
(2019) 01 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 54637 Of 2018

Murari Lal Tayal

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173, 190, 190(1)(a), 190(1)(b), 190(1)(c), 203, 204, 315, 482
Indian Penal Code, 1860 — Section 120B, 420, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Land Acquisition Act, 1894 — Section 6
Evidence Act, 1872 — Section 106

Citation : (2019) 01 P&H CK 0142

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : R.S. Cheema, A.S. Cheema, Sumeet Goel

Final Decision : Dismissed

Judgement

Petitioner Murari Lal Tayal has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (here-in-after referred to as the 'Cr.P.C.') for quashing of FIR No. RCCHG-2015 A0019 dated 15.09.2015 under Section 120-B read with Sections 420, 471 of the Indian Penal Code, 1860 (here-in-after referred to as the 'IPC') and Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station CBI, Chandigarh (Annexure P-1), Final Report under Section 173 Cr.P.C. (Annexure P-2) and summoning order dated 16.03.2018, passed by learned Special Judge, C.B.I., Haryana at Panchkula (Annexure P-3) and the consequential proceedings arisen therefrom.

Mr. R. S. Cheema, learned Senior counsel for the petitioner, at the very outset, has restricted his prayer for quashing of summoning order dated 16.03.2018 only and not for quashing of the FIR and final report. Accordingly, this petition is only for quashing of summoning order dated 16.03.2018.

As per arguments raised by learned Senior counsel for the petitioner, the impugned order of summoning has been challenged on the ground that the petitioner being the Principal Secretary was to assist the then Chief Minister, Haryana in his official capacity and he had played his role in his official capacity as per the Rules of Business of the Government of Haryana, 1977 as amended upto 13.10.2006. Petitioner was not having any independent powers to exercise but he had only communicated the orders to the decision making authority as the power rests with him. Petitioner while holding additional charge of Chairman, HSIIDC was only an ex officio and no decision was taken by him during that period also. Nothing came during investigation as to whether there was any contravention of the procedure or the decision was taken by him independently. The petitioner did his best while assisting the then Chief Minister being within the Rules of Business and the established practice. He was not involved in any decision making process at any point of time. While working as Chairman of HSIIDC, being in his ex officio capacity his presence was only nominal. While convening the meeting of Board of Directors of HSIIDC held on 11.07.2007, only the decision taken by the then Chief Minister was conveyed as neither there was any agenda of deferment of the award nor any proposal was formulated on his behalf. No such decision for deferment or recommendation was taken in said meeting. It is only the functionaries of HSIIDC who took the decision for deferment of the award on 18.06.2007 and a letter dated 20.06.2007 was also issued to Land Acquisition Collector to defer the award.

Learned Senior counsel for the petitioner also submits that while passing the summoning order, learned Special Judge, CBI has merely summarized the final report under Section 173 Cr.P.C. and by recording a prima facie case, the petitioner has been summoned to face trial. Neither the role of the petitioner has been taken into consideration nor it has been mentioned as to how prima facie case is made out against him. Learned counsel also submits that there was no incriminating material collected by the investigating agency showing his involvement in the alleged offence. Neither there is any allegation of conspiracy nor any opinion was given before passing the final order by the highest authority. There was neither any contravention of any procedure or Rules of Business nor he had played any role in decision making. The procedure which was adopted by him was within the Rules of Business and established practice. Learned counsel also submits that the investigating agency has wrongly reached to the conclusion that the petitioner was involved in taking any final decision by twisting the facts. Petitioner has been shown to be involved on the ground of suspicion by showing it to be a conspiracy. As per the allegations, the petitioner was holding additional charge of Industries Department and notification under Section 6 of the Land Acquisition Act (for short - 'the Act') for acquisition of land was published. At that time, he was Chairman of HSIIDC but it was in his capacity as ex officio which was only a nominal presence. Petitioner has been shown to convene the meeting of Board of Directors of HSIIDC held on 11.07.2007, whereas there was neither any agenda for deferment of the award which was already fixed on 26.06.2007

nor any proposal was formulated by him. No decision was taken by him for deferment or recommendation of the award in the meeting. Learned Senior counsel also submits that role and responsibilities of the Principal Secretary are prescribed in the "Secretariat Instructions, 1989" and "Rules of Business of the Government of Haryana, 1977" are also there where role of Principal Secretary to the Chief Minister has been specified. However, no independent powers have been specified and only the role of the Principal Secretary is to communicate the orders and decision taken by the Chief Minister. Petitioner was also holding the additional charge of Chairman, HSIIDC and his role and responsibilities as Chairman have clearly been mentioned in Memorandum of Association of Corporation bylaws and the relevant regulations. In fact, he was only the nominated head.

