Raj Bahadur - Applicant @HASH Central Bureau of Investigation and another

Court: Uttarakhand High Court

Date of Decision: March 19, 2016

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 197, Section 482
Prevention of Corruption Act, 1988 - Section 13(1)(D), Section 13(2), Section 19, Section 19(3)(d), Section 7

Citation: (2016) 119 ALR 98

Hon'ble Judges: Sudhanshu Dhulia, J.

Bench: Single Bench

Advocate: Mr. Parikshit Saini, Advocate, for the Applicant; Mr. Arvind Vashishta, Senior Advocate assisted by Mr. Ashish Sinha, Advocate, for the CBI/Respondent No.1

Final Decision: Dismissed

Judgement

Sudhanshu Dhulia, J. - The applicant before this Court is presently facing a trial under Sections 7/13 (2) read with Section 13(1)(d) of the

Prevention of Corruption Act (from hereinafter referred to as ""the Act"") before the Special Judge, Anti Corruption (CBI), Dehradun/2nd

Additional District Judge, Dehradun.

2. The applicant was working as an Income Tax Officer at Dehradun. On 25.08.2010 on a trap laid by the CBI he was caught red handed taking

a bribe of Rs. 50,000/- (Rupees Fifty Thousand Only) from one income tax assessee on whose complaint the trap was laid. The charge-sheet

against the applicant was filed by the CBI under Sections 7/13(2) read with Section 13(1)(d) of the Act. Sanction under Section 19 of the Act was

obtained on 30.08.2011 and charge-sheet submitted on 02.09.2011 on which cognizance was taken by the court below on 12.09.2011. This

cognizance order was earlier challenged by the applicant before this Court invoking the inherent jurisdiction of this Court under Section 482

Cr.P.C. where the contention of the applicant was that the sanctioning authority had even earlier passed an order of sanction under Section 19 of

the Act on 19.11.2010, which was never placed by the CBI before the court below and only the second sanction which was taken on

30.08.2011, was placed before the court which is illegal as sanction cannot be obtained twice! More importantly it was argued that the sanctioning

authority cannot review its own order which it apparently did vide order dated 30.08.2011.

3. Although there is no mention of the earlier order dated 19.11.2010. For the sake of convenience order dated 19.11.2010 was referred as a first

sanction and the second order dated 30.08.2011 which will be presently referred as a second sanction which are before this Court as Annexure

Nos. 7 and 10, respectively.

4. Criminal proceedings in a case related to the Prevention of Corruption Act have also to proceed in accordance with the Code of Criminal

Procedure, 1973, subject to certain modifications which have been specifically given in Section 22 of the Act itself. Ordinarily for prosecution of a

public servant a sanction has to be taken from the Government under Section 197 of Cr.P.C. All the same, there are special provisions regarding

sanction in cases relating to the Prevention of Corruption Act, which is given in Section 19 of the Act. Since primarily this Court has to look at the

provision of Section 19 of the Act as the question here is whether the sanction given to prosecute the applicant was a valid sanction or not, it

would be absolutely necessary that we reproduce Section 19 of the Act for a ready reference. Section 19 of the Act, reads as under:-

19. Previous sanction necessary for prosecution. - (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and

15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the

sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the

sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by

the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would

have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(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.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted

in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the

proceedings.

Explanation. - For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or

with the sanction of a specified person or any other requirement of a similar nature.

5. As we have already referred above, in the present case after the cognizance was taken in the matter by Special Judge CBI, it was challenged by

the present applicant invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. (in Criminal Misc. Application No.1057 of 2011),

which was dismissed by a learned Single Judge of this Court vide order dated 22.11.2011. The contention of the applicant regarding the wrong or

erroneous sanction in the matter was rejected. Evidently the case of the applicant before this Court in the earlier round of litigation was confined to

the argument that there were two sanctions taken by the CBI, first vide order dated 19.11.2010 and second vide order dated 30.08.2011 which is

not permissible under the law, as the subsequent sanction is nothing but a review of the first sanction. As we shall see this argument has been re-

agitated by means of this present application under Section 482 Cr.P.C.

6. The learned counsel for the applicant even on the earlier occasion had relied upon the decision of the Hon"ble Apex Court in the case of State

of Himachal Pradesh v. Nishant Sareen reported in (2011) 3 SCC (Cri) 836, and had submitted that the sanctioning authority cannot review

its earlier order. All the same, the facts of Nishant Sareen case are materially different from the present one. In the case of Nishant Sareen

sanctioning authority had refused to grant the sanction earlier but granted the sanction, later, the order which was challenged. The submissions of

the learned counsel for the applicant as regarding the Nishant Sareen case, rightly did not find favour with the learned Single Judge of this Court as

the learned Single Judge of this Court was of the opinion that the case of Nishant Sareen had no application in the matter, since even earlier the

sanctioning authority (in the case in hand) had not declined sanction and hence this Court dismissed the application of the applicant vide order

dated 22.11.2011. Paragraph Nos. 4 and 5 of the said judgment read as under:-

4. It is a trap case. It does not appear that earlier authority has declined the sanction, as alleged by learned counsel for the petitioner. In view of

the provision contained in Clause (C) of Sub Section (3) of section 19 of Prevention of Corruption Act, 1988, this court is not inclined to interfere

with the trial of the case.

