

“for Obtaining a Sanction for the Prosecution of a Public Servant Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : Jan-21-2013

Appellant : “for Obtaining a Sanction for the Prosecution of a Public Servant

Respondent : State of Haryana

Judgement :

CRM Nos. M-23339 & 33093 of 2010 (O&M) 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH 1 CRM not M-23339 of 2010 Arun Kalra ...Petitioner Versus State of Haryana ...Respondent 2. CRM not M-33093 of 2010 Naresh Kumar ...Petitioner Versus State of Haryana ...Respondent Date of Decision:-21.1.2013 CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR Present:- Mr.Jai Vir Yadav, Advocate for the petitioner in CRM not M-23339 of 2010. Mr.Baldev Singh, Advocate for the petitioner in CRM not M-33093 of 2010. Mr.Gourav Verma, AAG Haryana for the State. Mehinder Singh Sullar, J.(Oral) As identical points of law and facts are involved, therefore, I propose to decide the indicated petitions, bearing CRM not M-23339 of 2010 (for brevity the 1st case.) filed by petitioner Arun Kalra and CRM not M-33093 of 2010 (for short the 2nd case.) filed by petitioner Naresh Kumar, arising out of the same impugned orders/charge sheet/case, vide this common order in order to avoid the repetition. CRM Nos. M-23339 & 33093 of 2010 (O&M

2. The epitome of the facts & material, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant petitions and emanating from the record, is that the State of Haryana formulated an old age pension scheme. The prosecution claimed that the petitioners-accused along with their other co-accused have hatched a criminal conspiracy, cheated the government of huge amount, prepared, used the forged documents as genuine and illegally certified the wrong ages of the pensioners, including the age of Prem Devi. In the background of these allegations and in the wake of complaint of complainant Vijay Pal, the present criminal case was registered against the petitioners-accused along with their other co-accused, vide FIR No.196 dated 20.10.2008 (Annexure P3), on accusation of having committed the offences punishable under sections 420, 467, 468, 471 and 120-B IPC by the police of Police Station Ateli, District Mahendergarh.

3. After completion of the investigation, the police submitted the final police report (challan) against the accused to stand trial of the indicated offences.

4. Taking into consideration the final police report (challan) and the documents submitted therewith, the trial Court charge sheeted the petitioners-accused for the commission of offences punishable u/ss 420, 467, 468, 471 and 120-B IPC, by means of impugned order dated 7.12.2009 (Annexure P4) and charge sheet (Annexure P5).

5. Aggrieved thereby, the petitioners-accused have filed the revision petitions, which were dismissed as well, by the revisional Court, by way of impugned order dated 12.7.2010 (Annexure P6). CRM Nos. M-23339 & 33093 of 2010 (O&M

6. The petitioners-accused still did not feel satisfied and preferred the instant 2nd revision petitions (which are otherwise legally barred) in the garb of petitions u/s 482 Cr.PC to quash the impugned orders/charge sheet (Annexure P4 to P6).

7. After hearing the learned counsel for the parties, going through the record with their valuable help and after deep consideration over the entire matter, to my mind, there is no merit in the present petitions in this context.

8. Ex facie the argument of learned counsel that since the prosecution did not obtain the sanction to prosecute, so, the Court cannot take cognizance of the criminal case against the petitioners-accused, is not only devoid of merit but misplaced as well.

9. What cannot possibly be disputed here is that the sanction u/s 197 Cr.PC is only required if the offences alleged to have been committed by a public servant in the discharge of his official duty and not otherwise. Therefore, cheating, misappropriation, preparing and using the forged documents as genuine, cannot possibly be termed, in any manner, to be an act relating to discharge of their official duties. Moreover, the trial Court has considered the final police report (challan) & documents and rightly framed the charges against the petitioners-accused, vide impugned order (Annexure P4) and charge sheet (Annexure P5).

10. not only that, the revisional Court has re-examined the matter in the right perspective, negated the claim of petitioners-accused and dismissed their revision petitions, by way of impugned order (Annexure P6), which, in substance, is as under :- CRM Nos. M-23339 & 33093 of 2010 (O&M) 4 for obtaining a sanction for the prosecution of a public servant, primarily, it has to be ascertained as to whether there was any direct nexus between the act done and the official duties of that particular public servant and certainly at this stage it is not possible to determine as to whether the act done by the petitioner-revisonist-accused had any direct nexus with the discharge of his official duties or not. Therefore, no benefit out of it to the accused can be extended regarding the question of sanction at this stage. However, learned counsel for the petitioner- revisonist-accused as hereby put at liberty to take his plea at the time of final arguments after the conclusion of the evidence of both the sides in the present trial.

11. The learned counsel for petitioners-accused did not point out any reason/ground, muchless cogent, so as to warrant any interference in the impugned orders/charge sheet.

12. Meaning thereby, both the Courts below have correctly recorded the cogent grounds in this relevant connection. Such impugned orders/charge sheet, containing valid reasons, cannot possibly be interfered with by this Court, in the

present 2nd revision petitions (which are otherwise legally barred under section 397(3) Cr.PC), in the garb of petition under section 482 Cr.PC, unless and until, the same are illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioners- accused, so, the impugned orders (Annexures P4 to P6) deserve to be and are hereby maintained in the obtaining circumstances of the case.

13. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

14. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side CRM Nos. M-23339 & 33093 of 2010 (O&M) 5 during the course of trial of main case, as there is no merit, therefore, the instant petitions are hereby dismissed as such.

15. Needless to mention that nothing observed, here-in-above, would reflect on the merits of main case, in any manner, during the course of trial, as the same has been so recorded for a limited purpose of deciding the present petitions in this relevant direction. 21.1.2013 (Mehinder Singh Sullar) AS Judge

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