

In The High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-46386-2022 (O&M)
Date of Decision:- 20.3.2023

Shipali Sharma Petitioner

Versus

State of U.T. Chandigarh ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. P.S.Ahluwalia, Advocate,
for the petitioner.

Mr. Abhinav Gupta, APP, U.T. Chandigarh,
assisted by Inspector Rajiv Kumar.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 16.7.2022, vide which the trial Court proceeded to frame charges against the petitioner in respect of FIR No.03, dated 01.08.2018, Police Station Vigilance U.T. Chandigarh, under Sections 409, 420, 446, 468, 471, 120-B read with Sections 12, 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988.
2. At the time of issuance of notice of motion, the following order was passed on 18.1.2023:

“Learned counsel for the petitioner submits that in the instant case, the offence was committed between the year 2011 to 2018 and the FIR came to be lodged on 01.8.2018 and final report under Section 173 Cr.P.C. was presented against the petitioner on 26.8.2019 and since Section 19 of Prevention of Corruption Act, stood amended on 26.7.2018, as per which even in case of erstwhile public servant, sanction was mandated, the said provisions would be equally applicable in the case of the petitioner as the relevant date for applicability of the amended provision of Section 19 of Prevention of Corruption Act would be the date when cognizance is to be taken and not the date of commission of offence or lodging of FIR. Learned counsel presses into service Dr. Anil Kumar Shukla @ A.K.Shukla Vs. Central Bureau of Investigation (Allahabad)(Lucknow Bench), 2020(4) All. LJ 562, S.V.Kalesan Vs. State of Kerala (Kerala) 2021 CriLJ, 4736, Mahendra Kumar Dubey Vs. Economic Offence Wing, Unit: Gwalior (Madhya Pradesh) (Gwalior) (DB) 2022(2) AICLR 470, State of Karnataka Vs. Dr. V. Chandrashekhar, (Karnataka) 2022 CriLJ 1516.

Notice of motion for 01.3.2023.

At this stage, Mr. Abhinav Gupta, APP, U.T. Chandigarh, accepts notice on behalf of the respondent and seeks time to assist this Court on the aforesaid legal issue.

To be shown in urgent list.”

3. Learned counsel appearing on behalf of U.T. Chandigarh has today produced following two orders i.e. order dated 30.1.2023 passed by Assistant Excise and Taxation Commissioner, Excise and Taxation Department, U.T. Chandigarh and order dated 24.2.2023 passed by Chief Executive Officer, SPIC:

“Order dated 30.1.2023

With reference to your good office letter no. 8050 dated 28.10.2022, it is intimated that Smt. Shipali Sharma and Sh. Ram Tirath Arey were the contractual employees of M/s SPIC, Chandigarh and their services were placed at the disposal this department. Hence, necessary required sanction may be sought from the CEO SPIC being their employer. However this department has no objection for prosecution under the provision of Section 19 P C Act in respect of above named persons.

Order dated 24.2.2023

Reference your office memo No. 1275/UT/HAC dated 23.02.2023 on the subject cited above.

It is Intimated that the contractual deployment of the services of Smt. Shipall Sharma and Sh. Ram Tirath Aroy to Excise and Taxation Department, UT, Chandigarh through SPIC had already been discontinued on/before 01.08.2018 on the request of the department. Therefore SPIC has no objection if any proceeding is initiated against them by Police Department.

You are therefore requested to deal with the matter at your end accordingly.”

4. Learned State counsel submits that order dated 24.2.2023 is in fact an order of sanction.
5. Since the stand of the State is that order dated 24.2.2023 is a sanction order, and it is not disputed that there was no sanction for prosecuting the petitioner when the trial Court proceeded to frame the charges, order dated 16.7.2022 passed by the trial Court is hereby set aside.
6. It shall be open to the prosecution to furnish/file sanction order as may be before the trial Court. As and when any sanction order is

filed, it shall be open to the trial Court to proceed further in accordance with law.

20.03.2023
Mohan

(GURVINDER SINGH GILL)
JUDGE

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