

(2014) 09 AHC CK 0347

In the Allahabad High Court

Case No : Writ Petition No. 7806 (M/B) of 2009, 4212, 5366, 5369, 5372, 6678
(M/B) of 2012, 3647, 5464, 6098 and 6774 (M/B) of 2014

Nirmal Kumar Dwivedi

APPELLANT

Vs

Principal Secretary, Department of Rural Development

Satya Pal Singh Vs State of U.P.

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 20, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 197, 397, 401, 437, 438
Evidence Act, 1872 — Section 114(e)
Penal Code, 1860 (IPC) — Section 109, 120-B, 408, 409, 419
Prevention of Corruption Act, 1988 — Section 13(1), 13(1)(d), 13(2), 19, 19(1)

Citation : (2014) 09 AHC CK 0347

Hon'ble Judges : Vishnu Chandra Gupta, J; Ravindra Singh, J

Bench : Division Bench

Advocate : Rajeev Singh, Santosh Shukla, A.K. Jauhri, Anil Kumar Tiwari, R.S. Pandey, R.B.S. Rathore, Alok Singh, Mahmood Alam, Rizwan Khan, Gayasuddin, O.P. Singh Sikarwar, Jay Prakash Singh, P. Chakravarty, Nadeem Murtaza and V.K. Dubey, Advocate for the Appellant; Zafaryab Jilani, AAG, Sunita Sachan, Islam Khan and Bireshwar Nath, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Chandra Gupta, J.—By means of Writ Petition No. 7806 (M/B) of 2009, the petitioner sought the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the Government Order No. 296WC/Saat-Nyaya-5-2009-124WC/2009 dated 11.05.2009 (contained as Annexure No. 1) Government Order No. 216WC/Saat-Nyaya-5-2009-124WC/2009 dated 06.05.2009 (contained as Annexure-2) passed by opposite party no. 5 and Government Order No. 4762/22-1-2008-112/2008 dated 17.12.2008 (contained as Annexure No. 3) passed by opposite party no. 4.

(ii) Issue a writ, order or direction in the nature of mandamus restraining the respondents from taking any coercive action against the petitioner in pursuance of Government Order dated 17.12.2008 (contained as Annexure-3 to the writ petition)."

2. By means of Writ Petition No. 4212 (M/B) of 2012, the petitioner sought the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the Government Order No. 5003/22-1-2008-112/2008 dated 17.12.2008 passed by the State Government through the Secretary, Karagar Prasashan Evam Sudhar Anubhag-1, Department of Prison Government of U.P. u/s 197, Cr.P.C. contained in Annexure No. 1 to the writ petition.

(ii) Issue a writ, order or direction in the nature of mandamus restraining the respondents from taking any coercive action against the petitioner in pursuance of Government Order dated 17.12.2008."

3. By means of Writ Petition No. 5366 (M/B) of 2012, the petitioner sought the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned sanction order u/s 197 of Cr.P.C. dated 11.06.2012 as contained in Annexure No. 1.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned final investigation report dated 03.08.2009 so far as it relates to the petitioner as contained in Annexure-2.

(iii) Issue a writ, order or direction in the nature of mandamus commanding and directing the opposite parties not to arrest the petitioner at Case Crime No. 1002 of 2000, under Sections 109, 419, 420, 467, 468, 408, 471 IPC and Sections 13(1) & (2) of Prevention of Corruption Act, Police Station Ghazipur, District Ghazipur as contained in Annexure No. 6."

4. By means of Writ Petition No. 5369 (M/B) of 2012, the petitioner sought the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned sanction order u/s 197 of Cr.P.C. dated 11.06.2012 as contained in Annexure No. 1.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned final investigation report dated 14.09.2009 so far as it relates to the petitioner as contained in Annexure-2.

(iii) Issue a writ, order or direction in the nature of mandamus commanding and directing the opposite parties not to arrest the petitioner at Case Crime No. 691 of 2000, under Sections 109, 419, 420, 467, 468, 408, 471 IPC and Sections 13(1) & (2) of Prevention of Corruption Act, Police Station Kotwali Mau, District

Mau as contained in Annexure No. 6."

5. By means of Writ Petition No. 5372 (M/B) of 2012, the petitioner sought the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned sanction order u/s 197 of Cr.P.C. dated 11.06.2012 as contained in Annexure No. 1.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned final investigation report dated 03.08.2009 so far as it relates to the petitioner as contained in Annexure-2.

