

(2020) 06 JH CK 0004
In the Jharkhand High Court
Case No : Criminal Revision No.189 Of 2020

Girija Nand Kisku

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 03-06-2020

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 19(1), 19(3)(a)

Citation : (2020) 06 JH CK 0004

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Amit Kumar Das, T. N. Verma

Judgement

1. Heard the parties through video conferencing.
2. This criminal revision has been directed against the Order dated 06.12.2019 passed by learned Special Judge (ACB), Dhanbad in Special Case No.27 of 2017 {M.C.A. No.2005 of 2018} whereby and whereunder the learned court below has rejected the prayer for discharge of the revision petitioner.
3. The brief facts of the case is that the revision petitioner who was posted as Block Development Officer; was found in possession of Rs.50,000/- of alleged bribe money. Hence, after investigation of the case, A.C.B. has submitted the charge-sheet. Thereafter, prayer for discharge was made by the petitioner which has been rejected by the trial court, by the impugned order.
4. Though several grounds have been agitated by the revision petitioner in the criminal revision petition but at the time of hearing, Mr. A. K. Das, learned counsel for the petitioner, after some arguments, submits that he is confining his submission only to the sole ground that the accused-petitioner agitated the ground that the sanction for prosecution is not passed by the competent authority but the learned trial court without considering the said ground has rejected the petition for discharge without expressing any opinion regarding the validity of the sanction. It is further submitted by learned counsel for the

petitioner that the Secretary Personnel is the Competent Authority to sanction the prosecution of the accused-petitioner but the sanction of prosecution in this case having not been signed by the Secretary, Personnel Department, Government of Jharkhand rather the Principal Law Secretary having signed the sanction of prosecution on behalf of the Government of Jharkhand, the same is not a proper sanction. In support of its contention, Mr. A. K. Das, learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court of India in the case of C.B.I. vs. Ashok Kumar Agrawal & Others reported in AIR 2014 SC 827 wherein the Hon'ble Supreme Court of India has held as under in paragraph-9:-

9. "In view of the above, we do not find force in the submissions advanced by Shri Vishwanathan, learned ASG that the competent authority can delegate its power to some other officer or authority, or the Hon'ble Minister could grant sanction even on the basis of the report of the SP. The ratio of the judgment relied upon for this purpose, in A. Sanjeevi Naidu etc. v. State of Madras and Anr., AIR 1970 SC 1102, is not applicable as in the case of grant of sanction, the statutory authority has to apply its mind and take a decision whether to grant sanction or not".

It is further submitted by Mr. A. K. Das that as the sanction for prosecution of the accused-petitioner is not proper, hence, the accused-petitioner be discharged.

5. Mr. T. N. Verma, learned counsel appearing for the A.C.B. on the other hand defends the impugned order and submits that the sanction of the prosecution is proper. It is further submitted by Mr. Verma that the sanction for prosecution, the copy of which is in page-63 of the brief, clearly indicates that the Personnel, Administrative Reforms and Rajbhasha Department of Jharkhand has referred the matter to the Law Department and as any of the Secretary can represent the Government, so, the sanction of prosecution by the Principal Secretary-cum-Law Legal Remembrance, Law Department, Government of Jharkhand is proper. Mr. Verma submits that the validity of a sanction of prosecution is to be decided at the stage of trial and not at the nascent stage of framing the charge. In support of its contention, Mr. Verma relied upon the judgment of Hon'ble Supreme Court of India in the case of C.B.I. vs. Mrs. Pramila Virendra Kumar Agrawal & Another (Cr. Appeal No.1489-90 of 2019) date of the judgment is 25.09.2019 wherein the Hon'ble Supreme Court of India has held as under in paragraph-13:-

13. "Further the issue relating to validity of the sanction for prosecution could have been considered only during trial since essentially the conclusion reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction being defective. In that regard, the decision in the case of Dinesh Kumar vs. Chairman, Airport Authority of India, (2012) 1 SCC 532 relied upon by the learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of nonapplication of mind. The

absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial. In the instant facts, admittedly there is a sanction though the accused seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial". (Emphasis Supplied)

6. Hence, it is submitted by Mr. Verma that there is no illegality or perversity in the impugned order passed by the learned trial court. Hence, it is submitted that the same ought not to be interfered with by this Court in exercise of its revisional jurisdiction.

7. It is pertinent to mention here that it is a settled principle of law that the validity of the sanction is to be tested at the stage of the trial as has been held by the Hon'ble Supreme Court of India in the case of C.B.I. vs. Mrs. Pramila Virendra Kumar Agrawal & Another (supra). The Hon'ble Supreme Court of India in the case of Prakash Singh Badal Vs. State of Punjab reported in (2007) 1 SCC 1 has also held that mere error, omission or irregularity in sanction is not fatal unless it has resulted in failure of justice or failure of justice has occasioned thereby. It has been held by the Hon'ble Supreme Court that the question as to absence of sanction for prosecution can be agitated at the threshold of the trial but the question as to invalidity can be agitated during trial.

8. Section 19 (3) (a) of the Prevention of Corruption Act inter alia envisages that no order passed by a special judge under the act should be interfered in revision on the ground of absence of any error, omission or irregularity in, the sanction required under sub-section (1) of Section 19 of the Prevention of Corruption Act, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby, and the petitioner has not agitated failure of justice having been occasioned in this case.

9. Considering the facts of the case and the principle of law discussed above, this Court is of the considered view that the impugned order passed by the learned trial court does not suffer from perversity or any illegality or warranting interference of this Court and accordingly, this revision application is disposed of with the observation that the accused-petitioner will be at liberty to raise the issue of validity of the sanction for his prosecution at the stage of trial and if the same is raised at the time of trial, the trial court will address the same as per law.

10. It is made clear that this Court has not expressed any opinion regarding the validity or otherwise of the sanction for prosecution.