State Of Madhya Pradesh vs Dr. Krishna Chandra Saksena on 11 October, 1996

Equivalent citations: AIRONLINE 1996 SC 177, (1996) 3 SCJ 663, (1997) 1 REC CRI R 556, 1996 (11) SCC 439, (1996) 4 CUR CRI R 206, (1997) 1 EAST CRI C 474, (1997) 35 ALL CRI C 285, (1997) 1 CRIMES 4, (1997) 1 RAJ LW 81, 1997 CRI LR(SC MAH GUJ) 44, (1997) 1 CRI CJ 110, 1997 SCC (CRI) 35, (1997) CRILR(RAJ) 6, (1996) 3 RAJ LW 288, 1997 CRI LR (SC&MP) 44

Author: S.B. Majmudar

Bench: S.B. Majmudar

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           CASE NO.:
Appeal (crl.)  1800 of 1996

PETITIONER:
STATE OF MADHYA PRADESH

RESPONDENT:
DR. KRISHNA CHANDRA SAKSENA

DATE OF JUDGMENT: 11/10/1996

BENCH:
DR. A.S. ANAND & S.B. MAJMUDAR

JUDGMENT:
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JUDGMENT 1996 Supp(7) SCR 503 The Judgment of the Court was delivered by S.B. MAJMUDAR, J.

Leave granted.

We have heard learned advocates of parties on merits with their consent. This appeal is, therefore, being finally disposed of by this judg-ment. The appellant is the State of Madhya Pradesh. Respondent was sough to be prosecuted under Section 6 of the Prevention of Corruption Act on the basis of a trap case. A learned Single Judge of the High Court A.S. Tripathi, J. by the impugned judgment quashed the criminal proceed-ings against the respondent in a petition filed under Section 482 of Code of Criminal Procedure (for short 'Cr. PC') and that is how the State is in appeal against the said judgment.

A few relevant facts may be noted at the outset. Respondent was a Medical Officer in the service of the appellant-State. He was posted at the relevant time as District Project Officer, Danida in Madhya

Pradesh. One Sunil Jain, a representative of Kankur Laboratories, Ahmedabad made a complaint against him of demand of bribe on 1st January 1987 to the Vigilance Branch of Lok Aayukt. On his Complaint a trap was laid on 2nd January 1987 and the respondent was trapped and arrested. After comple-tion of investigation sanction for prosecution of the respondent was granted by the State Government on 27th July 1989. Before the challan could be filed on the basis of the aforesaid case registered as Crime Case No. 4 of 1987 at Vigilance Branch of Lok Aayukt, Gwalior, respondent preferred a petition under Section 482, Cr. PC at the Gwalior Bench of the High Court of Madhya Pradesh challenging this sanction order on three grounds - (i) the" grant of sanction by the Department of Law was without the authority of law; (ii) the prosecution sanction was given against principles of natural justice having been granted without hearing the respondent; and (iii) the grant of sanction amounted to abuse of the process of the court. Because of the stay order granted by the High Court on 4th August 1989 in those proceedings the challan could not be filed before the competent court. In the meantime the record of the case was lost in the High Court. Proceedings dragged on for a couple of years on the file of the High Court. During this period the respondent got promoted to the post of Chief Medical Officer and was further promoted as Joint Director of Gwalior and Raipur and then he retired on attaining superannuation in June 1993.

In the criminal proceedings pending in the High Court the record was reconstructed by an order of the Chief Justice dated 13th July 1993.

After the record was reconstructed Miscellaneous Criminal Case No. 948 of 1989 was heard by the learned Single Judge of the High Court who allowed the petition Filed by the respondent by his impugned order dated 17th November, 1995 and quashed the prosecution. As noted earlier the said order of the learned Single Judge is on the anvil of scrutiny in the present proceedings.

Shri Shukla, learned senior counsel appearing for the appellant State submitted that the learned Single Judge ought not to have quashed the criminal proceedings when after investigation the case was ready for being filed in the court in the light of the sanction granted by the competent authority. That the High Court had patently erred in bypassing the trap case wherein the respondent was found to have been caught red-handed while accepting bribe of Rs, 2,500 from the complainant. That such proceedings could not be nipped in the bud. That if ultimately the respon-dent was found not to have accepted the bribe he would be acquitted but in the light of the evidence on record at the stage of investigation the prosecution agency had clearly made out a case for prosecuting the respondent who was required to face the trial. It was further contended that the High Court did commit a patent error in taking the view that the sanction was invalid as all relevant aspects were not considered by the sanctioning authority. That even assuming that some aspects were not considered by the sanctioning authority while granting the sanction, like the affidavits filed by staff members of the hospital who were admittedly supporting the respondent, it could not be said that the sanction was invalid. That respon-dent was not required to be heard while granting the sanction and that ultimately if on evidence it was held that the sanction was invalid the proceedings could result in favour of the respondent and he would get acquitted but there was no reason why criminal proceedings should be quashed under Section 482 Cr. PC at this stage.

