
(2014) 01 RAJ CK 0216

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 711/2013

Kesri Chand Sethia

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 120-B, 161, 164, 165, 409
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 5, 5(2), 6

Citation : (2014) 1 WLN 547

Hon'ble Judges : Amitava Roy, C.J.;Pratap Krishna Lohra, J

Bench : Division Bench

Advocate : C.S. Kotwani, Advocate for the Appellant; K.K. Bissa and Mr. Anil Bissa, Addl. Govt. Counsels, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—By the instant intra-Court appeal, the appellant/petitioner has called in question the impugned judgment and order dt. 02.08.2013, passed by the learned Single Judge, dismissing his writ petition for twin relief's, viz., against the order of suspension, and order granting sanction for prosecution under Sec. 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 and Sections 409, 467, 468, 471 and 120-B IPC. Stated in succinct, the facts of the case are that appellant while working as Junior Accountant with S.B.K. Government College, Jaisalmer, was sent on deputation by the District Collector, Jaisalmer vide order dt. 21.07.2003 to the Tehsil Office, Fatehgarh, District Jaisalmer. The aforesaid arrangement was made by the District Collector, Jaisalmer for facilitating smooth and streamline drought relief work at Fatehgarh. Pursuant to the order of deputation, the appellant assumed his duties at Tehsil Office, Fatehgarh on 23.07.2003 and continued to serve in the said capacity in that office up to 23.04.2004. It appears that before appellant's joining at the Tehsil Office, some scam was unearthed in the office involving serious financial

irregularities at the behest of Sub Divisional Officer, Fatehgarh, Tehsildar Fatehgarh and L.D.C. cum Cashier of the office. Taking serious note of the lapses and the allegations of misappropriation, FIR dt. 07.06.2005 was registered against the erring officials under Sec. 13(1)(d), 13(2) of the Prevention of Corruption Act as well as under Secs. 409, 467, 468, 471 & 120-B IPC. In the FIR, it was clarified that the offence has occurred in the intervening period of 2002-2003 and 2003-2004. The positive assertion of the appellant has been that his name was not figured in the First Information Report and as such he was not involved in the act of defalcation. Pleading his innocence, the appellant has averred in the writ petition that despite no role of the appellant in the entire episode, the competent authority has granted sanction for prosecution against him by order dt. 01.07.2010 (Annex.6 with the writ petition), therefore, the appellant has questioned the said order on the anvil that the same has been granted dehors the provisions of law and without examining the factual aspect in an absolutely mechanical manner. Apart from questioning the grant of sanction for prosecution, the appellant has also assailed before the learned Single Judge the order of suspension dt. 02.07.2010 (Annex.8 with the writ petition). For challenging both the orders, the appellant has precisely harped on the fact that his deputation with Tehsil Office, Fatehgarh was for a short duration and during that period there was no financial irregularity warranting impugned actions against him.

2. The writ petition was contested by the respondents and reply to the petition was submitted on behalf of the third respondent. In the return, the third respondent has taken the stand that the embezzlement, which was bone of contention for the grant of sanction for prosecution also relates to the period of 2003-2004 during which the appellant was working on deputation as Junior Accountant and some of the payments which were made during that period were forwarded by the appellant for adjustment, and therefore, the embezzlement of a sum of Rs. 1,56,289/- has occasioned due to connivance of the appellant, which prima facie indicates his involvement in the entire dubious dealings. With these submissions, the respondent has stoutly defended its action in granting sanction for prosecution so also issuance of the suspension order.

3. The learned Single Judge, after hearing the rival submissions and examining the matter threadbare, found that prima facie evidence was available against the appellant for grant of sanction for prosecution. The learned Single Judge has also overruled the contention of the appellant for affording him an opportunity of being heard before issuance of sanction for prosecution. Dealing with the contention of the appellant against the order of suspension, the learned Single Judge has concluded in the impugned judgment and order that there is no infirmity much less legal infirmity in the said order.

4. Learned counsel for the appellant, Mr. C.S. Kotwani, has argued that the appellant was not at all involved in embezzlement or misappropriation, and he has been made scapegoat to camouflage the serious omissions and commissions

by other officials of Tehsil Office, Fatehgarh, and therefore, the order granting sanction for prosecution is not sustainable. Mr. Kotwani, learned counsel for the appellant, would urge that the issue involved in the matter has not been properly appreciated and thrashed out by the learned Single Judge while dismissing the writ petition, and therefore, the impugned judgment and order is liable to be interfered with in this intra-Court appeal. Mr. Kotwani has argued that granting sanction for prosecution is required to be founded on objective considerations and the competent authority, while taking a decision, is under an obligation to consider the materials placed before it, and thereafter to apply its mind to form an opinion for grant of sanction for prosecution. Mr. Kotwani has urged that in the instant case, the competent authority has not examined the material placed before it and other relevant facts, and therefore, the order granting sanction for prosecution is vitiated and cannot be sustained. The learned counsel for the appellant has contended that the learned Single Judge while appreciating the grievances of the appellant has not cared to examine the facts and circumstances, which were relevant and germane to the matter, and therefore, the impugned judgment and order calls for interference in this intra-Court appeal.