5. Therefore, without expressing any opinion as to final merits of the case, this petition under section 482 Cr.P.C., is dismissed summarily, with the

observation that petitioner is at liberty to raise the defence pleas before the trial court, including one relating to sanction for prosecution.

7. In other words, while dismissing the petition on merits, yet purely for abundant precaution while dismissing the plea of the applicant regarding

sanction it was said that the aspect of ""sanction"", the applicant will always be at liberty to raise as a defence plea. This Court has further been

informed by the learned senior counsel for the CBI that the above order was challenged before the Hon''ble Apex Court where the SLP of the

applicant was dismissed.

8. The trial ultimately proceeded before the Special Judge, CBI and as it appears from the present order of the trial court dated 08.01.2016, all

substantial witnesses in the case have already been examined, the examination-in-chief of the Investigating Officer is over and presently the cross-

examination is under way. At this stage, another application was moved by the applicant (being Application No.109B), stating that the court has till

now not decided on the validity of the sanction and this must be first decided before the trial proceeds any further. This application has been

rejected vide a speaking order by the learned Special Judge, Anti-Corruption (CBI)/2nd Additional District Judge, Dehradun stating that more

than half the trial is over now, and then it referred to the order of this Court dated 22.11.2011 and said that as per the directions of the High Court

the validity of sanction will be seen at the time of examination of defence witnesses. The application was disposed of with the following directions:-

28. From the aforesaid, the court is of the view that accused Sri Raj Bahadur has raised the defence plea of invalidity of sanction, but it would be

dealt with the final disposal of the case. His objections and submissions regarding invalidity of sanction would be on record and the same would be

considered along with the final disposal of case. Order accordingly.

9. This was done vide order dated 08.01.2016. Aggrieved by the above order, he has filed the present application under Section 482 Cr. P.C. yet

again invoking the inherent jurisdiction of this Court.

10. Now the contention of the learned counsel for the applicant is that the mandate of law demands that plea of sanction must be raised at the

earliest stage before the trial court itself. This could only have been done after the Investigating Officer had been examined. That the issue of

sanction or validity of sanction has to be examined by the trial court as it is mandated to do so and having refused to do that at the ""earliest stage"",

it has failed to act in accordance with law. To strengthen his argument learned counsel for the applicant has relied upon the decision of Hon''ble

Apex Court in the case of CBI v. Ashok Kumar Aggarwal in which the Hon''ble Apex Court after having referred to its earlier decisions such as

in the case of Dinesh Kumar v. Chairman Airport Authority of India and another, reported in AIR 2012 SC 858 as well as in the case of

Parkash Singh Badal & another v. State of Punjab & others, reported in AIR 2007 SC 1274 held that the stage of examining the validity of

a sanction is during the trial itself. As far as this submission is concerned, the learned Senior Counsel for the CBI Mr. Arvind Vashishta would

argue that a Special Judge, CBI has never deviated from this principle. In his order, he has categorically stated that the issue of sanction will be

decided as a defence plea of the present applicant as this was the observation of the learned Single Judge of this High Court while dismissing the

earlier C-482 application filed by the applicant, which has already been referred in the above paragraphs.

11. The assertion of the learned counsel for the applicant, however, is that not only the plea of sanction has to be decided by the trial court but it

must be decided at the earliest. This argument springs out from the observations made by the learned Single Judge of Delhi, High Court in the case

of Ashok Kumar Aggarwal v. Central Bureau of Investigation wherein the Delhi High Court while dealing with Section 19 of the Act and the

aspect of sanction observed as follows:-

From a conspectus of the decisions of the Supreme Court as cited above the legal position that emerges is that the question of validity of a

sanction must be decided as soon as it is raised and cannot be postponed to a later stage of trial, as an invalid sanction goes to the very root of the

jurisdiction of the court that has taken cognizance. Considering that the cognizance taken by the Special Judge, CBI would be rendered non-est in

light of section 19(1) of POCA, the dispute on validity must be adjudicated at the earliest.

12. This Court has absolutely no doubt in its mind that the question of sanction or validity of sanction must be decided by the trial court and

ordinarily it must be decided at the earliest, when this issue comes up before the trial court. However, each facts of the case are different. This case

has different factual matrix. We have before us absolutely different set of facts, as compared to the one before the learned Single Judge of Delhi,

High Court.

13. In the present case, the first sanction dated 19.11.2010 and the second sanction dated 30.08.2011 given by the appointing authority of the

applicant who were also the sanctioning authority at the relevant time. On that there is no dispute. Therefore the jurisdiction of the concerned

authority while giving sanction is not an issue before this Court.

