

2023:PHHC:081644

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

CRM-M-43702-2022
Decided on 30.05.2023

Dr. Amit Kumar		Petitioner
	Versus	
State of Haryana		Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Aditya Gautam, Advocate, counsel for the petitioner.

GURVINDER SINGH GILL, J.

1. Petitioner seeks quashing of order dated 12.4.2022 (Annexure P-5), passed by the Governor of Haryana, according sanction to prosecute the petitioner in respect of a case arising out of FIR No. 144 dated 19.4.2019 under Sections 201, 205, 297, 420, 464, 465, 468, 471 read with Section 34 IPC (Sections 120-B, 193 IPC and Sections 7 and 13 of the Prevention of Corruption Act 1988 added later on), lodged at Police Station Civil Lines, Sonapat, District Sonapat.
2. The FIR, in the present case, was lodged pursuant to a complaint made by Aman Bedi, Vice President Fraud and Investigation Unit, Bharti Axa General Insurance Limited with the allegations that one gang, in a pre-planned manner, was running a racket in which they get cancer patients insured with different insurance companies and immediately after their natural death due to illness they project it as a case of death on account of a vehicular accident

and claim compensation amount from insurance companies. It is alleged that eight cases had come to their knowledge. The gang is alleged to be headed by one Pawan Bhoria and Mohit. Some police officials, Doctors and employees of PGIMS, Rohtak are also stated to be involved with them who share the amount. Some amount is given to family of the deceased. Eight persons namely Ajit, Dharambir, Krishan, Smt. Rajpati, Leela Ram, Yogender, Anoop Singh and Sandeep had died due to cancer disease but different FIRs for offences under Sections 279 and 304-A IPC had been got registered in different police stations alleging that they died in motor vehicular accidents. Call details of three mobile numbers 99916-25616, 81685-99529 and 99924-64248 were collected and it was found that mobile number 99916-25616 has been issued in the name of Ravi son of Dinesh resident of village Nitholi, District Jhajjar, who is brother-in-law of Pawan Bhoria but the said number was being used by Pawan Bhoria. The mobile numbers 81685-99529 and 99924-64248 were found to have been issued in the name of Mohit himself. All these mobile numbers were put under surveillance and calls were intercepted and conversations were heard and it was confirmed that Mohit and Pawan Bhoria were running a racket of claiming insurance amounts by showing natural deaths as accidental deaths. Some persons namely Padam Kharb, Rajesh Kaushik, Rakesh Kumar, Ravinder, Johnny Saroha, Pardeep, Sachin nephew of Pawan Bhoria, Sahil, brother-in-law of Pawan Bhoria and Vikas Kharab are involved with them. Upon hearing conversation in respect of intercepted telephone calls, it surfaced that some police officials were also involved and that original treatment record of PGIMS was in their possession. The doctors at PGIMS, Rohtak were contacted and application was moved before Head of the

Department at PGIMS, Rohtak to produce record and it was found that all the files pertaining to treatment of insured patients except the file of Smt. Rajpati, were missing though entries as regards their treatment had been made in different registers from which it was established that all these persons were infact cancer patients and had been undergoing treatment and that the accused had got stolen the treatment record in connivance with the employees of PGIMS, Rohtak. It was also found that all these persons hatched a conspiracy with officials of PGIMS, Rohtak, Police Officials as well as Doctors who conducted post-mortem examinations in committing the crime.

3. It is further the case of prosecution that the petitioner had conducted post-mortem examination on the dead bodies of Ajit, Smt. Madho, Virender, Jaivir and Kuldeep who were cancer patients and had prepared false and incorrect post-mortem reports.
4. The matter was investigated by the police and challan was presented. Since the petitioner was serving Government of Haryana as a Medical Officer, CHC, Mangali, Hisar, therefore he, being a public servant, could not have been prosecuted except with prior sanction of the appointing authority, as is mandated by provisions of Section 19 of the Prevention of Corruption Act 1988. Accordingly, the matter pertaining to grant of sanction was considered and sanction to prosecute the petitioner was accorded by the Governor of Haryana by passing a speaking order dated 12.4.2022 (Annexure P-5). It is the said sanction order which is being assailed by the petitioner *inter-alia* on grounds of delay and having been passed without following the guidelines of

Hon'ble Apex Court as regards sufficiency of material and proper application of mind etc.

