M.S. Walia Vs Central Bureau of Investigation

Criminal M. Mo. 34307 M of 2010

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 2, 2010

Acts Referred:
Constitution of India, 1950 â€" Article 235, 311(2)#Criminal Procedure Code, 1973 (CrPC) â€" Section 173, 465, 465(2), 482#Prevention of Corruption Act, 1988 â€" Section 13(1), 19(3)

Citation: (2011) 1 RCR(Criminal) 284

Hon'ble Judges: Nirmaljit Kaur, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Nirmaljit Kaur, J.
The present petition has been filed u/s 482 of the Code of Criminal Procedure for quashing of the Sanction Order dated

9.12.1999 (Annexure P-12) and the order dated 2.11.2010 (Annexure P-15) passed by the learned Special Judge, CBI Court, Chandigarh

whereby application dated 12.7.2010 (Annexure P-14) moved by the Petitioner for deciding the validity of sanction for prosecution was

dismissed.

2. An FIR No. 10 dated 3.2.1998 under Sections 13(1)(e) PC Act was registered against the present Petitioner, who was Civil Judge, (Sr. Divn.)

Bathinda, at that time, at the instance of Registrar (General) Punjab and Haryana High Court, Chandigarh on account of being in possession of

disproportionate assets to his income, which he could not satisfactorily account for. Thereafter, the matter was transferred to the CBI for

investigation. The CBI submitted its report u/s 173 Code of Criminal Procedure in CBI Court, Chandigarh. An exhaustive and detail order granting

sanction was issued by the Governor on 9.12.1999. The operative part of the same reads as under:

Now therefore, the Governor of Punjab, being competent authority, do hereby, accord sanction u/s 19(1)(c) of the PC Act, 1988 for the

prosecution of said Sh. M.S. Walia (Civil Judge, Sr. Division), for the said offences and for any other offences punishable under any other

provision of the law in respect of said act and for taking cognizance of the said offence by the court of competent jurisdiction.

3. The Petitioner challenged the said order as late as on 12.7.2010 before the Special Judge, CBI Court, Chandigarh. However, the said

application was dismissed vide a detailed order dated 2.11.2010.

4. The sanction order dated 9.12.1999 as well as the order dated 2.11.2010 has been impugned in the present petition u/s 482 Code of Criminal

Procedure inter alia contenting that sanction in the present case has been granted at the instance of the third party i.e. High Court. Secondly,

Principal, Secretary to Government of Punjab, Department of Home Affair and Justice has not gone through the statements of witnesses and the

other evidence on record. As such, there has been non application of mind by the Sanctioning Authority as the draft sanction was adopted without

a change of word. Reliance was placed on the judgment of Hon''ble the Supreme Court rendered in the case of Mansukhlal Vithaldas Chauhan

Vs. State of Gujarat, to argue that independent application of mind to the facts of the case as also material and evidence collected during

investigation by the authority competent to grant sanction was essential and any sanction issued by an authority on the directions of the High Court

was invalid because there was no independent application of mind by that authority.

5. It was further explained that the delay in challenging the grant of sanction is on account of the fact that it was only during the course of trial i.e.

when the statements were recorded in which DW-27 and PW-108 were examined that the evidence on record revealed that the sanction in the

present case was at the instance and intervention of the High Court.

Heard.

6. It is admitted that the matter regarding permission to prosecute the Petitioner was considered by the High Court in its Full Court meeting held on

4.11.1999 in the light of the inquiry report dated 2.11.1999 submitted by the Senior Superintendent of Police, CBI, Chandigarh. It was decided in

the Full Court meeting that the Government may be moved to accord necessary sanction for the prosecution of the present Petitioner and a letter

to this effect was sent by the Registrar (General) to the Chief Secretary on 5.11.1999. It is also admitted that the sanction order dated 9.12.1999

was duly issued by the Governor of Punjab being competent authority to issue the same.

7. The arguments raised by the learned Counsel were dealt with by the Judge, Special Court, Chandigarh. With respect to the office noting

Annexures P-4 and P-5 referred by the learned Counsel for the Petitioner to say that the sanction was on the asking of Hon''ble the Chief Justice

suffice it to say that the same was dealt in detail by the Special Judge, CBI Court, Chandigarh, in his order dated 2.11.2010 while disposing of the

application filed by the accused-applicant M.S. Walia for deciding the question whether sanction for prosecution granted in this case is valid. The

relevant part of the same reads as under:

In the noting Ex.DW-27/3 which is being vehemently stressed by the accused, it is mentioned that the Principal Secretary has signed and sent the

sanction order for prosecution of M.S. Walia, Civil Judge (Senior Division) which was received through Punjab and Haryana High Court because

the Hon''ble Chief Justice, Punjab and Haryana High Court has telephonically asked the Principal Secretary to do so in this regard and keeping in

view the importance of the case the sanction order has been issued. It is further mentioned that as per the order of the Principal Secretary on the

preceding page the file may be shown the Chief Minister, Punjab. From the aforesaid noting Ex.DW-27/3 no conclusion can be drawn that the

Principal Secretary, Home was being pressurized or dicatated by the Hon''ble Chief Justice to accord the sanction. At the most the Hon''ble Chief

Justice might have asked the Principal Secretary, Home to expedite the matter as the charge sheet was already filed in the court. Moreover the

request for grant of prosecution sanction was sent to the Punjab Government on 5.11.1999 vide letter Ex.DW-21/10 that is more than on month

ago.

