Vinod Kumar Asthana vs Central Bureau Of Investigation on 11 October, 2022

Author: Yogesh Khanna

Bench: Yogesh Khanna

$~62
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 643/2019 & CRL M.A.Nos.4589/2019, 11013/2
   16410/2022
   VINOD KUMAR ASTHANA ..... Pe
   Through: Mr.Maninder
   Advocate with M
   Ms.Aekta Vats,
   Mr.Varun Jain,
   Mr.Vishal Chouh
   Gangopadhyay, A
   versus

   CENTRAL BUREAU OF INVESTIGATION ..... Respo
   Through: Mr.D.P.Singh, SPP with Mr.Man
   Mishra and Ms.Shreya Dutt,
   Advocates.
CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 11.10.2022

1. This writ petition is filed challenging an impugned order dated 30.07.2018 passed by the learned Special Judge in case RC No.220/2017/E/2013 whereby the learned Special Judge allegedly in excess of his jurisdiction and in violation of the provisions of Section 19 of Prevention of Corruption (Amendment) Act (PC Act) and Section 197 Cr.P.C. has taken cognizance of the offences under Sections 13(2) and 13(1)(d) of PC Act and Sections 120B/420 IPC and substantive offences thereof without the requisite sanction, as mandated.

2. It is submitted amendment in PC Act came into force w.e.f. 26.07.2018 and an amended Section 19 of the Act mandates the taking of sanction for prosecution with respect to person who were at the time of commission of an alleged offence were employed with the affairs of the Union, even if they had retired. The amended Section 19 of the Act sought to bar any Court from taking cognizance of any offence punishable under Sections 7/10/11/13/15 of the PC Act against the public servant except with the prior sanction of the competent authority.

3. It is submitted the impugned order dated 30.07.2018 would show no sanction as required was sought by the respondent herein yet the learned MM had taken cognizance.

4. Thus, it is argued a) Special Judge had failed to appreciate there is no prima facie evidence against the petitioner so as to justify prosecution; and b) there is no sanction. Reference was made to Sections 17A & 19(1) (as amended) of PC Act as under:

> "17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.
>
> (1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval--

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

> Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:
>
> Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.
>
> 19. Previous sanction necessary for prosecution.--(1) No court shall 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 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]--

(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;

(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."

5. It is argued the sanction as was required at the time of taking cognizance was never taken, hence the cognizance is bad and the proceedings against the petitioner needs to be quashed.

6. Admittedly, the cognizance in this case was taken on 30.07.2018 and thereafter, on 29.06.2020 the sanction was obtained against the appellant.

7. The issued thus raised is can a subsequent grant of sanction make the cognizance legal?

8. Various cases were relied upon by the learned senior counsel for the petitioner viz. State of Bihar vs. Murad Ali Khan and Others (1988) 4 SCC 655; Indra Devi vs. State of Rajasthan & Anr. CRL.A.593/2021 decided on 23.07.2021 by the Hon'ble Supreme Court; State of Punjab vs. Labh Singh (2014) 16 SCC 807; State of Goa vs. Babu Thomas (2005) 8 SCC 130; Re Subramanian Chettiar AIR 1957 Madras 442; Dr.Anil Kumar Shukla @ A.K.Shukla vs. Central Bureau of Investigation in case No.3076/2019 judgment delivered by the Allahabad High Court on 20.12.2019 etc. to argue the cognizance taken without sanction either under Section 197 Cr.P.C. or under Section 19, the prosecution needs to be quashed and proceedings vitiated.

9. In any case one cannot ignore an observation made in Babu Thomas (supra), wherein the Court held having regard to the gravity of allegations leveled against the respondent, we permit the competent authority to issue a fresh sanction order by an authority competent under rules and proceed afresh against the respondent from the stage of taking cognizance of the offence and in accordance with law.

10. On the other hand arguments raised by the learned SPP for the CBI is an amendment under Section 19 is prospective in nature and not retrospective. He relied upon an opinion of the learned Attorney General of India as also State of Rajasthan vs. Tejmal Chaudhary in CRL.A.1647/2021 decided on 16.12.2021; S.V.Kalesan vs. The State of Kerala in CRL.M.C.5365/2013; K.R.Ramesh vs. Central Bureau of Investigation and Another 2020 SCC Online Ker 2529; Girish Kumar Suneja vs. Central Bureau of Investigation (2017) 14 SCC 809; State of Bihar and Others vs. Rajmangal Ram (2014) 11 SCC 388 and State of Madhya Pradesh vs. Virender Kumar Tripathi (2009) 15 SCC 533. A bare perusal of these judgments would show the cardinal principle of construction is every statute is prospective, unless it is expressly or by necessary implication made to have retrospective operation. There exist a presumption against retrospectivity. One may say an amendment will have only prospective application and it has no application to cases registered prior to the amendment and pending under various stages of investigation but then again the date relevant for considering the necessity of sanction is the date on which cognizance is taken. In any case Rajmangal Ram (supra) and Virender Kumar Tripathi (supra) declares where the case was at the stage of framing of charge, whether or not the failure of justice has in fact being occasioned, is to be determined once the trial commenced and the evidence led.

11. No doubt it is held in various judgments the cognizance taken without sanction is bad but admittedly the process of closure of the proceedings at an initial stage has also not been appreciated see State through CBI vs. B.L.Verma and Another (1997) 10 SCC 772; Shantaben Bhurabhai Bhuriya vs. Anand Athabhai Chaudhari and Others 2021 SCC Online SC 974 wherein it was held the

directions of the High Court to drop the proceedings against the respondent on account of want of sanction under Section 197(1) Cr.P.C. was bad and should the competent authority hereafter grant sanction under Section 197 Cr.P.C., it will be perfectly valid and open to the petitioner herein to activate the prosecution against the respondent. Rather in Shantaben (supra) it was held the absence of sanction cannot be a ground to quash the criminal proceedings in exercise of power under Section 482 Cr.P.C. and rather to quash proceedings at this stage in exercise of power under Section 482 Cr.P.C. is rather impermissible. Even, if it is found in the absence of Section 197 Cr.P.C. the proceedings are vitiated, then also the Court may direct the authority to take sanction and then proceed, instead of completely quashing the entire proceedings. Same was the view taken in Fertico Marketing and Investment Pvt. Ltd. vs. CBI (2021) 2 SCC 525.

12. Admittedly, in the present case the FIR was registered and the chargesheet was filed prior to the amendment. However, the case was listed on 30.07.2018 when cognizance was taken by the learned Special Judge, saying qua other accused, including the petitioner, sanction is not required.

13. In any case presently the arguments on charge are going on. All issues raised before this Court can very well be taken before the learned Trial Court. Per Shantaben (supra) and B.L.Verma (supra) it would not be feasible to quash the proceedings at such an initial stage and especially when while taking the cognizance, learned Special Judge was of the view the sanction is not required, though not elaborated the same. In any case, the requisite sanction has now been granted on 29.06.2020. The effect of sanction dated 29.06.2020 is yet to be seen by the learned Trial Court during hearing of charge. In case the learned Special Judge comes to a conclusion the cognizance in absence of sanction was vitiated then surely can proceed per law settled above and in the wake of sanction dated 29.06.2020. Hence prayer to quash proceedings cannot be acceded to.

14. Even otherwise, in Inspector of Police and Another vs. Battenapatla Venkata Ratnam and Another AIR 2015 SC 2403 the Court held as under:

> "11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only."

15. Petition is thus dismissed. Pending application, if any, also stands disposed of.

YOGESH KHANNA, J.

OCTOBER 11, 2022 DU