
(2008) 03 P&H CK 0067
In the Punjab And Haryana At Chandigarh

Nirmal Singh Kahlon

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 197
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13, 19

Citation : (2008) CriLJ 4096 : (2008) 2 RCR(Criminal) 208

Hon'ble Judges : T.P.S. Mann, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant petition is directed against the order dated 7.5.2007 (P-8), passed by the Special Judge, Rupnagar, rejecting the application filed by the petitioner for dropping the proceedings of case FIR No. 11. dated 16.5.2002, under Sections 420, 467, 471, 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity, "the Act"), registered at Police Station Vigilance Bureau, Flying Squad-I, Mohali.

2. The petitioner Nirmal Singh Kahlon was inducted as a Cabinet Minister in the Akali Dal Government during the period 1997 to 2002. The petitioner has alleged that the Congress Chief Minister, Capt. Amarinder Singh, assumed his office and launched a drive against corruption. According to the petitioner this was a motivated and an arbitrary action intended to harass and falsely implicate the former ministers holding different portfolios in the cabinet of Shri Parkash Singh Badal, the then Chief Minister of Shiromani Akali Dal. The Ministers were sought to be involved in false and frivolous cases. Firstly, the State Government issued a notification on 19.12.2002. A false complaint was made against the petitioner and on 16.5.2002 an FIR No. 11, under Sections 420, 467, 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Act, was registered against him at Police Station, Mohali. Another FIR No. 13, dated 14.6.2002, under Sections

420, 467, 468, 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Act was also registered at Police Station, Vigilance Bureau, Flying Squad-1, Mohali. Thereafter the Government also issued notification dated 17.11.2003, requiring that the cases within the jurisdiction of Police Station, Vigilance Bureau, Flying Squad-1, Mohali, were to be tried by the Special Judge at Ropar. Notifications dated 19.12.2002 and 17.11.2003 gave jurisdiction to this police station all over the State of Punjab in respect of specified cases.

3. In furtherance to FIR No. 11, the investigating agency presented the challan before the Court of Special Judge, Ropar. The allegations in the challan were made against the petitioner that he had purchased Drag Line Machines from Escorts JCB Limited at a price much higher than the price at which it was purchased by the State of Haryana from the same company. After presentation of the challan, the petitioner was summoned by the learned Special Judge, Ropar.

4. The petitioner filed an application before the learned Special Judge, Rupnagar, in case FIR No. 11, dated 16.5.2002, for dropping the proceedings in the said case. In the said application jurisdiction of learned Special Judge, Rupnagar, was challenged primarily on the ground that the Court of Special Judge could not entertain and try the case, inasmuch as, the alleged act was done at Chandigarh, which is outside State of Punjab and that the FIR was registered on 16.5.2002, whereas notification conferring jurisdiction upon the Court was issued on 17.11.2003. It was also urged that sanction u/s 197 Cr.P.C. and Section 19 of the Act was not obtained. Learned Special Judge, Rupnagar, dismissed the application of the petitioner, vide order dated 7.5.2007, which is subject-matter of challenge in the instant petition (P-8).

5. Before the Special Judge various arguments were raised, which did not find favour with him. The first argument raised and rejected was that no preliminary inquiry was held. The FIR was registered and then investigation was conducted. On the submission of report u/s 173 Cr.P.C., the Court was to consider whether on the basis of the final report, documents and statements recorded u/s 161 Cr.P.C., any prima facie case is made out against the petitioner or not. Learned Special Judge rejected the aforementioned contention by observing as under:

...The proceedings against the accused/applicants cannot be dropped merely because no preliminary enquiry was conducted because that is not mandatory. It depends from case to case. Wherever in certain cases some preliminary enquiry is required, the same is held. Therefore, this plea of counsel for accused is devoid of merit and proceedings against the accused applicants are not liable to be dropped simply on the ground that preliminary enquiry was not held.

6. The other submission was concerning lack of territorial jurisdiction. The aforementioned argument was rejected on the basis of the judgment of Hon'ble the Supreme Court in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, . In paras 75, 76 and 77, their Lordships" have held as under:

75. So far as conferment of jurisdiction on the police station over the whole State

is concerned, it appears that the same was created on 31.10.1994 by the then Government of Chandigarh (Punjab?) and by order dated 20.4.1995 the office of Superintendent of Police, Vigilance Flying Squad-I/Criminal Investigation Agency, Chandigarh was shifted to Police Station Mohali. This order continued to operate subsequently. As rightly contended by learned Counsel for the respondent State, the fresh notification was issued creating some more police stations qua other districts. It is pointed out that PS Mohali falls within Ropar District and within the area of Special Judge, Ropar as was specified in consultation with the Punjab and Haryana High Court. The Special Judges are transferred by the High Court and, therefore, the allegation of choosing any Special Judge with oblique motive is clearly without any substance. The notification regarding the reorganization of the police station with Police Station Mohali having jurisdiction over the whole State of Punjab was notified on 19.12.2002.

