

(2016) 03 RAJ CK 0044

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 1103 of 2013.

State of Rajasthan

APPELLANT

Vs

Om Prakash Badgujar and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 19

Citation : (2016) 2 WLN 217

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Arjun Singh Rathore, P.P, for the Appellant; Harish Purohit, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J. - By way of this misc. petition, the State of Rajasthan has approached this Court being aggrieved of the order dated 28.9.2012 passed by the learned Special Judge, (Prevention of Corruption Act) (Sessions Court), Udaipur in Sessions Case No.149/2010 whereby, the learned Special Judge allowed the application filed by the accused respondents under Section 19 of the Prevention of Corruption Act and dropped the proceedings holding that since, no prosecution sanction was available on the record, the prosecution of the respondents in the case involving the offence under the Prevention of Corruption Act was impermissible.

2. I have heard the arguments advanced by the learned counsel for the parties and have gone through the impugned order.

3. The learned trial Court appears to have been unnecessarily swayed by the observations made by this Court in S.B. Cr.Misc. Bail Application No.4502/2010 decided by this Court on 20.7.2010 in which order, this Court with reference to the case diary, noted that till the date of passing of the order, no sanction order was available on the record of the case. As against this, the learned Public

Prosecutor submits that the sanction order dated 31.12.2009 is available on the record. The fact regarding grant of prosecution sanction is duly mentioned in the charge-sheet. Thus, he submits that the trial Judge was totally unjustified in dropping the proceedings of the criminal case which as per the learned Public Prosecutor, is as a result of the misreading of the record.

4. Shri Harish Purohit, learned counsel for the respondents frankly concedes that this Court while granting anticipatory bail to the accused, only observed that till the passing of the order, the sanction order was not available on the case diary. However, he is not in a position to deny the fact that the matter was pending before the competent authority for grant of sanction and that before filing the charge-sheet, sanction was duly accorded to prosecute the respondents accused Om Prakash Badgajar and Shyam Singh Tamboli.

5. In this background, this Court is of the opinion that the order passed by the learned Special Judge accepting the application filed by the respondents under Section 19 of the Prevention of Corruption Act and dropping the proceedings is absolutely absurd and cannot be sustained. The charge-sheet having been filed after acquiring sanction to prosecute the accused, the trial Court was not justified in dropping the proceedings by ignoring the documents available on the record in reference to certain observations made by this Court in an interlocutory bail order. It is quite possible that when this Court examined the case diary in connection with the above bail application, the sanction order dated 31.12.2009 passed by the competent authority for prosecuting the respondents might be in the communication channels and had not been received by the Investigating Officer. The fact that the prosecution sanction was duly accorded on 31.12.2009 is not disputed by the learned counsel for the respondents. There is a presumption regarding the correctness of the act done by a public servant in the discharge of the official duties.

6. Thus, the finding recorded by the learned trial Court in its order dated 28.9.2012 that no sanction was accorded by the competent authority to prosecute the respondents accused is factually incorrect.

7. The misc. petition thus deserves to be and is hereby allowed. The impugned order dated 28.9.2012 passed by the learned Special Judge (Prevention of Corruption Act) (Sessions Court), Udaipur is quashed and set aside. The proceedings of the case shall be restored and continued from the stage at which, the order dated 28.9.2012 was passed.

8. Record be sent back to the trial Court. The trial Court shall restore the proceedings as directed above and conclude the same as early as possible.