
(2015) 08 RAJ CK 0140
In the Rajasthan High Court
Case No : Cr. Misc. Petition No. 1419/2013

Dinesh Yadav and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 13(1)(C)(D), 13(1)(D)

Citation : (2015) 08 RAJ CK 0140

Hon'ble Judges : Gopal Krishan Vyas, J.

Bench : Single Bench

Advocate : C.S. Kotwani, for the Appellant; L.R. Upadhyay, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—The instant cr. misc. petition has been filed by the petitioner under Section 482 Cr.P.C. against the order dated 15.9.2013 passed by the learned Sessions Judge, Prevention of Corruption Act Cases, Bikaner in Cr. Misc. Complaint No. 112/2012 (Mangi Lal v. Smt. Geeta Devi & Ors) whereby the learned court while declining to accept the preliminary inquiry issued direction to register an FIR against the petitioners for the offence under Sections 13(1)(D) , 13(2) of the Prevention of Corruption Act, 1988 and for offence under Sections 420 , 467 , 468 , 471 and 120B IPC.

2. As per the facts of the case, all the petitioners are working at different places on their respective posts in the State and they are challenging the validity of the order dated 15.6.2013 passed by the learned Sessions Judge-cum-Special Judge, Prevention of Corruption Act Cases, Bikaner in Cr. Misc. Case No. 112/2012 by which the learned trial court while declining to accept the preliminary inquiry report NO.202 submitted by the ACD gave directions to the Anti Corruption Bureau for registration of FIR against the petitioners for offence under Sections

13(1)(C)(D) and 13(2) of the Act of 1988 and under Section 420 , 467 , 468 , 471 and 120B IPC.

3. The respondent complainant Mangi Lal filed a complaint against the petitioners as well as Smt. Geeta Devi wherein it was alleged that Smt. Geeta Devi has purchased a land from Nema Ram S/o Jeevan Ram Mali situated at revenue village Kismidesar, Tehsil Bikaner in Khasra NO.370/224 measuring 429.0 sq.yard. As per the allegation after purchasing the above land, Smt. Geeta Devi submitted an application for regularizing her possession before UIT, Bikaner and in pursuance of her application, a report was called from the concerned Patwari, Gangashahar, Bikaner, who in turn submitted its report stating therein that the land in question is not the same land and it belongs to some other Khatedars Koja Ram, Bajrang, Gangali etc. of village Kismidesar. Upon complaint submitted by the complainant, a criminal misc. case No. 112/2012 was registered and the learned Judge, Anti Corruption Bureau directed Anti Corruption officials to conduct preliminary inquiry in the case and in pursuance thereof, preliminary inquiry No. 202/2012 was registered by the ACB. After thorough investigation, the investigating agency submitted its report on 6.6.2013 before the Judge, Prevention of Corruption Act Cases, Bikaner in which it is stated that no offence whatsoever is made out against the petitioners.

4. As per the contention of the petitioner although no offence whatsoever is made out against the petitioners, but upon complaint of the respondent No. 2, the learned trial court without considering the report in any manner and without presence of the complainant or his lawyer, passed an order whereby issue direction to ACB to register FIR against the petitioners vide order dated 14.6.2013. The petitioners are challenging validity of the order on the ground that the petitioners are government servants and as per the judgment of the Hon'ble Supreme Court, the Presiding Officer can proceed in the preliminary inquiry submitted by the investigating officer, but in no manner, the court can direct the investigating agency to register the FIR, but in this case, the learned trial court without even considering the report of the investigating agency issued directions to register an FIR against the petitioners in spite of the fact that for registration of the FIR against the government employee the previous sanction of the government is necessary. In support of his contention, the learned counsel for the petitioner invited my attention towards the judgment of the Hon'ble Supreme Court delivered in the case Anil Kumar and Others Vs. M.K. Aiyappa and Another, and submits that order of investigation and registration of the FIR without sanction in an anti corruption case against the public servants that to without considering the report of preliminary inquiry, is illegal, so also, Magistrate while exercising his powers under Section 156(3) Cr.P.C. cannot act in a mechanical or casual manner and to go with the complainant after getting report, therefore, the order of registration of the FIR may kindly be quashed because no sanction is obtained for registration of the FIR.

5. After hearing the learned counsel for the parties, I have perused the judgment

rendered by the Hon"ble Supreme Court in the case of Anil Kumar (supra) in which following adjudication is made upon the same issue, which reads as under:

"12. We may now examine whether, in the above mentioned legal situation, the requirement of sanction is a pre-condition for ordering investigation under Section 156(3) Cr.P.C., even at a pre-cognizance stage. Section 2(c) of the PC Act deals with the definition of the expression public servant and provides under Clauses (viii) and (xii) as under:

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty.

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority."

The relevant provision for sanction is given in Section 19(1) of the PC Act, which reads as under:

"19. Previous sanction necessary for prosecution.(1) No court shall take cognizance of an offence punishable under Sections 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.

Section 19(3) of the PC Act also has some relevance; the operative portion of the same is extracted hereunder:

Section 19(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(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 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) xxx xxx xxx

c) xxx xxx xxx

13. Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases (supra).

14. Further, this Court in Criminal Appeal No. 257 of 2011 in the case of General Officer, Commanding v. CBI and opined as follows:

"Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him.. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio."

6. After perusing the aforesaid adjudication made by the Hon''ble Supreme Court and upon fact that without sanction of the Government the Special Judge has passed an order for registration of FIR and to conduct thorough investigation, therefore, the order is in contravention of the judgment of the Hon''ble Supreme Court in aforesaid case.

7. In view of the above while following law laid down by the Hon''ble Supreme Court in case of Anil Kumar (supra) this cr. misc. petition is hereby allowed and the order impugned dated 15.6.2013 passed by the Session Judge, Prevention of Corruption Act Cases, Bikaner in Cr. Misc. Complaint NO.112/2012 (Mangi Lal v. Smt. Geeta Devi & ors.) for registration of the FIR against the petitioners for the offence under Sections 13(1)(C) (D) , 13(2) of the Prevention of Corruption Act, 1988 and under Section 420 , 467 , 468 , 471 and 120B IPC is hereby quashed and set aside.