

Jitendra Kumar Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Dec-11-2014

Appellant : Jitendra Kumar

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER

: S.B.CIVIL WRIT PETITION NO.7390/2014 Jitendra Kumar versus State of Rajasthan & ORS.Date of Order :: 11th December, 2014 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Dr.

Sachin Acharya, for the petitioner.

Ms.Kusum Rao, for the respondents.

---- BY THE COURT: This writ petition under Article 226 of the Constitution of India is directed against order dated 10.09.2014 passed by the respondents, whereby, prosecution sanction against the petitioner under Section 19 of the Prevention of Corruption Act, 1988 ('the Act') and Section 197 Cr.P.C.has been granted.

The petitioner is an Assistant Commercial Taxes Officer ('ACTO').Commercial Taxes Department; a complaint was filed by Chhitarmal at Anti Corruption Bureau, Chowki Nagaur ('ACB') on 26.01.2011 complaining that he was involved in the

business of electric goods and furniture at Borawad, Makrana; on 25.01.2011 the petitioner alongwith another ACTO Krishan Kanhaiya Borana came to his shop and conducted a survey and sought record of his shop and in the evening when complainant went to Commercial Taxes Office, he met the petitioner and K.K.Borana, when they threatened him with heavy fine and when he agreed to give illegal gratification, he was assured that case will be closed; after bargain the petitioner and K.K.Borana agreed to take Rs.60,000/- as bribe; based on the said complaint, the ACB duly laid a trap on 28.01.2011 but the same failed; again on 10.02.2011 the trap failed; however, the ACB registered an FIR No.104/2011 at Police Station Anti Corruption Bureau, Jaipur (Chowki Nagaur) for the offences under Sections 7, 13(1)(d) and 13(2) of the Act and Section 120-B IPC against the petitioner; whereafter on conclusion of investigation, prosecution sanction against the petitioner and K.K.Borana was sought; the petitioner was provided opportunity of hearing and thereafter the prosecution sanction has been issued by the authority on 10.09.2014.

It is contended in the petition that the order dated 10.09.2014 is arbitrary, unreasonable, unjustified and is violative of Article 14 and 16 of the Constitution of India; the allegations against the petitioner are not at all established; the petitioner has been falsely implicated in the case; the trap having failed and there being no evidence available on record, the sanction could not have been granted; based on the perusal of the note-sheet, the Dy.

Secretary, Department of Personnel by a detailed note-sheet refused to grant prosecution sanction, however, on the same material, the Secretary, Department of Personnel has granted prosecution sanction, which is not sustainable; the location of complainant's business does not fall within the petitioner's jurisdiction and, therefore, the entire story made out is baseless; allegations have been made against the complainant and reference has been made regarding criminal matters pending against him as well.

A reply to the writ petition has been filed by the respondents raising preliminary objections regarding maintainability of the writ petition based on the law laid down by Hon'ble Supreme Court and the averments made in the petition have been

denied.

It has been indicated that only a note was prepared by the Dy.

Secretary and after discussing the entire matter on the basis of available record, the Secretary found it a fit case for grant of prosecution sanction and whereafter the matter was sent for approval to the Chief Secretary and the Chief Minister; the approval having been granted, the sanction has been issued.

A rejoinder has been filed, wherein, besides reiterating the stand taken in the writ petition, the competence of the authority has been questioned; however, during the couRs.of submissions, the said aspect was not pressed.

It is submitted by learned counsel for the petitioner that from the material available on record, it is apparent that the respondents while issuing prosecution sanction under Section 19 of the Act has not applied their mind and the order granting prosecution sanction and the consideration lacks proper satisfaction, rather the same smacks of a casual approach; the various aspects raised by the petitioner and found favour by the Dy.

Secretary while preparing the note-sheet dated 03.04.2014, wherein, a opinion was formed that prosecution sanction be refused have been overruled/reversed without any basis; the prosecution sanction order also merely indicates the events and 4 cannot be said to be a speaking order and, therefore, the order impugned deserves to be quashed and set aside.

Reliance was placed on State of Himachal Pradesh v.

Nishant Sareen : 2011 Cr.L.R.(SC) 40 and Munish Kumar Sharma v.

The State of Rajasthan & ORS.: 2010 WLC (Raj.) UC368 Learned counsel for the respondents vehemently opposed the submissions made by learned counsel for the petitioner; it was submitted that the authorities were well within their jurisdiction to reach a final conclusion on consideration of the material available on record and the petition questioning the propriety and validity of the order is not maintainable and the same deserves to be dismissed.

Reliance was placed on State of Bihar & Anr.v.Shri P.P.Sharma : AIR 1991 SC1260 I have considered the rival submissions made at the Bar.

