
(2015) 07 MP CK 0081

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 8043 of 2014, 6917, 6919 and 7302 of 2015

B.S. Waskel and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 166, 226

Criminal Procedure Code, 1973 (CrPC) — Section 197(1), 432, 465, 482

Penal Code, 1860 (IPC) — Section 120-B, 34, 420, 467, 468

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19, 19(1), 19(1)(b)(c)

Citation : (2015) 07 MP CK 0081

Hon'ble Judges : Rajendra Menon, J; S.K. Gupta, J

Bench : Division Bench

Advocate : Rajendra Tiwari, Learned Senior Advocate and A.P. Shroti, Learned Counsel, for the Appellant; Swapnil Ganguly, Learned Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. As the common question of law and facts are involved in all these petitions, they are being heard and decided by this common order.

2. In all these petitions challenge is made to an order of sanction granted by the authority concerned under Section 19(1)(b)(c) of the Prevention of Corruption Act, 1988 read alongwith Section 197(1) of Cr.P.C. All the petitioners herein on the basis of the aforesaid sanction granted, impugned in the writ petitions, are being prosecuted for various offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 420, 467, 468, 471, 120-B read with Section 34 of the IPC.

3. Petitioner Shri B.S. Baskel in Writ Petition No. 8043/2014 is working in the Co-Operative Department as a Joint Commissioner and Joint Registrar, Cooperative Societies. It is alleged that in the matter of certain auction conducted for sale of property, mortgaged with the Cooperative Bank, he has committed various acts

of commission and omission which amounts to offence, therefore, he is being prosecuted.

4. In W.P. No. 7302/2015 also the same petitioner Shri B.S. Baskel is being prosecuted under identical situation, but with regard to another incident in Crime No. 510/2013.

5. In W.P. No. 6917/2015 the petitioner Shri B.L. Chauhan is working as a Joint Commissioner-cum-Joint Registrar, Cooperative Societies and he is also being prosecuted under identical situation due to irregularity and illegality committed by him in the matter of conducting auction, approving the same and sale of property, and is being prosecuted for various offences of Prevention of Corruption Act and IPC.

6. In W.P. No. 6919/2015 Shri Ashok Mishra, petitioner therein is also a Deputy Commissioner-cum-Deputy Registrar of Cooperative societies and is being prosecuted for similar acts of commission and omission, as other petitioners.

7. It is reported that in the matter of 127 auctions undertaken finding various irregularities and illegalities committed by the Officers of the Bank and the Co-operative Department, criminal cases have been registered and they are being prosecuted for various offences under the Prevention of Corruption Act and the Indian Penal Code.

8. Shri Rajendra Tiwari, learned Senior Advocate and Shri Amal Pushp Shrotri, learned counsel for the petitioners argued that in all these cases prosecution has been sanctioned by the concerned department and not by the law department. It is said that on the basis of certain procedure laid down by the State Government in the Circular issued on 05.09.2014 by the Chief Administrative Department sanction for prosecution is being accorded, this according to petitioners is illegal. In as much as vide notification dated 03.02.1988 by amending the Business Allocation Rule the power to accord sanction was entrusted to the Department of Law and by subsequent circular issued on 09.02.1988 it was contemplated that before according of sanction, the Law Department would obtain the opinion of the Administrative Department concerned, where the government servant was employed. It was further pointed out that vide another circular dated 21.04.1997 a provision was made for referring of matter to the competent authority of Council of Ministers in case of conflict of opinion in the matter of granting sanction by the Administrative Department and the Law Department. Subsequently, this provision for reference to the Sub-Committee was deleted on 10.07.1997 and various other procedures were laid down. For the present, we need not to deal with all these questions for the simple reason that in each case, the case of petitioners is that the sanction is granted by the concerned department based on the procedure contemplated in the circular dated 05.09.2014 which is illegal, this circular has not been authenticated under Article 166 of the Constitution of India and the Rules of Business. Accordingly, the first ground of challenge is that the sanction granted is unsustainable and it is based

on the illegal sanction, the prosecution cannot be launched.

9. The second ground canvassed was with regard to validity of the sanction granted on merit and it was said that the petitioners were conducting auction process in accordance to law, they have not committed any illegality, the sanction has been accorded without application of mind and by referring to sanction order Shri Rajendra Tiwari, learned Senior Advocate and Shri A.P. Shrotri tried to indicate that the department has indicated that they do not have the expertize in conducting investigation or enquiring, therefore, relying upon the recommendation and findings recorded by the Lokayukt Organization in their report, without application of mind and after so observing the sanction has been granted. It is said that the sanction for prosecution can be granted only by application of mind and in such an illegal manner that also by holding that the department does not have expertize, the sanction granted is unsustainable. Shri Rajendra Tiwari, learned Senior Advocate and Shri A.P. Shrotri, learned counsel argued that when such a sanction is granted merely without application of mind, the same is illegal, unsustainable and therefore, the entire prosecution launched on the basis of such an executive instruction should be quashed.

