State Of Maharashtra Tr.C.B.I vs Mahesh G.Jain on 28 May, 2013

Author: Dipak Misra

Bench: Dipak Misra, B.S. Chauhan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2345 OF 2009

State of Maharashtra Through C.B.I. ...Appellant

Versus

Mahesh G. Jain ...Respondent

J U D G M E N T

Dipak Misra, J.

The singular question that emanates for consideration in this appeal is whether the High Court of Judicature at Bombay in Criminal Application No. 2648 of 2007 is justified in refusing to grant leave to file an appeal by the Central Bureau of Investigation, Anti Corruption Branch, Mumbai (for short "the CBI") to assail the judgment and order dated 8th September, 2006 in Special Case No. 62 of 2000 by the Court of Special Judge for Greater Bombay whereby the learned Special Judge had acquitted the respondent No. 1 under Sections 7, 13 (1) (d) read with 2 of the Prevention of Corruption Act, 1988 (For brevity "the Act") principally on the foundation that the sanction granted by the competent authority was defective and illegal as there was non-application of mind which would show lack of satisfaction.

2. At the very outset, it is condign to state that as we are only dealing with a singular issue it is not necessary to state the facts in detail. Suffice it to state one Satish P. Doshi, proprietor of Shree Travels, the complainant, had given his vehicles to State Bank of India on contract basis and was entitled to receive hire charges for his vehicles periodically. The complainant experienced certain difficulties in getting his cheques and Tax Deducted at Source certificates. When he approached the accused-respondent, he demanded illegal gratification which was not acceded to by the

complainant. Despite consistent refusal by the complainant, the demand of the accused was persistent which constrained the complainant to approach the CBI with a written complaint. The CBI took up the investigation and the raiding party carried out a trap operation, seized the bribe amount of Rs.1000/-, sent the seized article to the CFSL, obtained the sanction order and ultimately on 5.10.2000 filed the charge-sheet before the learned Special Judge. After the trial was over the learned Special Judge adverted to all the issues and answered all of them in the affirmative against the accused but acquitted him solely on the base that the sanction order was defective and illegal and that went to the very root of jurisdiction of the court.

3. Grieved by the aforesaid judgment of acquittal, the CBI filed an application for grant of leave and the learned single Judge of the High Court of Bombay declined to grant leave on the ground that it was doubtful whether the sanctioning authority had, in fact, actually applied its mind while granting sanction. The High Court further opined that the view taken by the learned Special Judge in that regard was a plausible one being not contrary to material on record and hence, it did not require any interference.

4. We have heard Mr. Sidharth Luthra, learned Additional Solicitor General appearing for the appellant, and Mr. V.N. Bachawat, learned senior counsel appearing for the respondent.

5. Section 19(1) of the Act postulates that 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. The said provision enumerates about the competent authorities. In the case at hand, the competence of the authority who has granted sanction is not in question. The only aspect that is required to be scrutinized whether the order granting sanction is valid in law.

6. Grant of sanction is irrefragably a sacrosanct act and is intended to provide safeguard to public servant against frivolous and vexatious litigations. Satisfaction of the sanctioning authority is essential to validate an order granting sanction. This Court in Jaswant Singh v. State of Punjab[1] was considering the validity and effect of the sanction given under Section 6(1) of the Prevention of Corruption Act, 1947. After referring to the decisions in Basdeo Agarwala v. Emperor[2] and Gokulchand Dwarkadas Morarka v. The King[3], the Court opined as follows: -

> "It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case." In the said case, the two-Judge Bench had reproduced the order of sanction and opined that if the same, strictly construed, indicated the consideration by the sanctioning authority of the facts relating to the receiving of the illegal gratification by the accused. We think it apt to reproduce the order of sanction in that case: -
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> "Whereas I am satisfied that Jaswant Singh Patwari son of Gurdial Singh Kamboh of village Ajaibwali had accepted an illegal gratification of Rs.50 in 5 currency notes of

> Rs.10 denomination each from one Pal Singh son of S. Santa Singh of village Fatehpur Rajputan, Tehsil Amritsar for making a favourable report on an application for allotment of an ahata to S. Santa Singh father of the said S. Pal Singh.
>
> And whereas the evidence available in this case clearly discloses that the said S. Jaswant Singh Patwari had committed an offence under S. 5 of the Prevention of Corruption Act.
>
> Now therefore, I, N.N. Kashyap, Esquire I.C.S. Deputy Commissioner, Asr, as required by S. 6 of the Prevention of Corruption Act of 1947, hereby sanction the prosecution of the said S. Jaswant Singh Patwari under S. 5 of the said Act." We have quoted the aforesaid order only to highlight the approach of this Court pertaining to application of mind that is reflected in the order.

7. In Mohd. Iqbal Ahmed v. State of Andhra Pradesh[4] this Court lucidly registered the view that it is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out constituting an offence and the same should be done in two ways; either (i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and

(ii) by adducing evidence aliunde to show the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio.

8. In Superintendent of Police (C.B.I.) v. Deepak Chowdhary and others[5] it has been ruled that the grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction.