(iii) Issue a writ, order or direction in the nature of mandamus commanding and directing the opposite parties not to arrest the petitioner at Case Crime No. 36 of 2001, under Sections 109, 419, 420, 467, 468, 408, 471 IPC and Sections 13(1) & (2) of Prevention of Corruption Act, Police Station Kotwali, District Mau as contained in Annexure No. 6."

6. By means of Writ Petition No. 6463 (M/B) of 2012, the petitioner sought the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned sanction order dated 11.06.2012 whose copy contained in the Annexure No. 1 to this writ petition.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned final investigation report dated 03.08.2009 so far as it relates to the present petitioner and whose copy is contained as Annexure No. 2 to this writ petition.

(iii) Issue a writ, order or direction in the nature of mandamus for staying the arrest of the petitioner on vide Case Crime No. 1002 of 2000, under Sections 109, 419, 420, 467, 468, 471, 120-B IPC read with Sections 13(1) & (2) of the Prevention of Corruption Act, 1988 relating to the Police Station Kotwali, District Ghazipur, during the pendency of the writ petition."

7. By means of Writ Petition No. 6678 (M/B) of 2012, the petitioner sought the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned sanction order dated 11.06.2012 whose copy contained in the Annexure No. 1 to this writ petition.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned final investigation report dated 03.08.2009 so far as it relates to the present petitioner and whose copy is contained as Annexure No. 2 to this writ petition.

(iii) Issue a writ, order or direction in the nature of mandamus for staying the arrest of the petitioner on vide Case Crime No. 1002 of 2000, under Sections

109, 419, 420, 467, 468, 471, 120-B IPC read with Sections 13(1) & (2) of the Prevention of Corruption Act, 1988 relating to the Police Station Kotwali, District Ghazipur, during the pendency of the writ petition."

8. By means of Writ Petition No. 3647 (M/B) of 2014, the petitioner sought the following reliefs:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 05.03.2014 passed by the opposite party no. 1 as contained in Annexure No. 1 to the writ petition.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite party no. 3 to get re-investigation completed under his supervision."

9. By means of Writ Petition No. 5464 (M/B) of 2014, the petitioner sought the following reliefs:

"(i) Issue an order or a direction or a writ in the nature of certiorari calling for the record and quashing the order dated 7th April, 2014, passed by the Principal Secretary, Department of Rural Development, Government of U.P. at Lucknow, granting sanction u/s 19(1)(b) of the Prevention of Corruption Act, 1988 for the prosecution of the petitioner herein. (Annexure No. 03 of the writ petition)

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 not to arrest the petitioner during the investigation/pending submission of charge-sheet to the court concerned."

10. By means of Writ Petition No. 6098 (M/B) of 2014, the petitioner sought the following reliefs:

"(a) Issue a writ, order or direction in the nature of certiorari quashing the prosecution sanction order dated 07.04.2014 issued by the opposite party no. 1 (Principal Secretary, Rural Development Department, Government of Uttar Pradesh) for initiating prosecution against the petitioner in Crime No. RC0062010A0027, under Sections 120-B, 409, 420, 467, 468, 471 IPC and Sections 13(1) read with Section 13(1)(d) of P.C. Act, Police Station CBI/ACB, Lucknow in the interest of justice.

(b) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to arrest the petitioner in Crime No. RC0062010A0027, under Sections 120-B, 409, 420, 467, 468, 471 IPC and Sections 13(2) read with Section 13(1)(d) of P.C. Act, Police Station CBI/ACB, Lucknow during the pendency of this writ petition in the interest of justice."

11. By means of Writ Petition No. 6774 (M/B) of 2014, the petitioner sought the following relief:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned sanction order dated 07.05.2014 contained as Annexure No. 1 to the writ petition with all consequential benefits."

12. In this bunch of writ petitions a very vital question of public importance is involved:-

Whether a proposed accused under Article 226 of Constitution of India can challenge the grant of sanction to prosecute him before institution of the prosecution in a competent court?

13. In all these writ petitions, the prosecution against the petitioners yet to have been launched. The sanction has been accorded to prosecute the petitioners by the competent authority. In most of the writ petitions, the order for grant of sanction has been challenged on merit, therefore, the aforesaid question is required to be answered first.