76. At this juncture, it is relevant to note that allegations of impropriety were made because of the notification dated 17.11.2003 relating to jurisdiction of the Special Judge. A few relevant aspects need to be noted at this juncture. The Court of Special Judge, Ropar was created by the notification dated 5.1.1990 of the State Government which was issued in consultation with the High Court for the area of Ropar District. Another notification was issued on 5.9.2000 in consultation with the High Court. By this notification, Sessions Judges in the State of Punjab were appointed as Special Judges within their respective districts. The notification dated 31.10.1994 creating PS Chandigarh with Statewide jurisdiction Which was shifted to PS Mohali by order dated 20.4.1995 was already in existence when Sessions Judges were made Special Judges. There is no dispute about this fact.

77. The controversy revolves around the notification dated 19.10.2002 regarding PS Mohali with Statewide jurisdiction. According to learned Counsel for the respondent State it represents a continuity and there was no new creation. So far as the notification dated 17.11.2003 is concerned, undisputedly, the expression used is "appoint". It was clarified that though the said expression has been used, it did not actually mean appointment of a Sessions Judge and First Additional Sessions Judge, Ropar as Special Judges. They were already appointed and designated as stated in the notification itself. What was intended related to allocation of cases registered at PS Mohali to the existing Courts of Special Judges, Ropar. There is also no dispute that PS Mohali falls within the area of District Ropar over which Special Judges, Ropar had jurisdiction as approved by the High Court.

7. It is, thus, obvious that the argument has been rightly rejected. Learned Special Judge then considered the facts of the present case and found that according to the allegations firstly the order for purchase of two drag line machines was passed by the then Chief Minister, Punjab, Shri Parkash Singh Badal in the area of Vidhan Sabha, Nabha, which is part of the State of Punjab and then after purchase of machines the same were sent to various parts of the

State of Punjab. Even the drivers appointed to operate those machines were also sent to Punjab. Therefore, the contention on behalf of the petitioner that no cause of action had arisen in the State of Punjab was rejected. The other argument that sanction u/s 197 Cr.P.C. was required to be obtained because the acts alleged to have been committed by the petitioner are closely related to his official duty, has also been rejected by the learned Special Judge by placing reliance on the judgment of Hon''ble the Supreme Court in Parkash Singh Badal and Another Vs. State of Punjab and Others, . Applying those principles to the facts of the present case, learned Special Judge has observed as under:

...In the present case, allegations against the applicants are that the machines were purchased without following procedures and similarly appointments were also made without following any procedure. Therefore, on the face of it, it cannot be said that act done by the accused was reasonably connected with the discharge of their official duty for which sanction u/s 197 Cr.P.C. was required.

8. On 21.5.2007, when the instant petition came up for hearing before the Division Bench, learned Counsel for the petitioner brought to its notice the order dated 20.9.2006 (P-6), passed by Hon''ble the Supreme Court in Appeal (Civil) No. 4211 of 2006 in SLP (Civil) No. 19958 of 2004. Accordingly, the Division Bench passed the following order on 21.5.2007:

Notice of motion to the respondents.

Mr. Anil Rathee, Additional Advocate General accepts notice on behalf of the respondents.

Learned Counsel for the petitioner at the outset states that the present writ petition relates to F.I.R. No. 11 dated 16.5.2002, P.S. Vigilance Bureau, F.S.I., Mohali. He further points out that F.I.R. No. 13 dated 14.6.2002 is also pending with the same authority which is under challenge by way of CWP No. 10861 of 2004. He also brought to our notice that the said writ petition is posted for hearing to 9.7.2007.

He further brought to our notice the order passed by the Hon''ble Supreme Court (Annexure P-6) in an appeal (Civil) 4211 of 2006 in SLP (Civil) No. 19958 of 2004 dated 20.9.2006. The said order shows that the Hon''ble Supreme Court of India has remitted the case to the High Court for fresh consideration. While disposing of the said appeal the Hon''ble Supreme Court has passed the following order:

xx xx xx The interim order passed by this Court shall continue till the High Court takes up the matter afresh for fresh disposal.

In view of the above order and the fact that the writ petition filed against FIR No. 13 dated 14.6.2002 is pending before this Court and is posted to 9.7.2007 for hearing, post the present writ petition along with CWP No. 10861 of 2004 on July 9, 2007. Learned Counsel for the respondents is permitted to file reply, if any, in the meantime.

