

Bhagwan Dass Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 21, 2008

Acts Referred: Constitution of India, 1950 " Article 226
Criminal Procedure Code, 1973 (CrPC) " Section 197, 482
Prevention of Corruption Act, 1988 " Section 13, 19, 19(1), 7

Citation: (2008) 2 RCR(Criminal) 781

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: Atul Lakhanpal, for the Appellant; R.D. Sharma, DAG, Haryana, for the Respondent

Final Decision: Allowed

Judgement

Vinod K. Sharma, J.

This is a petition u/s 482 of the Code of Criminal Procedure (for short the Code) for quashing of FIR No.20 dated

14.10.2003 under Sections 7 and 13 of the Prevention of Corruption Act, (for short the Act) registered at police station State Vigilance Bureau

Hissar, (Annexure P.1) and the order dated 28.10.2005 (Annexure P.3) and further proceedings taken thereon.

2. The ground on which quashing is sought is that where once the competent authority has rejected the application of the prosecution to grant

sanction to prosecute a public servant the same can not be reviewed by a subsequent order.

3. On 10.3.2005, the competent authority declined the sanction by passing the following order:-

Sh.Bhagwan Dass, Steno-typist in the office of Deputy Director Agriculture, Hissar was arrested on 14.8.2003 by a team of State Vigilance

Bureau (H), Hissar, for taking bribe of Rs. 4000/- from Sh. Mahabir Parsad son of Sh. Ram Chander Verma, Beej Bhandar, Adampur (Hissar)

and FIR No. 20 dated 14.8.2003, U/s 7/13/49/88 of Prevention of Corruption Act, 1988 was registered against him at the police station,

Vigilance Bureau, Hissar. Vide orders dated 23.8.2003 of the learned Special Judge, Hissar, Sh.Bhagwan Dass Steno typist was released on bail.

In connection with his said arrest, Sh.Bhagwan Dass Steno-typist vide his application dated 14.10.2003 intimated the office that complainant

Sh.Mahabir Parsad s/o Sh.Ram Chander, Mandi Adampur had implicated him falsely in the Vigilance case because on 14.8.2003, in between

4.00 and 4.30 p.m., Sh. Sushil Kumar TA and Sh. Krishana Chand Clerk were also present in his cabin.

The superintendent of Police, State Vigilance Bureau, Hissar vide his letter No. 2352 dated 20.10.2003/30.12.2003 had requested for grant of

necessary permission to put up the challan in the court and to launch prosecution against Sh. Bhagwan Dass, Steno-typist in the office of Deputy

Director Agriculture, Hissar in case (FIR) No.20 dated 14.8.2003 U/s 7, 13, 49 PC Act, 1988, PS State Vigilance Bureau, Hissar.

Before the requisite permission was granted to prosecute Sh.Bhagwan Dass steno-Typist, the undersigned deemed it appropriate to conduct an

enquiry in the matter. Accordingly, vide department's letter No. 1030/Local-3(1) dated 14.1.2001, Sh.Manohar Lal, Administrative Officer was

deputed to conduct a discreet enquiry in the matter.

The Enquiry Officer has submitted his enquiry report on 12.3.2004. In his enquiry report, the Enquiry Officer has mentioned that the complainant

Sh. Mahabir Parsad s/o Sh. Ram Chander, Mandi Adampur (Hissar) has made a statement in connection with the arrest of Sh. Bhagwan Dass

Steno-typist of the office of Deputy Director Agriculture, Hissar, that he (Mahabir Parsad) runs a shop of pesticides and Seeds in the name and

style of Verma Beej Bhandar, at Mandi Adampur (Hissar) and his younger brother Sant Lal is Proprietor of said shop. The validity of licences

issued by the Agriculture Department in this regard were expired on 31.3.2003 and 31.12.2003. In order to get the said licences renewed, he paid

repeated visits to the Agriculture Department, Hissar. Sh.Bhagwan Dass, Steno typist had demanded Rs.2000/- from him for the said purpose, but

he did not give him. On 26.7.2003, the Deputy Director Agriculture, Hissar along with Sh.R.D. Chauhan, Assistant Plants Protection Officer,

Hissar and Sh.Bhawan Dass Steno-typist and a peon raided at his shop and had taken along some pesticides of the value of about Rs. 20/25

thousands. At that time, he was not present in the shop. Sh.R.D. Chauhan, APPO had also misbehaved his father. After two days, when he met

Sh. R.D. Chauhan, APPO Hisar in his office, then he (Sh. R.D. Chauhan) demanded Rs. 10000/-, which were not available with him at that time.

