

2024:PHHC:075392



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

CWP-17154-2016

Judgment reserved on : 18.04.2024

Judgment pronounced on: 24.04.2024

HARVINDER SINGH BINDRA

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Ms. Shreya Kaushik and Mr. Kunal Dawar, Advocates
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

VINOD S. BHARDWAJ, J.

1. The issue which arises for consideration in the present writ petition is as to whether the competent authority could review its order refusing grant of sanction in the absence of any fresh material.

2. Challenge in the present writ petition is to the order dated 03.07.2015 passed by the Director, Department of Local Bodies, Punjab whereby he granted sanction to prosecute the petitioner under Section 19 of the Prevention of Corruption Act, 1988 (for short "the P.C. Act, 1988) while reviewing his earlier order dated 25.02.2015 whereby the grant of sanction for prosecuting the petitioner was refused in case FIR No. 04 dated 03.02.2014 registered under Section 7, 13 (2) of the Prevention of Corruption Act, 1988 read with Section 120-B IPC at Police Station

Vigilance Bureau, Ludhiana.

3. The facts in nutshell giving rise to the present lis before this Court are that the above FIR was registered against the petitioner on the complaint of one Sahil Chhabra son of Davinder Kumar who leveled allegations against the petitioner, then working as Inspector, House Tax, Zone-A, Ludhiana and one Balwinder Singh, working as Peon in Building Branch, Zone-A, Ludhiana. It was alleged in the FIR that after the death of Davinder Singh (father of the complainant) on 25.05.2012, he approached the office of Municipal Corporation, Ludhiana for transfer of House No. 1224/6A, Kalyan Nagar, Ludhiana in the name of his mother Smt. Kavita on the basis of Will dated 18.01.2012 registered on 29.11.2012. It was further stated in the FIR that the matter for transfer of the house was kept pending in the office of the Municipal Corporation and it was informed that the same was being delayed by the petitioner, who was then working as an Inspector, for a spot inspection report. The matter was being delayed by him on one pretext or the other. It was alleged that the complainant met the petitioner on 31.01.2014 when a demand of Rs. 50,000/- was made to undertake the transfer which was agreed to be paid by the complainant in two instalments of Rs. 25,000/- each. The said conversation was claimed to have been recorded by the complainant on his mobile phone and he had made a complaint to the Vigilance Bureau whereupon a trap was laid and the petitioner along with co-accused Balwinder Singh, Peon were apprehended on the spot. Recovery of Rs. 25,000/- was effected from Balwinder Singh Peon in the premises of the Municipal Corporation, Ludhiana. On conclusion of investigation, a final report was prepared on 16.07.2014.

4. It is stated that the petitioner had joined as a Clerk in the Vehicle Department of Ludhiana in the year 1983 and he was eventually

promoted as Inspector and was posted as Inspector House Tax, Zone A, Ludhiana in the year 2006. As per the process for transfer of ownership of the house in the Municipal records, an application is required to be given to the Superintendent in the office of House Tax who marks the same to the Clerk and a report is thereafter sent to the Superintendent whereafter it is marked to the Inspector for a field report. It is only after the report is submitted that the transfer is eventually made under the orders of the Commissioner. It is stated that an amount of Rs. 32,400/- was outstanding towards the house tax since the year 2012 and as such a notice under Section 103-D of the Punjab Municipal Act, 1976 was also sent. After the submission of the application, the file was forwarded to the petitioner for field report and the same was received by him on 28.01.2014. The spot inspection was conducted on the same day and it was informed by the petitioner that the House number mentioned in the Will was 1224/6A whereas the House number in the record was 1224/6A/1 and the complainant was asked to file a supporting affidavit of his mother which was submitted on 31.01.2014. Hence, no further act was required to be undertaken by the petitioner. The outstanding House Tax was deposited by the complainant in the month of May, 2014 whereafter the transfer of ownership was made in the Municipal record. It is also stated that Balwinder Singh, from whom recovery had been effected was not working as Peon in the House Tax Branch and that the Peon of the said Branch was Tarun Kumar and the Clerk was Ashwani Kumar.