The petition seeks to question the validity of the prosecution sanction granted under Section 19 of the Act; learned counsel for the petitioner raised several submissions based on the merits and the allegations made by the complainant i.e.the location of place of business of the complainant being beyond his jurisdiction, several criminal matters pending against the complainant, the complainant having committed suicide, the alleged taped version of the conversation being a weak evidence and having become still weaker on account of death of the complainant, the trap having failed, the fact that petitioner was not caught red handed etc.⁵ The said aspects were also raised by the petitioner during the couRs.of hearing granted to him by the authority before granting prosecution sanction and this Court under its writ jurisdiction does not sit in appeal on order granting prosecution sanction; a look at the note-sheet, produced by the petitioner, reveals that after the Dy.

Secretary proposed refusal of prosecution sanction vide his note-sheet dated 03.04.2014 on the ten grounds raised by the petitioner, the Secretary, Department of Personnel after examining the matter at his end opined on 21.07.2014 as under:- # & (& * + / 5 - 4-5 + , * + 40000/- # A * + * # (E35 39/&) * & G + * 40000/- & # # #, + # * * A * A * , 1988 * -7 13 (1)(&).13(2) & * 120-& W # : , 1988 * -19 X , 1973 * 197 [+ A & E # , _ , _ - & , E - , G & a + , _ , _ , - E & , E G -7 13 (1)(&).13(2) , 1988 120-& & b W A &E # + G + +[, _ , , + A & 6 + + # " Whereafter it appears that after approval by the higher authorities the order dated 10.09.2014 was issued.

A look at the above note-sheet clearly reveals that the Secretary has taken into consideration the material available on record and on taking into consideration the recorded conversation, came to the conclusion that prima facie case was made out; the said consideration cannot be said to be inadequate or insufficient so as to require interference by this Court.

Further, merely because in the couRs.of decision making, a note-sheet has been prepared taking a view different from the final view, the petitioner cannot take

advantage of the same and seek to question the final order on such ground.

Heavy reliance was placed by learned counsel for the petitioner on the order passed by this Court in S.B.Criminal Misc.

Petition No.1537/2011 (Krishan Kanhaiya Borana v.

State of Rajasthan) decided on 24.08.2011, whereby, in a misc.

petition filed by the said Officer, who was accused by the complainant alongwith with the petitioner, wherein, while deciding the said petition, this Court made observations that there was no allegation against the petitioner therein to accept bribe in the FIR; the observations made by the Court, by itself cannot amount to any finding by this Court, inasmuch as, in the order dated 24.08.2011 itself, the Court permitted the Investigating Officer to investigate the matter and permitted the petitioner therein to produce documents before him and directed 7 the Investigating Officer to consider the same for the purpose of arriving at a final decision.

Therefore, the order does not help the cause of the petitioner.

The judgment in the case of State of Himachal Pradesh (supra) also does not help the cause of the petitioner as initially the petitioner tried to make out a case that the Secretary, Department of Personnel had endorsed the view of Dy.

Secretary on 03.04.2014 itself and has thereafter reviewed his opinion while granting prosecution sanction on 21.07.2014, which according to the petitioner was not permissible; however, the said fact has been found factually incorrect, inasmuch as, the Secretary on 03.04.2014 had merely asked the Dy.

Secretary to speak to him.

The matter not having been reviewed, the judgment has no application.

The judgment in the case of Munish Kumar Sharma (supra) also deals with a case of review and, as such, has no applicability to the facts of the present case.

Hon'ble Supreme Court in the case of Subramanian Swamy v.

Manomhan Singh & Anr.

: (2012) 3 SCC64 inter alia, observed as under:- 44.

We may also observe that grant of refusal of sanction is not a quasi-judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the competent authority before it takes a decision in the matter.

What is required to be seen by the competent authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investigating agency prima facie disclose commission of an offence by a public servant.

If the competent authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction.

If the satisfaction of the competent authority is otherwise, then it can refuse sanction.

In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail of appropriate legal remedy.

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Further, regarding the guidelines prescribed by CVC, Hon'ble Supreme Court observed as under:- 50.

The aforementioned guidelines are in conformity with the law laid down by this Court that while considering the issue regarding grant of refusal of sanction, the only thing which the competent authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence.

The competent authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true.

Similarly, in the case of State of Maharashtra v.

Mahesh G.

Jain : (2013) 8 SCC119 Hon'ble Supreme Court clearly opined that the adequacy of material placed before the sanctioning authority cannot be gone into by the Court, it was observed as under:- The adequacy of material placed before the sanctioning authority cannot be gone into the court as it does not sit in appeal over the sanction order.

An order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity.

When there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with.

The flimsy technicalities cannot be allowed to become tools in the hands of an accused.

In view of the above legal position, this Court is of the opinion that no interference is called for in the impugned order dated 10.09.2014 (Annexure-9) sanctioning prosecution of the petitioner in the present writ petition and the same being devoid of merit is dismissed.

The stay petition is also dismissed.

No order as to costs.

(ARUN BHANSALI).J.

A.K.Chouhan/- 151

