
(2009) 11 P&H CK 0194

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Rev. No. 2719 of 2009 (O and M)

Harlochan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Nov. 25, 2009

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(2), 7

Citation: (2010) 2 RCR(Criminal) 358

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: Sunil Chadha, for the Appellant; Amandeep Singh Rai, AAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Augustine George Masih, J.

Prayer in the present revision petition is for setting aside the order dated 14.7.2009 passed by the learned Special Judge, Ludhiana vide which the application moved by the petitioner for his discharge on the ground that the sanction for prosecution was declined initially but now thereafter the same has been granted in violation of the law laid down by the Hon"ble Supreme Court and the Hon"ble High Court, which is not sustainable.

2. Counsel for the petitioner contends that an FIR was registered against the petitioner and one Narinder Pal Singh at the instance of one Jarnail Singh son of Sh.Prem Singh under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 and Section 120-B IPC with the Vigilance Bureau, Phase-I, Punjab at Mohali. As per the allegations of the prosecution, during raid, four currency notes of Rs. 100/- each were recovered from the pocket of the shirt of co- accused Narinder Pal Singh and one currency note of Rs. 100/- was recovered from the inner pocket of the petitioner"s coat. Counsel for the petitioner further contends that in the

departmental enquiry initiated against the petitioner, he stands exonerated. On conclusion of the investigation conducted by the prosecution, challan dated 27.2.2001 was prepared. Vide letter dated 23.4.2001 (Annexure P-1), the prosecution sought sanction from the competent Authority i.e. the Deputy Commissioner, Ludhiana, to prosecute the petitioner and the coaccused Narinder Pal Singh. The competent Authority i.e. the Deputy Commissioner, Ludhiana, after minutely going through the allegations made against the petitioner as also the investigation conducted by the prosecution and the challan, declined to grant the sanction vide order dated 12.10.2001 (Annexure P-2). Subsequently, after a period of about 7 years, another communication dated 1.10.2008 (Annexure P-3) was addressed by the prosecuting Agency to the Deputy Commissioner, Ludhiana, being the competent Authority for seeking grant of sanction for trial against the petitioner. He submits that there was no reference to the earlier refusal of sanction by the competent Authority vide order dated 12.10.2001 (Annexure P-2). The Deputy Commissioner without referring to the earlier order dated 12.10.2001 vide which the sanction was refused for prosecuting the petitioner and without looking into the reasons which were assigned by the competent Authority at that time and there being no other fresh material or evidence on record to reconsider the earlier decision taken by the competent Authority, proceeded to grant sanction to prosecute the petitioner vide order dated 1.10.2008 (Annexure P-4). He contends that the request for grant of sanction for prosecution is dated 1.10.2008 and on the same day, the sanction has been granted by the competent Authority which shows the non Crl. application of mind. He relies upon a judgment of the Hon"ble Supreme Court in the case of State of Punjab and another v. Mohammed Iqbal Bhatti, 2009(4) R.A.J. 605 : 2009(3) RCR(Cri.) 861, to contend that when a sanction for prosecution of a government servant in a corruption case has been refused by the Government, the same cannot be reviewed and sanction granted to prosecute the government servant on the same material. He contends that nothing has come on record which would show that any fresh material was placed before the competent Authority so as to persuade the competent Authority to review the earlier order refusing to grant the sanction. He, on this basis, prays that the present petition may be allowed and the impugned order passed by the learned Special Judge, Ludhiana dated 14.7.2009 be set aside and the application moved by the petitioner for discharge be allowed. Counsel for the State has been unable to rebut the contentions which have been raised by the counsel for the petitioner. On the basis of the records, he states that as a matter of fact, no fresh material was placed before the competent Authority except for the material which was placed before the competent Authority at the initial stage when order dated 12.10.2001 refusing to grant sanction was passed. He also does not dispute the fact that the prosecuting Agency and the office of the competent Authority failed to bring it to the notice of the competent Authority i.e. the Deputy Commissioner, Ludhiana, the earlier order dated 12.10.2001 passed by the Deputy Commissioner, Ludhiana, declining grant of sanction to prosecute the

petitioner.