14. Let us examine these two sanctions. First sanction dated 19.11.2010, the sanctioning authority unequivocally says this, which according

sanction:-

3. Subject to these observations, (he made certain observations in the preceding paragraphs before granting sanction) I, R.K. Sharma,

Commissioner of Income-Tax, Dehradun, being the Authority competent to appoint and remove the said Shri Raj Bahadur from the office, after

fully applying my mind and carefully examining the documents, material including the statement of witnesses recorded by the Investigating Officer

and the circumstances of the case, consider that the said Shri Raj Bahadur should be prosecuted in the Court of law for the said offences.

4. Now, therefore, I, R.K. Sharma, Commissioner of Income-Tax, Dehradun do hereby accord sanction under section 19 of the Prevention of

Corruption Act, 1988, subject to my above noted observations for the prosecution of the said Shri Raj Bahadur for the said offences and for

taking cognizance of the said offences, by the Court of the Competent Jurisdiction.

15. Indeed as from the first few words of his sanction in fact that these are subject to certain observations, these observations are contained in the

preceding paragraphs of his sanction dated 19.11.2010 wherein the sanctioning authority refers to the fact that there is another person called

Binno Sharma"", who was acting as an agent of the applicant and he should also be prosecuted. This is actually not the work of the sanctioning

authority, and hence as far as these observations are concerned, it has absolutely no relevance to the actual sanction in paragraph No. 3 of the

sanction dated 19.11.2010 (reproduced above), which is clear and unambiguous. Yet without any reasons and best known to the CBI, however,

another sanction was sought on 30.08.2011 which is contained in Annexure No.10. Evidently, we had a different Commissioner of Income Tax

Officer by that time who was again the sanctioning authority of the applicant and he after referring to the entire facts in paragraph nos. 9 and 10

had granted the sanction. Paragraph nos. 9 and 10 read as under:-

9. And whereas I, D.P. Semwal, Commissioner of Income Tax, Dehradun being the authority competent to appoint and remove the said Shri Raj

Bahadur from the office, after fully applying my mind and carefully examining the documents, material including the statement of witnesses recorded

by the Investigating Officer and the circumstances of the case, consider that the said Shri Raj Bahadur should be prosecuted in the Court of Law

for the said offences.

10. Now, therefore, I, D.P. Semwal, Commissioner of Income Tax, Dehradun do hereby accord sanction U/s 19 of the Prevention of Corruption

Act, 1988 for the prosecution of the said Shri Raj Bahadur for the said offences and for taking cognizance of the said offences by the Court of the

competent jurisdiction.

16. It is on the above sanction that cognizance has been taken by the learned Special Judge, CBI and the matter proceeded for trial. This sanction

was earlier challenged and the fate it met at the hands of this Court has already been referred in the preceding paragraphs. We need not to repeat

these facts.

17. Important aspect to note here is that the validity of sanction was not raised before the trial court in the first round. The applicant straightaway

approached this Court and sought questioning of the proceedings as according to the applicant there was no sanction in the case. His petition was

dismissed by this Court vide order dated 22.11.2011 on grounds that it is wrong to say that in the first order sanction has been declined. This

order was challenged before the Hon''ble Apex Court where the SLP of the applicant was again dismissed. This has, however, not prevented the

applicant from raking this issue of sanction yet again.

18. It is a clear case where the present applicant has deliberately abused the process of the Court on one pretext or another. His sole intention

seems to dilate and delay the proceedings. He has apparently invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. apparently

to prevent an abuse of the process of Court, at the hands of the Investigating agency. However, it is clear that the abuse of process of the Court is

only at the hands of the applicant himself who has twice challenged the same aspect before this Court.

19. This Court has already referred to the first sanction and the second sanction. It cannot be said that the second sanction is a review of the first

sanction, and the sanctioning authority refused the sanction in the first instance and thereafter by the second order it has granted the sanction as

then the case of State of Himachal Pradesh v. Nishant Sareen would have come to the rescue of the applicant. What has actually weighed in

the grant of the trial is the fact clearly given in Section 19(4) of the Act whereby when the court has to examine any error, omission or irregularities

in the sanction, it has to see whether any failure of justice has been caused or not. This aspect has already been left open by the trial court. This is

purely in terms of Section 19(4) of the Act as well as the observations made by the learned Single Judge in its judgment in the earlier round of

litigation where a liberty was given to the applicant to raise a defence at an appropriate stage.

20. In term of Section 19(3)(b) unless a proceeding in the court below or an order passed by it has resulted in failure of justice, proceedings under

the Prevention of Corruption Act cannot be stayed. Same is also the mandate of the law. Section 19(3)(b) of the Act reads as under:-

19. Previous sanction necessary for prosecution:-

(1)Ã¯Â¿Â½Ã¯Â¿Â½..

(2)Ã¯Â¿Â½Ã¯Â¿Â½..

(3)(a)Ã¯Â¿Â½.

(3)(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;

21. This application under Section 482 Cr.P.C. has absolutely no merit and is hereby dismissed.