Learned Senior counsel further submits that the allegations against the petitioner are not based on any evidence or any specific act or conduct of the petitioner. There is no allegation of illegal gratification or wrongful gain against him. Even there was no material on record to show that the petitioner was beneficiary in any manner. Learned Senior counsel also submits that the impugned order of summoning has been passed mechanically without any application of mind. There is no legal evidence to connect the petitioner with the alleged allegations. There is neither any direction nor circumstantial evidence to show the involvement of the petitioner in any conspiracy.

Mr. Cheema further submits that reliance by respondent-CBI upon judgment of the Apex Court dated 12.03.2018 i.e. passed in Civil Appeal No.8788 of 2015 titled as Rameshwar and others Vs. State of Haryana and others is totally misplaced and unwarranted as the findings recorded therein have neither any relevancy nor any bearing with the controversy in hand. Petitioner was neither party before the Apex Court nor any role or conduct was mentioned or commented upon by the Apex Court. Even his name was not figured in the said judgment. He also submits that in criminal case the charge is to be proved beyond doubt and criminal proceedings are necessary to be conducted independently as per law. He further submits that formal order of dropping of acquisition proceedings dated 24.08.2007 was passed by the then Chief Minister. As per statement of Shri Rajesh Khullar, Principal Secretary to Chief Minister, Haryana (PW-57) the concerned file was left from the office of Industries Minister late on 23.08.2007 at 07:30 p.m. and it was dealt with on 24.08.2007 in the office of the then Chief Minister. Otherwise also, the acquisition proceedings would have lapsed on 24.08.2007.

By relying upon the judgments of Hon'ble the Apex Court in cases Manju Surana Vs. Sunil Arora & Ors. 2018 (2) R.C.R. (Criminal) 673, Shanti Sports Club & Anr. Vs. Union of India & Ors. 2009(15) SCC 705, Century Spinning and Manufacturing Co. Ltd. Vs. The State of Maharashtra AIR 1972 Supreme Court 545, Sunil Bharti Mittal Vs. Central Bureau of Investigation 2015(4) SCC 609, Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and others. 2015 (12) SCC

420, Indseam Services Ltd. Vs. Bimal Kumar Kejriwal (HUF) 2001 (8) SCC 15, State of H. P. Vs. Pirthi Chand and another 1996 (2) SCC 37, State of Maharashtra Vs. Sharadchandra Vinayak Dongre and others. 1995 (1) SCC 42 and judgment of Division Bench this Court in case V. K. Khanna Vs. Union of India and others 1999 (2) I.L.R. P&H 186, learned Senior counsel submits that no prima facie case is made out to initiate/proceed for summoning the petitioner. For summoning as an accused, a proper satisfaction is to be recorded on the basis of material available on record but no such exercise was done while passing the impugned summoning order. The summoning Court is not to act as a post office while taking cognizance of the allegations and to issue process as a matter of course but a satisfaction is required to be recorded that the act of such person constitutes an offence. The summoning Court is not only to see the prima facie case/allegations as mentioned in the final report/charge-sheet and the statements of the witnesses but a finding is required to be recorded for reaching to a conclusion that a cognizable offence is made out against him. Learned Senior counsel also submits that as per ratio of aforesaid judgments the power of the Court in taking cognizance is not to be controlled by the investigating agency as the duty of the investigating agency is to investigate and place on record the facts and evidence before the Court. No such exercise has been done while passing the impugned order of summoning. At the end, learned Senior counsel for the petitioner submits that petitioner had only carried out the orders given to him by the then Chief Minister and not acted with mala fide intention. Even there was no violation of the prescribed norms or procedure as mentioned in the statement of PW-57 Mr. Rajesh Khullar. Even in the judgment of Hon'ble the Apex Court, nothing was against him and even he was not party there. The impugned order has been passed without any application of mind and without taking into consideration the role of the petitioner as there was no material on record to show that on the basis of record/documents even a prima facie case was made out for summoning. There was no legal evidence to connect the petitioner with the commission of the alleged offence and to justify the cognizance taken by the summoning Court. The judgment of Hon'ble the Apex Court has wrongly been relied upon.

