
(2015) 03 SC CK 0133

In the Supreme Court Of India

Case No : Civil Appeal No. 3024 of 2015 (Arising out of Special Leave Petition (Civil) No. 2953 of 2014)

The Director, Central Bureau of Investigation and Others

APPELLANT

Vs

Ashok Kumar Aswal and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2015) 2 RCR(Criminal) 510 : (2015) 7 SCALE 131

Hon'ble Judges : Ranjan Gogoi, J;N.V. Ramana, J

Bench : Division Bench

Advocate : Pinky Anand, A.S.G., Guru Krishnakumar, Senior Advocate, P.K. Dey, Sushma Manchanda, M. Khairati, B. Krishna Prasad, B.V. Balram Das and Kritika Sachdeva, for the Appellant; Vibha Datta Makhija, Senior Advocate, Aditya K. Dubey, Rajesh Pandey, Disha Vaish

Final Decision : Dismissed

Judgement

1. Delay condoned. Leave granted.
2. The challenge herein is against the order dated 11th January, 2013 passed by the High Court of Delhi in a writ proceeding registered as W.P. (C) No. 578 of 2010 by which the Order dated 21st October, 2009 granting sanction for prosecution of the Respondent No. 1 - Ashok Kumar Aswal has been interfered with by the High Court. Aggrieved, the Central Bureau of Investigation (hereinafter referred to as "the CBI") and Union of India have filed the present appeal.
3. We have heard the learned Counsels for the parties.
4. The facts that would be required to be noticed lie within a short compass and may be enumerated as hereunder. As far back as in the year 2004 the CBI had registered RC No. BA/1/2004/A0031 on the complaint of one Khalik Chataiwala

against one Rajeev Agarwal, Commissioner, Central Excise, Panvel and the Respondent No. 1 Ashok Kumar Aswal, who was then working as the Assistant Commissioner, Central Excise.

5. The complainant had alleged that a demand for bribe to settle certain central excise cases against two companies was made by the accused and that the same was paid and accepted.

6. It appears that the CBI submitted a report recommending launching of prosecution against both the Officers under different provisions of the Indian Penal Code, 1860 (hereinafter referred to as "the Indian Penal Code") as well as the Prevention of Corruption Act, 1988. The CBI had also recommended regular departmental action against the said two officers. While the matter was under process, there appears to have been some difference of opinion, at certain levels, as to whether Sanction for prosecution should be granted against both the Officers or against Rajeev Agarwal alone. Similarly, there was difference of opinion as to whether a departmental proceeding for imposition of a major or a minor penalty should be instituted. It also appears that on 11th September, 2007 sanction for prosecution of Rajeev Agarwal was accorded by the Competent Authority and in the proceedings filed before the learned trial Court the Respondent No. 1 was also shown as accused and sanction for prosecution of the Respondent No. 1 was stated to be awaited. While the matter was so situated, the learned trial Court discharged the Respondent No. 1 as, admittedly, at that point of time there was no sanction accorded for his prosecution.

7. Subsequently, the matter concerning sanction for prosecution of the Respondent No. 1 was taken up and eventually sanction was accorded in the File by the Finance Minister on 8th August, 2009 on the basis of which a formal order granting sanction was issued on 12th August, 2009. It also appears that on 14th September, 2009 a Corrigendum was issued to effect certain corrections in the sanction order dated 12th August, 2009 whereafter another sanction order (revised sanction) was issued on 21st October, 2009. It also appears that in the letter of the concerned Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, communicating the Sanction Order dated 21st October, 2009 to the Appellant, it has been mentioned that the earlier sanction order dated 12th August, 2009 and the corrigendum thereof dated 14th September, 2009 had been superseded.

8. The Delhi High Court on consideration of the matter took the view that the grant of sanction in the instant case by the Competent Authority was at the behest of the CBI and the same does not disclose a fair and independent application of mind. The High Court also took the view that the subsequent Sanction Order dated 21st October, 2009 was without the approval of the Sanctioning Authority. On the aforesaid two grounds, the High Court thought it proper to interdict the order dated 21st October, 2009 granting sanction for prosecution of the Respondent No. 1.

9. Ms. Pinky Anand, learned Additional Solicitor General appearing for the Appellants, has placed before the Court the Original Records pertaining to the matter including the nothings in the File to reiterate that in the instant case there was no question of any undue pressure being exerted on the Sanctioning Authority by the CBI or any other body or authority. Learned Additional Solicitor General has also contended, on the basis of the averments made in the pleadings as well as on the basis of the contents of the Original Record, that though the Corrigendum dated 14th September, 2009 did not have the approval of the Sanctioning Authority, such approval was not necessary inasmuch as what was sought to be corrected were mere typographical errors in the Sanction Order dated 12th August, 2009. The said corrigendum did not introduce any variation or modification of the terms of the grant of sanction by the order in the File dated 8th August, 2009 and the formal order dated 12th August, 2009. Learned Additional Solicitor General has also contended that on the basis of the records placed it clearly transpires that at no point of time earlier than 8th August, 2009 sanction was refused so as to lend support to the contention advanced on behalf of the Respondent No. 1 that there was any review of the decision not to grant sanction.

10. Learned Additional Solicitor General has further submitted that the present is a case where sanction has been granted and, therefore, on the authority of the decisions of this Court in Parkash Singh Badal and Another Vs. State of Punjab and Others, AIR 2007 SC 1274 : (2007) CLT 567 Supp : (2007) 1 JT 89 : (2006) 13 SCALE 54 : (2007) 1 SCC 1 : (2006) 10 SCR 197 Supp : (2007) AIRSCW 1415 : (2006) 8 Supreme 964 and Dinesh Kumar Vs. Chairman, Airport Authority of India and Another, (2011) 13 SCALE 132 , the High Court could not have interdicted the decision to grant sanction at the threshold. At best, the High Court could have left the matter for determination in the course of the trial.

