
(2015) 04 KAR CK 0052
In the Karnataka High Court
Case No : Criminal Petition No. 7386/2014

L. Megha Naik

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19, 7

Citation : (2015) 2 AKR 736 : (2015) ILR Kar 2053 : (2015) 3 KCCR 2257

Hon'ble Judges : A.N. Venugopal Gowda, J.

Bench : Single Bench

Advocate : P.S. Rajagopal, Senior Advocate for Kamaraju, for the Appellant;
A.S. Ponnanna, AAG and Anitha R., HCGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopal Gowda, J.—The petitioner, a public servant, while working as Deputy Electrical Inspector, was trapped by the Lokayukta Police, on 18.12.2010, while allegedly taking bribe money of Rs. 18,000/- from the 4th respondent, an electrical contractor. Upon completion of investigation, to prosecute the petitioner, sanction was sought, under S. 19 of the Prevention of Corruption Act, 1988 (for short "the Act") from respondent No. 1. Government of Karnataka, on the basis of the material placed by the Investigating Agency and on examination of the case, found no justification to grant the sanction. By order dated 28.03.2013, sanction for prosecution of petitioner was rejected.

2. Additional Director General of Police, Karnataka Lokayukta, furnished clarification with reference to the said order of rejection and requested the 1st respondent to reconsider its decision and accord sanction. Government of Karnataka having reconsidered the matter and accorded sanction for prosecution of the petitioner, vide Government Order dated 03.07.2014, as at Annexure-A, this petition was filed to quash the said order.

3. Sri P.S. Rajagopal, learned Senior Advocate, contended that the order dated

28.03.2013 having been passed after careful consideration of all the material on record, 1st respondent is precluded from passing a fresh order on the same material. He submitted that the successor Government cannot re-open an order passed by the previous Government, that too, in the absence of any fresh material. He submitted that the power of 1 respondent - Sanctioning Authority, being not of continuing character, can be exercised only once and thus, the impugned order being illegal, is liable to be quashed.

4. Sri A.S. Ponnanna, learned Additional Advocate General, on the other hand, submitted that the Addl. Director General of Police, Karnataka Lokayukta, by letter dated 20.05.2013 requested the Government to reconsider the decision dated 28.03.2013, by furnishing the clarifications vide Annexure-R1 and the matter having been placed before the Hon'ble Chief Minister, the Cabinet took the decision to withdraw the earlier order dated 28.03.2013 and accord sanction to prosecute the petitioner and hence, the Government Order dated 03.07.2014, as at Annexure-A, was issued. He submitted that the State has power to review, in the matter to grant of sanction, as has been held, in State of Punjab and Another Vs. Mohammed Iqbal Bhatti, . He further submitted that in the circumstances of the case, more particularly, having regard to the clarifications furnished vide Annexure-R1, no interference with the Government Order, as at Annexure-A, is called for.

5. Sri Venkatesh P. Dalwai, learned advocate, appearing for the respondent No. 2, submitted that after completion of the investigation, having found that the petitioner has committed offences punishable under Ss. 7, 13(1)(d) read with S. 13(2) of the Act and in view of the service particulars of the petitioner furnished, a request was made on 20.12.2010 and that as per a communication dated 23.12.2010, Competent Authority to remove the petitioner from service was indicated and accordingly, request for sanction to prosecute the petitioner was sought from the Principal Secretary, Energy Department. He submitted that after the receipt of rejection order dated 28.03.2013 and the clarification of respondent No. 3, Annexure-R1 was submitted and upon consideration, the order vide Annexure-A was issued. He submitted that the petitioner should face trial and no interference with the Government order, as at Annexure-A, is called for.

6. Considered the rival contentions and perused the record, including the file of respondent No. 1, which has led to the decision of Cabinet, in the matter of issuing of the impugned order.

7. There being no dispute with regard to the passing of Government Order dated 28.03.2013, refusing to accord sanction for prosecution of the petitioner, question which arises for consideration is with regard to "the power vested in the Government in reviewing its order, refusing to accord sanction for prosecution of a public servant in terms of S. 19 of the Act".