10. In support of their contention they invite our attention to recent judgment of the Hon"ble Supreme Court decided on 24.7.2015 in Criminal Appeal No. 1867/2012 Nanjappa Vs. State of Karnataka, Criminal Appeal No. 1838/2013 CBI Vs. Ashok Kumar Aggarwal decided on 22.11.2013, Gulf Goans Hotels Company Ltd. Vs. Union of India (UOI) and para 21 thereof with regard to validity of the circular and in the case of Jaipur Development Authority and Others Vs. Vijay Kumar Data and Another, (2011) 8 JT 211 : (2011) 7 SCALE 633 : (2011) 12 SCC 94 : (2011) 7 SCR 242 : (2011) 5 UJ 2887 : (2012) AIRSCW 1140 again with regard to validity of the circular. Accordingly, learned counsel argued that when the sanction granted is not in accordance with law the entire prosecution becomes null and non-est in the eyes of law and such a prosecution should be quashed.

11. Taking us through various observations made by the Hon"ble Supreme Court in the case of Nanjappa (supra) learned counsel says that a sanction which is not in accordance with law is not a sanction at all in the eyes of law, it is void ab initio., it goes to the root of prosecution and, therefore, it being non-est the entire trial becomes illegal. The learned Senior Advocate Shri Rajendra Tiwari and Shri A.P. Shrotri seeks for quashment of the entire prosecution on account of fact that the sanction granted is not proper. They also referred to various aspects of the case and argued that the material available on record does not show involvement of petitioners in commission of the offence so alleged and even no cogent evidence is available and, therefore, prosecution is liable to be quashed and this court in exercise of its jurisdiction under Article 226 of the Constitution and Section 432 of CrPC can very well quash such an illegal prosecution. They also referred to Article 166 of the Constitution, Rules of Business to say that circular issued is unsustainable.

12. Respondent, Lokayukt Organization represented by Shri Pankaj Dubey, referred to the provisions of Section 19 of the Prevention of Corruption Act, 1988, sub section (3), sub clause (c) and sub section (4) thereof and argued that at this stage, this Court should not interfere into the matter merely on account of error or omission or irregularity and illegality for the grant of sanction when it does not result in a failure of justice, the Court should not interfere. He invites our attention to the principle of law laid down in the case of State of Bihar and Others Vs. Rajmangal Ram, AIR 2014 SC 1674 : (2014) AIRSCW 2101 : (2014) CriLJ 2300 : (2014) 4 SCALE 338 and argued that at this stage the matter should be left to be decided by the trial court. The petitioner should raise the question of illegal or irregular sanction before the trial court and it is for the trial court to go into the question and this Court, at this stage, in a writ petition under Article 226 of the Constitution should not interfere.

13. Shri Swapnil Ganguly, learned Government Advocate took us to the provisions of Article 166 of the Constitution, the manner in which the circular dated 05.09.2014 has been passed and argued that merely because it is not mentioned that which part of the rules of business is applied, it cannot be said that it is not based in accordance to the requirement of law. He argued that even otherwise petitioners having not challenged the circular and having not prayed for quashing it cannot be said that based on the circular action taken is unsustainable. By filing statutory report of the State Government he has tried to justify the issuance of this circular.

14. We have heard learned counsel for the parties at length and we have perused the record. As far as issuance of circular dated 05.09.2014 and its validity is concerned no prayer is made in the writ petitions to declare that this circular is illegal, unsustainable and therefore liable to be quashed. That being so, we cannot go into the tenability of this circular, without such a specific prayer being made. Therefore, the only question would be as to whether the sanction granted by the State Government or the Department concerned is liable to be quashed at this stage in these proceedings under Article 226 of the Constitution.

15. The judgment in the case of Nanjappa and Ashok Kumar Aggarwal (*supra*) relied upon by the learned counsel for the parties are regular criminal appeals after complete trials have been conducted and persons concerned have been convicted or they may be acquitted and while dealing with those matters in a regular appeal, the question of sanction and procedure followed for sanction have been considered. In the present petitions, the question before us is as to whether we can interfere with the irregular or illegal sanction when the question can very well be considered by the trial court. Section 19 of the Prevention of Corruption Act, 1988 provides for sanction which is necessary for prosecution. sub section (3) of Section 19 and sub clause (b) & (c) thereof contemplates that no Court shall stay a proceeding under the Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity committed has resulted in a failure of justice.

