

(2016) 03 MP CK 0012

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1507/2015

Prabhu Lal Tatwal

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, Section 397, Section 401, Section 403, Section 482
Prevention of Corruption Act, 1988 — Section 13(1(d), Section 13(2), Section 19, Section 19(1), Section 19(3), Section 19(3)(a), Section 4</p>
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<div data-bbox="139 428 460 446" data-label="Text">
<p>Citation : (2016) 03 MP CK 0012</p>
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<div data-bbox="139 452 657 471" data-label="Text">
<p>Hon'ble Judges : S.R. Waghmare and Alok Verma, JJ.</p>
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<div data-bbox="139 477 365 494" data-label="Text">
<p>Bench : Division Bench</p>
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<div data-bbox="139 502 903 536" data-label="Text">
<p>Advocate : S.K. Vyas, Learned Senior Advocate and Atul Sreedharan, Learned Counsel, for the Appellant; Arvind Gokhale, Learned Counsel, for the Respondent</p>
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<div data-bbox="139 542 426 560" data-label="Text">
<p>Final Decision : Disposed off</p>
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<p>Judgement</p>
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<p>S.R. Waghmare, J.—1. By this revision petition under Section 397 read with 401 and 482 of the Cr.P.C. petitioner Prabhu Lal Tatwal is aggrieved by the order dated 28/10/2015 passed by the learned Special Judge, (Prevention of Corruption Act), Ujjain in Special Case No. 12/2004. The order admittedly was passed in consequence to the order dated 23.7.2015 in Criminal Revision No. 797/2015 preferred by the petitioner seeking remand. The remand was prayed for on three grounds that the relevant material was not placed before the Competent Authority. Whereas the Competent Authority has referred to the material so as to form the opinion whether the offence required sanction for prosecution. The petitioner has also filed another petition bearing Criminal Revision No. 96/2005 before this Court challenging the order dated 27.12.2004 passed by the Trial Court dismissing the objection filed by the petitioner with regard to the validity of sanction. The said revision petition has been dismissed by this High Court on 25.8.2011. The petitioner again preferred a Special Leave Petition No. 9999/2011 before the Apex Court and the matter was remanded to</p>
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<p>Page 1 of 6</p>
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the Trial Court to look into the validity of the sanction at the very outset. The Trial Court had however, on 10.2.2015 again held that the question of validity of sanction would be looked into at the stage of trial. The petitioner again preferred a petition bearing Criminal Revision No. 797/2015 against the said order dated 10.2.2015 before this High Court and the Court by order dated 23.7.2015 whereby specific directions were given to the Trial Court and again the Trial Court had dismissed the plea of the petitioner without complying with the directions given by this High Court. And hence, the present revision petition impugning order dated 28.10.2015 passed by the Trial Court.

2. Briefly stated the facts of the case in nutshell are that the present petitioner is an Assistant Engineer and an employee of the Municipal Corporation, Ujjain. The tenders for the construction of an administrative building were being processed and it was found that certain amount of money were sanctioned to the bid by offering rebate of Rs. 20 lacs. and in the year 1993 a complaint was filed before the Special Police Establishment (Lokayukta) and after involvement of several persons, they were found to be implicated along with the present petitioner for offence under Section 13(1(d) read with Section 13(2) of Prevention of Corruption Act (hereinafter referred as " the Act"). The D.I.G., Special Police Establishment (Lokayukta) vide letter dated 9.2.1996 sought common sanction under Section 19 of the Act for the joint prosecution of the accused persons including the present petitioner. The letter was addressed to the Principal Secretary, General Administration Department, Government of Madhya Pradesh.