Mr. Sumeet Goel, learned Standing counsel for respondent-CBI has opposed the submissions made by learned Senior counsel for the petitioner by raising certain preliminary objections stating that in judgment dated 12.03.2018 passed by Hon'ble the Apex Court in Civil Appeal No.8788 of 2015 titled as Rameshwar & Ors. Vs. State of Haryana & Ors., it was held while setting aside decisions dated 24.08.2007 and 29.01.2010 taken by the authorities of the Government of Haryana by holding it a mala fide exercise of power, that the decisions are clear cut case of fraud on power and annulled said decisions. Mr. Goel also submits that at the time of summoning or taking cognizance, the Court is to consider only a prima facie case against the accused. In the present case, sufficient evidence is available and on the basis of which, the charge-sheet (final report) has been filed. Now the case is fixed for arguments on charge on 22.01.2019. All pleas

raised before the Court can be taken at the time of framing of charge or during trial.

Learned counsel for CBI further submits that as per provisions of Section 190 Cr.P.C., the Court is to satisfy as to whether there is sufficient ground for proceeding further or not. In case there is sufficient ground for proceeding further, then Court is empowered for issuance of process under Section 204 Cr.P.C. At the time of issuance of summons or taking cognizance, reasons are not necessary to be recorded. Only an opinion is to be formed that there exists sufficient grounds for summoning. Learned counsel also submits that there is a clear cut finding recorded by the highest Court that it is not only a case of mala fide exercise of power but it is a case of fraud. At the end, learned counsel for CBI submits that the petitioner being the Principal Secretary was supposed to assist the Chief Minister with sincerity by making him aware with all facts and the provisions. The petitioner cannot be kept at par with Private Secretary or any subordinate officer.

Mr. Sumeet Goel also submits that as per provisions of Section 106 of the Indian Evidence Act, 1872, in case any fact is in the knowledge of any person, the burden of proving that fact is upon him. He also submits that as per provisions of Section 315 Cr.P.C., in case any person is accused of an offence before the Criminal Court, he can be a witness for the defence and may give evidence on oath in disproof of the charges made against him or any other accused charged together with him during the period of trial.

In support of his arguments, learned counsel for respondent- CBI has relied upon cases S. K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. & Ors. 2008(2) R.C.R. (Criminal) 38, Nupur Talwar Vs. C.B.I. & Anr. 2012(3) R.C.R. (Criminal) 595, Kanti Bhadra Shah Vs. State of West Bengal 2000(1) R.C.R. (Criminal) 407, Jagdish Ram Vs. State of Rajasthan & Anr. 2004(2) R.C.R. (Criminal) 194, Dy. Chief Controller of Imports and Exports Vs. Roshanlal Agarwal & Ors. 2003 (2) RCR (Criminal) 110, Bhushan Kumar & Anr. Vs. State (NCT of Delhi) & Anr. 2012(2) R.C.R. (Criminal) 794, Dr. Subramanian Swamy Vs. Dr. Manmohan Singh & Anr. Civil Appeal No.1193 of 2012 (Arising out of SLP (C) No. 27535 of 2010) decided on 31.01.2012, State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. 1991(1) R.C.R. (Criminal) 383, State of Bihar & Anr. Vs. Shri P.P. Sharma & Anr. 1991 AIR (SC) 1260 and Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vs. C.B.I. 2018 (2) R.C.R. (Criminal) 415.

Heard arguments of learned counsel for the parties and have also perused the impugned order and the final report submitted by respondent-CBI as well as other documents available on the file.

Admittedly, the petitioner was assisting the then Chief Minister, Haryana while working as Principal Secretary and the allegations of conspiracy/connivance of the petitioner are there against him. The investigation was carried out by the CBI and thereafter, impugned summoning order has been passed against the

petitioner and other accused which has been challenged before this Court by raising various grounds that the order is totally non-speaking and same has been passed without any application of mind and without showing any involvement of the petitioner in commission of any offence. It has also been challenged on the ground that the petitioner was having no role in passing any order for taking any decision for dropping of the proceedings or otherwise. There was no involvement as he was working in his official capacity and decision making authority was with other accused.

At the stage of taking cognizance and summoning the accused, the summoning Court is to find out as to whether prima facie case is made out for summoning the accused persons. However, the summoning Court is not to see as to whether any material will lead to conviction or not. The investigating agency has investigated the allegations and found that there was sufficient evidence for proceeding further. The summoning Court has power to differ and even to reject the report submitted by the investigating agency and to take cognizance of the offence by summoning the accused. The matter of taking cognizance and issuance of notice is based on satisfaction of the summoning Court and for that it is not necessary/essential to pass speaking order to demonstrate the basis of satisfaction.

