

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39273-2020 (O&M)

Date of Decision:- 02.06.2023

Rajinder KumarPetitioner
Versus
State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. A.P.S.Deol, Senior Advocate, with
Mr. Vishal Lamba, Advocate for the petitioner.

Mr. Luvinder Sofat, DAG, Punjab.

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GURVINDER SINGH GILL, J.

1. The petitioner, against whom final report under Section 173 Cr.P.C., arising out of FIR No. 11 dated 2.8.2017, under Sections 7, 13(2) of the Prevention of Corruption Act, 1988, Police Station Vigilance Bureau, Bathinda, was presented and subsequently even charges have been framed by the trial Court during pendency of instant petition, assails the following orders:

- (i) Order dated 28.4.2020 (Annexure P-28) passed by the office of Directorate, Local Government Department vide which a decision taken by the Director, Local Government Department pertaining to setting aside of Resolution No. 373 of Municipal Council, Mansa and further directing grant of sanction, had been conveyed to the Executive Officer, Municipal Council, Mansa.

- (ii) Order No. 5 dated 11.5.2020 (Annexure P-32) vide which the Administrator accorded approval for granting sanction to prosecute petitioner;
- (iii) Order No. 8 dated 9.7.2020 (Annexure P-36), vide which the Administrator, pursuant to an objection raised by DSP as regards form of sanction order, directed Executive Officer to take necessary action.
2. The petitioner had been working as a Clerk in Municipal Council, Mansa. Upon a complaint made by Pawandeep Singh, FIR No. 11 dated 2.8.2017, under Sections 7, 13(2) of the Prevention of Corruption Act, 1988, Police Station Vigilance Bureau, Bathinda (Annexure P-4) was lodged against the petitioner wherein the complainant alleged that he had submitted a building plan for construction of a house and in respect of which the petitioner had demanded an amount of Rs. 40,000/- as illegal gratification for getting the same approved. A trap was laid and the petitioner was caught red handed while accepting bribe.
3. Upon conclusion of investigation, a report under Section 173 Cr.P.C. was filed before the Special Court by the Vigilance Bureau on 30.7.2018. However, since the same was not accompanied by any sanction order in terms of Section 19 of the Prevention of Corruption Act, an application dated 6.9.2018 (Annexure P-9) was moved on behalf of the petitioner/accused Rajinder Kumar before the Special Court praying therein that cognizance be not taken in the absence of sanction order and that the petitioner/accused be discharged.
4. The State filed its reply on 20.2.2019 (Annexure P-10) wherein a stand was taken that since the FIR was lodged when the accused/petitioner already had

retired w.e.f. 31.1.2018 i.e. before amendment of Section 19 of the Act mandating requirement of sanction even for a retired employee, there was no requirement of obtaining a sanction for prosecuting the accused. It has further been stated therein that the amended provisions can be said to be operative with effect from the date of amendment i.e. 26.7.2018 whereas the instant FIR had been registered on 2.8.2017. When the said application was taken up for consideration by the learned Special Court, it was represented on behalf of the State that the matter in question regarding lack of sanction had been brought to the notice of department concerned. The Special Court accordingly adjourned the matter vide order dated 31.8.2019 (Annexure P-11) for two months to enable the prosecuting agency to seek sanction, in case it desired to do so. The Senior Superintendent of Police, Vigilance Bureau, Punjab wrote a letter dated 6.11.2019 (Annexure P-12) to the Executive Officer, Nagar Council, Mansa requesting for sanction to prosecute the accused.

5. The matter pertaining to grant of sanction was considered by the Municipal Council during the meeting of its members on 17.1.2020 and vide Resolution No. 373 (Annexure P-15), it was decided that sanction be not accorded and be declined. The said Resolution No. 373 was accordingly conveyed to the office of the Senior Superintendent of Police, Vigilance Bureau, Bathinda vide letter dated 21.1.2020 (Annexure P-16). The said resolution dated 17.1.2020 was also conveyed by the Executive Officer, Municipal Council, Mansa to the Director Local Bodies, Punjab vide letter dated 20.1.2020 (Annexure P-17).

