

State of Punjab Vs Bhim Sain

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 2, 1985

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 465

Citation: (1985) CriLJ 1602 : (1985) 2 ILR (P&H) 452 : (1985) 2 RCR(Criminal) 57

Hon'ble Judges: M.M. Punchhi, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

M.M. Punchhi, J.

In a trial u/s 5(2) of the Prevention of Corruption Act and Section 161, I. P. C. the accused-respondent, after the

prosecution evidence had been concluded, his statement u/s 313, Code of Criminal Procedure recorded, and his having led defence evidence,

raised at the time of arguments the plea that there was no valid sanction to prosecute the respondent. That plea found favour with Shri K. R.

Mahajan, Special Judge, Barnala, who ordered discharge of the accused on the ground that no valid sanction had been obtained before launching

the prosecution against the respondent. The State of Punjab aggrieved against that order has come up in revision.

2. The learned Special Judge found fault with the statement of Shri K. D. Arora, IAS, Deputy Secretary, Revenue, Punjab, Chandigarh, who had

appeared as PW-1 to depose that he was authorised to sign for and on behalf of the Governor of Punjab under the rules of business. Doubt was

cast on such statement by the learned Judge, being of the view that it was the Revenue Minister, who was head of the Revenue Department, who

could accord the sanction. Here, the signatures of Shri Beant Singh, the then Revenue Minister, appeared on the noting Exhibit PA/1, but the

learned Judge thought that there was nothing on the file from which it could be disclosed that he had applied his mind while according sanction, and

that mere appendage of the signatures did not necessarily mean that he : had applied his mind and accorded the sanction as required under the law.

The learned Judge further observed that Shri K. D. Arora, IAS, Deputy Secretary, could be right that he was authorised to sign on behalf of the

Governor under the rules of business, had the prosecution : produced a copy of the rules of business in that behalf.

Thus, he came to the view that j

express authorisation had not been proved in the present case. He relied upon certain observations of the Supreme Court in *Gour Chandra Rout*

and *Another Vs. The Public Prosecutor, Cuttack*, .

3. Section 465 of Criminal P.C., specifically says that subject to the provisions, herein before contained, a superior court cannot alter the findings

or sentence or order passed by a Court of competent jurisdiction on account of any error or irregularity in any sanction for the prosecution, unless

hi the opinion of that Court, a failure of justice has in fact been occasioned thereby. And further in determining whether failure of justice has

occasioned, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Now here, as is plain, the objection was taken when the trial had practically concluded and the matter was at the arguments stage. The accused

respondent, without showing any cause why the objection could not be raised at an earlier instance and whether in fact any failure of justice was

about to occasion thereby, straightway raised the plea at the fag-end of the trial. The sanction order Exhibit PA had been adduced in evidence on

8-8-1983 when Shri K. D. Arora, I AS, PW-1 had appeared in the Court on 8-8-1983. He was cross-examined in that regard from all possible

angles. It is at that stage that the point of sanction ought to have been raised Thereafter the prosecution led evidence uptill 27-10-1983 followed by

the statement of the accused and the defence evidence. No effort, however, was made in the meantime in that regard. Thus, on the principles of

Section 465, Cr. P. C., I am of the view that late raising of the question of sanction, unless any failure of justice could be pointed out, by itself was

fatal to the plea raised in the facts and circumstances of the present case.

4. Even keeping that apart, the evidence of Shri K. D. Arora, IAS, PW-1, cannot be doubted, if he on oath says that he under the rules of

business was authorised to sign for and on behalf of the Governor of Punjab. It is he who had dealt with the file and had identified the signatures of

Shri Beant Singh, the then Revenue Minister. There is a presumption that all official acts have been done by the respective functionaries in

discharge of the duties enjoined on them under the law. When the sanction file had been put up before the Minister, containing a self-explanatory

note, whereupon he appends his signatures, it is presumed that he had applied his mind thereto and thereafter as a token of accord put his

signatures thereon. The view taken by the learned Special Judge, appears to me in the circumstances, overly technical, requiring rectification at this

end. In no event, could it be held that the rules of business did not authorise Shri K. D. Arora, IAS, to sign for and on behalf of the Governor of

Punjab and nowhere could it be held that the Minister had not put his accord to the proposal for according sanction to prosecute the accused-

respondent,

5. Thus, for both the views, afore-expressed, that is, on the timing of the objection raised and the objection otherwise being untenable, this petition

of the State succeeds, the impugned order is set aside and the matter is remitted back to the learned Judge for proceeding with the trial from the

stage where it was towards final culmination. The parties through their counsel are directed to put in appearance before the learned Special Judge,

Barnala, on May 30, 1985.