
(2018) 05 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.Cr.C.No.12656 OF 2018

Harish Sharma

APPELLANT

Vs

Special Police Establishment (Lokayukt) And Another

RESPONDENT

Date of Decision : 01-05-2018

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2), 19, 19(3)
Code Of Criminal Procedure, 1973 — Section 313, 482

Citation : (2018) 05 MP CK 0004

Hon'ble Judges : SANJAY YADAV, J;ASHOK KUMAR JOSHI, J

Bench : Division Bench

Advocate : D.K. Agarwal, B.K. Sharma,

Final Decision : Dismissed

Judgement

With the consent of learned counsel for the parties, the matter is finally heard.

(1) Petitioner is being Â prosecuted under sections 13 (1) (e) and 13 (2) of the Prevention of Corruption Act, 1988 (for brevity â??Act, 1988â??).

(2) At the stage when the preliminary enquiry was set up by the Lokayukta on the complaint as to the petitioner having disproportionate income, he

challenged the entire proceedings on the ground that being a Tahsil Coordinator in Gram Raksha Samiti Gwalior (under the Madhya Pradesh Gram

Tatha Nagar Raksha Samiti Adhiniyam 1999) he is not amenable to the provisions of Act, 1988 and the Lokayukta constituted under Madhya Pradesh

Lokayukta Evam UpLokayukta Adhiniyam, 1981 has no jurisdiction to enquire into the complaints; vide W.P.No.4308/2008. The plea was negated

and the writ petition was dismissed on 17.9.2008. Whereagainst Â petitioner filed Writ Appeal No.560/2008. The Division Bench relying on the

provisions contained in the Adhiniyam 1999 and more particularly section 19

thereof and the Rules framed thereunder viz. M.P. Gram Tatha Nagar

Raksh Samiti Rules, 2003, and provisions contained in the Adhiniyam, 1981, upheld the order passed by learned Single Judge. Further relying on the

decision in Naresh Kumar Madan Vs. State of M.P., (2007) 4 SCC 766 and paragraph 51 and 52 of R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684

held the petitioner to be a public servant within the meaning of Adhiniyam, 1981, Adhiniyam 1999 and the Rules made thereunder. Review Petition

No.301/2010 was dismissed on 4.3.2011. Whereagainst Special Leave to Appeal (C) 8929/2011 was dismissed on 4.7.2011.

(3) That after preliminary enquiry the Lokayukta sought sanction from the State Government under section 19 of the Act, 1988. The sanction was

accorded on 11.10.2010, whereon, the cognizance was taken and prosecution was launched. Â In the criminal proceeding the prosecution examined

its entire witnesses and the petitioner also recorded his statement under section 313 of Code of Criminal Procedure, 1973. It was the stage of

recording of defence witnesses, that the petitioner on the basis of the prosecution evidence and more particularly evidence of the Sanctioning

Authority, the petitioner has filed this petition seeking quashment of entire proceedings that the sanction for prosecution was without jurisdiction and

that he is not the public servant, but the Government Servant, for whom the said Authority is empowered to grant sanction. And the Sanctioning

Authority had not applied its mind. Â

(4) The petitioner places reliance on the decision in Central Bureau of Investigation Vs. Ashok Kumar Aggarwal, (2014) 14 SCC 295, to bring home

the submissions that even with the stipulation contained under clause (a) of sub-section (3) of Section 19 of the Act, 1988 which envisages that

notwithstanding anything contained in the Code of Criminal Procedure, 1973, no finding, sentence or order passed by a Special Judge shall be reversed

or altered by a court in appeal, confirmation or revision Â 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; it is open for the petitioner/accused to

question the same at any stage of the trial/proceedings, if it could be established that the Sanctioning Authority was not in seisin with the record as

would enable him to apply his mind resulting in failure of justice.

(5) The crucial issue is whether when the trial is at an advanced stage when the prosecution has closed its evidence and the petitioner got himself

examined under section 313 of Code of Criminal Procedure, 1973, it would be apt to entertain an application under section 482 of Code of Criminal

Procedure, 1973 merely because the petitioner thinks that there is no justification in the sanction order or that the authority has no jurisdiction to grant sanction.

