

(1900) 01 MP CK 0027

MADHYA PRADESH HIGH COURT

Case No: 593 of 2016; 5724 of 2016

THE ORIENTAL INSURANCE
COMPANY LTD.

APPELLANT

Vs

SMT. MONIKA

RESPONDENT

Date of Decision: Jan. 1, 1900

Acts Referred:

- Indian Penal Code, 1860, Section 120B, Section 420, Section 468, Section 471, Section 467 - Punishment of criminal conspiracy -

Hon'ble Judges: S K Gangele, Subodh Abhyankar

Bench: Single Bench

Advocate: Ajay Kumar Mishra, Laven Arora, J K Jain

Final Decision: Dismissed

Judgement

1. Both these cases are being disposed of by a common order, as they arise out of the order dated 24.11.2015 and 15.3.2016 respectively passed by the learned Special Judge (CBI), Bhopal in Special Case No.09/2005, whereby the learned Special Judge has dismissed the applications filed under Section 19 of the Prevention of Corruption Act, 1988 (hereinafter referred to as "P.C.Act") challenging the validity of the sanction accorded by the Government on the ground that the sanction has not been granted by the appropriate authority. The petitioners are facing trial for the offences punishable under Sections 120-B, 420, 467, 468 and 471 of IPC and Sections 13(1)(d) and 13(2) of Prevention of Corruption Act. The prosecution witnesses have already been examined and the case is now at the stage of defence evidence.

2. In brief the facts of the case are that in Cr.R. No.593/2016 petitioners Shailendra Kumar and Vijay Kumar Sharma were working as the Assistant Provident Fund Commissioner and Enforcement Officer/AAO respectively, whereas in

M.Cr.C.No.5724/2016 petitioner Vinod Kumar was working as Officer-in-Charge, APFC (Accts), in the office of Employees Provident Fund Organization (EPFO), Sub Regional Office (SRO), Gwalior. During the relevant period claims under PF Code No. MP 1323 of five ex-employees of M/s Saund Zwirad Union (I) Pvt. Ltd. were received in the office of EPFO, SRO, Gwalior on 25.3.2003 and on the basis of forged documents, five claims of Rs.4,94,954/- each were settled and paid whichever found to be fictitious after investigation. It is alleged that in committing such fraud, the petitioner and other persons conspired together.

3. In the present case the prosecution sanction order dated 17.11.2005 (Ex.P-111) was passed by one Anirudh Roy, PW-5, who was holding the current charge of Central Provident Fund Commissioner. Objections were raised by the petitioners regarding validity of the prosecution sanction order, but the same was turned down by the learned Special Court vide order dated 29.6.2007 (Annexure P-7 in Cr.R.No.593/2016), which was challenged by petitioner Vinod Kumar by filing Criminal Revision No.1620/2007 before this Court, which was disposed of by this Court vide order dated 25.7.2014 with liberty to the petitioner to raise objections regarding validity of the sanction order in the trial Court at appropriate stage. The order dated 25.07.2014 reads as under:-

"Present petition is directed against the order dated 29/06/2007 passed by Special Judge, Bhopal in Special Case No. 9/2005 by which objection regarding sanction of prosecution for corruption case was again declined.

Present prosecution is based on the basis of sanction dated 07th November, 2005 given by Anirudh Rai, Central Provident Fund Commissioner and objection raised is that Anirudh Rai was not authorized to accord the sanction because he was not duly delegated by the original authority for such purpose and person who granted sanction was not the appointing authority and was not the officer of equivalent post also of such status.

Learned Additional Solicitor General for the respondent/CBI submits that on facts sanction has been accorded on merits by detailed order. For the sake of arguments, this is technical ground and is not everything in this case rather, it is a matter of evidence and to calculate the effect of the aforesaid alleged defect in the sanction is not possible by this Court at this stage because other clinching evidence are available against the petitioner on facts.

Considering the aforesaid, this petition is disposed of with liberty to petitioner that aforesaid points raised against sanction in this petition may be raised by

the petitioner in the trial court at appropriate stage. Accordingly, this petition is disposed of as indicated above."

4. It is submitted on behalf of the petitioners that the prosecution has examined in all 83-prosecution witnesses during the course of the trial. The prosecution had examined Investigation Officer MS Barar as PW-82, who after recording of partial examination-in-chief did not appear for evidence, whereas the learned Special Court recorded the statement of the accused persons/ petitioners on 19.6.2015 and the accused/petitioners were directed to submit the list of defence witnesses and the petitioners propose to examine as many as 21 witnesses.

