
(2004) 05 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 12584-M of 2004

Gian Prakash Sharma

APPELLANT

Vs

Central Bureau of Investigation and Another

RESPONDENT

Date of Decision : 19-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Prevention of Corruption Act, 1988 — Section 13, 19(1), 7

Citation : (2004) CriLJ 3817 : (2004) 3 RCR(Criminal) 842

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : N.P. Mittal, for the Appellant; Rajan Gupta, for the C.B.I., for the Respondent

Final Decision : Allowed

Judgement

Surya Kant, J.—In this petition u/s 482 of the Code of Criminal Procedure, the petitioner has questioned the legality of order dated February 24, 2004 (Annexure P-3) passed by the learned Special Judge, C.B.I. Punjab at Patiala whereby he has refused to accept the final closure report No. 1 dated 30-1-2003 (Annexure P-2) submitted by the Investigating Agency, namely, the C.B.I., Chandigarh in relation to a case registered vide FIR/RC No. 26/96-CHG dated 1-5-1996 under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 which originally emanated from a case registered vide FIR No. 3/97, PS Vigilance Bureau, Patiala Range, Patiala.

2. As per the allegations made in the F.I.R. the petitioner who was working as a Junior Telecom Officer at Sirhind, was caught red handed by the Vigilance Bureau while demanding and accepting Rs. 500/- as illegal gratification from Shri Parveen Kumar (respondent No. 2) for shifting telephone No. 40365. The further allegations were that the petitioner despite holding the charge of JTO (Indoor) as well as JTO (Outdoor) at the relevant time did not shift the telephone No. 40365 on the request of respondent No. 2 from one premises to the other and rather

demanded Rs. 1,000/- for shifting the same. A bargain was struck and the petitioner allegedly agreed to shift the telephone on payment of Rs. 500/- when respondent No. 2 contacted the petitioner again on 12-2-1996 at 9.00 a.m. on the advice of his neighbour, namely, Shri Sukhwant Singh not to pay the bribe money, respondent No. 2 along with the said Shri Sukhwant Singh, contacted the Vigilance Bureau at Fatehgarh Sahib on 12-2-1996 itself and lodged a complaint as well as produced currency notes for trapping the petitioner. The DSP, Vigilance Bureau, after making pre-trapping formalities and joining independent witnesses, trapped the petitioner and caught him red handed while demanding and accepting Rs. 500/- from respondent No. 2. Thereafter the DSP, Vigilance Bureau, Punjab transferred this case to the C.B.I. for investigation after registering FIR No. 3/97 at P. S. Vigilance Bureau, Patiala Range, Patiala.

3. The matter was investigated by the C.B.I. for a period of over six years. After thorough investigation, the C.B.I. submitted closure report dated February 14, 2003 (Annexure P-2) with a prayer "that the case may kindly be closed and the documents seized may also be ordered to be returned to the respective departments. Hand-wash and pant pocket wash nips also be ordered to be destroyed as per law. "The C.B.I. in its closure report stated that Shri Sukhwant Singh, shadow witness contradicted the statement of Shri Parveen Kumar, complainant (respondent No. 2) and Trap Laying Officer (TLO) and stated as under :--

"Sh. Sukhwant Singh, shadow witness contradicted the statement of Sh. Parveen Kumar complainant and TLO and stated that he was in the market when the bribe money was demanded and accepted by the JTO. He stated that the hand and pocket of the accused were not washed before him and two bottles containing pinkish solution had already kept on the floor when he reached inside the room of JTO. According to him, the certain papers were got signed by him under pressure and he was not aware of the content of these papers."

"Sh. Surjit Singh, independent witness stated that tainted money from the possession of the JTO was not recovered before him and the recovered money was in the hand of TLO when he reached the office of JTO,"

"according to the statement of TLO, all the members of the trap party including the complainant and the shadow witness left for the JTO office in the Govt. vehicle whereas according to the statement of complainant and shadow witness, both of them went on their scooter and the other team member came in a official jeep."

