
(2013) 07 AHC CK 0319
In the Allahabad High Court
Case No : Case No. 767 of 2013

Shashikant Prasad

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 83 ALLCC 215

Hon'ble Judges : Vishnu Chandra Gupta, J

Bench : Single Bench

Advocate : Nandit Srivastava and Tapeswar Kumar Maurya, for the Appellant;
Bireshwar Nath, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Chandra Gupta, J.—Short question for consideration before this Court in this petition is:- Whether Trial Court is competent to proceed with the case on the basis of deemed sanction to prosecute the accused, if prosecution sanction is not accorded by competent authority/State within the period of four months in terms of the direction issued by Apex Court in Vineet Narain and Others Vs. Union of India (UOI) and Another, .? Brief facts for deciding this petition u/s 482 Cr.P.C. are that Central Bureau of Investigation (for short "CBI") registered a case of criminal breach of trust, cheating, forgery, using forged documents as genuine, criminal conspiracy and criminal misconduct under sections 409, 420, 467, 468, 471, 120-B of Indian Penal Code (for short "IPC") and section 13(2) of Prevention of Corruption Act, 1988 (for short "PC Act") against Mohammad Syed Kasim Raza and fifteen others for the alleged food-grain scam. The CBI investigated the matter and submitted charge-sheet in this matter in the Court of Special Judge, Anti Corruption (West), U.P. Lucknow against the petitioner and others. CBI after conclusion of investigation asked for prosecution sanction to prosecute the petitioners and some other accused. The State Government granted sanction against some of the accused but no order has been passed in regard to prosecution sanction so far as the petitioner is concerned. CBI in this

case filed a copy of letter sent to the Chief Secretary, State of U.P. on 13.7.2012 by which sanction was sought against petitioner Sashikant Prasad. The Government has not taken any decision in regard to prosecution sanction so far as petitioner is concerned in spite of aforesaid latter. On account of inaction on the part of State Government, CBI submitted charge-sheet arising out of RC 0062010A0027/14.12.2012 in the Court of Special Judge, Anti Corruption (West), CBI, Lucknow against the petitioner and other co-accused under sections 120-B, 420, 468 and 471 I.P.C. And 13(2) read with section 13(1)(d) of P.C. Act. It was submitted by the learned Counsel for the petitioner that the charge-sheet has been submitted after registration of crime under the orders passed by the Division Bench of this Court at Lucknow on 30.12.2010 in Writ Petition No. 10503 of 2009 (M/B) (Vishwanath Chaturvedi v. Union of India). The charge-sheet was submitted in the Trial Court in the light of the judgment delivered in Vineet Narain and others v. Union of India and another, 1997 (Suppl.) ACC 195 (SC). wherein time limit was fixed by the Apex Court to take decision for grant or refusal of sanction to prosecute person concerned. The period fixed in Vineet Narain's case (supra), had already expired, but the Government has not taken any decision. Hence in this case the Court deemed that sanction has been accorded on account of default of State Government to take decision in the matter and issued process against accused including the petitioner to appear before Court vide order dated 4.12.2012. Aggrieved by the aforesaid order this petition has been filed.

2. Heard the learned Counsel for petitioner and the learned Counsel for CBI and also learned AGA.

3. It has been submitted. by the learned Counsel for the petitioner that the Apex Court in a recent matter (Special Leave to Appeal (Criminal) No. 5027 of 2013) considered the aspect of section 197 Cr.P.C and held that even in the case of a retired Government servant, sanction u/s 197 Cr.P.C. is also required. The Apex Court by an interim order stayed the prosecution of the petitioner and on the strength of this interim order it has been contended that to prosecute the Government servant sanction u/s 197 Cr.P.C. is also required. It is further submitted that in Vineet Narain's case (supra), the Apex Court issued certain directions and for implementation and suggested the Governments to carry out necessary amendment in the light of the directions in the statute book, but the legislature has not amended the law on the point of deemed sanction.

4. In recent case the Hon''ble Supreme Court in Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, . in paragraph 56 again requested the Parliament to make necessary amendment by introducing time limit u/s 19 of the PC Act. The relevant paras 55 and 56 of the said judgment are reproduced here-in below:

55. I may not be understood to have expressed any doubt about the constitutional validity of section 19 of the P.C. Act, but in my judgment the power u/s 19 of the P.C. Act must be reasonably exercised. In my judgment the Parliament and the appropriate authority must consider restructuring section 19

of the P.C. Act in such a manner as to make it consonant with reason, justice and fair play.

56. In my view, the Parliament should consider the Constitutional imperative of Article 14 enshrining the rule of law wherein "due process of law" has been read into by introducing a time limit in section 19 of the P.C. Act, 1988 for its working in a reasonable manner. The Parliament may, in my opinion, consider the following guidelines:

(a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant u/s 19 of the P.C. Act must be decided within a period of three months of the receipt of the proposal by the concerned authority.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit.

(c) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge sheet/complaint in the Court to commence prosecution within 15 days of the expiry of the aforementioned time limit.

