

(2013) 08 RAJ CK 0045
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8359 of 2010

Kesari Chand Sethia

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Constitution of India, 1950 — Article 141, 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 197, 482
Penal Code, 1860 (IPC) — Section 120B, 409, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d)(2), 19

Citation : (2014) LabIC 1606 : (2014) 1 RLW 279 : (2013) 4 WLN 476

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : C.S. Kotwani, for the Appellant; K.K. Bissa, Govt. Counsel and Mr. I.S. Pareek, Addl. Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—Instant writ petition has been filed by the petitioner who was working on the post of Junior Accountant in the office of the Project Director, Agriculture & Land Survey Department, Bikaner to challenge the order of prosecution sanction passed against him dated 01.07.2006 (Annex.-6), so also, the suspension order dated 02.07.2010 (Annex.-8). Brief facts of the case are that on 07.06.2005, an FIR was lodged against three persons namely, Vijay Singh Nahta, Pratap Singh Rao and Nakhta Ram at CPS ACB Jaipur bearing No. 120/2005 u/s 13(1)(d)(2) of the Prevention of Corruption Act, 1988 and Sections 409, 467, 468, 471 and 120-B, I.P.C. for the offences occurred in between 2002-03 and 2003-04.

2. As per the petitioner, at the relevant time he was working on deputation and was not involved in any kind of embezzlement, therefore, in the FIR his name was not mentioned in the FIR. But, after investigation, the D.I.G., Anti Corruption Bureau, Jaipur recommended his case to the Head of Department of the petitioner's office for granting prosecution sanction without even ascertaining the

fact whether the petitioner was posted at Fatehgarh at the relevant time or not. The State Government granted sanction against the petitioner; and, thereafter, he was placed under suspension vide order dated 08.06.2007.

3. As per the petitioner, in the charge-sheet issued against him by the Board of Revenue, Ajmer same allegations were levelled vide charge-sheet Annex.-9. The petitioner represented his case before the competent authority against the charge-sheet and, till today, no proceedings took place in the departmental inquiry, the same is still pending against him.

4. Learned counsel for the petitioner argued that the order of prosecution sanction is per se illegal because it has been passed without providing an opportunity of hearing to the petitioner. So also, the sanctioning authority issued the order without application of mind while accepting the entire evidence collected by the Anti Corruption Bureau for the purpose of filing challan against him, therefore, the order of prosecution sanction dated 01.07.2010 is not sustainable in law because the same has been passed without due application of mind and without providing opportunity of hearing to the petitioner.

5. Learned counsel for the petitioner vehemently submits that the petitioner has been placed under suspension vide order dated 02.07.2010 (Annex.-8) after issuance of the prosecution sanction for the alleged offences said to be committed in the years 2002-03 and 2003-04, therefore, the order impugned deserves to be quashed. The main emphasis of the petitioner's counsel is that prosecution sanction has been granted in very casual manner, that, too, upon saying of the investigating officer and authority of the Anti Corruption Department, therefore, the order of prosecution sanction passed against the petitioner by the competent authority is totally illegal. Therefore, both the orders impugned may be quashed.

6. In support of his argument, learned counsel for the petitioner invited attention of this Court towards the judgment reported in Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, and judgment of the co-ordinate Bench of this Court passed in S.B. Civil Writ Petition No. 590/2010, Subhash Bhatia & Others Vs. State of Rajasthan & Others, decided on 10.12.2010, in which the co-ordinate Bench held that the authority competent has not applied its mind independently and that makes the sanction so granted bad.

7. Per contra, learned counsel for the State submits that as per Section 19 of the Prevention of Corruption Act and Section 197, Cr.P.C. before filing any challan after investigation against public servant, it is necessary to obtain the prosecution sanction, therefore, the investigating officer after completion of the investigation in the FIR forwarded the case to the competent authority for sanction and, in turn, the Director, Treasury & Accounts granted the prosecution sanction after elaborate discussion in the order which is evident from order impugned Annex.-6 dated 01.07.2010, therefore, there is no question of raising voice by the petitioner that this order has been passed without application of

mind.