On 13.8.2003, it was settled between him and Sh. R.D. Chauhan that on the next day i.e. on 14.8.2003, he would give Rs. 5000/- to Shri

Bhagwan Dass, Steno-typist and then his pesticides would be returned back to him and also renewed the said licence. On 14.8.2003, accordingly

it was decided to give Rs. 4000/- on that day to Sh. Bhagwan Dass Steno typist and Rs. 1000/- later on. But before giving the said money as

bribe, he had made a complaint against Sh. R.D. Chauhan, APPO in that regard in the office of State Vigilance Bureau, Hissar. On 14.8.2003, a

team of State Vigilance Bureau Hisar had given Rs. 4000/- to Sh. Bhagwan Dass, Steno typist for giving the same to Sh. R.D. Chauhan and at the

same time the said team took Sh. Bhagwan Dass, Steno typist in their custody. The complainant in his statement has also admitted that he has been

running his shop by getting licence, some times in the name and style of Verma Beej Bhandar and sometimes as Sonu Beej Bhandar and some

times as Hindustan Seed Company. The complainant has further admitted that in the year 2000 Shri R.D. Chauhan and Sh. Lal Chand Godara,

APPO and Q.C.I. Hisar had taken away about 50-60 litres of a pesticide and had demanded Rs. 10000/- to return back the said pesticide. He

had given Rs. 6000/- and get back only 40 ltr. pesticides, whereas they had kept 5-7 litres pesticide with them. The said Officers had filed a case

in the Court of Sh. G.S. Wadhwa which is still pending. Apart from it, the Agriculture Department Hisar has also filed a case against him in the

Court of Shri Parveen Goyal at Hisar for selling fake seeds and he was arrested in the said case and then released on bail. The said case is still

pending.

The Enquiry Officer has also recorded the statements of S/Sh. Bhagwan Dass, Steno-typist, Sushil Kumar, TA, R.D. Chauhan, APPO, Krishan

Chand Clerk and Sh. Prithvi Singh Deputy Director Agriculture, which run as under:-

Sh. Bhagwan Dass Steno-typist has stated in his statement that on 14.08.2003 at about 4.00 P.M., in the presence of S/Sh. Sushil Arora TA and

Krishan Chauhan Clerk a team of State Vigilance Bureau, Hisar had taken him along to the Police Station without assigning any reason or any

proceedings and after registering a false FIR against him for taking bribe he was arrested. At that time, Sh. Krishan Kumar Clerk had also

accompanied him. That he had not taken any bribe from Sh. Mahavir Parsad because he was not capable to do his work. Neither he deals with

the issuance of licences nor he is posted under Sh. R.D. Chauhan. On 13/14.8.2003, neither he met Sh. Mahabir Parsad (complainant) nor any

conversation was held between them on telephone.

Sh. Sushil Kumar, Technical Assistant in the office of Deputy Director Agriculture Hisar, stated in his statement that on 14.8.2003 between 4.00

PM and 4.30 PM, he was sitting in the cabin of Sh. Bhagwan Dass, Steno. A team of State Vigilance Bureau, Hisar took along Sh. Bhagwan Dass

Steno without disclosing any reason/enquiry. He had not demanded any bribe from Sh. Mahabir Parsad (complainant) and nor any money was

given to him by the complainant. Two complaints made by Sh. Mahabir Parsad (complainant) against the proprietor of Sonu Beej Bhandar, Mandi

Adampur were received from the Deputy Commissioner, Hisar and a farmer, in which an enquiry was got conducted.

Sh. R.D. Chauhan, APPO, Hisar has stated in his statement that a case was got registered on 21.11.01 against Sh. Mahabir Parsad (complainant)

for selling pesticides unauthorisedly, which is still pending. Some farmers had also made a complaint against Sh. Mahabir Parsad (complainant)

for fraud and he remained in custody for 14 days and then released on bail. A complaint is also pending against the complainant (Sh. Mahabir

Parsad) in the local Distt. Consumer Forum that he used to procure licence by changing the name of firm frequently.