8. The submission of the learned Counsel for the Petitioner that there was non application of mind is further discussed in detail by the Court in para

29 of the said judgment. The extract of the same reads thus:

29. The material which was relevant for perusal by the Competent Authority to form its opinion for granting or refusing the prosecution sanction

was the S.P''s report, statement of the witnesses and the documents collected by the CBI during the investigation. Even as per the statement of

DW-27 Gurjit Singh, dealing Assistant the entire material was already available with the Principal Secretary, Home. So, it cannot be said that the

Principal Secretary, Home has spent only half an hour in perusing the material.

The issue of draft sanction was dealt in para 31, which is as under:

31. This fact is not disputed that the CBI has sent the draft sanction Mark-DW-27/A to the sanctioning Authority Singh has clarified in the cross

examination that whatever draft sanction is received from the prosecuting agency that is only used as format of the sanction order and the sanction

order is prepared by the Competent Authority. PW-108 D.S. Jaspal has also stated in the cross examination that some corrections in the draft

sanction order was made by Shri Rajesh Chhabra, the Sanctioning Authority which shows the due application of the mind by the Sanctioning

Authority. If the Sanctioning Authority has taken the help of the draft sanction order, it cannot be stated that the sanctioning authority has not

applied its mind for according the prosecution sanction. So, mere this fact that the sanction order Ex. PW-108/1 was substantially verbatim the

same as the draft sanction order Mark-DW-27/A except the corrections made by the Sanctioning Authority is also no ground to conclude that

there was no application of mind by the sanctioning authority.

9. No such ground has been raised, which may require the Court to set aside the well reasoned order passed by the Court of Special Judge,

Chandigarh. No error or fault has been pointed out with the order dated 2.11.2010. The matter was of utmost importance. The Full Court had

already taken a decision. The trial was proceeding. Therefore, the concern of the Chief Justice that the matter with respect to sanction should be

decided as soon as possible can be appreciated. The same cannot be twisted by the Petitioner to suggest that the Principal Secretary, Home was

pressurized. Even otherwise, the sanction order was passed by the Governor, who is competent authority. Sanction order Ex.PW-108/1 speaks

for itself. It is a detailed order, which shows that the entire evidence was scrutinized with complete application of mind.

10. Even otherwise, the argument of the learned Counsel for the Petitioner that the order sanction is a nullity and the same was issued at the behest

of the High Court which was only a third party is devoid of merit.

Article 235 of Constitution of India reads as under:

Control over subordinate Courts-The control over district Courts and Courts subordinate thereto including the posting and promotion of, and the

grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the

High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law

regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his

service prescribed under such law.

11. A perusal of Article 235 of Constitution of India makes it clear that the control over the subordinate judiciary is vested in the High Court and

the same is exhaustive in nature.

12. The extent of such ""control"" over the District Courts and Subordinate Judiciary is well settled by the Apex Court in various judgments.

13. The Larger Bench of Hon''ble the Supreme Court in the case of Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others,

while interpreting the word ""Control"" under Article 235 of the Constitution of India held in paras 37 and 38 as under:

37. Article 235 is the pivot around which the entire scheme of the Chapter revolves. Under it, ""the control over district courts and courts

subordinate thereto including the posting and promotions of, and the grant of leave to persons belonging to the judicial service of a State"" is vested

in the High Court.

38. The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystallised by those decisions

is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and

effective in operation. It comprehends a wide variety of matters. Among others, it includes:

(a)(i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal,

reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court

can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however, to the

conditions of service, and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article

311(2).

(ii) In Article 235, the word ''control'' is accompanied by the word ""vest"" which shows that the High Court alone is made the sole custodian of the

control over the judiciary. The control vested in the High Court being exclusive, and not dual, an inquiry into the conduct of a member of the

judiciary can be held by the High Court alone and no other authority.

(iii) Suspension from service of a member of the judiciary with a view to hold a disciplinary inquiry.