14. We have heard learned counsel for the petitioners and learned A.G.A. for the State at length and perused the pleadings exchanged between the parties.

15. For deciding this bunch of writ petitions, it is not necessary to discuss the facts of each case in view of the question framed to be answered by this Court because in all these cases sanction has been accorded either u/s 197 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") or u/s 19 of Prevention of Corruption Act, 1988, (for short "P.C. Act"). In all these cases neither the cases have been filed in the competent court nor cognizance has yet been taken.

16. Learned counsels appearing on behalf of petitioners submitted that grant of sanction is an administrative function of the State/Competent Authority, hence, it is subject to judicial review under Article 226 of the Constitution of India (for short "Constitution") because grant of sanction to prosecute involves violation of fundamental rights of the accused persons conferred under Articles 20 and 21 of the Constitution. A person cannot be prosecuted unless he is found to be involved in an offence which has been committed by him in discharge of his official duties. Therefore, a rider has been imposed under the statute with regard to the prosecution of a public servant whereby protection has been extended to him from frivolous prosecution. The whole system would collapsed, in case, frivolous prosecution is allowed to proceed against public servant without approval of his employer.

17. Sri Anil Kumar Tiwari, learned Senior Advocate assisted by Sri R.S. Pandey relying upon the judgment of the Apex Court in the Anil Kumar and Others Vs. M.K. Aiyappa and Another, submitted that considering the aforesaid analogy, the Apex Court had held that even in the cases of complaint lodged by private individual against the government servant, the prosecution sanction at pre-cognizance stage would be mandatory and even before start of investigation in pursuance of an FIR lodged by private individual or before initiating inquiry proceedings under Chapter XV of Cr.P.C. He after relying upon a judgment of the Apex Court in State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, further submitted that jurisdiction conferred on the High Courts under Article 226 of the Constitution of India for

judicial review is one of the basic structure of the Constitution which can be exercised by the High Courts under the powers conferred under Article 226 of the Constitution of India. He further submitted that alternative remedy does not operate as a bar to exercise jurisdiction of judicial review by the High Courts.

18. He further submitted that the High Court under powers of judicial review can proceed to look into the following cases;

- A. matters seeking enforcement of the fundamental rights
- B. where there is a violation of natural justice
- C. where the impugned orders or the proceedings are initiated wholly without jurisdiction
- D. where the vires of a statute is under challenge.

19. In support of his contention, he relied upon the following judgments:

"1. Tata Cellular Vs. Union of India,

2. M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan,

3. M.P. State Co-op. Dairy Fedn. Ltd. and Another Vs. Rajnesh Kumar Jamindar and Others,

20. It was further submitted by learned Senior Advocate Sri Tiwari that Court while exercising jurisdiction under Article 226 of the Constitution jealously guard the human and fundamental rights conferred under the Constitution of India as held in the case of Union of India (UOI) and Another Vs. S.B. Vohra and Others, Mr. Tiwari after relying upon the judgment of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, submitted that if sanction is granted, it would result a legal presumption u/s 114(e) of the Indian Evidence Act that person should be prosecuted. The sanctioning authority has to apply its own independent mind before issuing sanction and should not be influenced by any pressure or extraneous consideration as held in Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, , State of Punjab and Another Vs. Mohammed Iqbal Bhatti, , Superintendent of Police (C.B.I) Vs. Deepak Chowdhary and others, State (Anti Corruption Branch) Govt. of N.C.T. of Delhi and Another Vs. Dr. R.C. Anand and Another,

21. He further submitted that satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse or based on no evidence as held in State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo,

22. Sri R.B.S. Rathore, learned counsel appearing on behalf of the petitioner in one of the writ petitions submitted that the order of grant of sanction is an administrative order and subject to judicial review as held by Delhi High Court in a judgment delivered in Writ Petition (C) No. 578 of 2010 (Ashok Kumar Aswal Vs. Union of India and others) dated 11.01.2013., wherein the learned Single

Judge of the Delhi High Court ruled that validity of sanction order can be decided only by the High Court under Article 226 of the Constitution of India. The trial court will have no jurisdiction to examine whether the sanction order is malafide or bonafide and whether the same suffer from arbitrariness or contrary to Articles 14 and 21 of the Constitution of India. It is also ruled that when a sanction order is challenged on such grounds before the High Court, it will have exclusive right, prerogative and duty to examination validity of an order passed by the sanctioning authority. On the strength of this judgment, learned counsel submitted that this Court cannot refuse to look into the validity of sanction at this stage under Article 226 of the Constitution of India.

