
(2015) 11 RAJ CK 0026
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1739/2014

Brijlal Jatav

APPELLANT

Vs

Rajasthan State Agriculture Marketing Board

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120-B
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19, 7

Citation : (2015) 11 RAJ CK 0026

Hon'ble Judges : Prashant Kumar Agarwal, J.

Bench : Single Bench

Advocate : Sandeep Saxena and S.N. Kumawat, for the Appellant; R.K. Paliwal on behalf of R.A. Katta, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Agarwal, J.—Heard learned counsel for the parties.

2. The accused-petitioner by way of this civil writ petition under Article 226 of the Constitution of India has challenged the validity of order of sanction dated 18.9.2012 granted by Administrator, Rajasthan State Agriculture Marketing Board, Jaipur under Section 19 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "Act") to prosecute the petitioner, who at the time of the alleged offence, was posted as Executive Engineer (Civil), Sikar in respect of FIR No. 296/2012 registered at Police Station ACB for the offences under Sections 7 , 13(1)(d) read with Section 13(2) of the Act and offence under Section 120-B I PC.

3. It was submitted by the learned counsel for the petitioner that the order of sanction has been passed mechanically without application of mind and without taking into consideration several relevant facts and also considering several irrelevant facts. It was further submitted that the order has been passed

overlooking the Circular dated 15.5.2012 issued by the State of Rajasthan requiring that before granting sanction under Section 19 of the Act the competent authority shall independently apply his own mind and after considering the overall facts and circumstances of the case by passing a speaking order sanction would be granted. It was also submitted that it is an admitted fact that a draft of requisite sanction order was provided by the ACB to the sanctioning authority and if one goes into the impugned sanction order, it is clearly revealed that the same has been passed as per the draft provided by the ACB and this fact alone is clear indication of the fact that the competent authority has granted the sanction merely on the asking of the ACB. It was pointed out by the learned counsel for the petitioner that some factual errors were made in the draft prepared by the ACB and the same errors were repeated in the impugned sanction order, which fact alone reveals that the order has been passed mechanically without application of independent mind. It was submitted that it is well settled legal position that if sanction order has been passed without application of independent mind, the same is liable to be quashed. In support of his submissions, learned counsel for the petitioner relied upon the cases of Romesh Lal Jain Vs. Naginder Singh Rana and Others, , Subhash Bhatia and Others Vs. State of Rajasthan and Others, , State of Himachal Pradesh Vs. Nishant Sareen, , Ganga Ram v. State of Rajasthan & Ors. decided on 13.12.2010 in SB Civil Writ Petition No. 9599/2009 and in Manish Mathur v. State of Rajasthan & Anr. decided on 19.12.2012 in SB Civil Writ Petition No. 12684/2012.

4. I have considered the submissions made on behalf of the respective parties and the material made available on record as well as the relevant legal provisions and the well settled legal position.

5. This Court vide order dated 03.06.2015 passed in S.B. Criminal Revision Petition No. 343/2014 (Neel Chand Suman v. State of Rajasthan) has held that "A finding, sentence or order passed by a Special Judge (trial Court) can not be reversed or altered by a Court of appeal, confirmation or revision or by the High Court exercising its power under Section 482 Cr.P.C. or Article 226 of the Constitution of India on the ground of mere error, omission or irregularity in the order of sanction including grant of it without application of mind or on the ground of non-availability of material before the sanctioning authority or on the ground of bias of the sanctioning authority or the order of sanction having been given by an authority not authorized or competent to grant sanction as it is a matter of procedure and it does not go to root of jurisdiction more particularly when cognizance has already been taken by the trial Court. A finding, sentence or order so passed by the trial Court can be reversed or altered only when it is found by the Court that as a result of such error, omission or irregularity a failure of justice has infact occasioned and the same can be considered during the course of trial after evidence is led by the parties and not at the threshold or at the stage of framing of charge. It is for the accused, on the basis of evidence made available on record during trial, to satisfy the Court that failure of justice

has occasioned to him as a result of the defect or irregularity in the sanction. But so far as absence of sanction is concerned, it goes to the root of the matter and it could be raised at the inception and the threshold also by an aggrieved person."

6. For the aforesaid view this Court relied upon the cases of State of Bihar and Others Vs. Rajmangal Ram, , State of M.P. Vs. Virendra Kumar Tripathi, , C.B.I. Vs. Ashok Kumar Aggarwal, , Dinesh Kumar Vs. Chairman, Airport Authority of India and Another, and Ashok Tshering Bhutia Vs. State of Sikkim, .

7. In view of the aforesaid well settled legal position the submissions made on behalf of the petitioner are not tenable at this stage of the proceedings.

8. Consequently, the civil writ petition being devoid of merit is, hereby, dismissed. The stay application is also dismissed.