11. Controverting the submissions advanced, Ms. Vibha Dutta Makhija, learned Senior Counsel appearing for the Respondent No. 1 has strenuously contended that different authorities dealing with the matter, including the Central Board of Excise and Customs (CBEC), at different points of time, had taken the view that in the facts of the case grant of sanction would not be justified. Therefore, the subsequent grant of sanction by the Finance Minister is a review of the order or decision earlier taken. Learned Counsel has also submitted that the CBI in the present case had persisted with the issue of grant of sanction against the Respondent No. 1 and it is at the behest of the said body that sanction was eventually granted. Learned Counsel had submitted that admittedly the Corrigendum dated 14th September, 2009 did not have the approval of the Finance Minister. It is also pointed out that in the letter dated 21st October, 2009 issued by the Under Secretary to the Government of India forwarding the sanction order dated 21st October, 2009 to the Appellant it is mentioned that the earlier Sanction Order dated 12th August, 2009 and Corrigendum thereof dated 14th September, 2009 have been superseded. It is, therefore, contended that both the Corrigendum dated 14th September, 2009 and Sanction Order dated

21st October, 2009 are non-est in law. Finally, learned Counsel has submitted that enormous prejudice will be caused to the Respondent No. 1 if the prosecution on the basis of an ex facie invalid sanction is allowed to continue. The interference made by the High Court, therefore, is appropriate. In this regard, reliance has been placed on a judgment of this Court in *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, AIR 1997 SC 3400 : (1997) CriLJ 4059 : (1997) 3 Crimes 301 : (1997) 7 JT 695 : (1997) 5 SCALE 667 : (1997) 7 SCC 622 : (1997) SCC(L&S) 1784 : (1997) 3 SCR 705 Supp : (1997) AIRSCW 3478 : (1997) 8 Supreme 178 .

12. We have considered the submissions advanced. We have also examined the records-in-original placed before us. Having perused the said records we do not find that at any earlier point of time sanction was refused by the Competent Authority for prosecution of the Respondent No. 1 - Ashok Kumar Aswal. There is no dispute that the Competent Authority to grant sanction in the present case is the Finance Minister. Before the matter reaches the Finance Minister, naturally, it has to be processed at different levels and what we find from the nothings in the Original File is that certain authorities at different levels may have taken one view or the other of the matter. All such views which were earlier recorded in the file nothings were placed before the Finance Minister by cataloging the events in chronological order. It is on a consideration of the totality of the facts including the manner in which the matter had been processed at different levels, that the Finance Minister eventually accorded his approval for grant of sanction on 8th August, 2009. The file, in fact, had not reached the Finance Minister at any earlier point of time. We also do not find from the records in-original placed before us any indication of the exercise of any overt or unjustified pressure on the part of any authority on the Sanctioning Authority so as to sustain the argument advanced to the said effect on behalf of the Respondent No. 1. We have also looked into the relevant part of the original record with regard to the corrigendum issued and on a careful study of the contents of the said corrigendum and the context in which it has been made what we find therefrom is that the corrigendum dated 14th September, 2009 does not in any way affect the terms or conditions of the grant of sanction as made by the Finance Minister in the File on 8th August, 2009 on the basis of which the formal order dated 12th August, 2009 came to be issued.

13. In fact, all that the corrigendum does is to split up the alleged "reduced" demand of bribe into two separate amounts of Rs. 25 lakhs each instead of a lump-sum amount of Rs. 50 lakhs as mentioned in the Sanction Order dated 12th August, 2009. The corrigendum also dispenses with certain provisions of the Indian Penal Code. The aforesaid exclusion of some of the specific provisions of the Indian Penal Code really works to the benefit of the Respondent No. 1 accused and not to his prejudice. If the corrigendum does not, as we are inclined to hold, affect the substratum of the Sanction granted initially on 8th/12th August, 2009 we will have no reason to take the view that initial Sanction Order has in any way been modified or altered so as to require the approval of the

Finance Minister once again. Surely for correction of typographical errors the file need not have traveled all the way upto the Finance Minister, once again. The fact that the said Sanction Order has been superseded may have been mentioned in the letter of the Under Secretary communicating the said Order dated 21st October, 2009 to the Appellant. However, what is of relevance is that the said fact of super session is not supported by reference to any authority or decision in the File and, therefore, would not deserve any further attention of the Court. All the above apart, time and again, this Court has laid down that the validity of a Sanction Order, if one exists, has to be tested on the touchstone of the prejudice to the accused which is essentially a question of fact and, therefore, should be left to be determined in the course of the trial and not in the exercise of jurisdiction either Under Section 482 of the Code of Criminal Procedure, 1973 or in a proceeding Under Article 226/227 of the Constitution.

14. On the view that we have taken we have to hold that the High Court was not at all justified in passing the impugned order and in interfering with the sanction order dated 21st October, 2009. We, therefore, set aside the order of the High Court; allow this appeal and direct that the trial against the Respondent No. 1 - Ashok Kumar Aswal will now proceed in accordance with law. As the offences alleged are of the year 2004, we direct that the learned trial Court will initiate and complete the trial within an outer limit of 12 months from the date of receipt of a copy of this order. The appeal is allowed as indicated above.