5. At the very outset, it needs to be noticed that in the instant petition, the challenge is solely to the sanction order dated 12.4.2022 (Annexure P-5), vide which the Governor of Haryana has accorded sanction to prosecute the accused/petitioner in respect of the offences arising out of FIR No. 144 dated 19.4.2019, Police Station Civil Lines, Sonapat. The prayers made in the petition are reproduced herein under:

“Petition under Section 482 of the Code of Criminal Procedure for quashing of impugned order dated 12.4.2022 (Annexure P-5) in FIR No. 144 dated 19.4.2019, under Sections 193, 120-B, 201, 205, 297, 420, 464, 465, 468, 471, 34 of Indian Penal Code and Section 7/13 of Prevention of Corruption Act, Police Station Civil Lines, Sonapat, which grants sanction of prosecution against the petitioner as it is against the statutory guidelines as well as violative of Apex Court judgements.

AND

For the Direction to call for the records used in granting of prosecution sanction and reconsider the case based on facts and materials of the case.

AND

For the stay of operation of impugned order dated 12.4.2022 (Annexure P-5).

AND

For the issuance of any other order or direction that this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

6. A perusal of the above reproduced prayers made in the petition shows that it is only the sanction order *de-hors* any other document or any other action on part of the State which is under challenge. It will not be out of place to mention that the petitioner has filed another petition separately seeking quashing of FIR i.e. CRM-M-24970-2022, wherein he has chosen not to challenge sanction order. The said petition was filed on 27.5.2022 and

sanction order 12.4.2022 was very much in existence on the said day. A sanction order is basically in the nature of an administrative order which is essentially a pre-requisite to enable prosecution of a public servant, as per mandate of Section 19 of the Prevention of Corruption Act, 1988. As such, it will rather be debatable as to whether the petitioner can invoke inherent powers of this Court under Section 482 Cr.P.C. for setting aside sanction order or as to whether a Civil Writ Petition (CWP), seeking issuance of a Writ in the nature of “*Certiorari*” for quashing sanction order ought to have been filed.

7. However, this Court need not go into this issue as the position of law pertaining to assailing of a sanction order, as regards its “validity”, 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.
8. 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 on grounds of there being any 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)

9. 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?”

10. 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).”

11. 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)

12. The aforesaid consistent view of Hon'ble Supreme Court leaves no manner of doubt that the question regarding validity of sanction is best left to be examined during the course of trial when the trial Court would have the advantage of evidence that is led by the prosecution as it will be in a better position to examine all the finer issues including the issue pertaining to competence of sanctioning authority.

13. The judgment pressed into service by the learned counsel for petitioner i.e. D. Devraja vs. Owais Sabeer Hussain 2020(7) SCC 695, will not be of much avail to the petitioner, given the fact the the said case was a case of sanction under Section 197 of Cr.P.C. and that the position regarding sanction under Section 19 of the Prevention of Corruption Act, 1988, in any case, has been well settled as already discussed above.

14. 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 cannot be treated as a precedent that in every case of invalid sanction, the proceedings have to be dropped. Even otherwise, the Hon'ble Supreme Court 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:

‘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*’

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.”

15. Although, Hon'ble Supreme Court 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 the same was so ordered mainly 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.
16. 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 is 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.”

17. 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. Inbasakaran*, (2006) 1 SCC 420 that:

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

18. The CBI challenged the decision of the High Court by filing an appeal. Hon’ble Supreme Court in said appeal (in *Ashok Kumar Aggarwal’s case*), 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.”

19. The extracts from Ashok Kumar Aggarwal's case (supra), as reproduced above would 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. Rather, in para 46 and 47, the earlier judgments rendered in Dinesh Kumar's case (supra) and Parkash Singh Badal's case (supra) have been referred to approvingly wherein it has been held that the appropriate stage for examining the validity of sanction order is trial.

20. The judgments of Hon'ble Apex Court discussed have fully settled the position of law pertaining to a case where there is “absence” of sanction and a case pertaining to “invalidity” of sanction and the stage at which such issues may be raised. The position, as crystalised, may be stated as under:

- (i) There is a sharp distinction between a case of absolute absence of sanction and a case of invalid sanction. (*Parkash Singh Badal's case*).
- (ii) The issue as regards absence of sanction could be raised at the inception and threshold by an aggrieved person. However, in case the sanction order does exist but its legality and validity is put in question,

such issue has to be raised in the course of trial. (*Parkash Singh Badal’s case*).

(iii) The words “error, omission or irregularity in the sanction”, as mentioned in Section 19(3) of the Act would also include the competence of the authority to grant sanction (*State of Bihar and others Versus Rajmangal Ram*).

21. When the instant case is examined in light of the expositions by Hon’ble Supreme Court, this Court does not find any ground for exercising powers under Section 482 Cr.P.C. so as to quash the sanction order dated 12.4.2022 (Annexure P-5). The issue as regards validity of sanction may be raised before the trial Court upon conclusion of evidence. 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.
22. The petition, as such is found to be sans merit and is dismissed.

30.05.2023

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(**Gurvinder Singh Gill**)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No