9. In C.S. Krishnamurthy v. State of Karnataka[6] it has been held as follows: -

> "...sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order."

10. In R. Sundararajan v. State by DSP, SPE, CBI, Chennai[7], while dealing with the validity of the order of sanction, the two learned Judges have expressed thus: -

> "it may be mentioned that we cannot look into the adequacy or inadequacy of the material before the sanctioning authority and we cannot sit as a court of appeal over the sanction order. The order granting sanction shows that all the available materials were placed before the sanctioning authority who considered the same in great detail. Only because some of the said materials could not be proved, the same by itself, in our opinion, would not vitiate the order of sanction. In fact in this case there was abundant material before the sanctioning authority, and hence we do not agree that the sanction order was in any way vitiated."

11. In State of Karnata v. Ameerjan[8] it has been opined that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

12. In Kootha Perumal v. State through Inspector of Police, Vigilance and Anti-Corruption[9], it has been opined that the sanctioning authority when grants sanction on an examination of the statements of the witnesses as also the material on record, it can safely be concluded that the sanctioning authority has duly recorded its satisfaction and, therefore, the sanction order is valid.

13. From the aforesaid authorities the following principles can be culled out: -

a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution.

c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.

d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

e) The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

g) The order of sanction is a pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity.

14. Keeping in view the aforesaid principles it is to be seen whether the order of sanction granted by the sanctioning authority withstands scrutiny or not. For the aforesaid purpose it is necessitous to reproduce the order of sanction in entirety: -

"WHEREAS, it is alleged that Shri Mahesh Gandmal Jain, Accounts Clerk working in Office Administration Department, State Bank of India, Corporate Centre, Mumbai while working as such on 03.04.2000, abused his official position, in as much as demanded and accepted illegal gratification from Satish P. Doshi, Proprietor of Shree Travels, Matunga, Mumbai for handling over TDS Certificates in the form of 16A of Income Tax Act, in respect of Shree Travels.

WHEREAS, it is alleged that in pursuance of aforesaid demand, Shri Mahes Gandmal Jain, Accourt Clerk, on 03.04.2000 accepted the illegal gratification of Rs. 1000/- from Shri Satish P. Doshi for the aforesaid purpose at the office of Shree Travels situated at 445, Mahilashram Road, Somaya Building No. 2, Matunga Central Railway, Mumbai-19, before the panch witness when Mahesh Gandmal Jain was caught red handed by the officers of CBI, ACB, Mumbai.

AND WHEREAS, the said acts on the part of Shre Mahesh Gandmal Jain constitute offences punishable under Section 7, 13 (2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.

AND WHEREAS, I, Shri Yeshwant Balkrishna Kelkar, Asst. General Manager, Office Administration Dept., State Bank of India, Corporate Centre, Mumbai, being the authority competent to remove the said Shri Mahesh Gandmal Jain, Accounts Clerk, Office Administration Dept., State Bank of India, Corporate Centre, Mumbai from office after fully examining the material, documents i.e. Statement of witnesses under the provisions of Section 161 of Criminal Procedure Code 1973, FIR, CFSL Opinion and other relevant documents placed before me in regard to the said above allegations and the facts and circumstances of the case, consider that the said Shri Mahesh Gandmal Jain has committed the offences and he should be prosecuted in the court of law for the said offences.

NOW, therefore, I, Shri Yeshwant Balkrishna Kelakar, Asst. General Manager, Office Administration Dept., State of Bank of India, Corporate Centre, Mumbai, do hereby accord sanction under Section 19(1)(c) of the Prevention of Corruption Act, 1988 for the prosecution of the said Shri Mahesh Gandmal Jain for the said offences and any other offences punishable under the provisions of any law in respect of the acts aforesaid and for taking cognizance of the said offences by the court of competent

jurisdiction.

Date : 04.10.2000 (Illegible) (SHRI Y.B. KELKAR) ASST. GENERAL MANAGER (OAD) & APPOINTING AUTHORITY"

15. Reserving our opinion on the same for the present we shall proceed to deal with the reasons for treating the said order of sanction as invalid and improper by the learned trial Judge. The learned trial Judge has referred to the sanction order Ext.13 and the forwarding letter Ext. 14 and, thereafter, proceeded to observe that the order of sanction is completely bereft of elementary details; that though the date is not mentioned in the FIR, the authority has mentioned the date in the sanction order; that the order of sanction is delightfully vague; that the amount of bribe that finds place in the sanction order was told to him and he had no personal knowledge about it; that the minimum discussion is absent in the order of sanction; that grant of sanction being not an idle formality it was incumbent on the competent authority to ascribe proper reasons on perusal of the materials; that there is no material to show the existence of objective material to formulate the subjective satisfaction; that the authority has granted sanction in an absolute mechanical manner; and that the order of sanction does not reflect sincerity of approach. The High Court, while dealing with the said reason, has really not discussed anything except stating that a possible view has been taken by the learned trial Judge and in appeal it cannot substitute the findings merely because any other contrary opinion can be rendered in the facts of the case.