5. Notwithstanding the same, an application for grant of sanction for prosecution under Section 19 of the Prevention of Corruption Act, 1988 was moved by the respondent prosecution, alongwith the copy of challan

and all documents including telephone conversation transcript to the competent authority. The application was declined by the competent authority after going through the record of the case, vide its order dated 25.02.2015. It is submitted that another application was thereafter moved by the Vigilance Bureau to the competent authority for grant of sanction vide letter dated 17.03.2015; 16.04.2015 and 22.06.2015. The Department was requested to re-consider the earlier order of refusing sanction to prosecute. Vide its order dated 03.07.2015, the competent authority reviewed its own order of 25.02.2015 and granted sanction to prosecute the petitioner against which the present writ petition has been filed and the operation of the impugned order dated 03.07.2015 was stayed by this Hon'ble Court vide order dated 24.08.2016.

6. Reply by way of an affidavit of Jaswinder Singh, Deputy Superintendent of Police, Vigilance Bureau had been filed on 18.10.2016 wherein the respondents reiterated the version as narrated in the FIR and supported the order granting sanction to prosecute pointing out that there was sufficient evidence in the form of pre-trap recording between the petitioner and the shadow witness as well as the recordings which took place at tea shop between the petitioner, shadow witness and the complainant and that the same was considered by the competent authority and the sanction to prosecute has been rightly granted vide order dated 03.07.2015.

7. A separate written statement had been filed on behalf of the Director, Department of Local Bodies, Punjab to the Joint Secretary, Local Government, Punjab to the effect that sanction of prosecution is based on the material brought before respondent No.2 and that letter for reconsideration of sanction for prosecution was sent by the Senior Superintendent of Police,

Vigilance Bureau, Ludhiana which was accompanied with material documents/copies of rules and judgment of Hon’ble Supreme Court on the basis whereof a case could be sanctioned is made out. It was thus stated that there is nothing wrong in the order granting sanction.

8. Replication to the written statement on behalf of respondents No.1 and 3 was also filed by placing reliance on the judgment of the Hon’ble Supreme Court in the matter of “*State of Himachal Pradesh versus Nishant Sareen*” and contended that no fresh material/evidence was provided to the competent authority to review its earlier order and that the material referred to by respondents No.1 and 3 about the evidence of pre-trap recording etc. was already with the competent authority and sanction to prosecute the petitioner was denied. The same was thus not a new material.

9. An additional affidavit was thereafter filed by Ravinder Pal Singh, Senior Superintendent of Police, Vigilance Bureau on behalf of respondents No.1 and 3 wherein it was stated that the case of the petitioner was earlier sent to the competent authority for according prosecution sanction and after its refusal, a request was submitted for re-consideration of the earlier order and the following documents were sent to the competent authority.

Letter dated 16.09.2014 (R-1/T)	Letter dated 16.04.2015 (R-2/T)
i. Challan Form-5 Pages photo copies	i. Order vide which Prosecution Sanction refused -2 Pages photo copies
ii. Documents/Statements-1 to 65 pages photo copies	ii. Instructions issued by Punjab Govt. and order of Supreme Court dated 06.08.2014 – 31 Pages photo copies
	iii. Pre-Trap Recording-3 pages
	iv. Challan Form-5 pages photo copies

	v. Documents/Statements-1 to 65 pages photo copies
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10. It was stated that the complete record i.e. the transcript of conversation between Sahil Chhabra, shadow witness Bobby Chandelia and Harvinder Singh Bindra could not be sent earlier to the competent authority and that the said aspect stands duly noticed in the subsequent order passed on 03.07.2015. There was thus fresh material with the investigating agency, which was not placed before the competent authority, hence, the matter could be re-examined by the competent authority in light of the judgment of the Hon’ble Supreme Court in the matter of “***Superintendent of Police, CBI versus Deepak Chaudhary*** reported as ***1995 (6) SCC 225***”.

