(2006) 09 AHC CK 0225

In the Allahabad High Court

S.K. Awasthi APPELLANT

Vs

The State of U.P. and Others RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 320
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2007) CriLJ 382 : (2007) 5 RCR(Criminal) 786

Hon'ble Judges : Imtiyaz Murtaza, J;Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amar Saran, J.—Heard Shri S.K. Awasthi in person and learned Additional Government Advocate.

2. The petitioner, who was an Assistant Commissioner, Trade Tax (subsequently designated as Deputy Commissioner) has filed this writ petition for challenging the order dated 8.3.2006 sanctioning his prosecution u/s 197 of the Code of Criminal Procedure granted by the State Government for an offence under Sections 420/467/468/471/120-B IPC and consequent prosecution in case No. S.S.T. 5 of 2006 pending before the Fast Track Court No. 1, Kanpur Nagar.

3. Essentially the allegations in the sanction order were that prior to receipt of the Power of Attorney from Manni Lal Gupta, the proprietor of the firm Gupta Steel Traders Kanpur, 25 forms No. 31 were issued to the representative of the aforementioned firm Shri Ram Asray on different dates. The said proprietor disappeared and as a result of the illegal issuance of forms 31 by the petitioner in conspiracy with the aforesaid firm, a loss of Rs. 15,27,000/- was caused to the state exchequer.

4. The petitioner has contended that the sanction order needs to be set aside as it is in violation of the indemnity clause u/s 16 of the U.P. Trade Tax Act and that

under the said provision no suit, prosecution or other legal proceedings can lie against any government servant for anything done in good faith under this Act or the Rules thereunder.

5. The sanction order clearly shows that Form 31 had been issued in a collusive manner to the firm and the said act could not be said to be bona fide. In any case it is not open to this Court in writ jurisdiction to assess whether the unauthorized issuance of the forms to the absconding proprietor of the firm by the petitioner was mala fide or bona fide. These questions can only be appreciated during the trial of the case.

6. The second ground for challenging the order was that a letter had been issued by Shri T. George Joseph, I.A.S. which suggested that the petitioner''s prosecution in such situation was not desirable. Such a letter has no legal sanctity and it could not override the sanction order.

7. Another contention about the sanction order being violative of Article 14 21 and 320(c) of the Constitution of India has been raised and it is mentioned in the petition that only three persons including the petitioner have been selected for the prosecution, whereas others, such as A.K. Rai, R.C. Dixit and S.R.S. Srivastava, some of whom have distributed a larger number of forms to the dealers have not been prosecuted and this discrimination was not based on any rational criteria and was colorable.

8. Whether there was any material in the cases of these other persons to indicate that they had colluded with any dealers and simply because the Government has not chosen to prosecute them (if at all) provides no ground for quashing the sanction order against the petitioner.

9. Another contention of there being absence of hearing and violation of the principles of natural justice, is also not tenable because it has been held by the Apex Court in Superintendent of Police C.B.I. v. Deepak Chowdhary and Ors. 1995 SCC 1095 that grant of sanction is only an administrative function and even though the accused may be saddled with the liability of being prosecuted in a court of law, it is only for the sanctioning authority to consider the material against the accused to reach a satisfaction as to whether the relevant facts would constitute an offence, and then either to grant or to refuse sanction. The grant of sanction being an administrative act, the need to provide an opportunity of hearing to the accused before according sanction cannot arise.

10. The petitioner further submitted that the charges contained in the sanction order dated 8.3.2006 were baseless and related to Shri S.R.S. Srivastava and Shri A.N. Tripathi, who were working at the relevant time in Sector-IV, Kanpur when the petitioner had already been transferred and there was no iota of evidence about any criminal act under different sections of the Indian Penal Code and Prevention of Corruption Act against the petitioner.

11. It is also not open to the petitioner to raise these contentions at the time

when the sanction had been accorded against him. Whatever defence that the petitioner may have, he is free to raise the same at the trial at the appropriate stage.

12. In Gokulchand Dwarkadas v. The King AIR 1948 (35) PC 82, it has been held by the Privy Council that at the stage of according sanction all that required to be seen is that the sanction relates to the facts constituting an offence and if the same are not mentioned on the face of the sanction order (which is not the situation in the present case where the sanction order mentioned the facts) the prosecution must prove by extraneous evidence that the facts were placed before the sanctioning authority.

13. It has further been observed by the Apex Court in Superintendent of Police (CBI) v. Deepak Chowdhary (Supra) that all that has to be seen at this stage is whether the facts collected during investigation constituted an offence for which the sanction has been sought for and even the departmental exoneration by the disciplinary authority was irrelevant.

14. It is further mentioned in paragraph 7 of the aforesaid law report that the High Court cannot go into the merits or the culpability of the accused in the matter.

15. The same view has been taken by the Division Bench of this Court in Om Prakash v. State of U.P. and Ors. 2001 (42) ACC 744, wherein it has been held in paragraph 12 that questions of defence can only be raised during trial and not at the time when the sanction order is being examined.

16. The relevant extract from the aforesaid paragraph reads as under:

12. In the writ petition the entire effort of the petitioner has been to show that he has not misappropriated the funds and that the same had been utilized for official purpose. These are all questions which go to the merits of the case, namely, whether the charge against the petitioner that he misappropriated the public funds is established or not These are matters to be seen in the trial after the prosecution and the accused had the opportunity to lead evidence in support of their case. An order of sanction cannot be assailed or tested on the ground that the evidence does not establish the charge. This is the function of the court trying the case and not of the sanctioning authority.

17. In this view of the matter, there is no force in this petition. It is accordingly dismissed.

18. However, there shall be no order as to costs.