"there was also contradiction on the approximate time when the trap team left the O/O VB for the JTO office. According to the DSP, the team left the office at about 3.45 p.m. whereas according to the statement of Sh. Sukhwant Singh shadow witness, the team left the office at about 10.30 A.M. According to the complainant, the team started at about 2.30 p.m. On the other hand, independent witness stated that the DSP along with Inspector came to Markfed

office at 11.00 a.m. on 12-2-1996 and remained there till 4.30 p.m."

"it has also established that the jumper register has not been properly made since blank spaces/lines are left after every entry and a entry on 10-2-1996 has been made subsequently by Smt. K.V. Rattan, LTO at the instance of accused."

4. The Investigating Agency after observing that keeping in view the lack of sufficient evidence, prosecution of the accused was not recommended. However, recommendation of major penalty against both, namely, the petitioner and one Shrimati K. V. Rattan were made to the departments concerned and that the disciplinary authority vide their letter dated September 24, 2000 and again dated September 23, 2002, has intimated that both the above named officials have been exonerated of the charges levelled against them. It was in these circumstances that the Investigating Agency, namely, the C.B.I. requested for the closure of the case.

5. The learned Special Judge, C.B.I. at Patiala, however, vide his impugned order dated February 24, 2004 has declined to accept the afore-mentioned closure report primarily on the ground that the complainant as well as the Trap Laying Officer have in their statement recorded by the C.B.I., levelled charges against the accused and have implicated him in the commission of the crime and that the statements of Sukhwant Singh, shadow witness and Surjit Singh, independent witness were recorded by the Trap Laying Officer and both of them had implicated the accused and that positive opinion has been given by the Forensic Science Laboratory on the hand wash and pocket wash of the accused. According to the learned Special Judge, exoneration in the departmental action of the accused, is no ground for closure of the case as the hand wash memo, the recovery memo of tainted money, and the pocket wash of the accused are indicative of the fact that he had demanded and accepted the bribe. Based upon these reasons, the learned Special Judge declined to accept the closure report and directed that "the matter be further investigated and question of procuring sanction be considered."

6. While issuing notice to the C.B.I. and Shri Parveen Kumar, complainant (respondent No. 2), a learned Judge of this Court took notice of the contentions raised on behalf of the petitioner, inter-alia, pointing out that the closure report was submitted by the C.B.I. on account of lack of sufficient evidence; however, major penalty was recommended to the department but the disciplinary authority had exonerated him vide order dated September 24, 2001 {Annexure P-6}; that while considering the cancellation report, notice was given to the complainant who made a statement that he does not want to file any protest petition.

7. Upon notice, reply has been filed on behalf of the C.B.I. and in para 2 thereof, the following stand has been taken :--

"During investigation by the CBI certain major contradictions emerged in the statements of decoy, Trap Laying Officer and the shadow witness. The shadow witness Shri Sukhwant Singh contradicted the version of the complainant Sh.

Praveen Kumar and did not fully support the proceedings observed during the laying of trap. Sh. Surjeet Singh another independent witness stated that the tainted money was not recovered from the accused person in his person. He further stated that the said tainted money was in the hands of the Trap Laying Officer while he reached the place of occurrence. The statement of the Trap Laying Officer also differed from the statement of the other witnesses regarding the mode of transport used by members of the trap laying party for reaching to the place of occurrence and regarding the time of reaching the place of occurrence. After taking into consideration the fact CBI concluded that a prosecutable case was not made out against the petitioner accused Gyan Prakash Sharma and accordingly a Closure Report u/s 173 Cr. P.C. was filed in the Court of Spl. Judge CBI Punjab Patiala on 14-2-2003. However investigation did prove grave misconduct on the part of the accused petitioner and accordingly a recommendation was made out by CBI to the Deptt. for initiating RDA for major penalty. The Spl. Judge CBI Punjab Patiala has passed an order dt. 24-2-2004 for conducting re-investigation of the case and the same is under progress."

