
(2013) 09 RAJ CK 0216

In the Rajasthan High Court

Case No : Special Appeal (Writ) Nos. 210-11/2012

Kamal Khatri and Another

APPELLANT

Vs

Jodhpur Vidhyut Vitran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2014) 1 WLN 602

Hon'ble Judges : Amitava Roy, C.J.; Arun Kumar Mishra, J

Bench : Division Bench

Judgement

Amitava Roy, C.J.—The appellants being aggrieved by the negation of their challenge to the grant of sanction for their prosecution under the relevant provisions of the Prevention of Corruption Act, 1988 (for short, hereafter referred to as "the Act"), they are in appeal seeking redress. We have heard Mr. M.C. Bhoot, learned Senior Advocate with Mr. Arpit Bhoot for the appellants and Mr. Manoj Bhandari & Mr. I.S. Pareek, learned counsel for the respondents.

2. As the issues raised in both the appeals are common, they were heard together and are being decided by this judgment. The facts are taken from appeal No. 210/2012.

3. Briefly stated the facts relevant for the disposal of the present appeals are that the appellant while were serving as LDC with the respondents-Jodhpur Discom Department, one Pawan Kumar S/o Ramesh Kumar filed a complaint before the Anti Corruption Bureau, Hanumangarh alleging inter-alia that he (appellant) had sought for illegal gratification in the matter of grant of electric connection to his (complainant) rented shop. It was imputed that the appellant had represented that the concerned Junior Engineer Raja Ram Luhaniwal (appellant in appeal No. 211/2012) had demanded a sum of Rs. 25,000/- as bribe and that accordingly, he (complainant) gave Rs. 25,000/- to the appellant & Raja Ram when the officials of the Anti Corruption Bureau arrived at the spot and intercepted the transaction.

4. The investigating agency on the basis of the complaint registered the case and prepared the trap proceedings vis-a-vis the appellant & Raja Ram Luhaniwal. FIR No. 59/2009 was registered against them under Secs. 7, 13(1)(d) and 13(2) of the Act and Section 120B IPC by the Addl. SP, Anti Corruption Bureau, Churu. When the sanction for prosecution of the appellant and Raja Ram Luhaniwal was sought for, the respondent No. 3-Chief Engineer, Jodhpur Discom, Bikaner refused to grant the same, whereafter, the matter was referred to the concerned Principal Secretary of the Government of Rajasthan, who remitted the matter back to the respondent No. 3 for passing a fresh order. Though this authority on 29.12.2010 again declined to grant the sanction, eventually, on 26.07.2011, it had accorded the same to facilitate prosecution of the appellant and Raja Ram Luhaniwal in the aforementioned criminal case. Aggrieved, they sought to invoke the writ jurisdiction of this Court. Being unsuccessful, they are in appeal.

5. In their reply, the respondents No. 1 to 5 not only did endorse the allegations levelled against the appellant and Raja Ram Luhaniwal, they pleaded further in connection therewith that they were arrested and suspended as well. While contending that there is no bar in law to review a decision refusing sanction on a consideration of fresh and relevant materials, the answering respondents asserted that the order dt. 26.07.2011 whereby the sanction was granted would reveal that it was on a threadbare scrutiny of the entire materials available on record including in particular the transcript of the taped conversation between the appellant and the complainant prior to the transaction that was intercepted in the trap proceedings.

6. The respondent No. 6 substantially endorsed this plea elaborating that earlier the sanction for prosecution had been declined without taking note of the transcript of the taped conversation between the appellant and the complainant revealing the demand for the graft in connection with latter's request for grant of electric connection to his rented shop. This respondent reiterated as well that the sanction has been granted on the basis of new facts and thus, the decision to that effect is unassailable.

7. The learned Single Judge, on a consideration of the pleaded facts and other materials available on record especially the transcript of the taped discussions, returned a finding that the decision to grant sanction was sustainable as it was based on a consideration of all relevant documents and free from any extraneous consideration. It was held that the decision was founded on application of mind and that there was nothing on record to indicate that the concerned authority had abdicated its powers vis-a-vis the issue or had taken a decision on the direction of any other authority on impertinent factors.

8. The learned Senior Counsel for the appellants while admitting that the law does not prescribe an absolute bar for reconsideration of a decision refusing grant of sanction on the availability and consideration of fresh, relevant and convincing materials, has insistently argued that in the facts and circumstances of the case, a perusal of the orders passed by the authorities concerned on this

issue successively would demonstrate unmistakably that the impugned decision is based on the same materials on which earlier the sanction was repeatedly declined. The learned Senior Counsel took pains to read the orders dt. 23.02.2010, 29.12.2010 and 26.7.2011 to reinforce this plea. He placed as well reliance on the decision of the Apex Court in *State of Himachal Pradesh Vs. Nishant Sareen*, .

