
(1992) 05 DEL CK 0007

In the Delhi High Court

Case No : Criminal Revision Appeal No. 1 of 1992

State (Central Bureau of Investigation)

APPELLANT

Vs

Lachmandas Gupta and Others

RESPONDENT

Date of Decision : 18-05-1992

Acts Referred:

Citation : (1992) CriLJ 3555 : (1992) 2 Crimes 790 : (1992) 23 DRJ 330 : (1993) 1 RCR(Criminal) 301

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : S. Lal and S. Kohli, for the Appellant;

Judgement

Usha Mehra, J.

(1) Central Bureau of Investigation (thereinafter called the appellant) registered corruption cases against the present four respondents u/s 120-B Indian Penal Code . and 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. During the investigation the appellant could not collect sufficient evidence to establish criminal conspiracy and abuse of official position by the respondents. In view of lack of evidence the appellant submitted a report u/s 173 Cr. P.C. before the Special Judge, Delhi for closure of the case.

(2) The Special Judge, Delhi by the impugned order rejected the request of the appellant and directed that at the first instance the prosecution should approach the concerned sanctioning authority before coming to the Court and further held that the report u/s 173 Cr. P.C. was premature and Therefore not acceptable.

(3) It is against the impugned order dated August 16, 1991 that the present criminal revision has been preferred by the appellant inter alias on the ground that for filing a report u/s 173 Cr. P.c. for closure of the case, no sanction of the sanctioning authority is required.

(4) In order to appreciate the contention of the appellant, it is worthwhile to

refer to some of the relevant provisions. The prevention of Corruption Act, 1947 has been amended by Act No. 49 of 1988. The Act was amended to make it more effective by widening the coverage and by strengthening the object. But so far as the scheme of the Act is concerned, there is in fact no change and that has almost remained intact. Section 6(1) of the Prevention of Corruption Act 1947 (hereinafter called the Act) reads as under:-

SECTION 6(1)-: "No Court shall take cognizance of an offence punishable u/s 161 (or section 164) or section 165 of the Indian Penal Code or under sub-section (2) (or sub-section 3A) of section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction."

(5) The Prevention of Corruption Act, 1988, Section 19(1) also provides previous sanction for prosecution in the case of a person employed in connection with the affairs of the Union, State Government or other authority and is analogous to section 6(1) of the Prevention of Corruption Act, 1947 except clause 19 (3) which provides that on the ground of irregularity of sanction, no finding of the court can be reversed.

(6) The policy underlying Section 6 or u/s 19 and similar sections, is that there should not be unnecessary harassment of public servants. The object is to save the public servant from harassment of malicious prosecution. Valid sanction is a prerequisite to the taking of cognizance of the offences. In the case of *R.S. Nayak v. A.R. Antulay* (1984) SCC 172 Supreme Court held that a trial without a valid sanction where one is necessary u/s 6 is a trial without jurisdiction by the Court. The question for determination in this Criminal Revision is not the validity or invalidity of the sanction. The question raised by the appellant is whether the sanction from the sanctioning authority is a prerequisite for filing a final report u/s 173 Cr. P.C. even when the prosecution on account of lack of evidence is not in a position to charge the respondents with the offence? Can the Special Judge force the appellant to obtain sanction particularly when appellant is not asking the Court to take cognizance of the offence as there is no sufficient material to link the respondent with the offence. In the case of *Abhinandan Jha and Others Vs. Dinesh Mishra*, , Supreme Court was dealing with the power of the Magistrate u/s 173 of the Code of criminal Procedure.

(7) In that case Dinesh Mishra lodged a First Information Report that he saw a thatched house, of one Uma Kant Misra, situated on the northern side of the house, burning, and the petitioners herein, running away from the scene. The police made an investigation and submitted what is called a final report, u/s 173(1) of the Code, to the effect that the offence complained of, was false. The Sub-divisional Magistrate received this report on July 13, 1965, but in the meanwhile, the respondent had filed what is termed a protest petition, challenging the correctness of the report submitted by the police. The Magistrate after perusing the police diary directed the police to submit a charge-sheet against the petitioners, It is this order of the Magistrate which was challenged. Patna High Court upheld the order of the Magistrate, but the Supreme Court

after observing various provisions of the Code of Criminal procedure held that the Magistrate had no power to call upon the police to submit a charge sheet. It was observed that there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet. When they have sent a report u/s 169 of the Code, that there is no case made out for sending up an accused for trial, the functions of the Magistrate and the police are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot certainly impinge upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view. The investigation, under the Code, takes in several aspects and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police is the final step in the investigation, and final step is to be taken only by the police and by no other authority.

