State Of H.P vs Nishant Sareen on 9 December, 2010

Equivalent citations: AIR 2011 SUPREME COURT 404, 2010 (14) SCC 527, 2011 AIR SCW 3699, AIR 2011 SC (CRIMINAL) 265, 2011 CRI LJ (SUPP) 527 (SC), (2010) 4 DLT(CRL) 867, (2010) 13 SCALE 245, (2011) 1 MAD LJ(CRI) 806, 2011 CALCRILR 1 287, (2011) 72 ALLCRIC 423, (2011) 1 CURCRIR 58, (2011) 48 OCR 384, (2011) 1 CRIMES 47, (2011) 98 ALLINDCAS 193 (SC), (2011) 1 RECCRIR 193, (2011) 1 CRILR(RAJ) 40, (2011) 1 CHANDCRIC 209, (2011) 1 ALLCRIR 846, (2011) 1 RAJ LW 287, 2011 CRILR(SC MAH GUJ) 40, 2011 CRILR(SC&MP) 40, (2011) 2 ALD(CRL) 895

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Bench: R.M. Lodha, Aftab Alam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2353 OF 2010
(Arising out of SLP (Criminal) No. 2239 of 2010)

State of Himachal Pradesh .... Appellant

Versus

Nishant Sareen .... Respondent

JUDGMENT

R.M. Lodha, J.

Leave granted.

2. The question raised in this appeal, by special leave, is as regards the extent of power vested in the Government in reviewing its order granting or refusing sanction to prosecute the public servant in terms of Section 19 of the Prevention of Corruption Act, 1988 (for short, `the 1988 Act').

3. Nishant Sareen--the respondent--was posted as Drug Inspector, Bilaspur (Himachal Pradesh) in 2005. One, Dr. Ramdhan Sharma, owner of Leelawati Hospital, Ghumarwin lodged a complaint against the respondent in the Vigilance Department of the State Government that the respondent had demanded Rs. 5,000/- from him as bribe to allow him to run the said hospital without checking by the Drug Inspector. Based on the said complaint, a first information report (being No. 1/2005) was registered under Sections 7 and 13 (2) of the 1988 Act at Police Station AC Zone, Bilaspur. Thereafter, a raiding party under the supervision of Deputy Superintendent of Police, AC Zone, Bilaspur was constituted and a trap was laid on May 12, 2005. The respondent is said to have been caught red-handed on that day accepting the bribe from the complainant. The respondent was arrested and produced before the Additional Sessions Judge, Ghumarwin and was remanded to judicial custody upto May 16, 2005. The respondent was released on bail later on. Upon completion of investigation, the Vigilance Department sought for sanction under Section 19 of the 1988 Act from the Government to prosecute the respondent. It is not in dispute that the Principal Secretary (Health), Government of Himachal Pradesh is the competent authority authorized under the Rules of Business for according sanction in the matter.

4. The Principal Secretary (Health), on the basis of the material placed before her and on examination of the case, found no justification in granting sanction to prosecute the respondent. In the order dated November 27, 2007 whereby sanction was refused, it was observed as under :

> "Therefore, after thorough examination of the case taking all the aspects into consideration and scrutiny of the service records it has been concluded that Sh. Sareen in the course of his duties and responsibilities and impartial discharge of his duties (sic). It appears that the complainant has registered a case which appears to be frivolous and has resulted in unnecessary harassment and hindrance in the working of the Drug Inspector. In view of this, there appears to be no justification for launching prosecution against Sh. Nishant Sareen, Drug Inspector as it appears to be a case of Personal enmity."

5. It appears that the Vigilance Department took up the matter again with the Principal Secretary (Health) for grant of sanction as in their opinion sufficient evidence existed to prosecute the respondent.

6. The competent authority, thus, reconsidered the matter and granted sanction to prosecute the respondent vide its order dated March 15, 2008. In the sanction order dated March 15, 2008, it was observed thus:

> "I agree with the contention of the Vigilance Department that in evaluating the evidence of criminal misconduct, his general conduct and behaviour as perceived by his superiors cannot secure precedence. I have been through the case file and facts of

the case in detail. I find that the said Drug Inspector. Sh. Nishant Sareen has been caught red handed, with a bribe of Rs. 5000/-. There is nothing on record to show that this incident did not occur. The facts do not support the contention that Sh. Nishant Sareen was falsely implicated. In the circumstances, I am of the opinion that the prosecution sanction be granted in the instant case and accordingly do so."

7. Section 19 of the 1988 Act reads as follows :

"S. 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,--

(a) in the case of a person who is 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 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.

(2) 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 other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

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

(a) 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;

(b) 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;

(c) 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.

(4) In determining under sub- section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-- For the purposes of this section,--

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

8. The object underlying Section 19 is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations. The exercise of power under Section 19 is not an empty formality since the Government or for that matter the sanctioning authority is supposed to apply its mind to the entire material and evidence placed before it and on examination thereof reach conclusion fairly, objectively and consistent with public interest as to whether or not in the facts and circumstances sanction be accorded to prosecute the public servant. In Mansukhlal Vithaldas Chauhan vs. State of Gujarat1, this Court observed, `Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty'. Section 19 or for that matter Section 197 of Code of Criminal Procedure, 1973 (for short, `the Code') does not make any express provision regarding review or reconsideration of the matter by the sanctioning authority once such power has been exercised.

9. In Gopikant Choudhary v. State of Bihar and Ors.2, initially the concerned Minister refused to accord sanction to prosecute the public servant therein and an order was passed to that effect. Subsequently, after retirement of the public servant, the matter was taken up by the Chief Minister and he granted sanction for prosecution of the concerned public servant. The question that arose for consideration before this Court was the correctness of the order passed by the Chief Minister. This Court set aside the order of the Chief Minister granting sanction to prosecute the public servant, inter alia, on the ground that the Chief Minister did not have any occasion to reconsider the matter and pass fresh order sanctioning the prosecution.

(1997) 7 SCC 622 (2000) 9 SCC 53

10. In Romesh Lal Jain v. Naginder Singh Rana & Ors.3 , it was held by this Court that an order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority. If the complainant or accused can demonstrate such an order granting or refusing sanction to be suffering from non- application of mind, the same may be called in question

before the competent court of law.

11. Recently, in the case of State of Punjab and Anr. v. Mohammed Iqbal Bhatti4, this Court had an occasion to consider the question whether the State has any power of review in the matter of grant of sanction in terms of Section 197 of the Code. This Court observed as under:

> "7. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to (2006) 1 SCC 294 JT 2009 (13) SC 180 grant sanction may attract judicial review by the Superior Courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation.

Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered."

This Court then noticed the opinion of the High Court which was recorded as follows :

> "Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible."

While affirming the above opinion of the High Court, this Court held in paragraphs 22 and 23 of the Report as under :

> "22. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government

sent nine letters for obtaining the clarifications which were not replied to."

"23.The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise."

12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

13. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.

14. By way of foot-note, we may observe that the investigating agency might have had legitimate grievance about the order dated November 27, 2007 refusing to grant sanction, and if that were so and no fresh materials were necessary, it ought to have challenged the order of the sanctioning authority but that was not done. The power of the sanctioning authority being not of continuing character could have been exercised only once on the same materials.

15. There is no merit in this appeal and it is dismissed.

.....J. (Aftab Alam) ..... J.

(R.M. Lodha) NEW DELHI, DECEMBER 9, 2010