Consequently, sanction was granted for prosecution of the petitioner vide resolution dated 27.8.1996 passed by the Standing of the Municipal Corporation Ujjain. Counsel submitted that in the matter of co-accused D.P. Tiwari, Administrator and one Shri D.L. Rangotha, Commissioner of the Municipal Corporation, Ujjain the State Government refused the sanction for the prosecution. He submitted that both these officers are the immediate officers and the sanction could not be granted. Whereas, respondent/State Government filed charge sheet against the present petitioner on 28.5.2004. Validity of the sanction was objected by the petitioner on 13/12/2004 before the Special Court Ujjain. The Special Judge, Ujjain had dismissed the objection holding that the validity of the sanction could always be looked into during the course of the trial. The petitioner has filed a revision viz. Criminal Revision No. 96/2005 on 25.1.2005 before this High Court. But the revision has also been dismissed by this Court on 25.8.2011 and against which the petitioner filed an appeal before the Hon''ble Supreme Court and the Apex Court by its order dated 19.2.2014 remanded the matter to the Special Court, Ujjain; with specific instructions to conduct proper enquiry and place all the material before the sanctioning authority. Thereafter the petitioner has moved an application on 24.5.2014 before the Special Judge, Ujjain for proper enquiry into the validity of the sanction passed by the respondent/State Government and also prayed for closure of the case. The respondents however, filed reply to the application stating that the sanction had already been granted by the Commissioner vide its order dated 30.7.1997. The

petitioner however, questioned the validity of the sanction order stating that the letter of the Commissioner dated 4.7.2014 was also said to be a sanction letter. Besides the resolution dated 27.8.1996 of the Standing Committee is not even on record. Counsel vehemently urged the fact that there was no opinion of the Commissioner and that the copy of the report of the respondent Lokayukta was incomplete as evident from the documents availed. Counsel also submitted that the fifth page was not available on the said report. The petitioner had also moved an application under Section 311 of the Cr.P.C. dated 20.4.2015 requesting the Trial Court to examine the sanctioning authority. However, the application was dismissed by the Special Judge holding that it was not necessary to examine the sanctioning authority to arrive at a finding of application of mind by the sanctioning authority. The application was dismissed on 10.6.2015. However, three instructions were given to the Trial Court on filing of the Criminal Revision No. 797/2015 before this High Court. In the reply to the petition the respondent had categorically submitted that the entire material regarding the sanction sought was sent to the Standing Committee for scrutiny and not the sanction order alone. And hence, the petitioner has filed application dated 5.10.2015 for the closure of the case against him. On 27.10.2015 again the petitioner filed written submission, despite which the impugned order dated 28.10.2015 has been passed by the learned Special Judge (P.C. Act) Ujjain.

3. Counsel for the petitioner has vehemently urged the fact the incomplete copies of the report were sent to the Committee of Municipal Corporation which was to decide the issue of sanction on the basis of letter dated 12.7.1996 numbered as 1095, written by Secretary of Nagar Palika Nigam, Ujjain to the Commissioner, Ujjain Nagar Palika Nigam. In this letter it has been mentioned that page 5 of the report of Special Police Establishment is missing. Counsel submitted that it was amply clear that the report of Lokayukta Police, scrutinized by the Secretary of the Standing Committee, was incomplete and the letter dated 14.5.1996 was never filed before the Hon"ble Supreme Court also. And hence, the petitioner has filed an application under Section 311 of the Cr.P.C. before the Trial Court to examine the sanctioning authority and it is the say of the petitioner that material collected during the course of the investigation along with the charge sheet was not actually produced before the Standing Committee from which the sanction was sought. And thus, the sanction cannot be said to be a legal sanction under Section 19 of the P.C. Act. Admittedly there was no application of mind on the part of the Sanctioning Committee while granting to prosecute the petitioner. Counsel prayed that the impugned order be set aside and the application under Section 311 of the Cr.P.C. be allowed. To bolster his submissions, Counsel relied on Nanjappa v. State of Karnataka : Criminal Appeal No. 1867 of 2012 whereby the Apex Court has held thus:

"The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in

terms of Clauses (a)(b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the Court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the Trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution."

4. Per contra, Counsel for the respondent/Lokayukta has vehemently opposed the submissions put forth by the Counsel for the petitioner. He submitted that this Hon"ble High Court vide Annexure P/1 had directed the respondents to hold proper enquiry to ensure compliance of order dated 19.2.2014 passed by the Hon"ble Supreme. And this Court had given three specific findings viz;

"(i) Whether all the relevant material was placed before the competent authority?

(ii) Whether the competent authority has referred to the same so as to form the opinion?

