

(2015) 07 SHI CK 0062
In the High Court Of Himachal Pradesh
Case No : Criminal MMO No. 106 of 2015

J.K. Narang and Others

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 482
Penal Code, 1860 (IPC) — Section 120-B, 420, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19, 19(3)(b), 19(4)

Citation : (2015) 07 SHI CK 0062

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Pramod Kohli, Senior Advocate and Atul Jhingan, for the Appellant;
Sandeep Sharma, Senior Advocate and Pankaj Negi, Advocates for the
Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J—By medium of this petition, filed under section 482 of the Code of Criminal Procedure (for short, the Code), the petitioners seek setting aside the judgement/order dated 26.3.2015 passed by the learned Special Judge (CBI), Shimla, H.P. in Cr. MP No. 43-S/4 of 2014 and Cr.M.P. No. 42-S/4 of 2014, whereby the applications filed by them for their discharge with a further prayer to dismiss the charge-sheet for want of valid prosecution sanction has been ordered to be dismissed.

The facts in brief as pleaded are that:

2. (a) petitioner No. 1 had joined Indian Army as Lieutenant in Corps of Engineers (Bombay Sappers) on 14.3.1981 and earned promotions from time to time on the basis of his performance, integrity and seniority and rose to the rank of Brigadier on being promoted on 6.6.2007. He was deputed to Border Roads Organisation and was posted as Chief Engineer Project Deepak BRO, Shimla (H.P.), where he served from 6.6.2007 to 12.2.2009.

(b) The petitioner No. 2 had also joined the Indian Army as Lieutenant in Corps of Engineers (Bombay Sappers) on 20.12.1986 and earned promotions from time to time on the basis of his performance, integrity and seniority and rose to the rank of Lt. Colonel on being promoted in December 2005 and to the Rank of Colonel in December 2010. He was deputed to Border Roads Organisation and was posted as Staff Officer Grade-I, HQ. CE, (P) Deepak BRO, Shimla (H.P.) where he served from 31.3.2007 to 6.11.2009.

(c) While posted as Chief Engineer and Staff Officer respectively, the petitioners in discharge of their regular and normal duties made purchases of fully digital IP Based EPABX Exchanges as sanctioned by Ministry of Defence for the various units of Project Deepak located at far flung places in the State of Himachal Pradesh and Uttarakhand from a well known and reputed concern M/s. Siemens Enterprise Communications Pvt. Ltd. New Delhi. An FIR bearing No. RC09602120004 came to be registered on 23.2.2012 against the petitioners and M/s. Siemens Enterprise Communications Pvt. Ltd. allegedly for purchasing the above mentioned EPABXs on exorbitant rates. During the course of investigation, the petitioners as also M/s. Siemens Enterprise Communications Pvt. Ltd. produced various documents before the Investigating Agency to establish that there has been no financial irregularities/illegality nor there has been any loss to the State Exchequer. Similar purchases were made by various formations of Army/Air Force/Navy/BRO throughout the country from the same suppliers and the rates at which these exchanges were bought through limited tender inquiry were much lower than similar purchases made elsewhere in the country by Armed Forces Formations. Number of documents relating thereto were produced by the petitioners to the investigating agency, during the course of investigation, which also included a copy of the Staff Court of Inquiry earlier ordered by the Ministry of Defence in respect of these purchases. The Court of Inquiry Committee comprised of Sr. officers of Government of the Rank of Lieutenant General as the Presiding Officer, Major General and equivalent Govt. officials (I.e. Joint Secretary and above) as members.

(d) It was pleaded that on the basis of the evidence, the Court of Inquiry returned clear and categorical findings to the effect that there has been no financial bungs in these purchases and resultantly no loss has been caused to the State Exchequer. Even though, this Court of inquiry and other relevant documents were tendered by the petitioners and their co-accused to the Investigating Agency, same were alleged to be not taken note of and in fact returned to the petitioners. These documents according to the petitioners were sufficient to demolish the allegations contained in the FIR and clearly established the innocence and non-culpability of the petitioners. It was also alleged that the Investigating Agency despite having examined these documents, deliberately ignored the same and produced the charge sheet No. 06/2013 dated 15.10.2013 in the court of Learned Special Judge (CBI), Shimla (HP) for commission of offence under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, the Act) and under Section 120-B read with

Section 420 and 471 of Indian Penal Code (for short, the Code).

3. The petitioners and the Supplier M/s. Siemens Enterprise Communications Pvt. Ltd. were summoned in the aforesaid charge-sheet/challan by the Special Judge (CBI), Shimla. On being served with the copy of challan and examination of allegations and the documents produced by the CBI under Section 173(2) Cr.P.C., it is alleged that all the relevant documents particularly those produced by the accused persons to the Investigating Agency during the course of investigation which documents are the official record and of unimpeachable character were not placed by the Investigating Agency before the sanctioning authority. It was also alleged that the CBI procured the sanction from the Sanctioning Authority by active concealment of the facts/record material to the investigation.