8. Learned counsel for the respondent State further submits that at the stage of granting prosecution sanction against public servant by the competent authority the public servant cannot claim hearing as a matter of right nor he is required to be heard by the sanctioning authority because the competent authority is required to examine the entire investigation to ascertain the fact whether alleged offence is committed by the public servant during discharge of duties or not, therefore, the grounds raised by the petitioner in this writ petition are totally unfounded and deserves to be ignored. Hence, this writ petition may be dismissed on this ground alone.

9. Learned Government Counsel further argued that suspension is not a punishment. Here, in this case while following the procedure laid down in the rules the petitioner was placed under suspension when prosecution sanction was granted by the competent authority for the alleged offence committed by the petitioner under the Prevention of Corruption Act, therefore, the jurisdiction exercised by the competent authority under Rule 13 of the Rajasthan Civil Services (CCA) Rules, 1958 is not in contravention of any provisions of law; more so, it is a case in which after granting prosecution sanction by the competent authority the suspension order has been issued in which there is no illegality.

10. In support of his contention, learned counsel for the respondents invited my attention towards judgments of the Hon"ble Supreme Court reported in M.C. Mehta Vs. Union of India and Others, , State of M.P. Vs. Dr Krishna Chandra Saxena, and judgment of this Court dated 04.01.2011 passed in S.B. Civil Writ Petition No. 2662/2010, Avinash Mathur Vs. State of Rajasthan; and, submits that no right of being heard can be claimed by a public servant at the time of granting prosecution sanction by the competent authority. Therefore, it is submitted that there is no ground for interference in this writ petition and the writ petition may be dismissed.

11. After hearing learned counsel for the parties, I have perused the order of granting prosecution sanction dated 01.07.2010, so also, suspension order dated 02.07.2010, issued thereafter.

12. In the investigation, material evidence was collected by the investigating officer against the petitioner and the Director, Treasury & Accounts after taking into consideration the entire record whereby prosecution sanction has been granted against the petitioner in which there is no wrong.

13. The contention of the petitioner with regard to non-application of mind is totally untenable because the order Annex.-6 dated 01.07.2010 has been passed by the competent authority after elaborate discussion. Therefore, the plea of the petitioner with regard to non-application of mind is hereby rejected.

14. With regard to the petitioner's claim that he was required to be heard prior to granting the prosecution sanction, I am of the opinion that after the judgment

in the case of Superintendent of Police (C.B.I) Vs. Deepak Chowdhary and others, it cannot be said that any opportunity of hearing to the accused before granting sanction is required to be given. Para 4 and 5 of the said judgment run as under:

4. It is contended for the appellant that the question of giving an opportunity to the charged officer before granting sanction does not arise since it is not a quasi-judicial function. Grant of sanction is an administrative function. What is required is that the investigating officer should place all the necessary material before the sanctioning authority who should apply its mind to that material and accord sanction. Therefore, the question of giving opportunity of hearing to the accused before granting sanction does not arise.

5. We find force in the contention. 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. The grant of sanction, therefore, being administrative act the need to provide an opportunity of hearing to the accused before according sanction does not arise. The High Court, therefore, was clearly in error in holding that the order of sanction is vitiated by violation of the principles of natural justice.

15. Similarly, the Hon"ble Supreme Court in the case of State of M.P. Vs. Dr Krishna Chandra Saksena, held that where the sanction order is not ex facie illegal or invalid the proceedings cannot be quashed. Para 8 of the said judgment is as follows:

8. On a careful consideration of the rival contentions it is found that the learned Single Judge had ex fade erred in interfering with the criminal proceedings at the stage of filing a challan after investigation which was backed up by relevant sanction. It is now well settled that interference u/s 482 Cr.PC for quashing a criminal proceeding should be done very sparingly and in exceptional cases. In the case of State of Haryana v. Bhajan Lal it has been laid down by a two member Bench of this Court speaking through S. Ratnavel Pandian, J., that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the High Courts to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. It has also been laid down by way of illustration as to under what circumstances the High Court can be justified in interfering with the criminal proceedings under Article 226 of the Constitution of India or Section 482 Cr.PC. Seven illustrative circumstances under which such interference may be justified were listed as under: (SCC pp. 378-79, para 102)