16. Presently, we shall proceed to deal with the contents of the sanction order. The sanctioning authority has referred to the demand of the gratification for handing over TDS certificate in Form 16A of the Income-tax Act, the acceptance of illegal gratification by the accused before the panch witnesses and how the accused was caught red handed. That apart, as the order would reveal, he has fully examined the material documents, namely, the FIR, CFSL report and other relevant documents placed in regard to the allegations and the statements of witnesses recorded under Section 161 of the Code and, thereafter, being satisfied he has passed the order of sanction. The learned trial Judge, as it seems, apart from other reasons has found that the sanctioning authority has not referred to the elementary facts and there is no objective material to justify a subjective satisfaction. The reasonings, in our considered opinion, are absolutely hyper- technical and, in fact, can always be used by an accused as a magic trick to pave the escape route. The reasons ascribed by the learned trial Judge appear as if he is sitting in appeal over the order of sanction. True it is, grant of sanction is a sacrosanct and sacred act and is intended to provide a safeguard to the public servant against vexatious litigation but simultaneously when there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused. In the obtaining factual matrix, we must say without any iota of hesitation that the approach of the learned trial Judge as well as that of the learned single Judge is wholly incorrect and does not deserve acceptance.

17. At this stage, we think it apposite to state that while sanctity attached to an order of sanction should never be forgotten but simultaneously the rampant corruption in society has to be kept in view. It has come to the notice of this Court how adjournments are sought in a maladroit manner to linger the trial and how at every stage ingenious efforts are made to assail every interim order. It is

the duty of the court that the matters are appropriately dealt with on proper understanding of law of the land. Minor irregularities or technicalities are not to be given Everestine status. It should be borne in mind that historically corruption is a disquiet disease for healthy governance. It has the potentiality to stifle the progress of a civilized society. It ushers in an atmosphere of distrust. Corruption fundamentally is perversion and infectious and an individual perversity can become a social evil. We have said so as we are of the convinced view that in these kind of matters there has to be reflection of promptitude, abhorrence for procrastination, real understanding of the law and to further remain alive to differentiate between hyper-technical contentions and the acceptable legal proponements.

18. We shall presently deal with the course of action that is required to be undertaken in the case at hand. Had the High Court dealt with the appeal on merits, we would have proceeded to deal with justifiability of the same. The High Court has declined to grant leave solely on the ground that the conclusion reached by the learned trial Judge pertaining to validity of sanction being justified, the judgment of acquittal did not warrant interference. There has been no deliberation on the merits of the case.

19. At this juncture, we may note that Mr. Luthra submitted that the matter should be remitted to the High Court to deal with the application for grant of leave as per law. Per contra, Mr. Bachawat, learned senior counsel, submitted that if this Court would think of remitting the entire matter it should be remanded to the learned trial Judge as he has not appropriately dealt with the real issues, for he has been guided by the impropriety and validity of sanction. On a perusal of the judgment of the learned trial Judge we find that he had recorded his conclusions on every aspect. He has not rested his conclusion exclusively on sanction. True it is, he has acquitted the accused on the ground that the order of sanction is invalid in law but simultaneously he has dealt with other facets. Thus, remitting the matter to the trial court is not warranted. If the High Court thinks it apt to grant leave, it has ample power to deal with the appeal from all the spectrums. It is well settled in law that it is obligatory on the part of the appellate court to scrutinize the evidence and further its power is coextensive with the trial court. It has power to consider all the matters which weighed with the trial court and the reasons ascribed by it for disbelieving or accepting the witnesses. This has been so held in Laxman Kalu v. State of Maharashtra[10] and Keshav Ganga Ram Navge v. The State of Maharashtra[11]. Needless to emphasise that the High Court, while hearing an appeal against conviction, can scan the evidence and weigh the probabilities. It is incumbent on the High Court to analyse the evidence, deal with the legal issues and deliver a judgment. Thus, there is no merit in the submission that it should be remanded to the learned trial Judge. Apart from the aforesaid reason, we are also not inclined to remit the matter to the learned trial Judge as there would be another round of hearing before the learned trial Judge which is avoidable. It has to be kept uppermost in mind that remit to the trial court has to be done in very rare circumstances, for it brings in procrastination in the criminal justice dispensation system which is not appreciated.

20. Consequently, the appeal is allowed, the judgment of the High Court and the conclusion of the learned trial Judge pertaining to the validity of sanction are set aside and the matter is remitted to the High Court. As we have not dealt with any other finding recorded by the learned trial Judge, it has to be construed that there has been no expression of opinion on the merits of the case on those

counts. The High Court shall be well advised to consider all the aspects barring what has been dealt with in this appeal while dealing with the application for grant of leave.

.....J. [Dr. B.S. Chauhan] .....J. [Dipak Misra] New Delhi;

May 28, 2013.

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[1] AIR 1958 SC 124
[2] AIR 1945 FC 18
[3] AIR 1948 PC 84
[4] AIR 1979 SC 677
[5] (1995) 6 SCC 225
[6] (2005) 4 SCC 81
[7] (2006) 12 SCC 749
[8] (2007) 11 SCC 273
[9] (2011) 1 SCC 491
[10] AIR 1968 SC 1390
[11] AIR 1971 SC 953
