
(2014) 08 MP CK 0073
In the Madhya Pradesh High Court
Case No : Cr. R. No. 836/2013

Devraj Singh Parihar

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 409, 419, 420
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 15, 19

Citation : (2014) 08 MP CK 0073

Hon'ble Judges : Shantanu Kemkar, J; M.C. Garg, J

Bench : Division Bench

Advocate : Pradeep Gupta, Learned Counsel, Advocate for the Appellant

Final Decision : Dismissed

Judgement

1. Heard.

This revision petition has been filed by the petitioner, who is facing charge in Special Case No. 6/2008 framed against him and the others, who are members of Board of Director of the Cooperative Society, which disburse the loan to the relative of the petitioner and other persons in clandestine manner and in violation of the rules.

2. According the petitioner, even though he was member of the board, he was not the person in the meeting of the board, when the decision to disburse the loan to undeserving and ineligible person was taken by the Society. It is submitted that no case is made out for the offence for which he has been charged.

3. We have heard learned counsel for the petitioner and have perused the record.

4. Section 19 of the Prevention of Corruption Act reads as under:-

19. Previous sanction necessary for prosecution

(1) No court shall take cognizance of an offence punishable u/s 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this 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 has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

5. The trial Court having taken note of the submission made from both the sides, while passing the impugned order, made the following observations:-

6. It will not be out of place to mention that the appellant alongwith Rameshwar Patel has approached this Court even earlier seeking quashing of the FIR itself but without success. In fact Rameshwar Patel went upto Supreme Court which aspect was dealt with while disposing of M. Cr. C. No. 121/2005. Para 7 of that order is relevant and is reproduced here as under:-

7. After careful consideration of submission in the back drop of established legal principles, we are of the opinion that in the present case allegations against applicants are that they sanctioned and advanced housing loans against Bank's policy in connivance with Bank administration to ineligible persons. Allegations against them prima facie reveal sufficient material to take/initiate penal action U/s. 406, 409, 419, 420 read with Section 120B IPC against them. We find force in the submissions of the counsel for the respondents. The decision of the Supreme Court in State of M.P. v. Rameshwar Patel reported in AIR 2009 SC (Supp) 1820 between the same parties is clinching and squarely covers the controversy as raised in this petition. That was the case where Supreme Court upheld the initiation of criminal proceedings against Rameshwar Patel and other for their acts of commission and omissions resulting in criminal misconduct and breach of public trust by advancing loans to concerned borrowers for purchase of different kinds of vehicles. It was held that applicants hold the status of "public servant" for the purposes of their prosecution under the provisions of the Prevention of Corruption Act, 1988. In this view of the matter, it is unnecessary for us to dilate upon various decisions cited on behalf of applicants and suffice it to say that in view of the decision in State of M.P. v. Rameshwar Patel and others, there is no merit and substance in the petition and it deserves to be dismissed.

7. We are of the considered view that framing of charges is only an exercise based upon taking prima facie view of the allegation made by the prosecution and does not mean that the charges are proved or that the incumbent will have no defence to make. We, therefore, do not find any infirmity in the order.

8. Accordingly, the Revision Petition is dismissed.

C.c. as per rules.