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegation made in] the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provision of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance for the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

As this is a trap case wherein it is alleged that the respondent had taken a bribe of Rs. 2,500 for giving favourable treatment to the complainant, only circumstance No. 6, if at all, could be pressed by learned senior counsel for the respondent in support of the order of the High Court. That is to the effect that there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the concerned Act for prosecuting the case. In the present case, therefore, validity of the sanction would assume importance. If that sanction is found to be invalid then the proceedings could be validly quashed by the High Court in exercise of its jurisdiction u/s 482 Cr.PC. So far as this aspect is concerned our attention was invited by learned senior counsel for the appellant to the sanction order dated 27th July 1989 which was annexed to the SLP at page 22. A reading of the relevant recitals in the sanction order shows that the sanctioning authority had looked into the statements of witnesses from Police Case Diary and other relevant documents and it was observed that the complainant was to be given an order of Rs. 9,520 by the accused Dr. Saksena to supply medicine on which account the accused had asked for commission/

gratification of Rs. 2,500 at the rate of 25 per cent. The said medicine was to be supplied by M/s. Kankur Laboratories, Ahmedabad. Because the complainant did not want to give gratification, he made a written complaint against him on 1st January 1987 to the Vigilance Branch of Lok Aayukt. But since it was late on that day, i.e., 1st January 1987 the necessary action was taken on 2nd January 1987. The complainant had produced 25 notes of Rs. 100 and their numbers were taken on the Preliminary Panchnama and Phenoltheine Powder as put on these notes. After necessary instructions were given to the complainant Sunil Kumar Jain, the trapping group moved towards the destination. After reaching Dr. K.C. Saksena's clinic situated at Adarsh Colony, the complainant and a witness Giriraj Sharma went inside the clinic and other members were hiding nearby. After sometime Dr. Saksena came to his clinic. The complainant gave the said notes of Rs. 2,500 to accused Dr. Saksena when he asked for the same. The accused kept those notes in the back pocket of his pants. And after taking that money accused Dr. Saksena granted supply order to complainant Sunil Kumar Jain. Then the complainant came outside and gave a pre-planned signal, i.e., putting his hand on head. On that members of trapping group reached there immediately and introduced themselves and caught hold of wrists of accused Dr. Saksena's both hands. After that when both the hands of accused Dr. Saksena were put into the solution of Sodium Carbonate the colour of solution became rosy. The witness Sakharam, Deputy Collector searched accused Dr. Saksena and recovered 25 notes of Rs. 100 from back pocket of his full pants. And when the numbers of said notes were tallied with the numbers mentioned in the Preliminary Panchnama they were found to be bearing the same numbers and thereafter these notes were seized. The sanctioning authority has also noted in the sanction order that the evidence comprising of complainant Sunil Kumar Jain and witnesses Giriraj Sharma, Sakharam, Ran Singh Kushwaha, Tulsu Ram, K.C. Patoria, Vijendra Singh, R.S. Sharma and Lala Ram clearly indicated about these facts. Apart from these statements which were kept in view by the sanctioning authority the Chemical Examination Report was also seen by the sanctioning authority and it was found to support the case of the prosecution. In our view it could not prima facie be said that the sanction order was patently illegal. We must further hasten to add that if ultimately at the stage of trial it is found that the sanction was liable to fail on any relevant ground well made out by the defence then the respondent may be entitled to acquittal. But at the stage of quashing of criminal proceedings where even challan had not been filed the aforesaid order of sanction could not have been treated by the High Court as ex facie illegal or invalid. The reasons given by the learned Single Judge of the High Court in treating the sanction invalid were twofold. Firstly the sanction, according to the learned Judge was bad on the ground that the accused was not heard. This ground is rightly not pressed by the learned senior counsel for the respondent as it is now well settled that at the stage of granting of sanction the accused need not be heard (*State of Maharashtra v. Ishwar Piraji Kalpatri and Supdt. Of Police (C.B.I.) v. Deepak Chowdhary*). The second ground given by the High Court was to the effect that the affidavits filed by the staff members of the