4. Petitioner No. 1 filed an application dated 2nd April, 2014 seeking direction to the CBI for production of documents being 09 in number. In reply to the said application, the CBI admitted having received the XEROX copies of the above mentioned documents from the accused persons during the course of investigation, but submitted that the same were not relied upon for the purposes of establishing the allegations against the accused. The prosecution had produced the copies of the documents mentioned hereinabove and listed in the application dated 2nd April, 2014 before the Special Judge, CBI, and had sought permission of the learned Court to return the said documents to the petitioners.

5. The petitioners thereafter filed two separate applications dated 24.12.2014 seeking their discharge and dismissal of the case for want of valid prosecution sanction. It was inter alia pleaded that the orders sanctioning prosecution passed in respect of the petitioners are invalid and illegal and suffer from non-application of mind on account of non-consideration of material documents/facts not produced by the investigating agency to the sanctioning authority at the time of grant of sanction though admitted official record.

6. The applications preferred by petitioners were dismissed by the learned Special Judge, CBI, Shimla vide impugned order dated 26.3.2015, which order has been assailed on various grounds by the petitioners as taken in the memo of petition.

I have heard the learned counsel for the parties and have gone through the records of the case.

7. Sh. Pramod Kohli, learned Senior Advocate for the petitioners has strenuously argued that though the learned trial court has given findings to uphold the order of sanction, but it has given no specific findings in terms of sub-sections (3) and (4) of Section 19 of the Act.

8. In order to appreciate this argument, it is apt to reproduce the provision of sub-section (3) of section 19 of the Act, which reads as follows:--

"(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 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 thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."

9. At this stage, it is also necessary that the provisions of sub-section (4) and explanation thereto be also reproduced:--

"(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

10. The learned trial court has upheld the sanction order by according the following reasons:--

"9. Similarly in the case of State of Maharashtra Through C.B.I. Vs. Mahesh G. Jain, (2013) 4 ABR 686 : (2013) 6 AD 458 : (2013) CriLJ 3092 : (2013) 9 JT 15 : (2013) 3 RCR(Criminal) 263 : (2013) 7 SCALE 555 : (2013) 8 SCC 119 : (2014) 1 SCC(L&S) 85 Hon"ble Supreme Court clearly opined that the adequacy of material placed before the sanctioning authority cannot be gone into by the Court, it was observed as under:--

"The adequacy of material placed before the sanctioning authority cannot be gone into the court as it does not sit in appeal over the sanction order. An order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity. When there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused."

10. In Superintendent of Police (C.B.I) Vs. Deepak Chowdhary and others, AIR

1996 SC 186 : AIR 1995 SC 186 : (1996) CriLJ 405 : (1995) 71 FLR 827 : (1995) 6 JT 532 : (1996) 1 LLJ 731 : (1995) 5 SCALE 226 : (1995) 6 SCC 225 : (1995) 2 SCR 818 Supp : (1995) 2 UJ 720

"It has been ruled that the grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction."

11. In C.S. Krishnamurthy Vs. State of Karnataka it has been held as follows:--

"....sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order."

12. R. Sundararajan Vs. State by D.S.P., SPE, CBI, Chennai, (2007) CLT 482 Supp : (2006) 10 SCALE 351 : (2006) 12 SCC 749 : (2006) 8 SCR 499 Supp , while dealing with the validity of the order of sanction, the two learned Judges have expressed thus:--

"It may be mentioned that we cannot look into the adequacy or inadequacy of the material before the sanctioning authority and we cannot sit as a court of appeal over the sanction order. The order granting sanction shows that all the available materials were placed before the sanctioning authority who considered the same in great detail. Only because some of the said materials could not be proved, the same by itself, in our opinion, would not vitiate the order of sanction. In fact in this case there was abundant material before the sanctioning authority, and hence we do not agree that the sanction order was in any way vitiated."

13. In State of Karnataka Vs. Ameer Jan, AIR 2008 SC 108 : (2008) CriLJ 347 : (2007) 7 JT 183 : (2007) 11 SCALE 207 : (2007) 11 SCC 273 : (2007) 9 SCR 1105 : (2007) AIRSCW 6217 : (2007) 6 Supreme 341

"it has been opined that an order of sanction should not be construed in a pedantic manner. But, it also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not."

14. In Kootha Perumal Vs. State Tr. Inspector of Police, Vigilance and Anti Corruption, AIR 2011 SC 356 : (2011) 1 Crimes 52 : (2011) 1 JCC 32 : (2011) 6 JT 321 : (2011) 1 RCR(Criminal) 278 : (2011) 1 SCC 491 : (2011) 1 SCC(Cri) 418 : (2010) 10 UJ 5484

"it has been opined that the sanctioning authority when grants sanction on an examination of the statements of the witnesses as also the material on record, it can safely be concluded that the sanctioning authority has duly recorded its satisfaction and, therefore, the sanction order is valid."

