The State Of Punjab vs Partap Singh Verka on 8 July, 2024

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

2024 INSC 483 REPORTAB

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1943 OF 2024
(ARISING OUT OF SLP (CRL) No. 6006 OF 2019)

THE STATE OF PUNJAB …APPELLANT

Versus

PARTAP SINGH VERKA …RESPONDENT

JUDGMENT

SUDHANSHU DHULIA, J.

1. The State of Punjab is in appeal here against the judgment and order dated 02.08.2018, passed by the High Court of Punjab and Haryana setting aside the order dated 20.05.2017 of the Trial Court which had summoned respondent Pratap Singh Verka under Section 319 of Criminal Procedure Code (hereinafter referred to as 'CrPC') to face the trial for the offences under sections 7/13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'P.C Act'). Date: 2024.07.08 18:35:25 IST Reason:

2. Brief facts of the case are that on 25.04.2016, an FIR u/s 7/13 (2) of the P.C Act was lodged against Respondent- Dr. Partap Singh Verka and another co-accused i.e. 'Vikas', at Police Station Vigilance Bureau, Amritsar. It was disclosed in the FIR that the present respondent was working as a doctor in Guru Nanak Hospital at the relevant point of time when complainant-Gurwinder Singh sought treatment for his brother who was in jail. The complainant alleged that on 20.04.2016 the Respondent took a bribe of Rs.10,000 from the complainant through the accused-Vikas for admitting the complainant's brother in his hospital, as he was otherwise reluctant to treat a prisoner. Again on 24.04.2016, the respondent demanded another Rs.10,000/- to keep the patient in the hospital for further treatment and asked the complainant to give that amount to the other accused i.e. 'Vikas' in two installments of Rs.5,000 each. The complainant, however, contacted the

Vigilance Bureau instead and the officials of Vigilance laid a trap to catch the culprits. On 25.04.2016, the accused-Vikas (ward attendant) was caught red-handed in the parking lot of the hospital receiving Rs.5000 from the complainant. On the same day, the respondent was also arrested from his office.

3. In May 2016, both the accused were released on bail. A chargesheet dated 22.12.2016 was later filed only against the other accused-Vikas. The present respondent was not named in the charge-sheet as an accused.

4. However, during the course of the trial, the complainant-

Gurwinder Singh deposed as PW-1 on 12.05.2017 and in his examination-in-chief, he said that it was the present Respondent who had demanded the bribe and it was on his behalf that the other accused, Vikas had received the bribe amount. The trial Court deferred the hearing on the request of the Public Prosecutor of the State who then wanted to move an application under Section 319 of the CrPC for summoning the respondent as an accused. Consequently, an application was moved by the State on 18.05.2017 under Section 319 CrPC, which was allowed on 20.05.2017 and Dr. Partap Singh Verka was summoned to face the trial.

5. The accused Respondent challenged this order of the Trial Court before the High Court which has set aside the order of the Trial Court, as sanction under Section 19 of the P.C Act had not been taken.

6. We have heard the counsel for the Appellant-State as well as for the Respondent and have also perused the material before us.

7. There is no dispute on the fact that the Respondent is a 'Public Servant' as defined under Section 2(c) of the P.C Act. Section 19 of the P.C Act puts a bar on Courts to take cognizance of an offence under Sections 7, 11, 13 and 15, without the previous sanction of the State Government, Central Government or the competent authority, as the case may be. The relevant portion of Section 19 of the P.C Act is as follows:

> "19. Previous sanction necessary for prosecution.— (1) No court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)—
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> (a) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
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> (b) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State

Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office."

8. While allowing the Section 319 (CrPC) application moved by the Public Prosecutor, the Trial Court did not consider the question of sanction. Before this Court the stand of the State of Punjab is that there was no need for this sanction as cognizance was taken in the Court itself under Section 319 of the CrPC.

In Dilawar Singh v. Parvinder Singh, [(2005) 12 SCC 709], this Court while explaining the provisions of Section 19 of the P.C Act and also the provisions under Section 319 Cr.PC., said as under:

"This section creates a complete bar on the power of the court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this sub-section. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant..." (para 4) Further, in regard to the relation between Section 19 of P.C Act and the provisions of cognizance under CrPC, this Court laid down the law in the following words:

".....the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 CrPC. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 CrPC if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person." (para 8)

9. In Paul Varghese v. State of Kerala, (2007) 14 SCC 783, this Court again reiterated this provision and held:

"As has been rightly held by the High Court in view of what has been stated in Dilawar Singh case [(2005) 12 SCC 709 : (2006) 1 SCC (Cri) 727] the trial court was not justified in holding that Section 319 of the Code has to get preference/primacy over Section 19 of the Act, and that matter stands concluded." (para 4)

10. The words and phrases used in Section 19(1) of the P.C Act itself make it evident that the provision is mandatory in nature. In Surinderjit Singh Mand v. State of

Punjab (2016) 8 SCC 722, although this court was dealing with the issue of sanction under Section 197 of CrPC but while doing so it referred to various judgments including the two cases discussed above and emphasized the provision of prior sanction:

"The law declared by this Court emerging from the judgments referred to hereinabove, leaves no room for any doubt that under Section 197 of the Code and/or sanction mandated under a special statute (as postulated under Section 19 of the Prevention of Corruption Act) would be a necessary prerequisite before a court of competent jurisdiction takes cognizance of an offence (whether under the Penal Code, or under the special statutory enactment concerned). The procedure for obtaining sanction would be governed by the provisions of the Code and/or as mandated under the special enactment. The words engaged in Section 197 of the Code are, "... no court shall take cognizance of such offence except with previous sanction...".

Likewise sub-section (1) of Section 19 of the Prevention of Corruption Act provides— "19. Previous sanction necessary for prosecution.— (1) No court shall take cognizance ... except with the previous sanction ...." The mandate is clear and unambiguous that a court "shall not" take cognizance without sanction. The same needs no further elaboration. Therefore, a court just cannot take cognizance without sanction by the appropriate authority. Thus viewed, we find no merit in the second contention advanced at the hands of the learned counsel for the respondents that where cognizance is taken under Section 319 of the Code, sanction either under Section 197 of the Code (or under the special enactment concerned) is not a mandatory prerequisite."

11. It is a well settled position of law that courts cannot take cognizance against any public servant for offences committed under Sections 7,11,13 & 15 of the P.C. Act, even on an application under section 319 of the CrPC, without first following the requirements of Section 19 of the P.C Act. Here, the correct procedure should have been for the prosecution to obtain sanction under Section 19 of the P.C Act from the appropriate Government, before formally moving an application before the Court under Section 319 of CrPC. In fact, the Trial Court too should have insisted on the prior sanction, which it did not. In absence of the sanction the entire procedure remains flawed. We are completely in agreement by the decision of the High Court and therefore are not inclined to interfere with the impugned order passed by the High Court and accordingly this appeal is hereby dismissed.

Pending application(s), if any, shall also stand disposed of.

.....J. [SUDHANSHU DHULIA] .....J. [PRASANNA B. VARALE]
New Delhi July 8, 2024