5. Thereafter similar applications under Section 19 of the PC Act was filed by petitioner Shailendra Kumar of Cr.R.No.593/2016 and Vijay Kumar Sharma of M.Cr.C.No.5724/2016 in the light of the order dated 24.07.2015 passed by the Hon"ble Supreme Court in the case of Najappa vs. State of Karnataka in Cr.A.No.1867/2012 in which it is observed that the trial court cannot proceed further unless the validity of sanction is decided, and the learned trial Court vide its orders dated 24.11.2015 and 15.03.2016 respectively has again rejected the said applications on the ground that the competency of the officer granting sanction has already been decided by the trial Court vide its order dated 8.1.2007 and there is no reason to reconsider the same and also on the ground that even otherwise there is nothing on record to hold that the sanctioning authority was not competent to pass the order.

6. Learned senior counsel for the petitioners submits that once this Hon"ble Court in Criminal Revision No.1620/2007 had granted liberty to the petitioners to raise all the objections at the appropriate stage during the trial hence the trial Court was duty bound to decide the matter on merit and not on technical consideration, therefore the learned trial Court has committed a grave error in rejecting the application filed under Section 19 of the PC Act, hence the impugned order deserves to be set aside.

7. It is further submitted that as per the provisions of Section 5(D)(3) of the EPF Act, the power of the Appointing Authority for APFC is vested in the Central Board, and according to the petitioners the sanctioning authority in the present case is the Labour Minister and vide notification of the 2008, the CPFC is made sanctioning authority for Account Officer and Enforcement Officer but prior to 2008, in 2005 at the time of prosecution sanction, no notification existed for making CPFC as sanctioning authority for Account Officer and Enforcement Officer, whereas Anirudh Roy (PW-5) has admitted in his deposition that he was given the charge by the Labour Minister, Union of India, which was also approved by the cabinet. In support

of his contention, learned senior counsel for the petitioners has placed reliance upon the judgment of the Calcutta High Court in the case of B.K.Samal @ Bijoy Kumar Samal Vs. State of West Bengal/ Inspector of Police, CBI, reported in 1998 C.Cr.L.R. (Cal) 398.

8. On the other hand, learned counsel for the respondent/CBI has supported the impugned order on the ground that since there was no material available on record to show that Anirudh Roy was not competent to grant sanction for the prosecution of the petitioner, the learned trial Court has not committed any error in passing the impugned order.

9. Heard the learned counsel for the parties and perused the record.

10. A bare perusal of the impugned order reveals that it has not only been dismissed on the ground that the issue of sanction has already been decided by the Court on the earlier occasion, but also on the ground that there is nothing on record to show that the sanctioning authority was not competent to pass the order, and after appreciating the testimony of PW-5 the learned Judge of the Special Court has held that the order was passed after due application of mind and therefore the contention of the learned counsel for the petitioners that the Special Court has not considered the changed scenario after evidence, which has come on record, cannot be accepted.

11. The contention of the learned senior counsel that after the decision of Nanjappa's case (Supra), and the order dated 25.07.2014 passed in Cr.R.No.1620/2007 by this Court, the petitioners were entitled to move the application u/s.19 of the P.C.Act has also got no force, as firstly, Nanjappa's case (Supra) does not lay down a law that a criminal court can review its own order nor it can be inferred that a subsequent order of the Apex court passed in some other set of facts can be pressed into service to review an order of a criminal court. Even the order passed by this court as reproduced above on 25.07.2014 was specific that the question of validity of sanction can be raised at an appropriate stage, but the petitioners, despite citing 21 defence witnesses, even before examining them have once again filed the applications u/s.19 of the P.C.Act on the same set of facts. Needless to say that the documents relied upon by the petitioners cannot be gone into by this court at this stage.

12. Under such circumstances, when the petitioners were given an opportunity to specifically raise the contentions regarding ineligibility of the sanctioning authority to pass the sanction order at an appropriate stage, they cannot be allowed to agitate the same point without there being any change in the circumstances. The applications appear to be filed only to further protract the trial.

13. In the facts and circumstances of the case, we have no hesitation to hold that the learned Special Judge has not committed any error in rejecting the applications filed under Section 19 of the P.C.Act, hence both the cases deserve to be dismissed.

14. In the result, Criminal Revision No.593/2016 filed by petitioners Shailendra Kumar and Vijay Sharma and M.Cr.C.No.5724/2016 filed by petitioner Vinod Kumar are hereby dismissed. However, considering the length of the trial, which is now in its eleventh year, the Special court is also directed to conclude the trial within a further period of six months from the date of receipt of certified copy of this order. No cost.