11. Learned Senior Counsel appearing on behalf of the petitioner has argued that all the material was already in the notice of the competent authority at the time when the prosecution sanction was declined vide order dated 25.02.2015 and that the new material referred to in the tabulation given in the additional affidavit, extracted above, was in fact the same old material. He has referred to the specific parts of the order where the competent authority has been referred to have examined the said transcripts and the CD recordings done on the telephone by the complainant. It was also noticed by competent authority that even as per the transcript, there was no demand of any money by the petitioner and that no recovery of any nature had been effected from the petitioner. Further, there was also no reason as to why the money would be given to Peon, Balwinder Singh especially if the same was being demanded by the petitioner and he was also present on the spot. Hands of the petitioner were not properly washed and that Balwinder Singh, Peon never remained posted in the House Tax Branch which renders

his presence at the spot doubtful. It is also argued that in the subsequent application moved by the respondents, they requested for reconsideration of the earlier order which is in fact a review of the same order without any new facts or evidence. Reference in this regard is made to the information sought from the Director, Urban Local Bodies, Punjab as to whether any fresh material was collected or sent to the competent authority while seeking review of the order refusing the grant of sanction and was informed vide letter dated 10.12.2015 that no fresh material was collected or sent to the competent authority while seeking review of the order refusing to grant sanction. He submits that the respondents do not deny issuing the said letter under the RTI but offer an explanation that the said RTI information was about appeal and not about review. He submits that the competent authority having not being vested with the power of reviewing its decision, could not have done so on a mere request by the authorities and that the impugned order dated 03.07.2015 is liable to be set aside.

12. On the other hand, counsel appearing on behalf of the respondent-State has reiterated his submission that there was fresh material that was forwarded to the competent authority alongwith the request letter for reconsideration of the decision dated 25.02.2015 and upon consideration of the fresh material, the order was passed. He submits that the order of granting sanction is accordingly valid and based upon consideration of the judgment of the Hon'ble Supreme Court of India in the matter of ***“Superintendent of Police, CBI versus Deepak Chaudhary”***.

13. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record as also the judgments cited by them.

14. The first point of consideration before this Court is as to whether any fresh material had been brought before the competent authority, after the passing of the initial order dated 25.02.2015 declining the grant of prosecution sanction and at the time of passing a fresh order on 03.07.2015.

15. Reliance has been placed on confession and the fresh material that had been tabulated and stated to contain the pre-trap recordings and the documents/statements. The competent authority, while passing the order declining the prosecution sanction on 25.02.2015, noticed essential facts which are as under:-

“3 That in order to ascertain the truth of allegations against Sh. Harvinder Singh Bindra, the opinion of Chief Officer of the Urban Local Bodies, Punjab, was sought, on which he replied that Sh. Sahil Chabra (complainant) has averred that he can present the recording of their conversation in a CD, which contains the demand of bribery by Sh. Harvinder Singh Bindra, Inspector. Whereas upon reading the transcript from the CD summoned by the Vigilance Bureau it appears that the whole transcript was recorded during a telephonic conversation and according to the transcript made from the of the CD, it does not appear anywhere in the conversation regarding demanding or receiving bribe money. The statement given by Sh. Sahil Chabra (complainant) and the transcript copy made from the CD has various discrepancies. As per the available the record and the report of Municipal Service Cell, the Vigilance Bureau neither has recovered any bribe money from Inspector Harvinder Bindra nor his hand have been washed. According to the available statements and reports in the police file Sh. Sahil Chabra (complainant) had handed over the bribe money to Sh. Balwinder Singh, Peon, on the saying of Sh. Harvinder Singh Bindra Inspector, also the money was recovered from the possession of the Peon. Whereas Sh. Harvinder Singh Bindra, Inspector was present on the spot

but the money was not handed over to Harvinder Singh Bindra, Inspector (House Tax) but was handed over to Balwinder Singh, Peon by the Sh. Sahil Chabra (complainant). It is pertinent to mention here that according to the letter no. 78/ZAR dated 28.10.2014 (Mark-A) of PIO- cum-Superintend, Nagar Nigam Ludhiana, the concerned peon on dated 03.02.2014 and prior to that was not posted at the Building Branch. From this it can be inferred that this peon on the alleged time of occurrence was not posted in the House Tax Department.”