6. The Chief Director, Vigilance Bureau, Punjab, wrote a letter dated 13.2.2020 (Annexure P-25) to the Deputy Commissioner, Mansa requesting that Resolution No. 373 dated 17.1.2020 be set aside and that sanction be accorded for prosecuting Rajinder Kumar. The matter was considered by the Director, Department of Local Government, Punjab, and who set aside Resolution No. 373 dated 17.1.2020. It is, thereafter, that the impugned order i.e. letter dated 28.4.2020 (Annexure P-28) was sent from the office of Directorate, Local Government Department to the Executive Officer, Municipal Council, Mansa wherein decision taken by the Director pertaining to Resolution No. 373 dated 17.1.2020 of Municipal Council, Mansa was conveyed. The operative portion of the said letter dated 28.4.2020 (Annexure P-28) is reproduced herein-below:-

“The Hon’ble Director, Local Govt. Punjab, after perusal has taken the following decision regarding Resolution no. 373 of the proceedings of general meeting of M.C. Mansa dated 17.1.2020

“RESOLUTION NO.	DECISION
373	By setting aside the Resolution you are hereby directed to grant Prosecution Sanction.”

Sd/- Sudha Rani
Superintendent (GB)”

7. In the meantime, the Municipal Councils were suspended and vide notification dated 24.3.2020 (Annexure P-27), the Governor of Punjab ordered that till all the municipalities are re-constituted, the powers and duties of the municipalities shall be exercised by the Officers, as nominated in the said order. Thereafter, the matter pertaining to according sanction was taken up by the Executive Officer, Municipal Council and who while

referring to letter dated 28.4.2020 of the Director, Local Government, put up the matter before the Administrator, Municipal Council, Mansa. The Administrator, Municipal Council, Mansa considered the matter pertaining to according sanction pursuant to the Director, Local Government, Punjab having set aside the earlier Resolution No. 373 dated 17.1.2020 and concurred with the opinion of the Executive Officer, Nagar Council, Mansa for according sanction and accordingly approved the same on 11.5.2020 (Annexure P-32). Thereafter, the Executive Officer, Municipal Council, Mansa vide letter dated 11.5.2020 (Annexure P-33) conveyed the decision to the Deputy Superintendent of Police, Vigilance Bureau, Mansa. However, the DSP, Vigilance wrote back vide letter dated 2.6.2020 (Annexure P-34) that sanction should be sent in accordance with directions as per Form B. When the matter was put up before Administrator, he accorded approval for doing the needful and directed Executive Officer to take further action vide order No. 8 dated 9.7.2020 (Annexure P-36). It is on the same day that sanction order was conveyed to Vigilance Bureau.

8. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and that in any case, the petitioner cannot be prosecuted inasmuch as it is a case where sanction had initially been declined by the competent authority i.e. Municipal Council, as is evident from Resolution No. 373 dated 17.1.2020 (Annexure P-15). It has been submitted that in these circumstances, there was no occasion for Director, Department of Local Government, Punjab, to have set aside the same. It has further been submitted that the impugned order dated 28.4.2020 (Annexure P-28) passed by the office of Directorate, Local Government

Department is an absolutely non-speaking order and is in the nature of a direction issued by the office of Directorate, Local Government Department to the Executive Officer, Municipal Council, Mansa to accord sanction and that no reasons are forthcoming in the same and that a superior Officer cannot issue direction for according sanction in this manner. It has been submitted that as a matter of fact even the High Court cannot issue such directions. The learned counsel, in this regard, places reliance upon 1997(4) RCR (Criminal) 236 Mansukhlal Vithaldas Chauhan versus State of Gujarat, wherein Hon'ble Apex Court while considering a case where the High Court had directed the sanctioning authority to accord sanction held that the sanctioning authority has to apply its own mind and then pass an order and that the sanctioning authority is not to act mechanically. Consequently, the Hon'ble Supreme Court held the sanction order to be wholly erroneous having been passed mechanically at the instance of the High Court pursuant to a Writ of Mandamus.

