# State Of Punjab Vs Hari Kesh

**Court:** Supreme Court Of India

**Date of Decision:** Jan. 7, 2025

**Acts Referred:** Prevention of Corruption Act, 1988 â€" Section 7, 13(2), 19, 19(3), 19(4)

**Hon'ble Judges:** Bela M. Trivedi, J; Prasanna B. Varale, J

**Bench:** Division Bench

**Advocate:** Vivek Jain, Karan Sharma, Vivek Gupta, Ankit Verma

**Final Decision:** Allowed

## Judgement

Bela M. Trivedi, J

1. Leave granted.

2. The present appeal, filed by the appellantÃ‚State of Punjab, is directed against the impugned judgment and order dated 20.05.2019, passed by the

High Court of Punjab and Haryana at Chandigarh in CRMÃ‚M No. 11994 of 2019 (O&M), whereby the said petition, filed by the respondentÃ‚â€■

accused seeking quashing of Sanction Order dated 19.11.2018, in the case arising out of F.I.R. No. 02 dated 10.01.2024, registered at Police

StationÃ‚Vigilance Bureau, Patiala Range, Patiala for the offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988

(for short Ã¢â‚¬Å“the ActÃ¢â‚¬â€‹), has been allowed and the consequent proceedings arising therefrom have been set aside.

3. Heard learned counsels for the parties.

4. It is sought to be submitted by the learned counsel for the appellantÃ‚State of Punjab that the High Court had passed the impugned order when the

trial had already commenced and the prosecution had already examined seven witnesses. Learned counsel places heavy reliance on the decision of

this Court in the case of State of Karnataka, Lokayukta Police Versus S. Subbegowda (2023 SCC Online SC 911)t,o submit that the High

Court has committed an error in quashing the Sanction Order and setting aside the proceedings arising therefrom when the trial has already

commenced.

5. However, the learned counsel for the respondent-accused submits that the High Court has rightly quashed the proceedings considering the fact that

earlier, Sanction sought was not granted by the competent authority and now, the impugned Sanction Order has been passed by an officer who was

not competent to grant the Sanction to prosecute the respondent-accused.

6. The short question that arises for determination of this Court is whether the High Court could have set aside the impugned Sanction Order and the

proceedings arising therefrom, more particularly, when the trial had already commenced and the prosecution had examined seven witnesses.

7. In our opinion, the judgment in the case of S. Subbegowda (supra) clinches the issue, in which, this Court in the similar facts and circumstances,

after considering the provisions contained in Section 19 of the Act, has held as under: -

Ã¢â‚¬Å“11. The combined reading of sub-section (3) and (4) of Section 19 makes it clear that notwithstanding anything contained in the Code, no finding, sentence

or order passed by the 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 the Court, a failure of justice has in fact been occasioned thereby.

sub-section (4) further postulates that in determining under subsection (3) whether the absence of, or any error, omission or irregularity in the sanction has

occasioned, or resulted in failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in

the proceedings. The explanation to sub-section (4) further provides that for the purpose of Section 19, error includes Ã¢â‚¬Å“competency of the authority to grant

sanctionÃ¢â‚¬. Thus, it is clear from the language employed in sub-section (3) of Section 19 that the said sub-section has application to the proceedings before the

Court in appeal, confirmation or revision, and not to the proceedings before the Special Judge. The said sub-section (3) clearly forbids the court in appeal,

confirmation or revision, the interference with the order passed by the Special Judge on the ground that the sanction was bad, save and except in cases where the

appellate or revisional court finds that the failure of justice had occurred by such invalidity.Ã¢â‚¬â€‹

12. & 13Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦

14. In the instant case, the Special Judge proceeded with the trial, on the second application for discharge filed by the respondent having not been pressed for by

him. The Special Judge, while dismissing the third application filed by the respondent seeking discharge after examination of 17 witnesses by the prosecution,

specifically held that the sanction accorded by the government which was a superior authority to the Karnataka Water Supply Board, of which the respondent

was an employee, was proper and valid. Such findings recorded by the Special Judge could not have been and should not have been reversed or altered by the

High Court in the petition filed by the respondent challenging the said order of the Special Judge, in view of the specific bar contained in sub-section (3) of

Section 19, and that too without recording any opinion as to how a failure of justice had in fact been occasioned to the respondent-accused as contemplated in

the said sub-section (3). As a matter of fact, neither the respondent had pleaded nor the High Court opined whether any failure of justice had occasioned to the

respondent, on account of error if any, occurred in granting the sanction by the authority.

8. In the instant case, it appears that the petition for quashing of Sanction Order was filed by the respondent after the trial court framed the charge

and commenced the trial, rather after the prosecution examined five witnesses. It is pertinent to note that whether the Sanction has been granted by

the competent authority or not, would be a matter of evidence. Further, as per the Explanation to sub-section (4), for the purpose of Section 19, error

includes Ã¢â‚¬Å“competency of the authority to grant Sanction.Ã¢â‚¬ Therefore, in view of the settled legal position, the High Court should not have quashed

the Sanction Order and the consequent proceedings, unless it was satisfied that the failure of justice had occurred by such error or irregularity or

invalidity. There is not a whisper in the impugned order about any failure of justice having occurred on account of the impugned Sanction Order. The

High Court also should not have entertained the petition for quashing the Sanction Order when the prosecution had already examined seven witnesses.

9. In that view of the matter, we are of the opinion that the High Court has committed gross error in quashing the Sanction Order and the consequent

proceedings vide the impugned order.

10. The impugned judgment and order dated 20.05.2019, passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 11994 of

2019 (O&M), is therefore set aside. The proceedings arising out of the case being PC-15/2018, are restored on file before the Special Court-Sangrur

and they shall be proceeded further from the stage at which the proceedings were stopped, in accordance with law.

11. As stated earlier, whether the Sanction Order was passed by the competent authority or not, would be a matter of evidence to be proved by the

prosecution during the course of trial.

12. We clarify that we have not expressed any opinion on the merits of the case and the respondent-accused shall be at liberty to raise all contentions

as may be legally permissible with regard to Sanction during the course of the trial.

13. The Appeal is allowed accordingly.

14. Pending application(s), if any, shall stand closed.