Sh. Krishan Chand, Clerk has stated that the State Vigilance Bureau, Hisar has falsely implicated Sh. Bhagwan Dass, Steno in case of corruption.

Sh. Prithvi Singh, Deputy Director Agriculture, Hisar has stated in his statement that on 14.8.2003 he was present in his office. The team of State

Vigilance Bureau, Hisar had not contacted him in any manner regarding arrest of Sh. Bhagwan Dass, Steno, whereas it was necessary to contact

him being the head of office.

Sh. Prithvi Singh, Deputy Director Agriculture, Hisar in his comments, has also stated that Sh. Mahabir Parsad s/o Sh. Ram Chander

(complainant) had been misleading the department to run his business of pesticides and seeds unauthorisedly by changing the name of his firm

frequently. A case is also pending against him in the Court for sale of pesticides and another case was filed by Rajender s/o Sher Raj in the Distt.

Consumer Forum which is still pending. As such with a motive to put pressure on the department, and to malign the image of the department, the

complainant has re-coursed to a false case, which is altogether baseless.

The Deputy Director Agriculture, Hisar (Sh. Prithvi Singh) has further stated in his comments that Sh. Bhagwan Dass Steno has been working in

their department since 21.7.1995. The said official is so conversant that he has full knowledge of all office work and entire confidential record has

been rated as very good. As such, the complainant has concocted a false story to held him an accused.

Sh. Prithvi Singh, Deputy Director Agriculture, Hisar, in his comments has also clarified under the provisions of Pesticides Act, 1968 and Rules of

1971 FCO 1985 and Seed Act 1966, he himself is competent to issue and renew licence for sale of Fertilizers Pesticides and Seeds.

The Enquiry Officer has further mentioned that he has examined the matter thoroughly and has perused all relevant documents and records and

gone through the statements of the witnesses, and the following points came to his notice:-

1. Sh. Mahabir Parsad has not specified in the FIR as to who had demanded Rs. 2000/- from him for renewal of his licence, whereas in his

statement he has stated that Rs. 2000/- were demanded by Sh. Bhagwan Dass Steno.

2. According to Mahabir Parsad, he came to the office to remit the late fees after 15-20 days of expiry of his licence (i.e. 15-20 April, 2003) and

when Sh. Bhagwan Dass Steno demanded Rs. 2000/-, he did not make any oral or written complaint to any officer in the department, as is evident

from his version.

3. As per version of Sh. Sushil Kumar Arora, Technical Assistant, he is dealing with the matters of issuance of licence for sale of seeds and not Sh.

Bhagwan Dass, Steno.

4. Sh. Bhagwan Parsad has stated that he met Sh. Chauhan in connection with renewal of his licence 2-3 days prior to 14.8.2003, whereas, as per

Sh. Chauhan, he had not met him and there was no necessity of meeting him because Sh. Chauhan, APPO has no concern with the issuance and

renewal of licence for sale of Pesticides and Seeds, from the procedure explained by the Deputy Director Agriculture it is also clear that Sh.

Chauhan, APPO has/ had no concern with the above said matter.

5. From the bill No. 253 dated 6.5.2003 (which is in the name of Sh. Jagdish Chander) and bill No. 278 dated 30.5.2003 (which is in the name

of Shiv Kumar) issued by M/s Sonu Beej Bhandar and produced by Sh. Sushil Kumar, Technical Assistant, it is clear that the aforesaid firm had

continued its business even after the expiry of licence which is illegal.

6. On 2.9.2000 Sh. R.D. Chauhan, Assistant Plans Protection Officer had conducted a raid on the shop of Sh. Mahabir Parsad Proprietor of

Sonu Beej Bhandar, Kranti Chowk, Adampur whereupon a case was filed in the Court of CJM, Hisar on 21.11.2001 for selling expired

pesticides and the said case is fixed for evidence. In the said case, Sh. Mahabir Parsad was putting pressure on Sh. Chauhan, which the latter did

not accepted.