9. Learned counsel, while assailing order No. 5 dated 11.5.2020 (Annexure P-32) and order No. 8 dated 9.7.2020 (Annexure P-36), vide which the Administrator had approved the opinion of the Executive Officer for according sanction on account of order dated 28.4.2020 of the Director, Local Govt. Punjab, submitted that the Administrator had not applied its mind.
10. The learned State counsel, while opposing the petition, has submitted that the impugned letter dated 28.4.2020 (Annexure P-28) is in the nature of an intimation letter sent by the office of the Directorate, Local Government Department, Govt. of Punjab to the Executive Officer, Municipal Council

intimating that Resolution No. 373 dated 17.1.2020 passed by the Municipal Council, Mansa has been set aside and that directions had been issued to accord sanction. It has further been submitted that Resolution no.373 dated 17.1.2020 (Annexure P-15) had been set aside by Director in exercise of delegated powers under Section 236 of the Punjab Municipal Act 1911 and that as such, the same could not be called to question. The learned State counsel has pointed that the actual sanction order dated 9.7.2020 (Annexure P-37) passed pursuant to order dated 9.7.2020 (Annexure P-36) passed by Administrator has never been challenged till date and that it is only Annexure P-28, Annexure P-32 and Annexure P-36 which are under challenge in this writ petition and which are more in the nature of administrative orders passed by authorities concerned. The learned State counsel has submitted that all the three orders under challenge could have been assailed by way of filing "CWP" seeking issuance of a Writ in the nature of *Certiorari* rather than by way of filing a petition under Section 482 Cr.P.C. invoking inherent powers.

11. This Court has considered rival submissions addressed before this Court. It is apposite to first of all consider the issue as regards competence of Director, Department of Local Government, Punjab to set aside Resolution No. 373 dated 17.1.2020 (Annexure P-15), as it is mainly on the said issue that 'Notice of Motion' was issued by this Court on 27.11.2020. The relevant extract from said order is reproduced herein under:

"Learned counsel further submits that the powers to suspend the resolution of Municipal Council are vested with the Deputy Commissioner under section 232 of Punjab Municipal Act 1911 and the impugned orders have been passed

in violation of section 232 and 236 of the aforesaid Act. The Director Local Bodies and the Administrator of the Municipal Council have no jurisdiction to set aside the resolution of the Municipal Council which was approved by the Council itself on 6.3.2020.

Notice of Motion for 7.12.2020.”

12. There is no dispute that Municipal Council, being the appointing authority of petitioner, would be the authority competent to accord sanction to prosecute the petitioner under normal circumstances. However, in the present case, there are some special circumstances which are very material and need to be noticed in addition to relevant provisions of the Punjab Municipal Act, 1911. Sections 232 and 236 of the said Act read as under:

232. Powers to suspend any resolution or order of committee.

The Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a committee, or joint committee or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this act, or in pursuance of any sanction or permission granted by the committee in the exercise of its powers under the Act, if, in his opinion the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely, to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of person.

236. Power to State Government and its officers over committees. -

- (1) The State Government and Deputy Commissioners, under the orders of the State Government, shall be bound to require that the proceedings of the committees shall be in conformity with law and with the rules in force under any enactment for the time being, applicable to generally or the area over which the committee have authority.
- (2) The State Government may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, **annul or modify any proceeding** which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the Deputy Commissioner under Section 232.

- (3) The Deputy Commissioner may within his jurisdiction for the same purpose exercise such powers as may be conferred upon him by rule made in this behalf by the State Government.

13. Vide Punjab Government notification dated 22.7.2005 (Annexure R-1), the powers and functions of the State Government under Section 236 of the Punjab Municipal Act, 1911 were delegated to the Director, Local Government, Punjab. The said notification reads as under:

Punjab Government Gazette
Published by Authority

No.29 CHANDIGARH, FRIDAY, JULY 22, 2005 (ASADHA 31, 1927 SAKA)

Part I – B
Notifications by Local Government
DEPARTMENT OF LOCAL GOVERNMENT
(GENERAL BRANCH)
CORRIGENDUM
The 19th July 2005

“No. IDLG-GB-2005/49- In partial modification of Punjab Government Notification IDLG-GB-2003/12127 dated 30th April, 2003 and in exercise of powers conferred by section 32 of Punjab Municipal Act, 1911, the Governor of Punjab is pleased to delegate with immediate effect powers and functions of State Government under section 236 of the said Act to the Director, Local Government, Punjab in case of Class-I, II and III Municipal Councils and Nagar Panchayats.”

