

(2010) 07 DEL CK 0263

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 1754 of 2009 and Criminal M.A. No. 14370 of 2009

Dinesh Kumar

APPELLANT

Vs

Chairman, Airport Authority of India and Another

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(2), 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 304, 307
Prevention of Corruption Act, 1988 — Section 19

Citation : (2011) 2 JCC 733

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Dipak Bhattacharya and Navin Prakash, for the Appellant; Anjana Gosain, for Respondent No. 1/AAI and Vikas Pahwa for Respondent No. 2/CBI, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Bharihoke, J.—Dinesh Kumar, Executive Director (Personnel), Airports Authority of India, the Petitioner herein has filed the instant writ petition under Article 226 of the Constitution of India praying for issue of a writ of mandamus or certiorari or directions to quash the impugned order No. Pers/DC/1102/294/RVS&ORS/09 dated 04.11.2009 purportedly passed by Respondent No. 1 according sanction for prosecution of the Petitioner for various offences under Prevention of Corruption Act as well as Indian Penal Code.

2. Contention of learned Counsel for the Petitioner is that the impugned sanction order is liable to be quashed for the reason that the sanctioning authority has accorded the aforesaid sanction for prosecution mechanically without any application of mind to the facts and the material evidence collected by the investigating agency. Dilating on the argument, learned Counsel for the Petitioner sub-mitted that despite of repeated requests and reminders by the Petitioner,

Respondent No. 1 has not supplied the copy of duly signed sanction order to the Petitioner and instead, the Petitioner was supplied with the copy of a model sanction order purportedly forwarded to the sanctioning authority i.e. Respondent No. 1 by the investigating agency, CBI. Learned Counsel argued the mere fact that a draft sanction order detailing all the facts and circumstances of the case was forwarded to the sanctioning authority is indicative of the fact that the sanctioning authority has accorded sanction mechanically and without applying its mind to the facts and circumstances of the case by signing on the dotted lines. In support of this contention, learned Counsel for the Petitioner has relied upon the judgments of Supreme Court in the matters of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, Mansukhlal Vithaldas Chauhan v. State of Gujarat (1997) 7 SCC 682, State of Karnataka Vs. Ameer Jan, .

3. In the matter of State (NCT of Delhi) (supra), the Supreme Court held thus:

Ultimately, the test to be applied is whether relevant material that formed the basis of allegations constituting the offence was placed before the sanctioning authority and the same was perused before granting sanction.

4. In the matter of Mansukhlal Vithaldas Chauhan (supra), it was held thus:

17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanction authority was unable to apply its independent mind for any reason whatsoever or was under an

obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

5. In the matter of State of Karnataka (supra), it was held thus:

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanction authority. In the event, the order of sanction does not indicate application of mind as the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced.

6. There can be no dispute about the proposition of law enunciated in the aforesaid judgments. However, aforesaid judgments are of no avail to the Petitioner because the instant writ petition appears to have been filed on the assumption that the model sanction order annexed to the petition as Annexure P1 has been signed by the sanctioning authority on dotted lines. Aforesaid model sanction order (Annexure P1) is neither dated nor does it bear the signatures and seal of the sanctioning authority. It does not even disclose the name and designation of the authority and there are blank spaces in the model sanction order with regard to the name and designation of the authority concerned. From this, it is obvious that Annexure P1, which has been challenged as sanction order is not the actual order according sanction for prosecution of the Petitioner Dinesh Kumar. Learned Counsel submitted that the Petitioner was compelled to file the writ petition on the strength of model sanction order because despite of repeated reminders, he was not supplied with copy of sanction order passed by the competent authority u/s 19 of the Prevention of Corruption Act. This argument also deserves to be dismissed because on perusal of Para 1 of the writ petition, it transpires that the Petitioner is seeking quashing of the sanction order bearing No. Pers/DC/1102/294/RVS and Ors. /09 dated 04.11.2009. The Petitioner, obviously, could not have come to know about the number and date of the order of the competent authority according sanction for his prosecution unless he had laid hands on the sanction order. Despite that, copy of the actual sanction order dated 04.11.2009 has not been placed on record. This circumstance in itself is

