption Act as well was absolutely void.

20. It is well settled that each and every section is not required to be mentioned in the sanction order. It is the facts which should be referred to clearly. Hon'ble the Supreme Court in *Parkash Singh Badal and others vs. State of Punjab 2007(1) RCR (Criminal) 1*, held that sanction order need not mention each of the offence for which the accused is to be prosecuted and that what is required is application of mind and *prima-facie* satisfaction that accused has committed wrong. The relevant extract reads as under:

> "68. The sanctioning authority is not required to separately specify each of the offence 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."

21. A perusal of sanction order dated 18.11.2019 (Annexure P-9) shows that the Deputy Commissioner-cum-Chairman, DITS Nuh has taken note of all the

relevant and necessary facts pertaining to the petitioner having demanded an amount of Rs. 10,000/- as bribe for showing his presence in the Registrar office. The sanction order reveals that all the relevant materials i.e. statements under Section 161 Cr.P.C., report under Section 173 Cr.P.C. and other documents as forwarded by the police had been duly examined before according sanction to prosecute the petitioner. In these circumstances, even if the sanction order refers to only Section 7 of the Prevention of Corruption Act and does not refer to Section 13(d) of the Prevention of Corruption Act, the same cannot be said to be illegal or invalid and the trial Court would be well within its rights to frame charges in respect of any additional offence. The said contention, as such, is repealed and cannot be accepted.

22. A perusal of order 2.3.2023 (Annexure P-7), the trial Court ordered for re-trial after re-framing of charges. A perusal of the charge-sheet framed in the first instance on 24.5.2018 (Annexure P-2) and the charge-sheet framed on 2.3.2023 (Annexure P-8) shows that both the charge-sheets are *verbatim* and there is no difference whatsoever in the said charge-sheet. In such a scenario, where there is no substantial change in amended charges, there would normally be no necessity to recall prosecution witnesses and Court is competent to take a decision in this regard as is specifically provided under Sections 216 (3) and 217(a) Cr.P.C but since a technical issue of cognizance is involved in the present case, therefore recall of the witnesses will be appropriate. However, since the counsel for petitioner has expressed apprehensions that recording statements of witnesses afresh could be prejudicial to accused as his defence already stands disclosed during previous cross-examination of witnesses and that the prosecution will be able to cover up its weak points elicited during previous cross-examination,

therefore, in case the accused gives his consent to the effect that the statements of prosecution witnesses already recorded earlier by trial Court before the charges were framed afresh, be read as it is towards fresh charge, the trial Court may consider such request accordingly having regard to the fact that fresh charges are *verbatim* as the earlier charges and the Court otherwise was competent to try the case but for sanction.

23. In view of the discussion made in preceding paragraphs, this Court does not find any infirmity in the impugned orders and the same are upheld. The petition is sans merit and is dismissed.

**29.5.2023** **( Gurvinder Singh Gill )**
kamal **Judge**

Whether speaking /reasoned Yes / No
Whether Reportable Yes / No