8. It may also be mentioned here that on behalf of the complainant (respondent No. 2), Shri Sham Lal Bhalla, Advocate has reiterated the statement made before the learned Special Judge to the effect that respondent No. 2 had nothing to submit against the closure report and had no objection against acceptance thereof.

9. Learned counsel for the petitioner has raised two fold submissions. Firstly, he argues that after through investigation of the case for a period of more than six years and after recording statements of all the vital witnesses and carrying out scientific investigation, the Premier Investigating Agency of the country, namely, the C.B.I., has concluded in its closure report (Annexure P-2) that there is a lack of evidence to prosecute the petitioner and in view of this, the learned Special Judge ought not to have brushed aside the closure report by relying upon the pre-investigation version of the officials of the Punjab State Vigilance Bureau including the alleged statements of certain witnesses recorded by them.

10. His second contention is that by observing in relation to "the question of procuring sanction", the learned Special Judge, CBI has issued an implied direction for the sanction of the prosecution u/s 19(1) of the Prevention of Corruption Act, 1988 without permitting independent application of mind to the facts of the case and material and evidence on record by the authority competent to grant such sanction.

11. In the case of Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117 : (1968 Cri LJ 97), Their Lordships after examining the provisions of Chapter XIV of the Code of Criminal Procedure in relation to the scope and power of the Investigating Agency viz. power of the Magistrate to accept or reject the same, held as under (at p. 102 of Cri LJ)

".....The entire scheme of Chapter XIV clearly indicates that the

formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the Officer-in-charge of the police station and that opinion determines whether the report is to be u/s 170, being a "charge-sheet", or u/s 169, "a final report". It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police, if he disagrees he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either u/s 169 or u/s 170, depending upon the nature, of the decision. Such a question has been left to the police under the Code."

xx xx xx xx xx xx "The question can also be considered from another point of view, Supposing the police send a report, viz. a charge-sheet u/s 170 of the Code. As we have already pointed out the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, u/s 169? In our opinion, the Magistrate has no such power. He has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entire different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take a suitable action, according to law, he cannot certainly infringe (sic. impinge?) upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view."

12. In *R. Sarala Vs. T.S. Velu and Others*, , Their Lordships, while considering the question regarding giving of direction by the Court to the Investigating Officer, held as under (at p. 2454 of Cri LJ) :--

".....The formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the officer-in-charge of the police station and none else. There is no stage during which the Investigating Officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the superior police officer in the rank as envisaged in Section 36 of the Code. A Public Prosecutor is appointed as indicated in Section 24, Cr. P.C. for conducting any prosecution, appeal or other proceedings in the Court. He has also the power to withdraw any case from the prosecution with the consent of the Court. He is the officer of the Court. Thus the Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the Investigating Officer and the Public Prosecutor for filing the report in the Court."

