(1998) 11 AHC CK 0147

Allahabad High Court

Case No: Criminal Misc. Writ Petition No. 2424 of 1998

Pancham Lal		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Nov. 12, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197
- Penal Code, 1860 (IPC) - Section 120B, 406, 420, 477A
- Prevention of Corruption Act, 1988 - Section 13(2), 19

Citation: (1999) CriLJ 4111 : (2000) 1 RCR(Criminal) 174

Hon'ble Judges: S.K. Phaujdar, J; S. Rafat Alam, J

Bench: Division Bench

Advocate: Vineet Saran and V.P. Shukla, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. In the instant writ petition, the sole petitioner has come up for quashing of the order dated 18-4-1998 granting sanction u/s 197 of the Criminal Procedure Code and Section 19 of the Prevention of Corruption Act, 1.988.

2. It appears that Shri A.K. Sinha, the then District Magistrate, Mau lodged an F.I.R. on 1911 -1992 alleging that Shri Mishri Lal, Additional Collector, Mau came to his residence and handed over a brief case containing Rs. 1,00,000/- (Rs. One lac) as commission against the bill paid to the contractor, M/s. Arunji & Sons, Varanasi for erecting Pandals, pavilion etc. in the General Election of 1991. The matter was investigated by the Vigilance Department of the State Government which detected various lapses and irregularities committed while inviting tenders for the pandals, tent etc. for the purposes of polling and counting of the votes during the General Election held on 20th and 26th of May, 1991. It

was also found that the tender of M/s. Arunji and Sons, Varanasi was accepted in spite of the fact that he was the second lowest tenderer. It has also been found that the bill of Rs. 36,07,494. 30 Paise submitted by the Firm and verified by the petitioner, was incorrect and the amount shown was inflated as it included charges of such work which was not actually done. Even on the basis of the tender the actual amount payable would be Rs. 17,45,559.85 Paisa whereas the firm submitted bill of Rs. 36,07,494.30 Paise which was verified by the petitioner. After completion of the investigation, the State Government was moved to grant sanction for prosecuting the petitioner Under Sections 420 406 477-A 120-B, I.P.C. and Section 13(2) of Prevention of Corruption Act, 1988. The Sanctioning Authority having perused the case diary and the evidence collected by the Investigating Agency and having satisfied that prima facie evidence has come disclosing the commission of the offence, by the impugned order granted sanction to prosecute the petitioner, validity of which has been challenged in this petition.

3. Shri Vineet Saran, learned counsel appearing for the petitioner made two submissions. Firstly, the Sanctioning authority without applying his mind granted sanction in a mechanical manner and thus it cannot sustain. Secondly, petitioner invited the tenders on the instruction of the District Magistrate, in pursuant to which eight firms filed tenders. Though the tender of M/s. Arunji & Sons, Varanasi was second lowest but looking at his past experience of doing similar work of 1989 General Election, he bona fide, made recommendation in favour of this firm, which was finally accepted by the District Magistrate. In short the submission is that the petitioner had no final say in the matter and he simply acted on the direction given by the District Magistrate who also approved the same. He also argued that the verification of the bill was made by the petitioner in Kanpur in view of the direction of the Chief Election Officer, U.P. for the verification of the pending bills. It is also contended, that there is no evidence on record to show that the petitioner acted with dishonest intention or has committed any criminal misconduct.

4. In our view, the submissions are misconceived and cannot be accepted in the facts and circumstances of the case.

5. It is well-settled legal position that the order of sanction is only an administrative act and not quasi-judicial one nor a lis is involved. (Reference may be made to the judgment of the Apex Court in the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, . Therefore, the Sanctioning Authority while granting sanction is neither supposed nor expected to weigh or examine the evidence collected during investigation meticulously or to record reasons based on legal evidence. The only requirement is that it has to apply its mind to the facts and evidence collected by the Investigating Agency to satisfy that it prima facie discloses the commission of the offence alleged to have been committed. It may also indicate with sufficient particulars constituting the offence but while doing so it will not examine the sufficiency and admissibility of the evidence which is the function of the Court.

6. In the impugned order, the Sanctioning Authority has indicated the particulars and the irregularities committed in the matter of awarding contract to the firm, namely, M/s. Arunji and Sons, Varanasi and has also referred that the rate for the items has been given in an arbitrary manner and the false bills were verified by the petitioner which has caused a loss of Rs. 5,86,059.15 Paise. These bogus bills have also been mentioned in the order from serial Nos. 1 to 20. It has also indicated in the order that after perusal and examination of the case diary and the other materials on record, the State Government is satisfied that Shri Pancham Lal (petitioner) may be prosecuted for the alleged offence. Further, it has been asserted in paragraph 26 of the counter-affidavit that the State Government considered the material on record and perused the relevant records including the case diary and accorded sanction vide its order dated 18-4-1998. Thus, there is no substance in the contention of the learned counsel for the petitioner that the State Government has not applied its mind and it deserves to be rejected.

7. So far the second contention that the tender was approved by the District Magistrate and the petitioner has simply made a recommendation in favour of the firm and the final decision was taken by the Collector and the evidence collected by the Investigating Agency is insufficient to prove the guilt of the petitioner is his defence which in our view, cannot be looked into at this stage and the same is available to him during the course of trial. Besides it would not be proper at this stage to express any opinion touching the merit of the case which may prejudice the trial.

8. Having considered the submissions and looking to the facts and circumstances of the case, in our view, the impugned order granting sanction does not suffer from any illegality requiring interference under the writ jurisdiction of this Court.

The petition is; accordingly, dismissed.