23. On the contrary, Sri Zafaryab Jilani and Smt. Sunita Sachan learned Additional Advocate General appearing on behalf of State vehemently argued that grant of sanction is not an administrative order. It is purely an order which has been passed by the authority under the provisions of the statute, therefore, while granting the sanction by an authority in accordance with statutory mandate, it act cannot be said that sanctioning authority acted administratively. The authority virtually proceeded to perform it obligations under the procedure prescribed under the law for instituting the prosecution against the public servant. Sri Zafaryab Jilani relying upon the judgment of Apex Court in Parkash Singh Badal and Another Vs. State of Punjab and Others, submitted that the validity of the sanction could not be looked into under Article 226 of the Constitution of India in the garb of judicial review treating the same as administrative order. The validity could be seen only at appropriate stage by the trial court. He further relied upon the judgment in the case of Dinesh Kumar Vs. Chairman, Airport Authority of India and Another, wherein after relying upon Prakash Singh Badal's case (supra) and State of Karnataka Vs. Ameerjan; 2007(59) ACC 811 (SC), the Apex Court held that the invalidity of sanction order can be looked into by the trial court at appropriate stage, therefore, the question of invalidity can be raised before trial court by the accused. However, it has been emphasized by the Apex Court that where the challenge is based on non existence of sanction to prosecute or on prosecution is challenged on the ground of non existence of sanction order, the same can be raised at the very inception of the proceedings and should be looked into at the very outset.

24. Sri Zafaryab Jilani further relying upon recent judgment of the Apex Court in the case of C.B.I. Vs. Ashok Kumar Aggarwal, wherein the Apex Court allowed to raise the question of validity of sanction at an early stage of the proceedings before trial court.

25. We have considered the valuable arguments advanced by learned counsel for the parties and perused the authorities cited by them.

26. In Dinesh Kumar's case (supra) and in Dr. R.C. Anand's case (supra), the charge-sheets were filed in court during the pendency of the writ petitions, therefore, the Apex Court permitted the accused persons to raise the plea of invalidity of sanction order before the trial court. In Ameer Jan's case (supra),

the trial was concluded and after conviction of accused the High Court allowed the appeal on the ground of invalidity of sanction and the matter than, was considered by the Apex Court against the order passed by the High Court in appeal. In the case of Ashok Kumar Aggarwal's case (supra), the charge-sheet was filed in the trial court and only thereafter the validity of the sanction order was challenged in the High Court.

27. Admittedly, in all the writ petitions, the petitioners has been arrayed as accused and after conclusion of investigation, they were found to be involved in respective offenses by the Investigating Agency and thereafter the competent authority issued sanction orders to prosecute them.

28. It is not in dispute that grant or refuse of sanction order is statutory function of the competent authority. It is an absolute discretion of State Government or Central Government either to grant the sanction to prosecute its employee or not. There is no prescribed format for grant of sanction either u/s 197, Cr.P.C. or u/s 19 of P.C. Act. The prosecution yet to be launched and unless the prosecution is launched in the competent court, the accused persons cannot be allowed to challenge the proceedings during investigation, which are necessary to launch the prosecution. It is no doubt true that fair investigation and fair trial is the right of an accused, who is protected under Article 21 of the Constitution of India.

29. Article 21 of the Constitution of India provides protection of life and personal liberty of a person, which reads as under:

"21. Protection of life and personal liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law."

30. The integral part of Article 21 is that no person shall be deprived of from his life or personal liberty except according to procedure established by law.

31. It has been argued by learned counsel for the petitioners that if the petitioners are allowed to raise the plea of invalidity of the sanction at the appropriate stage of the trial, they would be compel to appear before the trial court in terms of Section 437, Cr.P.C. It is further submitted that the provisions of Section 438, Cr.P.C. are not applicable in the State of U.P., therefore, even if, remedy is available to the accused persons/petitioners to challenge the validity of sanction at the stage of trial this Court in view of non applicability of section 438 of Cr.P.C. under Article 226 of the Constitution of India can look into the validity of sanction order and if this Court finds that sanction order has not been validly granted, the accused persons shall not be compelled to appear before the trial court and to face trial unnecessary and their rights conferred under Article 21 would be safeguarded.