8. In GOPIKANT CHOUDHARY Vs. STATE OF BIHAR, (2000) 9 SCC 53ENDLAWFINDER , the Minister concerned had refused to accord sanction for

prosecution of a public servant and an order was passed to that effect. Subsequently, after retirement of the public servant, the matter was taken up by the Chief Minister and he granted sanction for prosecution of the public servant concerned. The question considered by the Apex Court was with regard to the correctness of the order passed by the Chief Minister. Apex Court, set aside the order of the Chief Minister, according sanction to prosecute the public servant, inter alia, on the ground that the Chief Minister did not have any occasion to reconsider the matter and pass fresh order sanctioning the prosecution.

9. In VIJAI BAHADUR Vs. STATE OF U.P., 1989 (1) SLR 93, petitioner therein was a Junior Engineer. He was alleged to have been apprehended by the Inspector of Vigilance. Petitioner could be prosecuted only after obtaining sanction from the Appointing Authority. Papers were sent to the Chief Engineer, who did not grant sanction. The order was reviewed by the same Chief Engineer, on the same material, by giving reason, to review the order, as "Erroneous impression". When a challenge was put forth by the public servant concerned, it was held as follows:

"2. Section 6 of the Prevention of Corruption Act, 1947 extends protection to a public servant against unwarranted harassment. It should, therefore, be construed in a manner which subserves the objective of its enactment keeping this in view of the order of April 5, 1984 is examined it leaves no room for doubt that it cannot be sustained. The order refusing to sanction was passed on entire material, case diary etc. The appointing authority was satisfied that no prima facie case was made out. What made him change his view? Not any fresh material but erroneous impression. Such review or going back on earlier order is fraught with danger. It is destructive of certainty and finality. It may leave room open for influence and pressure. An order, judicial or administrative, may be permitted to be reviewed or recalled only if it was passed under misapprehension of fact. Otherwise it gives rise to misgiving and speculation which is not conducive to the sense of justice. Since the earlier order was passed after careful consideration of material on record the opposite party was precluded from recalling it or passing fresh order on same material because of erroneous impression."

(emphasis supplied)

10. In State of Himachal Pradesh Vs. Nishant Sareen, , respondent therein, was caught red handed, while accepting bribe. Sanction was sought, under S. 19 of the Act, by the Vigilance Department. Since, Principal Secretary found no justification in granting sanction sought, the sanction was refused. Thereafter, Vigilance Department took up the matter again for grant of sanction. The matter was reconsidered. Though, no fresh material was available for further consideration, Competent Authority granted sanction for prosecution. Having noticed the decision in Mohammed Iqbal Bhatti (supra), where the Apex Court had an occasion to consider the question, whether the State has power to review in the matter of sanction in terms of S. 197 of the Code, Apex Court has held as follows:

"12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us a sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course."

(emphasis supplied by me)

In effect, it has been held, that sanction to prosecute a public servant, on review, could be granted only when fresh materials have been collected by the Investigating Agency, subsequent to the earlier order i.e., reconsideration can be done by sanctioning authority, in the light of the fresh material.

11. In the instant case, learned advocates for the respondents did not contend that any fresh material was collected by the Investigating Agency and was placed before the Sanctioning Authority for reconsideration and/or for review of the earlier order, refusing grant of sanction. Only, clarification vide Annexure-R1 was submitted. Order dated 28.03.2013 was passed by the earlier Government. Very strangely, the successor Government, has come to a diametrically opposite conclusion, on the same material stand has accorded the sanction. In effect, what the 1 respondent has done is to review the order of the predecessor Government, which it is not entitled to under law. Mere change of opinion on the same material or on the same evidence would not constitute a ground for review. The 1st respondent, on the same material, has changed its action and has granted sanction, vide Annexure-A, to prosecute the petitioner. Thus, the impugned order is arbitrary, illegal and contrary to proposition of law laid down in the case of NISHANT SAREEN (supra).

12. Respondent Nos. 2 and 3, if had any grievance against the order dated 28.03.2013, refusing to grant sanction, ought to have challenged the said order. The said order having been allowed to become final and the power of sanctioning authority being not of continuing character i.e., in the absence of any other fresh material, could not be exercised.

In the result, the petition is allowed and the impugned order, as at Annexure-A, is quashed.

No Cost.