15. From the aforesaid authorities the following principles can be culled out:--

a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution.

c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.

d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

e) The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

g) The order of sanction is pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity.

16. True it is, grant of sanction is a sacrosanct and sacred act and is intended to provide a safeguard to the public servant against vexatious litigation but simultaneously when there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused.

17. At this stage, I think it apposite to state that while sanctity attached to an order of sanction should never be forgotten but simultaneously the rampant corruption in society has to be kept in view. It has come to the notice of this Court how adjournments are sought in a maladroit manner to linger the trial and how at every stage ingenious efforts are made to assail every interim order. It is the duty of the court that the matters are appropriately dealt with on proper understanding of law of the land. Minor irregularities or technicalities are not to be given Everstine status. It should be borne in mind that historically corruption

is a disquiet disease for healthy governance. It has the potentiality to stifle the progress of a civilized society. It ushers in an atmosphere of distrust. Corruption fundamentally is perversion and infectious and an individual perversity can become a social evil. This court is of the convinced view that in these kind of matters there has to be reflection of promptitude, abhorrence for procrastination, real understanding of the law and to further remain alive to differentiate between hyper-technical contentions and the acceptable legal pronouncement.

18. Since the competent Authority has granted the sanction and in view of the law laid down by Hon"ble Supreme Court in 2013 SCC-119, 2006 SCC 749 and 2007 SCC 273, this court cannot sit over the sanction order as appellate Authority. The present applications for discharge of accused on the ground of invalid sanction are not sustainable and maintainable. Moreso, no sanction is required on behalf of the Accused/applicant No. 3, as he is not public servant. Hence in view of the above discussion all the three applications are dismissed."

11. It is evident from the aforesaid findings that though an elaborate discussion has been made to uphold the order of sanction, but the order does not specifically record any findings in terms of clause (b) of sub-sections (3) and (4) of section 19 of the Act that non-production of the relevant material before the sanctioning authority at the time of grant of sanction has not resulted in a failure of justice.

12. Undoubtedly, it was on account of the petitioners own overzealousness whereby they had raised objection to the validity of the sanction order at the very initial stage i.e. even before arguments on charge could be advanced that the impugned findings were rendered. But then these findings cannot foreclose this question for all times to come since it was not the proper stage to have raised or even examined the issue of sanction as relating to the applicability of provisions of sections 19(3)(b) and 19(4) of the Act. This was so held by the Hon"ble Supreme Court in C.B.I. Vs. Ashok Kumar Aggarwal, AIR 2014 SC 827 : (2014) 2 CCR 561 : (2014) CriLJ 930 : (2014) 2 RCR(Criminal) 213 : (2013) 14 SCALE 280 in the following terms:--

"46. 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 Vs. Chairman, Airport Authority of India and Another, (2011) 13 SCALE 132 , this Court dealt with an issue and placing reliance upon the judgment in Parkash Singh Badal and Another Vs. State of Punjab and Others, AIR 2007 SC 1274 : (2007) CLT 567 Supp : (2007) 1 JT 89 : (2006) 13 SCALE 54 : (2007) 1 SCC 1 : (2006) 10 SCR 197 Supp : (2007) AIRSCW 1415 : (2006) 8 Supreme 964 , came to the conclusion as under:

"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..."

47. 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 pretrial stage."

13. Moreover, this legal position has not even been disputed by the respondents as is clear from the replies filed by it to the application preferred by the petitioners for their discharge, wherein the respondents themselves have conceded that it was not the stage where the sanction order could be questioned. It shall be profitable to reproduce paras-6 and 7 of the reply, which reads thus:--

"6. That the prosecution had forwarded a CBI report alongwith all relied upon documents and statement of relied upon witnesses, on the basis of which the allegations leveled in the charge sheet against accused public servants were proposed to be sustained, to the competent Sanctioning Authority for according sanction of prosecution. The competent authority after careful consideration of material evidence including statements of witnesses and relied upon documents placed before it, accorded the sanction of prosecution against accused applicant.

7. That sanction of prosecution is just a prerequisite for the Trial Court to take cognizance against accused persons charge sheeted after investigation of the case. The trial against accused persons has to be conducted as per the procedure laid down under law and they will have each and every opportunity to rebut the allegations including sanction of prosecution during trial. They will also have the opportunity to cross examine the competent authority who accorded the sanction of prosecution against accused public servants. The accused applicant is also at liberty to bring the alleged documents mentioned in his application, in his defence during trial."

14. In view of the aforesaid discussion, this petition is allowed and the impugned order passed by the learned Special Judge is set-aside with a direction to the learned trial court to record a finding in terms of clause (b) of sub-sections (3) and (4) of section 19 of the Act at the appropriate stage of the trial. All pending applications are also disposed of.