5. It has been submitted by the learned Counsel for the petitioner that law laid down in Vineet Narayan's case (supra) has no binding effect in absence of any legislative amendment made in P.C. Act. It was further submitted that in Vineet Narain's case (supra), certain directions have been given by the Apex Court to CBI and Central Vigilance Commission (for short "CVC"). Direction No. 15 deals with time frame for according sanction which runs as follows:-

Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

6. In this regard paragraph 61 of the judgment of Vineet Narain's case (supra), is very important and so it is reproduced herein below:

61. In the result, we strike down Directive No. 4.7(3) of the Single Directive quoted above and issue the above directions, which have to be construed in the light of the earlier discussion. The Report of the Independent Review Committee (IRC) and its recommendations which are similar to this extent can be read, if necessary, for a proper appreciation of these directions. To the extent we agree with the conclusion and recommendations of the IRC, and that is a large area,

we have adopted the same in the formulation of the above directions. These directions require the strict compliance/adherence of the Union of India and all concerned.

7. In the light of this paragraph no room left to doubt that the direction given in Vineet Narain's case (supra), ought to have been strictly complied with by all concerned including State Government. Therefore, directions issued in Vineet Narain's case (supra), shall have the binding effect in the light of Article 141 of Constitution of India.

8. It was further submitted by the learned Counsel for the petitioner that the direction No. 15 was with regard to fix the limit, which has to be adhered to by all concerned but what would happen if it is not complied with? According to Counsel for petitioner the remedy would be of initiating proceeding of contempt and not to take it as deemed sanction to prosecute.

9. Sri Bireshwar Nath, learned Counsel appearing for CBI drew attention of this Court towards the judgment of Division Bench of this Court delivered in Writ Petition No. 10503 (M/B) of 2009 (Vishwanath Chaturvedi v. Union of India), wherein the Division Bench of this Court keeping in view the direction issued in Vineet Narain's case (supra), fixing time limit to accord sanction has held that in default of taking decision to accord sanction within the time fixed, the sanction shall be deemed to have been granted.

Paragraph 151 of the said judgment is reproduced herein below:

In view of above, we allow the writ petition subject to observation made and finding recorded hereinabove and issue the following directions for compliance not only in the interest of present controversy but to safeguard the future public interest till Act is appropriately amended (supra) by the Parliament:-

(i) The C.B.I. shall proceed with further enquiry not only with regard to Ballia, Lakhimpur and Sitapur but also with regard to Varanasi, Gonda and Lucknow District.

(ii) All those cases where the State agencies found that the food grains have been smuggled outside the State of U.P. or to other countries, immediately, they shall refer such cases to the C.B.I for further investigation.

(iii) It shall not be necessary for the C.B.I or State agencies to obtain sanction under the statutory provisions with regard to present controversy where from initial stage, prima facie intentionally, deliberately and in a planned manner, the foodgrains were lifted from godown for sale either in open market or to smuggle outside the State of U.P or to other countries.

(iv) Subject to exception above (supra), the Chief Secretary of the State of U.P is directed to ensure that not only in the present controversy but in all cases where State agencies or the C.B.I or other investigating agency moves an application for sanction under the Code of Criminal Procedure or Prevention of Corruption

Act, 1988 or any other law for the time being in force, a decision should be taken within a period of three months. In absence of any decision with due communication, it shall be deemed that the sanction has been accorded, charge-sheet shall be filed and the Trial Court shall proceed with trial to logical end in accordance to law.

(v) Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of such person shall be conducted and completed expeditiously. It is imperative to retain public confidence in the impartial working of the State agencies.

A message must be given by the investigating agencies keeping in view the concept of equality enshrined in the Constitution that, "Be you ever so high, the law is above you." Law must take its course to punish the guilty.

(vi) Directorate of Enforcement, Ministry of Finance, Government of India shall also proceed with search and seizure of assets, property, cash or kind earned under food scam under the Prevention of Money Laundering Act and Foreign Exchange Management Act or any other law time being in force expeditiously.

(vii) The State and the central agencies shall proceed with the investigation expeditiously and conclude the same within a period of six months. At the interval of every two months, they shall submit a status report to this Court henceforth till filing of the charge-sheet/report to Court concerned.

It shall be open to the C.B.I. and State agencies to proceed with investigation with regard to food scam not only up to the year 2007 but even beyond the said year in case some link evidence/material is found with regard to continuance of diversion of food under various schemes of the State and Central Government.

(viii) As and when a charge-sheet is filed, the Trial Court shall proceed with the Trial and conclude the same expeditiously and preferably within a period of one year.

Registrar General shall communicate the order passed by this Court and circulate to all Courts concerned and submit a compliance report within one month.

