Vivek Batra vs U.O.I & Ors on 18 October, 2016

Equivalent citations: AIR 2016 SUPREME COURT 4770, AIR 2016 SC(CRI) 1506, AIR 2016 SC 4770, (2016) 168 ALLINDCAS 20 (SC), (2017) 1 BOMCR(CRI) 413, (2017) 1 MH LJ (CRI) 318, 2017 CALCRILR 1 539, 2017 (1) SCC (CRI) 219, (2017) 1 RAJ LW 521, (2017) 1 JCR 3 (SC), 2017 (1) SCC 69, (2016) 4 DLT(CRL) 320, 2016 CRILR(SC&MP) 1114, (2016) 4 RECCRIR 679, 2016 CRILR(SC MAH GUJ) 1114, (2016) 4 CRILR(RAJ) 1114, (2016) 97 ALLCRIC 989, (2016) 3 ALLCRIR 3350, (2016) 4 CURCRIR 124, (2016) 10 SCALE 64, (2016) 3 UC 2049, (2016) 4 CRIMES 56, (2017) 1 SERVLR 727, 2017 (1) ABR (CRI) 30, (2017) 66 OCR 353, (2016) 2 ALD(CRL) 906

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Bench: Prafulla C. Pant, Ranjan Gogoi

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2491 OF 2014

Vivek Batra … Appellant

Versus

Union of India and others … Respondents

J U D G M E N T

Prafulla C. Pant, J.

This appeal is directed against judgment and order dated 29.10.2013, passed by the High Court of Judicature at Bombay in Criminal Writ Petition No. 3654 of 2012, whereby the petition challenging the sanction dated 09.10.2012 for prosecution of the appellant under Section 13 of the Prevention of Corruption Act, 1988 is dismissed.

Brief facts of the case are that the appellant is an officer of cadre of Indian Revenue Service (for short “IRS”), who entered into the service through 1992 batch. It is stated that an FIR RC No. BA1/2005/A0017 was registered on 04.04.2005 by Central Bureau of Investigation (CBI) (Respondent No. 4) in respect of disproportionate assets to the known sources of the appellant. The prosecution case is that the appellant has amassed the assets valued at Rs.1,27,38,353/- in his name and in the names of his wife and minor son during the check period 04.01.1993 to 31.03.2004, which is disproportionate to the known sources of his income. The investigation took almost six

years to get completed, which revealed that a sum of Rs.56,30,296/- was invested by the appellant through Benami transactions in the names of his wife and son in two companies, namely, M/s. ARJ Impex Private Limited and M/s. Malik Hospitality Services Private Limited. According to CBI, the appellant's wife Priyanka Batra incorporated a company, M/s. ARJ Impex Limited, to engage in import-export business, and then sold her shares in the company to her two uncles, namely, Karan Singh and Vijay Kumar. The company's main source of income was unsecured loans obtained from various companies and individuals, many of which were never paid back, several of these loans were from Priyanka Batra herself. Further, though the sale of income of the company was minimal, it acquired assets of Rs.85,70,770/- during the check period. It appears that Karan Singh and Vijay Kumar had incorporated another company called M/s. Malik Hospitality Services, whose main source of income was unsecured loans from various individuals and companies. The company had acquired assets of Rs.20,52,013/- and had unrepaid loans of Rs.26,77,000/- during the check period. Priyanka Batra was connected to Malik Hospitality Services as a public notice appeared in Nav Bharat Times, showing her as the intended purchaser of a property that was to be bought for the company.

The appellant was arrested on 02.09.2010, and after about three days released on bail. He was placed under suspension by the authority concerned. The CBI sought sanction for prosecution of the appellant from the competent authority on which the file was processed, and at the first stage on 03.05.2011 advice of Central Vigilance Commission (CVC) was sought by the Finance Department. On 01.09.2011, the CVC recommended that the sanction for prosecution be granted. The department concerned (Finance Department) endorsed the matter again on 01.11.2011 for fresh opinion of the CVC. But the CVC, through its Office Memorandum dated 02.11.2011, reiterated its opinion. The Finance Department thereafter referred the matter to Department of Personnel and Training (for short "DOPT") for its views. The DOPT did not appreciate the stand of the Finance Department that the sanction should be accorded only if the CBI provides sufficient evidence and communicated the same through letter dated 29.03.2012. However, it observed that administrative warning could be issued to the appellant for not intimating the transactions to Finance Department. Through letter dated 28.05.2012, the DOPT conveyed that insufficiency of evidence can be tested in the court of law and sanction for prosecution can be granted. Finally, the competent authority, vide its order dated 09.10.2012, granted sanction for prosecution of the appellant, who challenged the same before the High Court in the writ petition, which was dismissed by the impugned order.