Further proceedings before the trial Court shall remain stayed till July 9, 2007.

9. Mr. Ashwani Kumar Chopra, learned senior counsel has conceded that since the matter in respect of obtaining sanction u/s 19 of the Act stand concluded by the judgment of Hon"ble the Supreme Court rendered in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, , the issue would not survive for consideration of this Court. He has, however, assailed the impugned order dated 7.5.2007 (P-8) by arguing that sanction u/s 197 Cr.P.C. is required to be obtained from the competent authority because the allegations levelled in the FIR would conclusively show that the imputation of various acts alleged to have been committed by the petitioner are closely related to his official duties and that the petitioner deserve to be accorded protection for those acts. According to the learned Counsel, passing of order for purchase of drag line machines was at the instance of the then Chief Minister, Punjab and that the allegations in the FIR are absolutely false because comparison of price with the machines alleged to have been purchased by the State of Haryana is non-existent as State of Haryana never purchased such like machines. He has also insisted that all the purchases of drag line machines and appointments made on the post of driver on temporary basis was done by the petitioner in discharge of his official duty, which could not be regarded as commission of any offence. He has then submitted that the learned Special Judge, Ropar, did not apply his mind to the facts of the present case and has remained unable to deal with various issues raised before him. According to the learned Counsel the order passed by the learned Special Judge is cryptic and deserves to be set aside. He has lastly submitted that all the offences alleged to have been committed by the petitioner have taken place at Chandigarh and there is no warrant to register a case at Mohali because there is neither any police station at Mohali for dealing cases of this nature nor any cause has arisen in that area. Therefore, the Special Judge, Ropar, would not acquire jurisdiction to try the petitioner once all the alleged acts have been committed at Chandigarh.

10. Mr. R.S. Khosla, learned State counsel, however, has drawn our attention to para 71 of the judgment of Hon"ble the Supreme Court in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, and argued that the issue of sanction u/s 197 Cr.P.C. would not survive because in para 71 it has been laid down by Hon"ble the Supreme Court that the offence of cheating u/s 420 or offences under Sections 467, 468, 471 and 120B IPC could not be regarded as having been committed by any public servant while acting or purporting to act in discharge of his official duty because in such cases official status actually provides an opportunity for commission of the offence. Learned State counsel has then referred to the observations made in para 96 of the judgment to argue that the controversy with regard to notification dated 19.12.2002, regarding Police Station, Mohali, does not survive as per the observation made in this long para. Therefore, even the other arguments raised by Mr. Chopra has been taken care of.

11. Having heard learned Counsel for the parties, we are of the considered view that this petition is devoid of merit and is, thus, liable to be dismissed. FIR No. 11, dated 16.5.2002, when translated into English, reads thus:

It has come to know from the reliable sources that on dated 26.4.2001 during the Sangat Darshan held at Vidhan Sabha Constituency, Nabha, it has been sent in writing by the then Chief Minister, Punjab to the Financial Commissioner, Punjab, Rural Development and Panchayat Department to purchase 2 Drag Line Machines for the digging of the CHHAPARS (ponds) as per the demand raised by the Panchayats of the villages of that locality. In this matter, on dated 16.5.2001 while interpreting the Guidelines of the 10th Finance Commission in his own manner to the Director, Rural Development, the C.P.F. prepared the proposal for the purchase of 16 more such machines, which have been put up by the then D.R.D.P. while approving the same, to the Financial Commissioner and the then Rural Development and Panchayat Minister has also approved this proposal. Whereas it had ordered by the Chief Minister to purchase only 2 machines. For the purchase of these machines, a Committee had been constituted by the D.R.D.P., in which the Members were the Director, Rural Development; Chief Engineer (Panchayati Raj); Controller, Panchayati Raj (Finance); Deputy Director. The tender notice of 7-8 days has even been got published directly in the newspaper. The advertisement has been got published at their own level on dated 1.6.2001, whereas it was essential to get the advertisement published through the Director, Public Relations and the notice might had been given for a minimum period of 21 days. The tenders had been called for by the Director Panchayat on dated 8.6.2001. Even the number of machines had also not been mentioned in this advertisement of the tender. In the meantime the Director Panchayat and the Chairman had been transferred, regarding which the Chief Engineer, Panchayati Raj had even brought to the notice of the Financial Commissioner on dated 8.6.2001 itself, who got the powers of delegated to the Chief Engineer and the D.D.L.D. on the same day from the Minister of the Rural Development and Panchayat Department on the same very day to make recommendations in this regard, although the orders to put up the file immediately to take further action have been passed on dated 9.6.2001. The action in respect of the tenders has been taken on dated 8.6.2001 even by the Chief Engineer alone. On dated 13.6.2001 the Financial Commissioner, Rural Development and Panchayat Department has put up the note at his own level for the purchase of 20 machines, but the then Rural Development and Panchayat Minister has granted approval for the purchase of 18 machines, which have been purchased. Again the note has been prepared by the Financial Commissioner, Development for the purchase of 50 more machines while giving the reference of the telephonic talk of the Chief Minister, Punjab and the oral orders, which has been marked to the D.D.R.P. The machines have even been purchased on the basis of the price of the machines already purchased at the rate of Rs. 13,24,962/-. Again the note has been prepared on dated 3.11.2001 at his own level for the purchase of 50 more machines, whereupon the then Rural