14. In the case of T. Lakshmi Narasimha Chari Vs. High Court of Andhra Pradesh and another, instead of the Governor issuing the sanction

order, the same was issued by the High Court itself. Since, it is apparent that in the case of subordinate judiciary, the power vests with the High

Court. It was in that context that the Apex Court held that the recommendation of the High Court was mandatory and binding on the Governor,

who may issue the order of removal in pursuance of the recommendation made by the High Court. While holding so, it was observed in para 9 of

the said judgment as under:

One of the conclusions rightly reached by the High Court is that the appointing authority for a directly recruited District Munsiff is the Governor.

Both these persons were directly recruited as District Munsiffs and it was this substantive rank held by them when they were removed from

service. The High Court has further correctly concluded that the major penalty of dismissal or removal or reduction in rank can be imposed on a

directly appointed District Munsiff only on the recommendation of the High Court which is binding on the Governor. The result is that the order of

removal from service of a person holding the substantive rank of District Munsiff has to be made only by the Governor, even though the Governor

must act in accordance with the recommendation of the High Court which is binding on the Governor. This the true import of Article 235 of the

Constitution which vests the control over the District Courts and the courts subordinate thereto in the High Court. This is well settled by a catena of

decisions of this Court. It is sufficient to refer the decisions in B.S. Yadav and Others Vs. State of Haryana and Others, and Chief Justice of

Andhra Pradesh v. L.V.A. Dixitulu (1979) SC 193.

15. While expressing similar view in the case of The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead)

by Lrs. and Another, , Hon''ble the Supreme Court held:

On going through the judgments of this Court from Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), down to High Court

of Judicature for High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another, , one cannot but reach one conclusion regarding

the power of the High Court in the matter of ordering compulsory retirement. That conclusions is that the High Courts are vested with the

disciplinary control as well as administrative control over the Members of the Judicial Service exclusively, but that does not mean that they can also

pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the

Members of Judicial Service. Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of

dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the

State Governor on the recommendation of the High Court. It is well settled again by a catena of decisions of this Court that the recommendation of

the High Court is binding on the State Government/Governor (vide para 19 in State of Haryana Vs. Inder Prakash Anand H.C.S. and Others,

The same view is further clarified and fortified in the case of Madan Mohan Choudhary Vs. The State of Bihar, leaving no doubt that in the case of

judicial officers, the decision of the High Court is binding requiring the government to pass formal order in pursuance to the recommendation of the

High Court. The control of the High Court over the subordinate judiciary being exclusive, it cannot be termed a ""third party

16. The judgment of Madan Mohan Chaudhary (supra) relied on by the learned Court will not apply to the facts of the present case. The Petitioner

in that case was not a judicial Officer. The said order was passed by the High Court on judicial side. A mandamus could not have been issued. The

matter could only have been sent for consideration.

17. In the present case, the Full Court had taken final decision to prosecute the Petitioner. Accordingly, the case was recommended to the

Governor to accord sanction. The appropriate authority duly granted the sanction after passing a detailed order.

18. There is yet another way of looking at the earlier aspect. Section 19(3) of the Prevention of Corruption Act, 1988 reads as under:

(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.

19. It is evident from the perusal of the said section that the absence of sanction or invalid sanction to prosecute public servant cannot be a ground

to alter the order passed by the Special Judge and nor any proceedings under the Act can be stayed on account of error, omission, irregularity or

absence of any such sanction unless and until there is failure of justice.

20. While deciding the said issue, Hon"ble the Supreme Court in the case of Central Bureau of Investigation Vs. V.K. Sehgal and another, clarified

in paras 10 and 11 as under:

10. A Court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or

irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining

whether want of valid sanction had in fact occasioned failure of justice the aforesaid Sub-section (2) enjoins on the Court a duty to consider

whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly

sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the

trial stage cannot possibly sustain such a plea made for the first time in the appellate Court. In Kalpnath Rai Vs. State (through CBI), , this Court

has observed in paragraph 29 thus:

Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if

objection thereto was raised at the first instance itself. The Sub-section only says that "the Court shall have regard to the fact" that objection has

been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was

raised at the earlier stage, for that very reason the irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void

trial.

11. In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making judicial

scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction

was accorded for prosecuting the public servant, because the very purpose of providing such a filtering check is to safeguard public servants from

frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But one

the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a sur-plusage. This

could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal

Procedure.

21. In the present case also, the sanction order was challenged after the prosecution evidence is almost complete. The case is at its fag end. Even

otherwise, no injustice has been caused in as much as the decision to prosecute the Petitioner was taken in the Full Court meeting of the High

Court. Recommendation to grant sanction was sent to the Government. Even though, the recommendation is binding as well settled by various

pronouncements of the Apex Court, the said sanction has been granted by the Governor, who is the proper authority by passing a detailed order.

A perusal of the same shows due application of mind. Thus, no injustice has been caused. The arguments of the Petitioner have been dealt by the

Special Court. Nothing wrong has been pointed but in the said order.

In view of the above, the present petition is dismissed being devoid of merit.