

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

CRR-1853-2022 (O&M)
Date of Decision:- 2.2.2023

Satpal Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vivek K. Thakur, Advocate for the petitioner.

Ms. Swati Batra, DAG, Punjab.

GURVINDER SINGH GILL, J.

1. This revision petition is directed against order dated 10.8.2022 vide which an application dated 20.8.2019 (Annexure P-11) filed by the petitioner seeking his discharge in respect of trial arising out of FIR No. 4 dated 27.1.2018 lodged under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 at Police Station State Vigilance Bureau, District Jalandhar, has been dismissed.
2. A few facts, necessary to notice for disposal of this petition are that FIR in question was lodged at the instance of Gurmeet Singh wherein he alleged that he had transferred his land measuring 22 kanals 16 marlas situated in village Georgepur in the name of his wife Amarjit Kaur on 18.1.2018 and had furnished a copy of transfer deed to Satpal, Patwari, Halqa Dalla, who was having additional charge of the area of Kaalru, for the purpose of getting the mutation sanctioned. The complainant alleged that Satpal, Patwari (petitioner), however, demanded an amount of Rs. 6,000/- as bribe for the purpose of doing the needful. Upon pleading by the complainant, the amount was settled at Rs. 5,000/-. However, since the complainant did not

wish to pay the said amount, he reported the matter to the Vigilance Bureau. Accordingly, a trap was laid and the petitioner was caught red handed while accepting an amount of Rs. 5,000/-.

3. The matter was investigated by the police. Upon conclusion of investigation, challan was presented on 8.7.2018, which was accompanied by sanction order dated 14.6.2018 (Annexure P-6). The trial Court ordered for framing of charges vide order dated 10.8.2018 (Annexure P-10).
4. Subsequently, the petitioner moved an application dated 20.8.2019 (Annexure P-11) seeking his discharge on the ground that sanction order dated 14.6.2018 (Annexure P-6) was no longer in existence and stood replaced with another sanction order dated 9.8.2018 (Annexure P-9).
5. The trial Court considered the said application and dismissed the same vide impugned order dated 10.8.2022, holding therein that order dated 9.8.2018 (Annexure P-9) cannot be treated as a fresh sanction order but is merely clarificatory and that it shall be open to the petitioner to raise the said issue at the stage of final arguments. It is the said order dated 10.8.2022, which is impugned in the instant petition.
6. The learned counsel for the petitioner submitted that the trial Court fell in error in passing impugned order dated 10.8.2022 inasmuch as the earlier sanction order dated 14.6.2018 (Annexure P-6) stood replaced and was no longer in existence and as such, the trial Court could not have taken cognizance on 10.8.2018, particularly when the subsequent sanction order dated 9.8.2018 (Annexure P-9) was not even on record and was not part of challan.

7. The learned counsel has further submitted that while the land belonging to the petitioner falls in the revenue area of Kaalru, the petitioner, as on the date of alleged commission of offence, was posted and was having charge of revenue area of Dalla only and as such, there would be no occasion for the petitioner to have demanded any amount from the complainant in respect of any work pertaining to area of Kaalru over which he did not have any jurisdiction. It has, thus, been submitted that the impugned order dated 10.8.2022 dismissing the discharge application filed by the petitioner cannot sustain and deserves to be set aside.
8. Opposing the petition, the learned State counsel submitted that it is on 10.8.2018 that the order framing charges (Annexure P-10) was passed and as such, even if sanction order dated 9.8.2018 (Annexure P-9) is treated as a fresh sanction order, the same had come in existence one day prior to the day when matter regarding framing of charges was considered and charges were framed and as such, the Court was fully competent to take cognizance. Learned State counsel has further submitted that in any case, the only difference in two sanction orders i.e. order dated 14.6.2018 (Annexure P-6) as well as sanction order dated 9.8.2018 (Annexure P-9) is pertaining to the area over which the petitioner had jurisdiction and that while in sanction order dated 14.6.2018 (Annexure P-6), the petitioner is stated to be having jurisdiction over halqa Dalla with an additional charge of Kaalru, in the subsequent sanction order dated 9.8.2018 (Annexure P-9), it has been stated that the petitioner had jurisdiction only over halqa Dalla only. It has, thus, been submitted that the amendment of formal nature pertaining to deletion of reference of additional charge of village Kaalru, as was there in sanction order dated 14.6.2018 (Annexure P-6) cannot be construed to mean that a

fresh sanction order has been passed and that in any case, the same cannot be said to have prejudiced the petitioner in any manner.

9. This Court has considered the rival submissions.
10. Though, the fact that the petitioner was not having any charge over the area of village Kaalru where the land of the complainant was situated is not disputed by State but the petitioner having been caught red handed while accepting bribe from the petitioner and the tainted currency notes having been recovered from him would *prima facie* establish the allegations that he had demanded an amount and infact had accepted the same which had infact recovered from him.
11. While this Court does agree with the contention of the State that the amendment in the sanction order carried out by way of order dated 9.8.2018 (Annexure P-9) is a formal amendment only which would not materially affect the case, either of the prosecution or of the petitioner and had also come into existence before the charges were framed on 10.8.2018 i.e. before the Court took cognizance but this Court cannot lose sight of the fact that order dated 9.8.2018 (Annexure P-9) was never before the trial Court on the said date.
12. Having regard to the aforestated facts and circumstances particularly the fact that order dated 9.8.2018 (Annexure P-9) was not before the trial Court and the accused did not have copy of the same, this Court is of the opinion that the said defect be cured at this stage itself rather than the said issue being raked up at the final stage when all the prosecution witnesses would have been examined. As such, the petition is accepted, the impugned order dated 10.8.2022 is set aside. However, this Court is of the opinion that it is not a

case for discharging the accused. The prosecution is directed to place on record order dated 9.8.2018 (Annexure P-9) on the record of trial Court. The trial Court shall furnish a copy of such order to the complainant which shall be treated part of report under Section 173 Cr.P.C. Thereafter, the trial Court shall consider the matter pertaining to framing of charges afresh and pass a speaking order in consideration of the same. Since by way of the substituted order dated 9.8.2018 (Annexure P-9), it is only a formal amendment regarding the area over which the petitioner was having jurisdiction which has been made, therefore, upon fresh consideration of charges, in case the trial Court is of the opinion that the accused is to be tried and there is no substantial change in the chargesheet as framed afresh, the witnessess who may have already been examined except for the witness in respect of sanction order need not be examined afresh. The witness pertaining to according sanction, if already examined, shall be recalled and examined afresh. It is further clarified that it shall, however, always be open to the petitioner and also to prosecution to move an application for recalling any witness in terms of provisions of Sections 311 Cr.P.C., if deemed necessary and in case any such application is filed, the same shall be considered strictly in accordance with law.

13. The petition stands accepted to the extent indicated above.

2.2.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No