14. A perusal of Section 236 of the Punjab Municipal Act shows that it not only vests the State Government with a power to modify or annul any proceedings of the Committees but rather casts a duty to ensure that the proceedings of the Committees are in conformity with law and with the rules. Further, by way of the above reproduced notification dated 22.7.2005 (Annexure R-1),

the powers under Section 236 of the Punjab Municipal Act stand delegated to the Director, Local Government.

15. In the present case, the term of the members of the Municipal Council, Mansa, expired on 8.3.2020 and the State Government vide notification dated 24.3.2020 (Annexure P-27) nominated officers/SDMs to perform all the duties and to exercise all powers of municipalities. Thus, as on the day when resolution of Municipal Council dated 17.1.2020 (Annexure P-15) was set aside by the Director, he was exercising delegated powers of State Government, under Section 236 of the Act.
16. The decisions taken by the Municipal Council are conveyed and implemented through the Executive Officer. Thus, in case a decision pertaining to Municipal Council, is taken by Director, while exercising delegated powers under Section 236 of the Act, the same would be ultimately executed through the Executive Officer. In the present case, it was after the Director had set aside Resolution No. 373 dated 17.1.2020 of the Municipal Council, declining sanction to prosecute the petitioner, that the matter was processed through the Administrator who directed the Executive Officer to issue sanction order dated 9.7.2020 (Annexure P-37).
17. It is worth mentioning that the sanction order dated 9.7.2020 (Annexure P-37) is not under challenge in the present case. Even if, the sanction order had been under challenge, still the material issue would be regarding scope of intervention of the High Court for quashing proceedings on the grounds of defective sanction order. The question as to whether the High Court could interdict the criminal proceedings on ground of sanction being defective is

no longer *res-integra* and it has repeatedly been held by Hon'ble Supreme Court that it is only during the trial that the issue regarding validity of the sanction order on account of any error, omission or irregularity may be raised.

18. Hon'ble Supreme Court in 2009(3) R.C.R. (Criminal) 599 - State of M.P. Versus Virendra Kumar Tripathi was dealing with an identical question i.e. as to whether the accused can be discharged at the stage of framing charges, error or irregularity in the grant of sanction to prosecute or could get the proceedings quashed by approaching the High Court. The relevant extracts of which are reproduced below :-

- “6.Further the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of /or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the Court a failure of justice has in fact been occasioned thereby. In the instant case there was not even a whisper or pleading about any failure of justice. **The stage when this failure is to be established yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was lead.** In this connection the decisions of this Court in *State v. T. Venkatesh Murthy [2004(7) SCC 763]* and in *Prakash Singh Badal v. State of Punjab [2007(1) SCC 1]* need to be noted.
7. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct.”

(emphasis supplied)

19. Hon'ble Supreme Court in 2014(2) R.C.R. (Criminal) 400 - State of Bihar and others Versus Rajmangal Ram while considering the issue regarding intervention of the High Court for quashing proceedings on the ground that sanction was not accorded by a competent authority held that the High Court

could not interdict the criminal proceedings on such grounds or on the ground that the sanction order was mechanically passed without considering the relevant facts and record. The question framed for adjudication in the said case is reproduced herein-under :-

“Whether a criminal prosecution ought to be interfered with by the High Courts at the instance of an accused who seeks mid-course relief from the criminal charges levelled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant such sanction?”

20. Hon’ble Supreme Court while referring to a plethora of judgments held as follows :-

“7. In a situation where under both the enactments any error, omission or irregularity in the sanction, **which would also include the competence of the authority to grant sanction**, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is **difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity** in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in *State by Police Inspector vs. T. Venkatesh Murthy*, 2004(4) RCR (Criminal) 388: (2004)7 SCC 763 (paras 10 and 11) wherein it has been *inter alia* observed that,

“14.Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice.”