(iii) Whether the same constituted an offence requiring sanction for prosecution?"

The learned Special Judge has vide impugned order dated 28.10.2015 rejected the claim of the petitioner that the resolution No. 309 was passed granting sanction against the petitioner without application of mind. The Court has specifically held the letter No. 368 written by the Commissioner, Ujjain Nagar Palika Nigam to the Secretary, Ujjain Nagar Palika Nigam indicates that the report of Special Police Establishment was sent as it is also with the photocopy. The Special Judge has also considered the letter No. 783 written to Principal Secretary, General Administration Department by D.I.G., Special Police Establishment(Lokayukta) Bhopal which mentions enclosure of documents. This is on the record of the Trial Court and it mentions that the list of documents is enclosed. The Trial Court also relied on another letter written by Deputy Secretary, G.A.D. to Commissioner, Ujjain to take decision on the question of grant of sanction in respect of the petitioner and others. It is, therefore, the Commissioner, Ujjain wrote to the Secretary, Nagar Palika Ujjain to take steps for consideration of sanction vide letter No. 310 dated 22.6.1996 and the Court of Special Judge has also taken note of letter No. 309 which is a letter granting sanction in respect of the petitioner. And Counsel vehemently urged that there has been proper application of mind and the petitioner was unnecessarily picking holes in the administrative function of the Sanctioning Authority

Counsel vehemently urged that the petition is without merit and the same be dismissed as such; primarily because this is the third round litigation by the petitioner and the sanctioning authority had considered all the materials.

5. Counsel further submitted that even if the sanction was affected by

irregularity at the most it should be termed an irregularity and not to be an illegality. And hence, the sanction cannot be questioned at this stage. He also relied on the same judgement in the case of Nanjappa (supra). In the case of State of Goa v. Babu Thomas : , (2005) 8 SCC 130 the Apex Court has held that the absence of a valid sanction under Section 19(1) of the P.C. Act went to the very root of the prosecution case since the sanction in the said case was issued by an authority who did not have competence to do so and the Court therefore, passed order that the authority was without competence. However, the Apex Court reserved liberty to the competent authority to issue fresh orders, looking to the serious allegations issued against the accused. However, Counsel vehemently urged the fact that under Section 403 of the Cr.P.C. even when there is an acquittal there is no bar to retrial of the accused or this was considered on earlier occasion and the same objection cannot be raised in the present case at the time of final hearing if at all it was the case of invalid sanction order. Counsel submitted that the petitioner in his entire petition has not stated that what prejudice has been caused to him because of alleged irregularity of sanction. Therefore, also the revision petition deserves to be dismissed.

6. On considering the above submissions, I find that this Court had already twice dismissed petitions regarding the sanction granted by the Commissioner of the Municipal Corporation Ujjain being without application of mind.

Besides at the cost of repetition it is reiterated that the letter No. 783 by the D.I.G. Special Police Establishment Bhopal to the Principal Secretary mentions the report sent to the committee of Nagar Palika as one of the enclosures in the list of documents sent (in original) and this fact has been considered by the Special Judge at the time of passing the impugned order.

In this light it would be more appropriate to consider the case of Nanjappa (supra), whereby the Apex Court has held thus:

"That in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to Section 4, "error includes competence of the authority to grant sanction." The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny. A careful reading of Sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity."

And thus, if the order of the Special Judge cannot be reversed unless the petitioner is able to show that the order resulted in failure of justice which is not the case of the present petitioner since he has not stated that as to what prejudice has been caused to him because of alleged irregularities. Besides under Section 19(3)(a) of the P.C. Act as submitted by the Counsel for the petitioner merely on the ground of error, omission or irregularity of sanction the Court cannot reverse any finding or sentence passed by the Special Judge. Hence, without making any comment on merits of the case, this petition is disposed off granting liberty to the present petitioner to raise question of validity at the time of final argument or in appeal, if filed. No interference is called for in the impugned order passed by the Special Judge, Ujjain at this stage.

7. With the aforesaid observations, the present revision petition is disposed off to the extent herein above indicated.

C.c. as per rules.