16. It is evident from a perusal of the aforesaid order that a specific reference has been made to the conversation in the CD as also consideration of the transcript from the CD summoned from the Vigilance Bureau and a specific finding was recorded that there was no conversation regarding demanding or receiving any bribe money. The discrepancies in the statement of Sahil Chhabra and the transcript copy made from the CD was also noticed. It was also noticed that no recovery had been effected from the Inspector (petitioner herein) nor his hands were washed, no money was recovered or handed over to the petitioner and recovery was in fact effected from Balwinder Singh, Peon who was not a Peon attached with the petitioner.

17. Reference is also required to be made to the information sent by the Director, Urban Local Bodies, Punjab dated 10.12.2015. The table of the information supplied by the respondent authority is extracted as under:-

Sr. No.	Required Information	Reply of the required information
1.	Shri Harvinder Singh Bindra, Inspector, House Tax, Municipal Corporation, Ludhiana, who was arrested by the Vigilance Bureau in FIR No. 4 of 2015 for	The record which was given by the Vigilance Bureau at the time of seeking sanction to prosecute was returned to the concerned the department.

	taking bribe, the sanctioned to prosecute him was earlier refused, the copies of the all the documents given by the Vigilance Bureau at the time of seeking sanction to prosecute him may kindly be provided.	
2.	Please provide the copy of all the additional evidences as given by the Vigilance Bureau when they again sought the sanction to prosecute him by filing an appeal with the competent authority.	No such document was ever presented.

18. The respondent authority did not dispute the supply of said information but has submitted that the said information was submitted in reference to an appeal with the competent authority and since no appeal had been filed, hence, the same ought not to be attached any further importance. I am of the opinion that the explanation tendered by the authority is an afterthought since a perusal of the above said table clearly shows that the information was specifically sought with respect to the prosecution sanction in the above said FIR and pertaining to refusal as well as review of the said order. Information in Para No.2 was specifically in relation to providing copy of the additional evidence given by the Vigilance Bureau when they again sought the sanction to prosecute by filing an appeal with the competent authority. The very fact that the expressions of the phrase additional evidence given by the “Vigilance Bureau”, when they again sought sanction to prosecute and filed the appeal before “Competent Authority” are significant. Merely because a common phrase of ‘appeal’ instead of ‘review’ has been used, it does not convey any other sense, as is

being sought to be in portray by the respondent-Department. The information sought was clear and specific to the additional evidence submitted by the Vigilance authorities when they again sought the sanction from the competent authority. The specific response by the Department, cannot be said to be based on a misreading or misunderstanding especially when there was no other proceeding initiated but for the proceeding culminating in passing of the order dated 03.07.2015 impugned herein. Surprisingly, even though the respondents No.1 and 3 contend that fresh material was submitted by the authorities, however, the competent authority viz. respondent No.2 does not take any such stand about any fresh material having been brought before it for reconsidering its decision. The competent authority has rather chosen to remain evasive and has contended that the petitioner may take all his pleas before the Special Judge and get his matter adjudicated. The aspect as regards whether there was any fresh material or not was crucial solely for the competent authority and not from the perspective of the prosecuting agency. Despite a specific case having been set up by the petitioner that there was no fresh material brought before the competent authority, an evasive silence has been maintained by the competent authority by not denying the specific averments or by making any reference to new/fresh material.