Development and Panchayat Minister has passed the order to purchase 35 machines. To operate these machines worth of crores of rupees the drivers etc. have been recruited on temporary basis, who have also been terminated later on and in this way these machines purchased by spending crores of rupees in a hot haste manner are lying parked idle. The similar machines had also been purchased by the State of Haryana, which had been purchased on the basis of the price of Rs. 10,35,000/- and tax of Rs. 41,400/- per unit. The above mentioned whole purchase has been made by the Department of Rural Development and Panchayat, Punjab for Rs. 13,71,75,086/-, whereby the direct loss has been caused to the Government by the departmental officers and the other persons in connivance with each other, for which at preliminary stage Shri C.L. Premi, C.P.F./D.D.F., Rural Development and Panchayat Department, Punjab Chandigarh and other officers of this department are responsible. The proceedings for the processing of the tender etc. have been taken by Shri Baldev Singh, Chief Engineer alone, whereas this was required to be done by the Committee. Accordingly, the above mentioned officers have caused the loss to the Government only with intention to gain personal benefit for own and have committed the offence under Sections 420, 467, 120-B I.P.C. and 13(1)(d) R/W 13(2), 1988 PC. Act. After lodging the case under these sections, the copy of the F.I.R. be sent to me. I shall conduct investigation personally. Ruqa is being sent through C-II Mohinder Partap No. 80/864. Sd/- Surjit Singh D.S.P. Vigilance Bureau F.S.-I, Punjab, Chandigarh dated 16.5.2002 at 6.40 P.M. On receipt of the Ruqa through C-II Mohinder Partap 80/864 the above mentioned case FIR under Sections 420, 467, 120-B IPC and 13(1)(d) read with 13(2), 1988 P.C. Act has been registered against Shri C.L. Premi, C.P.F./D.D.P. Rural Development and Panchayat Department, Punjab, Chandigarh etc., the completion of the papers has been made. Copies of the F.I.R. are being sent as special reports through Constable Rajinder Pal Singh No. 13/277 to the Illaqa Magistrate, Kharar and the higher police officers. Copy of the F.I.R. and the original Ruqa (case file of FIR) are being sent through the above said messenger C-II Mohinder Partap to the Investigating Officer.

Closing of DDR No. 13 at 8.20 P.M.

Sd/- Satpal Singh Station House Officer Police Station V.B. F.S.-I, Pb. at Mohali 16.3.2002

12. A bare perusal of the FIR reveals that the allegations against the petitioner are that on 26.4.2001, during the course of Sangat Darshan held at Vidhan Sabha Constituency, Nabha, the then Chief Minister, Punjab, directed the Financial Commissioner, Punjab, Rural Development and Panchayat Department in writing to purchase two Drag Line Machines for digging ponds. On 13.6.2001, the Financial Commissioner, Rural Development and Panchayat Department, put up a note at his own level for purchase of 20 machines instead of 2 as ordered by the then Chief Minister, however, the petitioner who was then Rural Development and Panchayat Minister, granted approval for purchase of 18

machines. Again a note was prepared by the Financial Commissioner, Development for purchase of 50 more machines, giving reference of telephonic talk and verbal orders of the then Chief Minister, Punjab. The machines were already purchased at the rate of Rs. 13,24,962/-. On 3.11.2001, again a note was prepared for purchase of 50 more machines, whereupon the petitioner passed order to purchase 35 machines. In furtherance to this, to operate the machines worth of crores of rupees, drivers etc. were recruited on temporary basis, whose services were later on terminated. The machines, which were purchased by spending crores of rupees in a shooting hurry are lying idle. Further allegation in the FIR is that similar type of machines were also purchased in the State of Haryana at a much less price i.e. at the rate of Rs. 10,35,000/- plus tax of Rs. 41,400/- per machine. In this manner, it has been alleged that loss of crores of rupees has been caused to the State exchequer. In this manner, the petitioner and other officers are alleged to have committed offences under Sections 420, 467, 471 and 120-B IPC read with Section 13(1)(d) read with 13(2) of the Act.