7. On the complaint of Sh. Jagdish Chander s/o Sh. Mangtu Ram, resident of Kishangarh, a case of fraud was registered against Sh. Mahabir

Parsad in the police station, Adampur and Sh. Mahabir Parsad remained in custody for 14 days and now he is on bail. He himself has admitted this

fact.

8. Sh. Rajender s/o Sh. Sheo Raj Goyal, r/o village Siswal, Tehsil Adampur has also filed a case against Sh. Mahabir Parsad in the Distt.

Consumer Forum, Hisar for selling fake pesticides, which is fixed for evidence.

9. As per comments of Deputy Director Agriculture Hisar the earlier licence No. 4/97 issued to Sh. Mahabir Parsad in the name of Sonu Beej

Bhandar, Kranti Chowk, Adampur was expired on 31.12.2000. After that he changed the name of his firm as Verma Beej Bhandar, Bhadra

Road, Adampur on 3.8.2001 and got a licence (of pesticides) which was valid up to 31.12.2002 but even after the issuance of request letter

dated 4.3.2003 by the office of deputy Director Agriculture, Hisar, he did not get it renewed and same was expired on 31.12.2002. Now, Sh.

Mahabir Parsad has changed the name of his firm the proprietor of which is Sh. Jagar Singh s/o Sh. Manphool Singh Siswal (Bhiwai) and has got

licence in the name of firm as M/s Hindustan Seed Company.

From the aforementioned position, it appears that the complaint made by Sh. Mahabir Parsad s/o Sh. Ram Chander, Mandi Adampur against Sh.

R.D. Chauhan, Assistant Plants Protection Officer, Hisar, a result of FIR, which was got registered against him for selling expired pesticides

illegally and other complaints made against him. It is also clear from the various cases filed against the complainant that he is not honest in his

profession because he continued selling pesticides etc. even after the expiry of validity of his licence.

In the end, the Enquiry Officer has concluded that from the procedure explained by the Deputy Director Agriculture, Hisar regarding issuance and

renewal of licence for sale of fertilizers, Seeds and Pesticides, Sh. R.D. Chauhan, Assistant Plants Protection Officer, Hissar had no concern with

the matter of complainant and nor he was competent to render any help to the complainant, rather the Deputy Director Agriculture, Hissar himself

was competent Authority under the rules for renewal of his licence. In these circumstances, it appears unbelievable of demanding any bribe by Sh.

Bhagwan Dass Steno from the complainant in the name of Sh.R.D. Chauhan Assistant Plants Protection Officer, Hissar and giving any bribe in that

regard by the complainant. The complaint being frustrated from the cases pending against him and out of revenge against the officers/officials of the

office of Agriculture Department, Hissar has resorted to his aforementioned act through the State Vigilance Bureau, Hissar. It is crystal clear that

the act of Sh.Mahabir Parsad son of Sh. Ram Chander, resident of Adampur is merely an act of trickery, because he had a deceive attitude

towards the department and farmers. Apart from it, in the FIR, the name of Mahabir Parsad has been mentioned whereas in the request letter sent

by the State Vigilance Bureau, Hisar for grant of sanction for prosecution, name of Sh. Jagar Singh has been mentioned. In view of the narrated

facts, the allegation of taking bribe does not prove.

I have gone through all facts relating to the matter and perused the Enquiry Report thoroughly submitted by Sh. Manohar Lal, Administrative

Officer and it has been revealed that keeping in view the report of Enquiry Officer, it would not be appropriate to prosecute against Sh. Bhagwan

Dass Steno. Therefore, the request made by the Supdt. of Police, State Vigilance Bureau, Hissar for grant of sanction to prosecute against

Sh.Bhagwan Dass Steno is rejected.

4. However, subsequently, by way of order dated 28.10.2005 the competent authority was pleased to grant sanction by passing the following

order:-

Where from the investigation of case FIR No. 20 dated 14.8.2003 u/s 7 & 13 of Prevention of Corruption Act, 1988 Police Station, State

Vigilance Bureau Hisar, it has been revealed that Mr. Bhagwan Dass, Steno was posted in the office of Deputy Director of Agriculture, Hisar and

was the dealing hand with regard to work of Insecticides Licence, Hindi Typing and Court cases. On 14.8.2003, Mr. Bhagwan Dass accepted Rs.