19. The case is also required to be seen from the perspective as to what material satisfies the test of new/fresh material empowering an authority to conduct review of its own order. A similar issue came up for consideration before the Hon'ble Supreme Court of India in the matter of ***“State of Himachal Pradesh versus Nishant Sareen”*** reported ***as 2010 (14) SCC 527*** wherein it was held that it is permissible for the sanctioning

authority to review or reconsider the matter on the same material again and that if the Investigating Agency has grievance against the sanctioning order, it can challenge the order refusing to grant the sanction. It was observed that a change of opinion *per se* on the same material cannot be a ground for reviewing or reconsidering the earlier decision and that the fresh material referred to by the agency/sanctioning authority is in the nature of material collected by the Investigating Agency subsequent to the earlier order and placed before the sanctioning authority. The relevant extract of the judgment reads thus:-

*11. Recently, in the case of **State of Punjab and Anr. v. Mohammed Iqbal Bhatti**, 2009(3) RCR (Criminal) 861: 2009(4) R.A.J. 605: JT 2009(13) SC 180, this Court had an occasion to consider the question whether the State has any power of review in the matter of grant of sanction in terms of Section 197 of the Code. This Court observed as under:*

7. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be

considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered."

This Court then noticed the opinion of the High Court which was recorded as follows:

"Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible."

While affirming the above opinion of the High Court, this Court held in paragraphs 22 and 23 of the Report as under:

22. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to."

23. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was

produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise."

12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course."

20. The said judgment has been followed by the Bombay High Court in Criminal Revision application No. 297 of 2023 with Criminal Application No. 246 of 2019 titled “**Central Bureau of Investigation versus R. Bhuvaneswari**” decided on 09.01.2024.

21. Reference was also made to the judgment in the case of “**Giri Raj Sharma versus State of U.P.**” reported as **2022 (1) I.L.R. Allahabad 228** decided on 17.12.2021.

22. The reliance of the respondent State on the judgment of **Superintendent of Police, CBI** (supra) is however misplaced as the issue of review/passing of a fresh order of sanction did not arise in the said judgment. The same was only in the context as to whether Principles of Justice are required to be followed at the time of granting prosecution sanction. Since the law empowers the authority to examine or re-visit its decision on fresh material, it has to be seen as to what would constitute fresh material especially more so when the Court has already held that a change of opinion on the same facts cannot be termed as fresh material.

23. “Fresh material” usually and typically refers to new evidence or information which is collected or discovered post the decision. It may, in a reasonable case and based on evidence brought, be extended to evidence that was fraudulently withheld or concealed from the competent authority at the time of decision making. However, if such exceptional circumstances are not made out, merely because, there is a change of opinion cannot be sufficient to re-label the old material as new.

24. It is not the case of the respondent-State that the material in the form of transcripts as well as the CD recordings were not available with it at the time when the case was put up before the competent authority for

seeking sanction at the first instance. Further, even though, the competent authority has referred to the transcript having not been provided earlier when the material was sent to the competent authority, however, a perusal of the order of 25.02.2024 clearly shows that the transcript was not only available alongwith the audio/CD but was also perused and considered by the competent authority. Specific defects, deficiencies and absence of the necessary ingredients of authorizing prosecution of the petitioner were noticed. Thus, a mere reference that it was a new material does not make the same as new. Para 6 of the impugned order dated 03.07.2015 thus needs to be referred and the same is extracted as under:-