sufficient to reject the prayer of the Petitioner. Otherwise also, mere fact that a model sanction order was forwarded by the CBI to the competent authority by itself cannot be taken as a circumstance to assume that the sanctioning authority signed the model sanction order on dotted lines without application of mind to the evidence and material placed before him by the investigating agency. The question whether or not sanctioning authority applied its mind to the facts and material collected by the investigating agency is a mixed question of law and fact which requires evidence for determination and if at all the Petitioner has any grievance against the validity of the sanction order, he obviously would get a chance to challenge its validity before the concerned court i.e. Special Judge Calicut, where the charge sheet has been filed.

7. In the matter of Pepsi Food Ltd. (supra), Supreme Court has observed that in the cases where sanction for prosecution by a competent authority is a condition precedent to taking of cognizance, the Petitioner ought not to be unnecessarily subjected to rigors of illegal trial and the fact that the Petitioner would get a chance to challenge the impugned order before the Trial Court cannot be taken as a reason by the High Court for not interfering with the impugned order under Article 226 of the Constitution.

8. Learned Counsel for the Petitioner has relied upon the judgment of Supreme Court in the matter of Abdul Wahab Ansari Vs. State of Bihar Another, . In support of this contention, he has taken me through the following observations of the Supreme Court in the aforesaid matter:

3. ...there is no justification for the accused to wait till the stage of framing of charge is reached and the High Court, therefore, was in error in not exercising the jurisdiction vested in law.

7. ...It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings.

8. ...This being the position, we are of the considered opinion that the decision of this Court in Birendra Kumar Singh case 1990 Suppl SCC 41 does not lay down the correct law by directing that the objection on the question of sanction can be raised at the stage of framing of charge at not at any prior point of time.

9. In my respectful view, the above referred judgment relied upon by the Petitioner is not applicable to the facts of the case. In the matter of Abdul Wahab Ansari (Supra), the Chief Judicial Magistrate on the complaint made before him alleging commission of offence by the Appellant of that case u/s 304, 307, 147, 148, 149 and 380 IPC came to the conclusion that prima facie case under those Sections was made out and took cognizance against the accused and directed issuance of the non-bailable warrants against the Appellant. The Chief Judicial Magistrate was of the view that provision of Section 197 of the Code of Criminal Procedure will have no application to the facts of that case. The Appellant then moved High Court u/s 482 of the Code of the Criminal Procedure praying, inter

alia, that no cognizance could be taken by the Chief Judicial Magistrate for want of sanction of appropriate government as required u/s 197(2) of the Code of Criminal Procedure when the offence was said to have committed by the Appellant while discharging his official duty pursuant to the orders of the competent authority. The High Court, however, without going into the merits of the matter took the view that all such questions may be raised at the time of framing of charge and disposed of the petition u/s 482 Code of Criminal Procedure. The Supreme Court, while hearing the appeal against the order of the High Court declining to interfere u/s 482 Code of Criminal Procedure, had made aforesaid observations.

10. Learned Counsel for the Respondent has submitted that the investigation of this case has since been completed and charge sheet has been filed in the court of Special Judge, Calicut. It is not clear whether or not the Special Judge has taken cognizance in the matter. As per the scheme of P.C. Act, the Special Judge is obligated to take cognizance only after going through the charge sheet and on being satisfied that a proper sanction for prosecution of the Petitioner has been accorded by the competent authority as required u/s 19 of the Prevention of the Corruption Act. And, if at all, the Special Judge, Calicut takes cognizance of the matter, process for appearance would be issued to the Petitioner and in that eventuality if the Petitioner has any grievance relating to the validity of the order according sanction for his prosecution, he would definitely get a right to challenge the sanction order before the Trial Court.

11. In view of the discussion above, I find no merit in this petition.

12. Writ Petition is accordingly dismissed.