4000/- from Mr. Mahabir Parshad s/o Ram Chander resident of Shiv Colony, Mandi Adampur for preparing the Insecticides Licence of Mahabir

Parshad which was applied by his Munim namely Jagir Singh S/o Sh. Manphool Singh. This amount was allegedly demanded by Shri Rameshwar

Dass APPO, Hisar and he asked to pay the amount to Mr. Bhagwan Dass, Steno. Currency Notes amounting to Rs. 4000/- were recovered from

the possession of Mr. Bhagwan Dass, Steno as per the recovery memo prepared by Mr. Ram Sarup, DSP, State Vigilance Bureau, Hisar Range,

Hisar in the presence of Mr. Dharampal Panu, Tehsildar, Hisar. The said act of Bhagwan Dass is punishable u/s 7 & 13 of PC Act, 1988 because

he accepted this amount as illegal gratification other than legal remuneration as a motive or reward for showing a favour to him in the discharge of

his official duties by illegal and corrupt means or otherwise abusing his position as a public servant.

After carefully, examining the material placed before me i.e. Challan papers, Police file and other documents of the case of the said F.I.R. I am

satisfied that there is prima facie case made out against Mr. Bhagwan Dass, Steno for criminally prosecuting him for committing a cognizable

offence u/s 7 and 13 of PC Act 1988 or any other offence or which he may found guilty.

Therefore, I, R.K. Khullar, IAS, Director of Agriculture, Haryana being competent authority to remove the above said accused Mr. Bhagwan

Dass, Steno, DDA Office, Hisar from Service do hereby accord the requisite sanction u/s 19 of the Prevention of Corruption Act, 1988 for

prosecution of the said Bhagwan Dass Steno for offences u/s 7 and 13 of PC Act and any other offence of which he may found guilty. I am also

satisfied that the launching prosecution against the above is necessary in the public interest.

5. Mr. Atul Lakhanpal, learned counsel appearing on behalf of the petitioner contended that once an authority passes an order refusing to grant

sanction the said authority cannot review its order. In support of this contention reliance has been placed on the Division Bench judgment of this

Court in the case of Mohammed Iqbal Bhatti v. State of Punjab, 2006 (2) RCR (Criminal) 430 (P&H) wherein this Court has been pleased to lay

down as under:-

15. We have perused the impugned order dated September 30, 2004. This order does not talk of the deficiency in the order dated December 15,

2003, nor it is indicative that the same has been passed in supersession of the said order. It is correct that the sanction required to be granted u/s

19 of the Act and Section 197 of the Code of Criminal Procedure, is not a quasi judicial order and that opportunity of being heard was not

required to be granted to the petitioner. However, passing of the impugned order would not amount to reviewing the order passed by the

competent authority. Learned Additional Advocate General has not been able to show any provision under the Act or under any other statute that

such an authority had the specific power to review the earlier order. De hors this, there is nothing in the order supporting the argument of learned

Additional Advocate General that the material which had been placed before the competent authority while passing the impugned order was never

ever placed before the competent authority while passing the order dated December 15, 2003. It is also no where the case of the respondents that

the points/clarification raised had been duly complied with and which would entitle the respondents for passing a second order. It is in this regard,

we had asked for the production of the record vide our order dated December 13, 2005. The perusal of the record categorically shows that the

impugned order was never ever passed in supersession of the previous order. Further, it is nowhere the case of the respondents that absolutely

new fact had come to surface, which had been examined by the competent authority while granting the sanction for prosecuting the petitioner. We

have perused the record and we find that the learned Legal Remembrancer and Secretary to Government of Punjab had made a reference to Dr.

Jaswinder Kaur's case (supra) indicating that the Government had not refused to grant sanction but it had only taken a decision to drop

departmental proceedings in that case and that the afore-stated judgment does not apply to the fact of the case but the pivotal fact remains to be

kept in mind is that the order dropping the departmental proceeding had been made after the Vigilance Bureau had asked for sanction of the

prosecution. Therefore, it may not be advisable now to grant sanction. In case the department is bent upon to grant sanction at this stage, the

matter would require to be put up before the Chief Minister for modifying/reviewing the order passed by the then Minister for Rural development

and Panchayat, whereby departmental proceedings on these very allegations had been dropped. This opinion was of August 19, 2003, where after

the order dated December 15, 2003, had been passed vide which the sanction for prosecuting the petitioner had been declined. The record which

has been shown to us does not indicate that any new material had been placed before the competent authority for passing the impugned order

except the communication received from Director, Vigilance Bureau, dated June 22, 2004, which makes a reference of the letter dated May 26,

2004 which again does not disclose any new material.