Learned senior counsel Shri Jain for the respondent on the other hand submitted that the High Court has noted all relevant aspects and that even though he did not support the reasoning of the High Court that sanction would be bad because the respondent was not heard before granting the sanction, it would still remain bad as all relevant material was not placed before the sanctioning authority. That the respondent was promoted by the Government as it was convinced about the falsity of the trap and he has retired since three years and more justified the quashing of prosecution. Under these circumstances it could not be said that the High Court had erred in quashing the proceedings. This order did not call for any interference under Article 136 of the Constitution of India.

On a careful consideration of the rival contentions it is found that the learned Single Judge had ex facie erred in interfering with the criminal proceedings at the stage of filing a challan after investigation which was backed up by relevant sanction. It is now well settled that interference under Section 482 Cr. PC for quashing a criminal proceeding should be done very sparingly and in exceptional cases. In the case of State of Haryana & Ors, v. Bhajan Lal & Ors., [1992] Supp. 1 SCC 335 it has been laid down by a two member Bench of this Court speaking through S. Ratnavel Pandian, J., that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the High Courts to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. It has also been laid down by way of illustration as to under what circumstances the High Court can be justified in interfering with the criminal proceedings under Article 226 of the Constitution of India or Section 482 Cr. P.C. Seven illustrative circumstances tinder which such interference may be justified were listed as under :

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police of-ficers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the uncontroverted allegation made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2} of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provision of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and con-tinuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance for the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

As this is a trap case wherein it is alleged that the respondent had taken a bribe of Rs. 2,500 for giving favourable treatment to the complainant, only circumstance No. 6, if at all, could be pressed by learned senior counsel for the respondent in support of the order of the High Court. That is to the effect that there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the concerned Act for prosecuting the case. In the present case, therefore, validity of the sanction would assume importance. If that sanction is found to be invalid then the proceedings could be validly quashed by the High Court in exercise of its jurisdiction under Section 482 Cr. PC. So far as this aspect is concerned our attention was invited by learned senior counsel for the appellant to the sanction order dated 27th July 1989 which was annexed to the special Leave Petition at page 22. A reading of the relevant recitals in the sanction order shows that the sanctioning authority had looked into the statements of witnesses from Police Case Diary and other relevant documents and it was observed that the complainant was to be given an order of Rs. 9,520 by the accused Dr. Saksena to supply medicine on which account the accused had asked for commission/gratification of Rs. 2,500 at the rate of 25 per cent. The said medicine was to be supplied by M/s. Kankur Laboratories, Ahmedabad. Because the complainant did not want to give gratification, he made a written complaint against him on 1st January 1987 to the Vigilance Branch of Lok Aayukt. But since it was late on that day, is., 1st January 1987 the necessary action was taken on 2nd January 1987. The complainant had produced 25 notes of Rs. 100 and their numbers were taken on the Preliminary Panchnama and Phenoltheine Powder as put on these notes. After necessary instructions were given to the complainant Sunil Kumar Jain, the trapping group moved towards the destination. After reaching Dr, K.C. Saksena's clinic situated at Adarsh Colony, the complainant and a witness Giriraj Sharma went inside the clinic and other members were biding nearby. After sometime Dr. Saksena came to his clinic. The complainant gave the said notes of Rs. 2,500 to accused Dr. Saksena when he asked for the same. The accused kept those notes in the back pocket of his pants. And after taking that money accused Dr. Saksena granted supply order to complainant Sunil Kumar Jain. Then the com-plainant came outside and gave a pre- planned signal, i.e., putting his hand on head. On that members of trapping group reached there immediately and introduced themselves and caught hold of wrists of accused Dr, Saksena's both hands. After that when both the hands of accused Dr. Saksena were put into the solution of Sodium Carbonate the