5. In support of his contentions, learned counsel for the appellant has placed reliance on a decision of Apex Court in case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, . In that matter, the Hon''ble Apex Court, in a criminal appeal, while examining the sanction for prosecution under Sec. 197 Cr.P.C., made following observations in Para 8 of the verdict:

8. Section 197 of the Criminal Procedure Code which deals with the prosecution of Judges and Public Servants for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty, lays down that no Court shall take cognizance of such offences except with the previous sanction either of the Central Government or the State Government, as the case may be. Section 6 of the Act, however, contains a special provision for sanction for prosecution for a few specific offences, including the offence punishable under Sec. 161 IPC. It provides as under:

6. Previous sanction necessary for prosecution.--(1) No Court shall take cognizance of an offence punishable under Sec. 161 (or Section 164) or Section 165 of the Indian Penal Code (45 of 1860), or under Sub-section (2) [or Sub-section (3A)] of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction.

(a) in the case of a person who is employed in connection with the affairs of the (Union) and is not removable from his office save by or with the sanction of the Central Government, (of the) Central Government;

(b) in the case of a person who is employed in connection with the affairs of (a State) and is not removable from his office save by or with the sanction of the State Government, (of the) State Government;

(c) in the case of any other person, of the authority competent to remove him

from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under Sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

6. Per contra, the learned counsel for the respondents has argued that the learned Single Judge has examined the matter threadbare and thereafter has concluded that no interference with the impugned orders is warranted; which is a just decision warranting no interference in this intra-Court appeal. Mr. Bissa, learned Addl. Govt. Counsel would urge that the learned Single Judge has thoroughly scanned the impugned order, whereby sanction for prosecution was granted against the appellant, and has found that the competent authority has examined the matter minutely and has also discussed the prima facie incriminating material against the appellant for grant of sanction for prosecution, which cannot be categorized as infirm by any stretch of imagination. Mr. Bissa, learned counsel for the respondents, while laying stress on the order dt. 01.07.2010 (Annex. 6) and the First Information Report dt. 07.06.2005, has submitted that there were four dubious transactions in which the appellant was involved and while taking into account that fact, the competent authority after due deliberation has granted the sanction for prosecution, which is a just decision. Mr. Bissa submits that the learned Single Judge has considered all these aspects in the impugned judgment and order, which requires no interference.

7. We have heard the learned counsel for the parties, perused the impugned judgment and order and the other materials on record.

8. On a close scrutiny of the First Information Report dt. 07.06.2005 (Annex.3) and the order dt. 01.07.2010 (Annex.6), it is amply clear that, in all, there were four dubious transactions of defalcation, and there was prima facie involvement of the appellant. The competent authority, while examining these transactions objectively, has attributed a role to the appellant in the act of defalcation. Therefore, we are of the view that looking to umpteen incriminating material, which prima facie establishes the nexus of the appellant with such dubious transactions, it cannot be said that the competent authority has not applied its mind while granting sanction for prosecution.

9. Siphoning of public money is a matter of grave concern and an incumbent involved in an act of squandering the public money cannot be given latitude by this Court. It is trite that granting sanction for prosecution is an administrative act and competent authority while taking such a decision is not obliged to grant an opportunity of being heard to the accused. Reliance in this behalf can be profitably made to a decision of Hon'ble Apex Court in the case of State Anti-Corruption Bureau v. Suryaprakasam, (2008) 14 SCC 13. The Hon'ble Apex

Court made following observations in Para 6 of the said verdict:

6. From the impugned judgment, we find that the High Court took exception to the fact that the respondent's explanation was not properly considered by the State Government in spite of the earlier order of the High Court as quoted above. This finding of the High Court is also against the law laid down by this Court in *State of Bihar v. P.P. Sharma* wherein, in dealing with the question as to whether such an opportunity of giving an explanation and hearing must be granted to the accused and the non-grant of the same would vitiate the order of sanction in a case under Sec. 5(2) of the Act, this Court observed: (SCC p.268, para 67) "It is equally well settled that before granting sanction the authority or the appropriate Government must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and the appropriate Government would apply their mind to those facts. The order of sanction is only an administrative act and not a quasi-judicial one nor is a lis involved.. Therefore, the order of sanction need not contain detailed reasons in support thereof as was contended by Shri Jain. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard. The question of giving an opportunity to the public servant at that stage as was contended for the respondents does not arise.

10. It is settled law that scope of judicial review under Art. 226 of the Constitution of India is not akin to that of an appellate Court as the Court does not have the expertise to correct the administrative decisions. The power of judicial review is to be exercised for examining the question of legality of a decision. Hon''ble Apex Court, in *Mansukhlal Vithaldas Chauhan's* case (supra), while reiterating the principles laid down in *Tata Cellular Vs. Union of India*, , made following observations in Para 25 of the verdict:

25. This principle was reiterated in *Tata Cellular v. Union of India* in which it was, inter alia laid down that the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made particularly as the Court does not have the ex-parte to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The Court pointed out that the duty of the Court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law;
3. Committed a breach of the rules of natural justice;
4. reached a decision which no reasonable tribunal would have reached; or
5. abused its powers.

11. Examining the order granting sanction for prosecution on the touchstone of parameters laid down (supra), we are of the view that there is no infirmity much

less legal infirmity in the order granting sanction for prosecution against the appellant. Thus, we fully concur with the learned Single Judge and are not persuaded to interfere with the impugned judgment and order passed by the learned Single Judge in this intra-Court appeal. Resultantly, we find no merit in this appeal and the same is accordingly dismissed.