We have also perused the noting dated 23.2.2004, vide which the detailed reference to the earlier decision of the government has been made vide

which the sanction to prosecute the petitioner had been declined. It had also been suggested that the complaint of Hans Raj deserves to be filed.

The order dated July 22, 2004, seems to have been passed by Rural Development and Panchayat Minister which is devoid of any discussion for

the purpose of differing with the earlier order. Nothing has been opined as to whether the order would now be passed in supersession of the

previous order and/or the authority has the power to review its earlier order. It is obvious that no new material was considered while passing the

impugned order.

16. Once the government passes the order u/s 19 of the Act or u/s 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 permissible.

The government is expected to act consciously and cautiously while taking such serious decisions. The perusal of the record shows that pointed

queries had been raised to be answered by the Vigilance Bureau but no answer was forthcoming nor any had been submitted subsequently which

culminated into passing of the later order dated September 30, 2004. We refrain ourselves from mentioning the queries which had been raised but

it would suffice to say that the queries were never answered at the relevant time when the order dated December 15, 2003, had been passed nor

the same were ever commented upon as no answers were placed before the competent authority for passing the impugned order dated September

30, 2004.

17. The government cannot act in a manner which may cause harassment to an employee or any person. Though the orders required to be passed

while exercising the powers u/s 19 of the Act and Section 197 of the Code of Criminal Procedure cannot be termed as quasi judicial order, yet the

orders have to be passed consciously and cautiously by applying the mind accordingly. In the present case, the impugned order has been passed in

a very casual manner whereas the previous order had been passed after due deliberations and when the Vigilance Bureau was unable to give

answers to the queries raised, the sanction had been declined. We have no reason to accept the contention of learned Additional Advocate

General that the subsequent order i.e. order dated September 30, 2004, was passed by due deliberations and upon the basis of the new facts

disclosed or by way of applying mind or holding that the present impugned order is in supersession of the previous order.

6. Learned counsel for the petitioners thereafter placed reliance on the judgment of this court in the case of Dr. Jaswinder Kaur v. State of Punjab

and Anr., 2002 (1) RCR (Criminal) 79 : 2001 (2) RCC 170, wherein this Court was pleased to lay down as under:

11. I am of the considered opinion that the case of the petitioner is covered by the aforesaid ratio. In the absence of some fresh material or some

technical infirmity, or some clerical error, the competent authority had no power to review the earlier order on merits.

16. These observations are squarely applicable to the facts and circumstances of the present case. The Officer could not have reviewed its earlier

orders. As soon as the earlier orders refusing the sanction was signed on 14.2.2000, the competent authority became functus officio. Merely,

because the Vigilance Bureau had asked for the reasons for the refusal of the sanction was not a ground to review the earlier order.

7. Learned counsel for the petitioners also placed reliance on the Division Bench judgment of Himachal Pradesh High court in the case of Omkar

Sharma and etc. v. State of H.P. and others, 2003 (2) RCR 512 (H.P.), wherein the Hon"ble Division Bench of Himachal Pradesh High Court has

been pleased to lay down that sanction for prosecution of public servant having been refused by competent authority the same cannot be reviewed

and revised on the same material and grant sanction for prosecution. It has further been held that power to review is not an inherent power. It must

be conferred by law specifically or by necessary implications. In order to record these finding reliance was placed on the judgment of Hon"ble

Supreme Court in the case of Ramanand Chaudhary v. State of Bihar, 1994 (2) RCR 491 (SC) , wherein Hon"ble Supreme Court was pleased to

lay down that where Commissioner on independent consideration refused to grant sanction in the absence of any case being made out against the

accused-appellant the grant of sanction after reconsideration of the appellant's case on directions by the Deputy Inspector General of Police (V)

was not proper in view of the facts and circumstances of the said case.

8. Learned counsel for the petitioner also placed reliance on the Division Bench judgment of Allahabad High Court in the case of Vijai Bahadur v.