Registry shall send a copy of the present judgment to the Secretary, Law, Government of India as well as to the Principal Secretary, Law and Chief Secretary of the State of U.P. to consider for appropriate amendment in the Prevention of Corruption Act, 1988 in the light of observations, made in the body of judgment. Till the law is appropriately amended by the State of U.P. (State Amendment) or the Central Government, findings recorded and directions issued shall be followed by all investigating agencies and subordinate Courts of the State while dealing with corruption cases. Copy of the judgment shall also be provided to the Addl. Solicitor General of India as well as the Advocate General of the State for appropriate action. A copy shall also be sent to the Directorate of Enforcement, Ministry of Finance, Government of India for appropriate action in the light of the directions issued (supra).

The writ petition is allowed accordingly. No order as to costs.

In view of above, we allow the writ petition subject to observation made and finding recorded hereinabove and issue the following directions for compliance not only in the interest of present controversy but to safeguard the future public interest till Act is appropriately amended (supra) by the Parliament:-

(i) The C.B.I, shall proceed with further enquiry not only with regard to Ballia, Lakhimpur and Sitapur but also with regard to Varanasi, Gonda and Lucknow District.

(ii) All those cases where the State agencies found that the foodgrains have been smuggled outside the State of U.P. or to other countries, immediately, they shall refer such cases to the C.B.I for further investigation.

(iii) It shall not be necessary for the C.B.I or State agencies to obtain sanction under the statutory provisions with regard to present controversy where from initial stage, prima facie intentionally, deliberately and in a planned manner, the foodgrains were lifted from godown for sale either in open market or to smuggle outside the State of U.P or to other countries.

(iv) Subject to exception above (supra), the Chief Secretary of the State of U.P is directed to ensure that not only in the present controversy but in all cases where State agencies or the C.B.I or other investigating agency moves an application for sanction under the Code of Criminal Procedure or Prevention of Corruption Act, 1988 or any other law for the time being in force, a decision should be taken within a period of three months. In absence of any decision with due communication, it shall be deemed that the sanction has been accorded, charge-sheet shall be filed and the Trial Court shall proceed with trial to logical end in accordance to law.

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(vii) The State and the Central agencies shall proceed with the investigation expeditiously and conclude the same within a period of six months. At the interval of every two months, they shall submit a status report to this Court henceforth till filing of the charge-sheet/report to Court concerned.

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(viii) As and when a charge-sheet is filed, the Trial Court shall proceed with the trial and conclude the same expeditiously and preferably within a period of one year. Registrar General shall communicate the order passed by this Court and circulate to all Courts concerned and submit a compliance report within one month.

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The writ petition is allowed accordingly. No order as to costs.

10. Perusal of this paragraph reveals that unless the amendment is made by the Parliament in the light of Vineet Narain's case (supra), the concept of deemed sanction shall be there. The order dated 3.12.2010 passed by the Division Bench of this Court in the aforesaid writ petition was assailed by the State before Apex Court by filing a SLP (c) No. 11563 of 2011. The Apex Court while entertaining the appeal vide its order dated 18.4.2011 has passed the following interim order:-

... Ad-interim stay of the direction No. (iii) in para 155 and the second part of directions No. (viii) in para 155 requiring the reports to be submitted to the High Court in regard to every investigation at interval of two months.

In regard to directions No. (iv) in para 155 of the impugned order, the period three months mentioned therein shall be substituted by the period "six months"...

11. Perusal of it shows that the Apex Court has not stayed the operation of direction (iv) given in para 155 but simply extended period from three months to six months which shows that concept of deemed sanction has been accepted by the Apex Court. In Dr. Subramanian Swamy's case (supra). The Apex Court again reminded to the Parliament to do its job. The guide line No. 3 of para 56 deals with concept of deemed sanction.

12. As such if Investigating Officer asked for grant of sanction from the Government, after expiry of time limit fixed as above, the prosecuting agency or complainant may ask the Trial Court to proceed in the matter on the basis of deemed sanction.

13. At the same time it would be incumbent upon the Court that while exercising doctrine of deemed sanction the Trial Court must think and apply its mind to the facts of the case and then proceed in accordance with law. If the Court comes to the conclusion that on the basis of investigation conducted by the investigating agency or on the basis of the complaint made by the complainant that necessary ingredients of particular offence are not available and prima facie case is not made out then merely because investigating officer has submitted charge-sheet or complaint has been filed and the State Government has not taken any decision for grant of sanction within the time schedule fixed by Apex Court, it shall not be treated that Court may proceed with blind eyes and without forming an opinion of prima facie case to proceed. In absence of the sanction the responsibility of the Court increases because the safeguard u/s 19 of P.C. Act available to the public servant has been lifted by the act of the Court.

14. In view of the above facts and circumstances of the case and law propounded by the Apex Court no illegality or infirmity is found in the impugned order passed by the Trial Court taking cognizance in the matter to prosecute the accused person including petitioner.

15. In this matter the Trial Court after discussing the merit of the case, proceeded to summon the petitioner and the learned Counsel for the petitioner has not argued on merit of the case and pressed only point of deemed sanction, so no finding is required to be recorded by this Court at this stage on merit of the case. In view of the above, the petition sans merit and is dismissed.