“6. That as per the letter No. 1880/C.C.B. dated 16.04.2015 issued by the Vigilance Bureau, Punjab the copies of the pre trap recording were placed on record, according to which there was a copy of transcript containing the conversation which took place between accused Harvinder Singh Inspector and shadow witness Bobby Chandelia, it also contain the transcript of the conversation which took place at the tea shop among accused, Harvinder Singh Inspector, shadow witness, Bobby Chandelia and the complainant Sahil Chabra. That there is no mention of the above stated transcripts in the statement given by the complainant by the Sahil Chabra to the Vigilance Bureau and also in the zimni prepared by the Vigilance Bureau. The second important fact is that as per the statement given by the complainant Sahil Chabra to the Vigilance Bureau, Ludhiana, the complainant has recorded the conversation between him and the accused, Harvinder Singh, Inspector, in his mobile phone. The above mention fact is also mentioned in the zimni and the copy of the said transcript is also attached with the record. Attention is drawn to the Memo No. 19/5/2012/3BA/7592 dated 23.07.2013 of Government of Punjab, Vigilance Bureau which is as under:-

"In this connection it is necessary to reiterate that the

judgment of the Supreme Court in the case of Superintendent of Police CBI V/s Deepak Chaudhary, (1996 (1) SIJ 171) has clarified that the grant of Sanction is only an administrative function where the evidence collected during investigation has to be placed before the competent authority which is then to prima facie satisfy itself as to whether the relevant facts constitute an offence."

Therefore, it is quite clear and evident from the above-mentioned facts that the above full information should have been sent by the Vigilance Bureau, Punjab but the same was not sent and has been sent now. After considering the information sent now, alongwith the file sent before, the reports and evidence sent by the Vigilance Department and the judgment passed by the Hon'ble Supreme Court, I, Priyanka Bharti IAS, Director Urban Local Bodies, Punjab, hereby grant the sanction to prosecute and present Challan against the accused Shri Harvinder Singh Bindra, Inspector, Nagar Nigam, Ludhiana in case FIR No. 4 dated 03.02.2014 under Section 7, 13(2) of the Prevention of Corruption Act 1988 read with Section 120-B IPC, PS Vigilance Bureau Range, Ludhiana and also allow the request sent by the Vigilance Bureau."

25. There was reference only to two grounds in the above said para i.e. the pre-trap recording and the statement of complainant Sahil Chhabra to the Vigilance Bureau as per which he had recorded the conversation between him and accused Harvinder Singh, Inspector on his mobile. The reasoning/explanation viz.-a-viz. new material referred to in Para 6 of the impugned order dated 03.07.2015 is directly contradicted by the reasons given in Para No.3 of the earlier order of 25.02.2015 which not only refers to the pre-trap conversation but also refers to the transcription made from the CDs as also the statement of Sahil Chhabra and the transcript copy made

from the CDs. It was also referred that opinion of Chief Officer of the Urban Local Bodies, Punjab was also obtained wherein the complainant averred that he can present the recording of the conversation in the CD pertaining to demand of bribery by Harvinder Singh Bindra which was placed in the form of a transcript. It is thus only a rephrasing by packaging the same material as a new material. It is in the said circumstances that the information furnished under the Right to Information Act, 2005 also becomes significant. Besides, it is not the case of the respondent that the said material was not available at the time when the prosecution sanction was asked for and declined on 25.02.2015 or that the same had been mischievously withheld from the competent authority. Hence, when the entire material was already in possession of the respondent-authorities and there had been no foul or fraudulent play and the earlier order dated 25.02.2015 made a specific reference to the said evidence, which is now portrayed as being a fresh material, as having been considered by the competent authority, I find that the material in question cannot be termed as fresh material and that the judgment of the Hon'ble Supreme Court in the matter of ***“State of Himachal Pradesh versus Nishant Sareen (supra)”*** would be applicable to the present case. This being a case of change of opinion viz. a review of its own order by the competent authority without any fresh material, the impugned order dated 03.07.2015 is thus liable to set aside.

26. Since the present writ petition is being allowed on the ground of the subsequent order being without jurisdiction and being in the nature of review of its earlier order, I refrain from commenting any further on the merits of the order lest it may prejudice the rights of the parties to take recourse to their appropriate remedies in accordance with law.

27. The writ petition is accordingly allowed and the order dated 03.07.2015 (Annexure P-1) granting prosecution sanction is hence set aside.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 24, 2024
Vishal Sharma

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