State of U.P. and others, 1989 Cri.L.J. (NOC) 61 where the sanction was refused after consideration of entire material and thereafter order was

reviewed on the same material by the same officer the same was held to be improper.

9. However, Mr. R.D. Sharma, learned Deputy Advocate General, Haryana on the other hand placed reliance on the Division Bench judgment of

this court in the case of Dilbag Singh v. State of Punjab, 2002 (4) RCR (Cri) 532, wherein this Court was pleased to lay down that sanction for

prosecution was declined by the authority the same was held to be an administrative act and it was further held that authority can reconsider and

grant sanction. However, it may be noticed that in the said case the sanction was challenged by the petitioner and the writ petition filed against the

said order was dismissed in limine by holding that there was no equity in favour of the petitioners and thus, there was no ground for interference in

exercise of discretion under Article 226 of the Constitution of India.

10. Learned Deputy Advocate General, Haryana thereafter made reference to the judgment of Hon"ble Supreme Court in the case of State (Anti

Corruption Branch) Govt. of N.C.T. of Delhi and Another Vs. Dr. R.C. Anand and Another, to contend that u/s 19 of the Prevention of

Corruption Act sanction for prosecution can be granted on application of mind and order of sanction, therefore, must ex facie disclose that the

sanctioning authority had considered the offence and other material placed before it.

11. In the said case sanction for prosecution was granted by the Governing Body of AIIMS by superseding the order of President of AIIMS

which revoked the suspension order of employee and declined to grant sanction subject to rectification by the Governing Body. Such order was

held to be valid. However, this judgment would have no application as in the said case. The President of AIIMS was not a competent authority

and sanction was refused subject to rectification by the Governing Body and thus, there was no question of review or reconsideration of the

matter.

12. Learned counsel for the State contended that it is for the trial court to consider whether the sanction was validly issued or not. However, the

validity of sanction cannot be a ground to quash the proceedings.

13. Finally, learned counsel for the State placed reliance on the judgment of Hon"ble Supreme Court in the case of Parkash Singh Badal and

Another Vs. State of Punjab and Others, , wherein it was observed that the requirement of sanction u/s 19(1) of the Prevention of Corruption Act

is a matter of procedure and does not go to the root of the jurisdiction. However, this can also be of no help to the State as the order of Hon"ble

Supreme Court in the case of State of Karnataka v. Ameerjan, 2007 (4) RCR (Cri) 375 : 2007 (5) RAJ 202 : 2008 (1) SCC(Cri) 130 has been

pleased to lay down as under:-

It is true 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 PC Act by refusing to accord sanction for his prosecution or not. For the

aforementioned purpose, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be

demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. In the instant case, the sanctioning

authority had purported to pass the order of sanction solely on the basis of the report made by IG Police. Even the said report has not been

brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police had

placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the

commission of the offence by the public servant concerned is not evident. The High Court called for the original records. It had gone there into. It

was found that except the said report, no other record was made available before the sanctioning authority. The order of sanction also stated so.

The sanctioning authority did not have the occasion to consider the records except the purported report. Therefore, the impugned judgment of the

High Court does not suffer from any legal infirmity although some observations made by the High Court do not lay down the correct legal position.

The judgment of Hon"ble Supreme Court in the case of Parkash Singh Badal v. State of Punjab (supra) was, thus, distinguished.

14. On consideration of the matter, I find that it is now well established that though it is opened to the competent authority to grant sanction after it

has been refused once but the same can only be done, if some new material comes to the notice of the competent authority which was not available

when earlier decision was taken. In the absence of any new material it is not open to the competent authority to review its decision regarding non-

grant of sanction. It may be noticed here that in the present case the order does not show that successor-in-interest came across any new material

which was not available to his predecessor-in-interest while refusing to grant sanction.

15. Thus, in view of the settled law, relied upon by the learned counsel for the petitioner, it has to be held that the order of sanction is without

jurisdiction and therefore, liable to be quashed, as sanction is prerequisite to initiate criminal proceedings under the Prevention of Corruption Act,

the proceedings being misuse of process of court are also liable to be quashed.

16. Consequently, the petition is allowed. The FIR and subsequent proceedings are ordered to be quashed.