Mr. K.K. Venugopal, learned senior counsel appearing on behalf of the appellant, argued that there was categorical opinion of the Finance Department that the evidence laid before it was not sufficient to grant sanction for prosecution. It is pointed out that there was difference of opinion between Finance Ministry and the CVC. Not only this, even DOPT opined that warning to the officer could be sufficient. It is further submitted that the earlier competent authority (Finance Minister, Government of India) had referred the matter back to the CVC, as such, the sanction for prosecution stood declined, and grant of the sanction by the successor Finance Minister cannot be said to be a valid sanction for prosecution. It is further argued that the Rules of Business are not followed, as such, it cannot be said that the sanction was accorded by the competent authority. In support of his argument learned senior counsel placed reliance on Nazir Ahmad v. King-Emperor[1], and argued that where a power is given to do a certain thing in a certain way, the thing must be done in that way

or not at all.

We have considered the submissions of learned senior counsel, and perused the record.

Before further discussion, we thing it just and proper to quote relevant part of Government of India (Allocation of Business) Rules, 1961. Sub- rules (3) and (4) of Rule 3 of the Rules read as under: -

> "(3) Where sanction for the prosecution of any person for any offence is required to be accorded – If he is a Government servant, by the Department which is the Cadre Controlling authority for the service of which he is a member, and in any other case, by the Department in which he was working at the time of commission of the alleged offence;
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> If he is a public servant other than a Government servant, appointed by the Central Government, by the Department administratively concerned with the organization in which he was working at the time of commission of the alleged offence; and In any other case, by the Department which administers the Act under which the alleged offence is committed;
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> Provided that where, for offences alleged to have been committed, sanction is required under more than one Act, it shall be competent for the Department which administers any of such Acts to accord sanction under all such Acts.
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> (4) Notwithstanding anything contained in sub-rule (3), the President may, by general or special order, direct that in any case or class of case, the sanction shall be by the Department of Personnel and Training." There is no dispute that for an IRS officer Cadre Controlling Authority is the Finance Minister of the Government of India. In Bachhittar Singh v.

The State of Punjab[2], Constitution Bench of this Court has held that the business of the State is a complicated one and has necessarily to be conducted through the agency of large number of officials and authorities. In Jasbir Singh Chhabra and others v. State of Punjab and others[3], this Court held as under: -

> "35. It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by

mala fides or is influenced by extraneous considerations……" In Sethi Auto Service Station and another v. Delhi Development Authority and others[4], this Court observed as under: -

"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned." In view of the law laid down by this Court, as above, we are of the opinion that the sanction cannot be held invalid only for the reason that in the administrative notings different authorities have opined differently before the competent authority took the decision in the matter. It is not a case where the Finance Minister was not the competent authority to grant the sanction. What is required under Section 19 of the Prevention of Corruption Act, 1988 is that for taking the cognizance of an offence, punishable under Sections 7, 10, 11, 13 and 15 of the Act committed by the public servant, is necessary by the Central Government or the State Government, as the case may be, and in the case of a public servant, who is neither employed in connection with affairs of the Union or the State, from the authority competent to remove him. Sub-section (2) of Section 19 of the Act provides that where for any reason whatsoever any doubt arises as to whether the previous sanction, as required under sub-section (1) should be given by the Central Government or the State Government or any authority, such sanction shall be given by that Government or authority which could have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed. Sub-section (3) of Section 19 of the Prevention of Corruption Act, 1988 provides as under: -

"(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings." Having gone through the copy of note-sheets relating to sanction in question placed before us as part of rejoinder affidavit, it is evident that there had been proper application of mind on the part of the competent authority before the sanction was accorded. Our perusal of the said record does not indicate that any decision was taken by the competent authority, at any point of time, not to grant sanction so as to give the decision to grant sanction the colour of a review of any such earlier order, as has been contended before us. The opinion of CVC, which was reaffirmed and ultimately prevailed in according the sanction, cannot be said to be irrelevant for the reason that clause (g) of Section 8 of the Central Vigilance Commission Act, 2003 provides that it is one of the functions of the CVC to tender advice to the Central Government on such matters as may be referred to it by the Government.

For the reasons, as discussed above, we find no reason to interfere with the impugned order passed by the High Court dismissing the writ petition. Accordingly, the appeal is dismissed. The interim order dated 25.11.2014, passed by this Court, is hereby vacated. The trial court is directed to conclude the trial expeditiously. However, we clarify that we have not given any opinion as to the merits of the case. There shall be no order as to costs.

.....J. [Ranjan Gogoi] .....J. [Prafulla C. Pant]
New Delhi;

October 18, 2016.

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[1] AIR 1936 PC 253
[2] [1962] Supp. 3 SCR 713
[3] (2010) 4 SCC 192
[4] (2009) 1 SCC 180