16. Similarly sub-section (4) of Section 19 also contemplates such a provision. This provision have been subjected to interpretation by the Supreme Court in the case of Rajmangal Ram (Supra) and the Hon"ble Supreme Court in the aforesaid case has considered the question of interfering into the question of grant of sanction by a competent authority by the High Court invoking its powers under Section 482 of CrPC which is similar to power available under Article 226 of the Constitution. The Hon"ble Supreme Court in the aforesaid case and after laying down the facts came to the conclusion that the short question of law arising for consideration is as follows :

"Whether a criminal prosecution ought to be interfered with by the High Courts at the instance of an accused who seeks midcourse 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 ?"

17. The aforesaid question is precisely the question which is before us in all these petitions, the question is as to whether this Court at the instance of the petitioners, who are accused, can interfere into the matter at this stage and as the question involved in these writ petitions are also answered by the Supreme Court after formulating the question, as indicated hereinabove, in the case of Rajmangal Ram (supra), we are required to apply the principle as laid down by the Supreme Court in the said case. As indicated hereinabove, the Hon"ble Supreme Court, in para 5 and 6 has elaborated the object behind the grant of sanction to prosecute a public servant, need not detain the court, the rights available to a public servant the requirement of Section 19 of the Prevention of Corruption Act, Section 465 of CrPC and after referring to various judgments has considered the question and the statutory enactment provided for interference in the matter of error, omission or irregularity in sanction, the concept of failure of justice occurring as indicated in statutory provision particularly Section 19(3)(4) and in para 8 has laid down the principle in the following manner :

"8. The above view also found reiteration in Prakash Singh Badal and Another vs. State of Punjab and Others 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. In fact, a three Judge Bench in State of Madhya Pradesh vs. Virender Kumar Tripathi 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)."

18. Thereafter in para 9 the Hon'ble Supreme Court refers to a contrary view in the case of State of Goa Vs. Babu Thomas, AIR 2005 SC 3606 : (2005) CriLJ 4379 : (2005) 12 JT 204 : (2005) 7 SCALE 659 : (2005) 8 SCC 130 : (2005) 1 SCR 712 Supp : (2005) 2 UJ 1405 : (2005) AIRSCW 4845 : (2005) 6 Supreme 547 , distinguishes it in the light of the judgment in the case of State of M.P. Vs. Virendra Kumar Tripathi, (2009) 14 JT 62 : (2009) 6 SCALE 593 : (2009) 15 SCC 533 : (2009) 7 SCR 89 and has quashed the orders passed by the High Court interfering with the sanction, by so observing in para 10 and 11:-

"10. In the instant cases the High Court had interdicted the criminal proceedings on the ground that the Law Department was not the competent authority to accord sanction for the prosecution of the respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High Court.

11. The High Court in both the cases had also come to the conclusion that the sanction orders in question were passed mechanically and without consideration of the relevant facts and records. This was treated as an additional ground for interference with the criminal proceedings registered against the respondents. Having perused the relevant part of the orders under challenge we do not think that the High Court was justified in coming to the said findings at the stage when the same were recorded. A more appropriate stage for reaching the said conclusion would have been only after evidence in the cases had been led on the issue in question."

19. Having considered the facts and circumstances of the aforesaid case in the back drop of aforesaid legal principle laid down by the Supreme Court, we are of the considered view that the material available before us is not sufficient enough to indicate that failure of justice has occasioned in the matter and in the absence of the entire evidence we cannot go into all these questions. That apart, when all these questions can be considered by the trial court, and when the question of sanction granted being illegally or irregularity can be challenged before the trial court, interfering into the matter by this Court at this stage is not called for.

20. Apart from challenging the sanction of prosecution granted, in some of the petitions the petitioner B.S. Waskel has also made a prayer that the respondents be restrained from suspending the petitioner due to his involvement in criminal case.

21. In accordance to rule 9 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules in anticipation that the petitioner may be suspended no preventive direction can be issued. That apart, under the statutory rule there

is a provision for appeal against order of suspension and, therefore, at this stage when suspension order has not been issued, in anticipation of suspension, interference cannot be made. Accordingly, we find no ground to interfere on such ground.

22. In view of above, for the present, we find no reason to interfere into the matter. All the four petitions are, therefore, dismissed.