13. The provisions of Section 197 Cr.P.C. were engrafted with the avowed object of infusing fearlessness in rendering their services by the public servants so as to protect all their acts which are in furtherance of their official duties. Accordingly, these principles were developed to infuse confidence amongst the public servants and they were accorded legal protection for all their official acts. In that regard judgment of the Constitution Bench of Hon"ble the Supreme Court in the case of Matajog Dobey Vs. H.C. Bhari, , deserves special mention. However, it is equally true that in order to enjoy protection u/s 197 Cr.P.C. such a public servant must have committed the offence while acting or purporting to act as public servant. Such a public servant can be said to act or purporting to act in the discharge of his official duties only if his act is such as to lie within the scope of his official duties. Thus, a public servant neither act or purports to act as such when he receives or alleged to have received bribe although the act done by such a public servant may be of such a nature. A medical officer cannot be treated to have acted as public servant when he picks pocket of his patient or when he outrages the modesty of a female patient while examining them, although the act of medical examination itself may be such an act. It appears to be well settled that there has to be proximity between the official duty and the act alleged to have been committed in order to claim protection of Section 197(1) Cr.P.C. If there is no close proximity and the acts are distantly related to the official duty then protection contemplated by Section 197(1) Cr.P.C. would not be available. All these principles have been considered by Hon"ble the Supreme Court in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, . Hon"ble the Supreme Court has placed reliance on its earlier judgments in the cases of Bakhshish Singh Brar Vs. Gurmej Kaur and Another, ; P. Arulswami Vs. The State of Madras, ; Matajog Dobey 1956 CriLJ 140 (supra); Rakesh Kumar Mishra Vs. The State of Bihar and Others, ; and P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, . The following principles

could be deduced from the observations made by Hon"ble the Supreme Court:

(i) Protection is only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act.

(ii) If in doing public duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection.

(iii) It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. Act can be performed in discharge of official duty as well as in dereliction thereof.

14. When the aforementioned principles are applied to the facts of the present case, it becomes evident that by no stretch of imagination the allegations in the FIR levelled against the petitioner could be regarded as having any proximity with the official duties. A close reading of the FIR and the allegations made therein shows that a large number of drag line machines were purchased at the instance of the petitioner at an exorbitant price, which is alleged to have been paid by the State of Haryana for similar machines. Even the drivers were recruited on temporary basis whose services were later on terminated. The whole process of tender by the Chief Engineer at the instance of the petitioner is alleged to have been undertaken only with the intention to gain personal benefit and offences are alleged to have been committed under Sections 420, 467, 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Act. In fact, Hon"ble the Supreme Court in para 50 of the judgment in Parkash Singh Badal and Another Vs. State of Punjab and Others, has observed that "the offence of cheating u/s 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence". Therefore, the first argument raised by the petitioner falls to the ground.

15. Learned Special Judge, Ropar, in the impugned order dated 7.5.2007 (P-8) has specifically discussed the allegations levelled against the petitioner and he has also deduced the principles applied to the cases of Sarvshri Parkash Singh Badal and Sukhbir Singh Badal. It cannot be concluded that the impugned order lacks application of mind and, therefore, on that score it is not liable to be set aside. In any case, we have closely examined the contents of the FIR registered against the petitioner and we can safely come to the conclusion that no sanction for such allegations is required, as has already been concluded in the preceding para. In any case, in his capacity as a minister, the petitioner has to be regarded as a public servant, as has been held by Hon"ble the Supreme Court in the case of P.V. Narsimha Rao Vs. State (CBI/SPE), .

16. The last submission of Mr. Chopra that the police station at Mohali did not have any jurisdiction to deal with the allegations as every act has been alleged to be committed at Chandigarh, would also not survive as it has been dealt with in para 75 of the judgment of Hon"ble the Supreme Court in Parkash Singh Badal and Another Vs. State of Punjab and Others, , which refers to notifications dated 31.10.1994. 19.12.2002 and 17.11.2003. In para 76, it has further been noticed that the Court of Special Judge, in fact, was created by the State Government on 5.1.1990 and the notification was issued in consultation with the High Court.

As a sequel of the above discussion, we find no merit in the instant petition and the same is hereby dismissed. It is further clarified that the trial Court shall not be influenced by any observation made in this order by considering it as an expression of opinion on the merit of the controversy. In view of the fact that proceedings have remained stayed, the Special Judge, Ropar, is directed to proceed with the matter Lal expeditiously.