13. While examining the legality of the impugned order dated 14-2-2004 (Annexure P-3) passed by the learned Special Judge, CBI on the touchstone of the principles laid down by Their Lordships in the judgments cited above, there is no doubt that the learned Magistrate in exercise of his powers u/s 173, Cr. P.C. is competent to disagree with the "final report" and direct further investigation in a matter. However, existence of valid and good reasons is a prerequisite for issuance of such a direction. It is seen from the impugned order dated 24-2-2004 (Annexure P-3) that the closure report submitted by the C.B.I. has been rejected by the learned Special Judge only on the basis of the statement of Trap Laying Officer and other police officials of the Punjab State Vigilance Bureau which are stated to have been recorded at the time of the registration of the case. Similarly, the learned Special Judge has also placed reliance on the pre-investigation statements allegedly made by the shadow witness, Sukhwant Singh and another alleged independent witness, namely, Surjeet Singh. In my view, their alleged statements recorded prior to the initiation of investigation of this case by the C.B.I. are of no legal consequence. It has not been disputed that the case was referred to the C.B.I. for investigation on May 1, 1996. The statements made by these witnesses during the course of investigation before the C.B.I. have not only been referred to in extenso in the closure report (Annexure P-2) but the C.B.I. in para 2 of its reply dated May 10, 2004, which has already been reproduced above, has categorically stated that these witnesses have contradicted each other as well as have completely demolished the prosecution version. When the shadow witness himself has stated that the tainted money was not recovered from the petitioner in his presence and/or the same was in the hands of the Trap Laying Officer when he reached the place of occurrence, the hand wash memo, the recovery memo and tainted money and/or pocket wash of the accused have become absolutely doubtful material justifying the conclusions drawn by the C.B.I. that the case lacks sufficient evidence for prosecution of the petitioner. It is not the case of the learned Special Judge that either the C.B.I. has not conducted the investigation in a fair and impartial manner or it has not attempted to collect any material piece of evidence against the accused petitioner. It is nobody's case that the closure report was submitted in a hurried manner inasmuch as the C.B.I. took over six years' time in concluding the investigation. No inference of causing any influence by the petitioner upon the Investigating Officer can be drawn even remotely as while recommending the closure of the prosecution of the case for want of sufficient evidence, the C.B.I. also recommended disciplinary action for imposition of major penalty against the petitioner and another official though it is a different matter that the disciplinary authority after holding a regular enquiry and taking opinion of the Central Vigilance Commission has also exonerated the petitioner vide order dated 24-9-2001 (Annexure P-6). Unfortunately, either it is a case where the petitioner has won over the prosecution witnesses or he has been falsely roped into the matter. Both are mis-happenings. The reluctance shown by the C.B.I. before this Court against re-investigation of the matter is another circumstance prompts to give decent burial to this case.

14. I am, therefore, of the considered view that keeping in view the facts and circumstances of this case where the trap witness and the eye-witness had not supported the prosecution version and the statement of the Trap Laying Officer also differed from the statement of other witnesses regarding the mode of transport used by the members of the Trap Laying Party and also the time of reaching the place of occurrence, the C.B.I. rightly drew the conclusion that the case lacks sufficient evidence to prosecute the petitioner. The direction of re-investigation in such a case would be totally a futile exercise as well as an abuse of the process of law, apart from putting additional burden upon the Premier Investigating Agency of the country, namely, the C.B.I. which is already overburdened with the investigation of several sensitive cases of larger public importance.

15. Coming to the second submission made on behalf of the petitioner in relation to the observations made by the learned Special Judge that "question of procuring sanction be considered," I do not find any merit in the submission that it amounts to commanding the competent authority to grant sanction without independent application of mind to the facts of the case or the material evidence on record. The doctrine of "*Actus curiae neminem gravabit*", namely the act of the Court harms no one, is a well established principle of law and has been pressed into service by Their Lordships of the Supreme Court in the case of *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, , in relation to the powers of the competent sanctioning authority u/s 19(1) of the Prevention of Corruption Act and/or Section 197, Cr. P.C., as the case may be, wherein it was held 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 sanctioning 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."

16. I am, therefore, of the view that notwithstanding the observations made by the learned Special Judge, the competent authority, namely, the Central Government, in exercise of its powers u/s 19(1) of the Act, if the occasion arises, has to apply its mind independently to the facts and circumstances of this case as also the material on record before taking an appropriate decision for granting or refusing the sanction for prosecution of the petitioner and will not be influenced by the observations made either by the Special Judge or by this Court.

17. In view of the fact that the reasons assigned by the learned Special Judge in

refusing to accept the closure report submitted by the C.B.I. have not been found to be valid and justified, I find that the impugned order dated 24-2-2004 (Annexure B-3) is unsustainable. Consequently, the petition is allowed and the afore-mentioned impugned order is set aside and the closure report dated February 14, 2003 (Annexure P-2) is ordered to be accepted.