In some of the judgments of Hon'ble the Apex Court, it has been held to that extent also that the summoning Court is not obliged to record reasons while issuing process but it should adopt the reasonable course. The Court is to examine on the basis of material collected by the investigating agency as to whether there is sufficient material before it for proceeding further against the accused person. The summoning Court is competent to take cognizance of the offence and direct the issue of process to the accused. However, the Court is required to apply his judicial mind while taking cognizance to find out as to whether a prima facie case is made out for summoning of the accused persons or not. At the stage of summoning the accused, it does not require to consider the defence version or materials or arguments or even to evaluate the merits or the materials or evidence of the complainant as has been held in judgment of Hon'ble the Apex Court in case *Sonu Gupta Vs. Deepak Gupta & Or.* 2015 (2) R.C.R. (Criminal) 32.

It has also been held in various judgments and a settled preposition of law as well that cognizance is taken of the offence and not the offender. An individual accused may seek discharge, if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused, but such exercise is required only at a later stage and not at the time of taking cognizance and summoning the accused on the basis of prima facie case.

For determining the issue as to whether any process is to be issued or not, the summoning Court has to satisfy itself after perusing the record available with it as to whether the evidence is adequate for summoning or not, but it is not necessary to record the reasons. Although the expression 'to take cognizance' is

not defined anywhere but it has been held in various judgments of Hon'ble the Apex Court as well as of this Court that when the notice of accusation is taken by the concerned Court by considering the allegations made in the complaint or police report or information and on being satisfied with the allegations, the cognizance can be taken of the offence by considering the material available before the Court. Section 190 Cr.P.C. talks of cognizance of offences by Magistrate, but this expression has not been defined anywhere. It means taking notice of any offence which includes the intention of initiating the judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating proceedings or for other purposes. The word 'cognizance' indicates the stage when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely different from the initiation of proceedings; rather it can be said that the condition precedent is to initiate the proceedings by the Magistrate or the Judge. It is not necessary to pass a detailed speaking order.

Under Section 190 (1) (b) Cr.P.C. the Magistrate has the advantage of a police report, under Section 190 (1) (c) Cr.P.C., he has the information or knowledge of the commission of offence. But under Section 190 (1) (a) Cr.P.C. he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitutes such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190 (1) (a) Cr.P.C. Accordingly, the complaint is simply to be rejected.

The steps taken by the Magistrate under Section 190 (1) (a) Cr.P.C. followed by Section 204 Cr.P.C. should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is a ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the Court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence while considering along with statements recorded, would prima facie make the accused answerable before the Court. No doubt, no formal or speaking order is required to be passed at this stage. But as per requirement of Section 203 Cr.P.C. the speaking order is required to be passed in case the complaint is dismissed and reasons are necessary to be recorded.

In view of the facts as well as law position as discussed above, it cannot be said that the summoning Court while issuing process has not taken into consideration the entire material available before it. The order of taking cognizance is well reasoned. Moreover, the summoning Court is empowered to take cognizance in case the material on record makes out a case for summoning. The investigation is within the exclusive domain of the investigating agency/police and taking cognizance of an offence is the area exclusively within the domain of the Magistrate.

In the present case the cognizance of the offence has been taken by the Court by

taking into consideration the material available with him and for that a detailed speaking order is not required to be passed. Only the satisfaction of the Court is required to be recorded. For that purpose also i.e. not to be recorded in so many words but for reaching on a prima facie view by taking cognizance the satisfaction of the Court is necessary. The investigation is exclusive domain of the investigating agency and taking of cognizance of offence is the area exclusively within the domain of the summoning Court/Magistrate. At this stage, only the satisfaction is to be seen of the summoning Court as to whether there is a sufficient ground for proceeding further or not. Whether the evidence is adequate for framing of charge or for supporting the conviction can be determined at the time of the trial and not at the stage of summoning or at the stage of issuing process to the accused. It is not necessary to record the detailed reasons.

Accordingly, I am of the considered view that the impugned order of taking cognizance or passing summoning order is within the parameters of power vested with the summoning Court while issuing the impugned summoning order of taking cognizance of the offence. There is no merit in the contentions raised by learned Senior counsel for the petitioner and the impugned order of summoning requires no interference.

The present petition being devoid of any merit is hereby dismissed.