(8) Mr. Lal appearing for the appellant contended that this authority relied by the learned Special Judge in fact helps the appellant. It is the decision of the investigating agency to form an opinion as to whether any case is made out or not and if that investigating agency comes to the conclusion on account of lack of material or no sufficient material, linking the respondents with the offence alleged then the final decision is to be formed by the investigating agency.. By directing to obtain sanction even (or submitting final report the Special Judge has gone beyond the scope of section 6(1) as well as the mandate given by Supreme Court in the case of Abhinandan Jha.

(9) Mr. Lal further contended that there cannot be any quarrel with the proposition of law that the Special Judge has the power, on the material disclosed before him, to give direction to further investigate the matter on certain points as envisaged u/s 173(8) of the Code. But the report of the appellant has not been rejected on this account nor the Special Judge has given any direction for holding further investigation on any particular aspect of the case. The report in fact has been rejected by the impugned order on account of lack of sanction by the sanctioning authority. I find force in the submission of Mr. Lal. The point involved in this case was not at issue before the Supreme Court in the case of Abhinandan Jha and others (supra). There cannot be any dispute that the provision for sanction is a most salutary safeguard. Calcutta High Court in the case of Indu Bhusan Chatterjee Vs. The State, observed that the sanctioning authority is placed somewhat in the position of a sentinel at the door of criminal Courts in order that no irresponsible or malicious prosecution can pass the portals of the Court of Justice. In order to safeguard the reputation & interest of the person, it is essential that a person charged with the responsible duty of granting sanction, which is a duty of deciding whether or not the credit and reputation of another citizen should be put in peril by means of a criminal

prosecution. Should bring to the discharge of their duty a sense of responsibility required to examine the relevant material. Sanctioning authority will exercise this right when the prosecution lay the material before it at the time of seeking sanction. But if the Investigating Agency finds that there is no material at all or there is a lack of material connecting the person with the offence then the Section 6(1) does not stipulate that the Investigating Agency should approach the sanctioning Authority for obtaining sanction to drop the investigation. The reading of Section 6 as well as of Section 19 does not indicate that in a case of closure prosecution must also obtain sanction from the sanctioning authority.

(10) Mr. Lal has brought to my notice a decision of this court in the case of State s. shri Raj Kumar Jain, Criminal Revision No. 171 of 1991 decided on January 24, 1992. While dismissing the revision, the Court observed that the Special Judge in the circumstances of that case was justified in giving the direction to the Investigating Officer to hold further investigation. In that case the point at issue was not whether for closure of the case sanction was necessary. In the peculiar facts and circumstances of that case where material was there but the Investigating Officer instead of investigating the matter further filed the report for closure. The learned Special Judge in the facts of that case directed that further investigation be carried out. As already observed above there is no quarrel with this proposition of law nor it is disputed by the counsel for the appellant that the learned Special Judge has authority to give such a direction. Therefore the observations in Raj Kumar Jain's case are not applicable to the facts of this case. The intention of the legislature for obtaining sanction for prosecution from the competent authority is to protect the public servant against malicious prosecution. But when the prosecuting agency finds that there is no material, even then asking it to approach the Sanctioning Authority is nothing but an effort in futility. To my mind the bare reading of Section 6(1) makes it clear that for final report of closure sanction is not required. In arriving at this conclusion I am supported by the decision of Patna High Court in the case of Pancham Singh Vs. The State, , where the power of the police was challenged on the ground that the police was not competent to submit any charge-sheet against the petitioner in the absence of the previous sane corporation required by Section 6 of the Prevention of Corruption Act. Patna High Court observed that the said section lays down that no Court shall take cognizance of an offence punishable under Sections 161,164 or section 165 of the Indian Penal Code or under sub-section (2) of section 5 of the Prevention of Corruption Act alleged to have been committed by a public servant, except with the previous sanction of the authority mentioned in clauses (a),(b)& (c) as the case may be of Section 1) of that Section.

(12) The bar contained in this section is to the taking of cognizance of an offence by a Court and not to the institution of a police case or the submission of a final form by the police u/s 173 of the Code. I am in respectful agreement with the observation of the Patna High Court, that a previous sanction is necessary for the purposes of prosecuting or for filing a charge-sheet but is not necessary for the

purposes of filing a final report u/s 173 of the Code as in this case. Mr. Lal rightly pointed out that obtaining sanction is not a part of further investigation because the sanction is always obtained when the investigation is complete and there is sufficient evidence to prosecute the accused in the Court of law.

(13) For the above reasons. I set aside the impugned order and remand the case to the Special Judge for reconsidering the final report u/s 173 Cr. P.C.