32. We are of the firm view that right to life and personal liberty is subject to restrictions imposed under Article 21 of the Constitution. The liberty of a persona may be deprived of in accordance with the procedure established by law. Petitioners are the proposed accused of the offenses for which they are sought to

be prosecuted. The investigation has been conducted with regard to the offenses as complained and the Investigating Agency found them involved in the offenses. The sanctioning authority has decided to proceed against them and to launch prosecution before the competent court. This all was done in accordance with the procedure established under law, therefore, the petitioners cannot be allowed to raise the plea of violation of fundamental rights conferred under Article 21 of the Constitution. If, the prosecution is launched, the same shall be in accordance with the procedure prescribed under law and rights conferred to an accused before trial court under the statute would be available to accused. The Courts cannot formulate a new procedure which is not akin to the procedure already prescribed.

33. In all cases, the prosecution is yet to be launched and if, there is no material on record as alleged by learned counsel for the petitioners then there is another safeguard available to them, which is in the form of a court of law. In case there appears no material to launch prosecution the court competent to take cognizance may not take cognizance of the case and even if the cognizance is taken by the court, the accused persons would be entitled to raise their grievances either in the form of Revision under Sections 397/401 of Cr.P.C. or u/s 482, Cr.P.C. It is also well settled that courts cannot legislate law. The courts are to maintain the rule of law. The courts while interpreting the law if found that the same is against the provisions contained in the Constitution of India, declares such law ultra vires.

34. In this bunch of writ petition, the vires of any statute is not under challenged, therefore, in the light of the aforesaid discussion made by us, the writ petitioners cannot be permitted to claim violation of Articles 20 and 21 of the Constitution of India and on this score the petitioners have no case.

35. It is true that grant of sanction order against the public servant for prosecution is a serious thing and should not be lightly dealt with by the authorities but at the same time, it should not be forgotten that the purpose for which an order of sanction is required should always be borne in mind. Ordinarily, the sanctioning authority is the best authority to judge as to whether the public servant concerned should receive the protection under the Act or accord sanction for his prosecution or not as held in AIR 1948 82 (Privy Council) the said judgment of Privy Council was followed by the Apex Court in *Jaswant Singh Vs. The State of Punjab*, and *Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh*, The Apex Court in *R.S. Nayak Vs. A.R. Antulay*, discussed the impact of *Mohd. Iqbal Ahmed*'s case (supra), and held as under:

"The Legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that that authority alone would be able, when facts and evidence are placed before him to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or

misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the Legislature clearly provided that that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office."

36. In Prakash Singh Badal's case (supra), the Apex Court in paragraph 29 stated as under:

"The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In Sub-Section (3) the stress is on "failure of justice" and that too "in the opinion of the Court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to root of jurisdiction as observed in para 95 of the Narasimha Rao's case (supra). Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the Old Act (Section 19(2) of the Act) question relates to doubt about authority to grant sanction and not whether sanction is necessary."

37. In respect of alleged irregularities in grant of sanction u/s 19 of the P.C. Act, the Apex Court after relying upon the judgment in Prakash Singh Badal and Ameer Jan's case (supra) in Dinesh Kumar's case (supra) held in para 9 as follows:

"9. In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non availability of material before the sanctioning authority or the order of sanction having been passed by an authority not authorized or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity of sanction would fall in the same category like the ground of invalidity of sanction on account of non application of mind-a category carved out by this Court in Prakash Singh Badal, the challenge to which can always be raised in the course of trial."

38. In view of above discussion, this Court is of the firm view that

(1) grant of sanction order to prosecute the accused under the statute is not an administrative action of the competent authority. It would be a statutory function

of the competent authority and subject to challenge in the proceedings launched against the accused in accordance with the procedure established under law.

(2) An accused cannot be allowed to challenge the order granting sanction to prosecute at pre-cognizance stage. As the same has no locus as held in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, and Raghu Raj Singh Rousha Vs. Shivam Sundaram Promoters (P) L and Another,

39. In view of above, this bunch of writ petition is not maintainable and the same are liable to be dismissed. The interim orders passed in the writ petitions are also liable to be vacated, therefore, the interim orders passed in the writ petitions stand vacated.

40. Accordingly, all the writ petitions are dismissed.

41. However, it is open to the petitioners of all writ petitions that in case, they appear before the court concerned within 30 days from today and apply for bail, the same shall be considered and disposed of expeditiously, if possible, on the same day by the courts below.