colour of solution became rosy. The witness Sakharam, Deputy Collector searched accused Dr. Saksena and recovered 25 notes of Rs. 100 from back pocket of his full pants. And when the numbers of said notes were tallied with the numbers mentioned in the Preliminary Panchnama they were found to be bearing the same numbers and thereafter these notes were seized. The sanctioning authority has also noted in the sanction order that the evidence comprising of complainant Sunil Kumar Jain and witnesses Giriraj Sharma, Sakharam, Ran Singh Kushwaha, Tulsi Ram, K.C. Patoria, Vijeadra Singh, R.S. Sharma and Lala Ram clearly indicated about these facts. Apart from these statements which were kept in view by the sanctioning authority the Chemical Examination Report was also seen by the sanctioning authority and it was found to support the case of the prosecution, In OUT view it could not prima facie be said that the sanction order was patently illegal. We must further hasten to add that if ultimately at the stage of trial it is found that the sanction was liable to fail on any relevant ground well made out by the defence then the respondent may be entitled to acquittal. But at the stage of quashing of criminal proceedings where even challan had not been filed the aforesaid order of sanction could not have been treated by the High Court as ex facie illegal or invalid. The reasons given by the learned Single Judge of the High Court in treating the sanction invalid were twofold. Firstly the sanction, according to the learned Judge was bad on the ground that the accused was not heard. This ground is rightly not pressed by the learned senior counsel for the respondent as it is now well settled that at the stage of granting of sanction the accused need not be heard (State of Maharashtra v, Ishwar Piraji Kalpatri & Ors., (1995) 6 SCALE 674 and Superintendent of Police (CB.I.) v. Deepak Chowdhary & Ors, AIR (1996) SC 186, The second ground given by the High Court was to the effect that the affidavits filed by the staff members of the clinic of the respondent were not considered by the sanctioning authority. It is true that the learned Single Judge had observed in paragraph (21) of his judgment that 'admittedly' in this case, representation of the petitioner, documents relied by him which have been lost, and the affidavits of the witnesses present on the spot who were large in number were not placed before the sanctioning authority and, therefore, the sanction granted is definitely bad in law. However it must be kept in view that without looking at the relevant documents comprised in the file which were lost during the pendency of the proceedings before the High Court it would be too premature to say whether the lost documents were seen by the sanctioning authority or not before granting sanction. Even otherwise if it is found on evidence which may be led at the stage of trial that the affidavits of the staff were self-serving statements obtained by the respondent to support his case and were of such a nature that they could not adversely affect the trap evidence, then it could not be urged by the prosecution that non- consideration of such irrelevant and self-serving evidence would have affected the efficacy of the sanction. In Short all these aspects could have been better examined at the stage of trial for invalidating the sanction. It is too premature at the present stage to hold that all necessary and relevant evidence must not have been considered by the sanctioning authority. It appears that the word 'admittedly' as found in paragraph (21) of the .order passed by the learned Single Judge appears to have been mentioned loosely and in an inadvertent manner. Learned senior counsel for the appellant fairly stated that the sanction order does not on the face of it indicate that the affidavits of staff members were considered by the sanctioning authority. But the recitals in the last but one paragraph of the sanction order show that the sanctioning authority was satisfied after complete and conscious scrutiny of the records produced in respect of the allegation against the accused. Now the question whether all the relevant evidence which would have tilted the balance in favour of the accused if it was considered by the sanctioning authority before granting sanction and

which was actually left out of consideration could be examined only at the stage of trial when the sanctioning authority comes forward as a prosecution witness to support the sanction order if challenged during the trial. As that stage was not reached the prosecution could not have been quashed at the very inception on the supposition that all relevant documents were not considered by the sanctioning authority while granting the impugned sanction. We, therefore, hold that the twin reasons given by the learned Single Judge of the High Court for quashing the proceedings on the ground that the sanction was invalid are unsustainable and unjustified.

The further circumstance that during the pendency of the proceedings before the High Court the respondent was promoted by the State or that he retired thereafter cannot have any impact on the question whether on the evidence available at the stage of investigation and filing of chargesheet, the prosecution had made out a case for prosecuting the respondent or not. For all these reasons, therefore, the impugned order cannot be sustained. Learned Single Judge had patently erred in law in quashing the proceedings and in foreclosing the trial of the respondent. It is clarified that whatever observations are made by us in this judgment are confined to the limited question as to whether the respondent should be prosecuted or not and these observations shall not be given any weightage while deciding the culpability of the respondent at the stage of trial and such decision would be strictly confined to the evidence led by the prosecution at the stage of trial and the defence evidence, if any, led by the respondent.

Before parting with these proceedings we may mention that the learned Single Judge had observed that one of the contentions of the defence was that the complainant is not traceable. We fail to appreciate how this aspect is relevant at this stage. It has to be kept in view that this is a trap case, the investigating agency has already recorded the statement of the complainant, the sanctioning authority has also considered, amongst others, the statement of the complainant. Consequently it could not be urged that the complainant was not available at the stage of investigation and the subsequent stage of filing the Challan against the accused. If at the stage of trial, the complainant is not available to support the case what will be its effect on the fate of the trial is a question which will have to be decided by the Trial Court on its own merits. Whether the complainant will ultimately support the prosecution case at the stage of trial or not is not a relevant circumstance for deciding whether the proceedings could be quashed under Section 482 Cr. PC by not permitting the trial to proceed when there is sufficient material collected during investigation including the version of the complainant to implicate the accused and to call upon him to face the trial.

In the result the appeal succeeds and is allowed. The impugned order is quashed and set aside. As we have found the sanction to be prima facie valid the criminal proceedings may now be launched against the respon-dent in a proper court for being proceeded further in accordance with law.