8. The above view also found reiteration in *Prakash Singh Badal and Another vs. State of Punjab and Others*. 2007(1) RCR (Criminal) 1 : 2007(1) Recent Apex Judgments (R.A.J.) 71 : (2007)1 SCC 1 (para 29) wherein it was, *inter alia*, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In *Prakash Singh Badal* (supra) it was further held that Section 19(1) of the PC Act is a matter of procedure and does

not go to the root of jurisdiction. On the same line is the decision of this Court in *R. Venkatkrishnan vs. Central Bureau of Investigation*, 2009(4) RCR (Criminal) 140 : 2009(5) Recent Apex Judgments (R.A.J.) 217 : (2009)11 SCC 737. In fact, a three Judge Bench in *State of Madhya Pradesh vs. Virender Kumar Tripathi*, 2009(3) RCR (Criminal) 599 : 2009(4) Recent Apex Judgments (R.A.J.) 351 : (2009)15 SCC 533 while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19(3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report).”

21. The aforesaid issue also came to be discussed in 2012(1) R.C.R. (Criminal) 100 - Dinesh Kumar Versus Chairman, Airport Authority of India and another wherein it was held as under :-

“10. The provisions contained in Section 19(1), (2), (3) and (4) of the P.C. Act came up for consideration before this Court in *Parkash Singh Badal and another*. In paras 47 and 48 of the judgment, the Court held as follows:

‘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.’**

11. 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. 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.”

(emphasis supplied)

22. Hon’ble Supreme Court in 2015(3) R.C.R. (Criminal) 862 - Nanjappa Versus State of Karnataka held as under :-

“Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature **where a question is raised as to whether the authority granting the sanction was competent therefore or not, at the stage of final arguments after trial**, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service..... ”

(emphasis supplied)

23. It is, thus, evident from the above referred judgments that the Hon’ble Supreme Court has consistently held that the question regarding validity of sanction be best left to be examined during the course of trial when the trial Court would have the advantage of evidence led before it so as to examine threadbare all the finer issues including the issue pertaining to competence of

sanctioning authority. The present case, as already noticed, is not a case of absolute absence of sanction.

24. Still further, this Court finds that the petitioner, in the present case is assailing the orders which, though related to prosecution of accused are administrative orders which had been passed in connection with matter pertaining to according of sanction. For the sake of ready reference, the three orders under challenge are described herein-under :

- (i) Order dated 28.4.2020(Annexure P-28) passed by the office of Directorate, Local Government Department vide which a decision taken by the Director, Local Government Department pertaining to setting aside of Resolution No. 373 of Municipal Council, Mansa and further directing grant of sanction, had been conveyed to the Executive Officer, Municipal Council, Mansa.
- (ii) Order No.5 dated 11.5.2020 (Annexure P-32) vide which the Administrator accorded approval for according sanction to prosecute petitioner;
- (iii) Order Number 8 dated 9.7.2020 (Annexure P-36), vide which the Administrator, pursuant to an objection raised by DSP as regards sanction order, directed Executive Officer to take necessary action.

25. The aforesaid orders are being assailed for the first time directly in this Court while seeking indulgence of the Court in exercise of powers under Section 482 Cr.P.C. It will be debatable as to whether the petitioner can invoke powers of this Court under Section 482 Cr.PC for setting aside these orders or as to whether a civil writ petition seeking issuance of a Writ in the nature of *Certiorari* should have been filed. However, this Court need not go into this issue as the position of law pertaining to invalidity of a sanction order, as already noticed above, is well settled and as per which the matter regarding

invalidity should best be left to be agitated during trial when the trial Court will have advantage of evidence led before it.

26. As a sequel to the discussion made in the preceding paragraphs, this Court does not find any merit in the instant petition. The issues as regards invalidity of sanction may be raised before the trial Court after evidence has been led. In case, any such issue is raised, the trial Court shall consider the same independently, having regard to the evidence which may have been led before it.
27. The petition, as such, is found to be sans merit and is dismissed.

02.06.2023
kamal

(Gurvinder Singh Gill)
Judge

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