(6) In *Dinesh Kumar v. Airport Authority of India*, (2012) 1 SCC 532, it is held:

“9. While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in *Parkash Singh Badal*, (2007) 1 SCC 1

expressed in no uncertain terms that the absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where

sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in *Parkash Singh Badal*,

this Court referred to invalidity of sanction on account of non-application of mind.

10. In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the

sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to

grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the

same category like the ground of invalidity of sanction on account of non-application of mind - a category carved out by this Court in *Parkash Singh*

Badal, the challenge to which can always be raised in the course of trial.

13. In our view, having regard to the facts of the present case, now since cognizance has already been taken against the appellant by the Trial Judge,

the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the Trial Court and giving liberty to

the appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of this Court in

Parkash Singh Badal and not unjustified.”

(7) Even in the case of *Ashok Kumar Aggarwal* (supra) Their Lordships were pleased to observe:

“18. This Court in *Ashok Tshering Bhutia Vs. State of Sikkim*, (2011) 4 SCC 402, while dealing with the issue whether invalid sanction goes to the

root of jurisdiction of the Court which would vitiate the trial and conviction, held (SCC p.411, para 25) that in the absence of anything to show that any defect or irregularity therein caused a failure of justice, the contention was without any substance. (emphasis supplied) The failure of justice would be relatable to error, omission or irregularity in the grant of sanction. However, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice or has been occasioned thereby.

19. The court must examine whether the issue raised regarding failure of justice is actually a failure of justice in the true sense or whether it is only a camouflage argument. The expression "failure of justice" is an extremely pliable or facile an expression which can be made to fit into any case.

The court must endeavour to find out the truth. There would be "failure of justice" not only by unjust conviction but also by acquittal of the guilty

as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded

but they should not be over emphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the accused has

suffered some disability or detriment in the protections available to him under Indian Criminal Jurisprudence. "Prejudice" is incapable of being

interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters

falling beyond their scope. Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these

aspects, and that the same has defeated the rights available to him under legal jurisprudence, the accused can seek relief from the Court. (Vide:

Nageshwar Shri Krishna Ghobe v. State of Maharashtra, AIR 1973 SC 165; Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577; State

v. T. Venkatesh Murthy, (2004) 7 SCC 763; Rafiq Ahmad Vs. State of U.P., (2011) 8 SCC 300, Rattiram V. State of M.P., (2012) 4 SCC 516,

Bhimanna Vs. State of Karnataka, (2012) 9 SCC 650, Darbara Singh Vs. State of Punjab (2012) 10 SCC 476 and Union of India Vs. Ajeet Singh,

(2013) 4 SCC 186.

58. The most relevant issue involved herein is as at what stage the validity of sanction order can be raised. The issue is no more res-integra. In Dinesh

Kumar v. Airport Authority of India & Anr., AIR 2012 SC 858, this Court dealt with the issue and placing reliance upon the judgment in Parkash

Singh Badal & Anr. v. State of Punjab & Ors., AIR 2007 SC 1274, came to the conclusion as under (Dinesh Kumar's case, (2012) 1 SCC 532, SCC

P.536 Para 13):

13. In our view, having regard to the facts of the present case, now since cognizance has already been taken against the appellant by the trial

Judge, the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the trial court and giving

liberty to the appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of this

Court in Parkash Singh & Badal & Anr. (emphasis supplied)

59. Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined

during the stage of inquiry or at pre-trial stage.

(8) In the case at hand as evident from the record that the trial is practically on the verge of its finality. And the prosecution having placed reliance on

the evidence of the Authority granting sanction, it is for the Trial Court to examine the issue in its entirety with the corroborative evidence on

record. However, as to validity of the sanction since the petitioner having been adjudged to be a Public Servant and the prosecution witness, i.e., the

Sanctioning Authority having categorically stated that there being no difference between Lok Sewak and Shaskiya Sewak, we decline to accede to the

contention that the Sanctioning Authority was only empowered to grant sanction for prosecution in case of Govt. Servant and not Public Servant.

(9) Having thus considered, we find no merit in the Establishment (Lokayukt) and another) petition under section 482 of Code of Criminal

Procedure, 1973.

(10) Consequently, petition fails and is dismissed. No costs.