3. I have heard counsel for the parties and have gone through the records of the case. A perusal of (Annexure P-1) dated 23.4.2001 which is a communication sent by the prosecuting Agency to the Deputy Commissioner, Ludhiana, who is the competent Authority to grant sanction to prosecute the petitioner, shows that the enclosures along with the said communication were (1) one copy of draft sanction to prosecute (four pages) (2) challan file (1 to 57 pages) (3) documents file (1 to 6 pages). The competent Authority was, therefore, supplied with the complete challan papers along with the documents and even the draft sanction to prosecute the petitioner. On consideration of the complete material on record, the Deputy Commissioner, Ludhiana, on consideration of the matter in detail by an elaborate and well reasoned order dated 12.10.2001 (Annexure P-2) refused the grant of sanction to prosecute the petitioner. Thus, perusal of the said order leaves no manner of doubt that the competent Authority had, in detail, referred to the evidence collected by the prosecution and had by valid reasons, rejected the request for grant of sanction to prosecute the petitioner. It would not be out of way to mention here that the petitioner also stands exonerated by the competent Authority in the departmental proceedings. The said order was duly communicated to the prosecuting Agency by the competent Authority.

4. However, a communication was thereafter again made to the Deputy Commissioner, Ludhiana on 1.10.2008 (Annexure P-3) by the prosecuting Agency, thereby making a request for grant of sanction to prosecute the petitioner. A perusal thereof shows that there is no reference to the earlier refusal of grant of sanction by the competent Authority vide order dated 12.10.2001 (Annexure P-2). There is also no mention in the said communication as to if any new material had come to the knowledge of the prosecution so as to seek review of the earlier order dated 12.10.2001 passed by the competent Authority refusing the sanction. The same day when the request for grant of sanction to prosecute the petitioner was received by the competent Authority, order granting sanction to prosecute the petitioner was passed by the Deputy Commissioner, Ludhiana. A perusal of the order dated 1.10.2008 clearly indicates that the earlier refusal to grant sanction dated 12.10.2001 was not brought to the knowledge of the competent Authority. This order does not reflect as to if any new material was placed on the records before the competent Authority so as to persuade the competent Authority to take a decision for review of the earlier order dated 12.10.2001. The order itself suggests that the competent Authority was kept in dark about the non-grant of refusal of sanction by the competent Authority vide order dated 12.10.2001 by the prosecuting Agency and by the office concerned. This clearly shows the non-application of mind on the part of the competent Authority. Nothing can be said to be on the record which would justify the review of the earlier order dated 12.10.2001.

5. The Hon"ble Supreme Court in the case of Mansukhlal Vithaldas Chauhan v. State of Gujarat, s has, while considering the requirement of a sanction to be a valid one by the competent Authority, held as follows :-

19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

6. The order dated 1.10.2008 (Annexure P-4) passed by the Deputy Commissioner, Ludhiana does not pass the test as laid down by the Hon"ble Supreme Court in the above referred judgment.

7. That apart, the Hon"ble Supreme Court in the case of Mohammed Iqbal Bhatti's case (supra) has while rejecting the appeal preferred by the State of Punjab against the order passed by this Court approved the judgment of this Court wherein the following observations made by this Court were accepted and reproduced with approval.

9. The High Court called for the entire records. It perused the same. It noticed that several queries were raised but remained unanswered. The Departmental proceeding initiated against the respondent was dropped. The recommendations therefore were made not to grant sanction on the basis whereof the aforementioned order dated 15.12.2003 was passed. A finding of fact has been arrived at by the High Court that no material was placed before the competent authority. Only a communication had been received from the Director, Vigilance Bureau dated 22.6.2004 wherein reference of the letter dated 26.5.2004 was made. It, according to the High Court, was not a new material. In the aforementioned situation, the High Court, opined :

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 or 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 was ever commented upon as no answers were placed before the competent authority for passing the impugned order dated September 30, 2004.

Thereafter in para 23 the Hon"ble Supreme Court held as follows :-

23. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise.

8. In the present case also, it is an admitted position that no fresh material was placed before the Competent Authority when the order dated 1.10.2008 came to be passed by the Deputy Commissioner, Ludhiana granting the sanction to prosecute the petitioner. The earlier order passed by the Competent Authority i.e. by the Deputy Commissioner, Ludhiana on 12.10.2001 was also not brought to the notice of the competent Authority which has passed the subsequent order.

9. The order dated 1.10.2008 (Annexure P-4) is, thus, contrary to the settled principles of law with regard to the review of the order passed by the Competent Authority for granting sanction by the Competent Authority to prosecute a government servant. In the absence of some technical infirmity or some clerical error or some fresh material on the record, the Competent Authority had no jurisdiction or power to review the earlier order passed by it on merits.

10. In view of the above, the revision petition is allowed. Order dated 14.7.2009 passed by the learned Special Judge, Ludhiana rejecting the application of the petitioner for discharge is hereby set aside. The application for discharge of the petitioner is allowed and all consequential proceedings arising consequent to the passing of the order dated 14.7.2009 by the learned Special Judge, Ludhiana stand quashed.