clinic of the respondent were not considered by the sanctioning authority. It is true that the learned Single Judge had observed in paragraph (21) of his judgment that "admittedly" In this case, representation of the petitioner, documents relied by him which have been lost, and the affidavits of the witnesses present on the spot who were large in number were not placed before the sanctioning authority and, therefore, the sanction granted is definitely bad in law. However it must be kept in view that without looking at the relevant documents comprised in the file which were lost during the pendency of the proceedings before the High Court it would be too premature to say whether the lost documents were seen by the sanctioning authority or not before granting sanction. Even otherwise if it is found on evidence which may be led at the stage of trial that the affidavits of the staff were self-serving statements obtained by the respondent to support his case and were of such a nature that they could not adversely affect the trap evidence, then it could not be urged by the prosecution that non-consideration of such irrelevant and self-serving evidence would have affected the efficacy of the sanction. In Short all these aspects could have been better examined at the stage of trial for invalidating the sanction. It is too premature at the present stage to hold that all necessary and relevant evidence must not have been considered by the sanctioning authority. It appears that the word "admittedly" as found in paragraph (21) of the order passed by the learned Single Judge appears to have been mentioned loosely and in an inadvertent manner. Learned senior counsel for the appellant fairly stated that the sanction order does not on the face of it indicate that the affidavits of staff members were considered by the sanctioning authority. But the recitals in the last but one paragraph of the sanction order show that the sanctioning authority was satisfied after complete and conscious scrutiny of the records produced in respect of the allegation against the accused. Now the question whether all the relevant evidence which would have tilted the balance in favour of the accused if it was considered by the sanctioning authority before granting sanction and which was actually left out of consideration could be examined only at the stage of trial when the sanctioning authority comes forward as a prosecution witness to support the sanction order if challenged during the trial. As that stage was not reached the prosecution could not have been quashed at the very inception on the supposition that all relevant documents were not considered by the sanctioning authority while granting the impugned sanction. We, therefore, hold that the twin reasons given by the learned Single Judge of the High Court for quashing the proceedings on the ground that the sanction was invalid are unsustainable and unjustified.

16. After perusing the aforesaid(adjudication made by the Hon"ble Supreme Court, it is abundantly clear that there is no strength in the argument of learned counsel for the petitioner that the petitioner was required to be heard prior to passing the order for granting prosecution sanction.

17. With regard to the judgment cited by learned counsel for the petitioner, reported in Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, I am of the

opinion that the said judgment was rendered in criminal appeal but, here, in the case of Deepak Chowdhary (supra), the point in issue was the same which is agitated by the petitioner in this writ petition. Therefore, the judgment cited by learned counsel for the petitioner is not relevant for deciding the question involved in this case.

18. With regard to the judgment of the co-ordinate Bench rendered in S.B. Civil Writ Petition No. 590/2010, decided on 10.12.2010, I am of the opinion that in above judgment the judgments aforementioned rendered by the Hon''ble Supreme Court have not been considered. In view of above, the judgment rendered by the Supreme Court is having binding force under Article 141 of the Constitution of India.

19. In view of above discussion, while following the judgment of the Hon''ble Supreme Court in Deepak Chowdhary's case (supra) I am not inclined to interfere in this writ petition against the order of granting prosecution sanction by the competent authority.

20. Similarly, in the opinion of this Court pension is not punishment and, in this case, the suspension order has been passed by the competent authority after granting prosecution sanction against the petitioner, in which, thorough investigation has been conducted. Therefore, it cannot be said that suspension order suffers from any illegality. In fact, it has been passed by the competent authority while exercising its power under the Rules of 1958. In view of the above, there is no force in this writ petition. This writ petition is hereby dismissed.