9. Per contra, Mr. Manoj Bhandari and Mr. I.S. Pareek emphatically urged that a plain perusal of the orders dt. 23.2.2010 and 26.7.2011 would reveal in particular that the transcript of the taped conversation between the complainant and the appellant had been laid before the concerned authority on 28.4.2011 and thus, the impugned decision is patently based on fresh relevant materials for which the grant of sanction is wholly legal and valid. They placed reliance on the decision of the Apex Court in *Dr. Subramanian Swamy vs. Dr. Manmohan Singh and Anr.* (Civil Appeal No. 1193 of 2012 decided on 31.1.2012) and of a Coordinate Bench of this Court in *Avinash Mathur vs. State of Rajasthan & Anr.*, (D.B. Civil Special Appeal(W) No. 51/2011 decided on 25.4.2011) affirming the decision rendered in *S.B. Civil Writ Petition No. 2662/2010 Avinash Mathur Vs. State of Rajasthan and Another*, .

10. We have considered the rival pleadings, the documents on record as well as the competing arguments.

11. It has been submitted in course of the deliberations that meanwhile the Investigating Agency has filed the challan in the criminal case on the completion of the investigation and that the proceedings are presently at the stage of framing of charge.

12. Be that as it may, there is no wrangle at the Bar that in law, the decision of the competent authority refusing to grant sanction for prosecution can permissibly be reviewed at a subsequent point of time acting on fresh, relevant and persuasive materials in support of the accusation being enquired or investigated to. More importantly, at the time of granting or refusing the sanction, the competent authority is required to ascertain only as to whether any prima facie case in affirmation of the indictment of the person involved does exist based on the materials collected and made available. At that stage, the said authority is not required to undertake an exercise of determining as to whether the materials laid before it prove the imputation, a conclusion to be arrived at the end of the trial, if at all it ensues. It is thus considered inessential to dilate on the authorities cited at the bar.

13. A perusal of the order dt. 23.02.2010 would reveal that the sanction was declined on the following reasons:-

(1) In course of the conversation with the Investigating Officer and with reference to the documents laid for scrutiny which mentioned as well the transcript of the taped deliberations between the complainant and the appellant, no indication of demanding illegal gratification by the appellant and Raja Ram

Luhaniwal was discernible.

(2) The repeated demands for receipt against payment of Rs. 25,000/- per se cannot be related to the demand for such gratification.

(3) The explanation given by the appellant and Raja Ram Luhaniwal, as referred to in the FIR, appears to be genuine.

(4) The conduct and demeanour of the complainant had been found to be little suspicious.

(5) The appellant and Raja Ram Luhaniwal had been granted bail by a competent Court on the basis of the explanation provided by them vis-a-vis the trap proceedings.

(6) The application filed by the complainant seeking electric connection contained interpolated dates and that an amount of Rs. 35,100/- on various heads of charges was payable therefore.

(7) The complainant under the cover of the proceedings had endeavoured to get the bills worth several lakhs of rupees of his relatives passed for payment.

14. The letter dt. 26.07.2011 containing the decision granting sanction, however, refers to the transcript of the taped conversation between the appellant and the complainant laid before the sanctioning authority by the Investigating Agency on 28.04.2011 i.e. after 23.02.2010. The taped conversation is prior to the trap proceedings. On a consideration of the said conversation, the sanctioning authority was not only of the view that the same constituted a legally admissible proof of the contents thereof, but also was satisfied that it was a fit case for grant of sanction. The authority was also satisfied with regard to the credibility of the trap proceedings.

15. The recitals of the two orders dt. 23.02.2010 and 26.07.2011 when juxtaposed with each other, demonstrate in unequivocal terms that the impugned decision granting sanction by the competent authority had been founded on fresh materials not earlier laid with it. The view taken is a plausible one and presently, there is no overwhelming materials to render the same absurd or preposterous. Having regard to the state of law, the decision also cannot be repudiated as bereft of competence or jurisdiction. The learned Single Judge, as the impugned judgment and order would reveal, did summon and examine as well in details all relevant materials pertaining to the issues raised and entered a finding that the decision granting sanction was on an independent application of mind and not actuated by any irrelevant consideration or collateral objectives or at the behest of any other authority. Having regard to the limited scope of scrutiny in an intra Court appeal and also the legal and factual premise as outlined hereinabove, we are of the unhesitant opinion that no case has been made out for interference. The appeals lack in merit and are dismissed. A copy of this judgment be placed in both the files.