

Abdul Aziz Gauri Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Oct-27-2015

Appellant : Abdul Aziz Gauri

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Abdul Aziz Gauri vs. The State of Rajasthan & ors. D.B. Civil Special Appeal No.1231/2014 under Rule 134 of the Rajasthan High Court Rules, 1952 against the order dated 23.5.2014 passed by learned Single Judge in S.B.Civil Writ Petition No.1231/2012. Date of Judgement :

27. 10.2015 PRESENT HON'BLE MR. JUSTICE GOVIND MATHUR HON'BLE MISS JUSTICE JAISHREE THAKUR. Mr. Mahesh Bora, Senior Advocate assisted by Ms. Meenu Purohit, Advocate, for the petitioner. Mr. K.L. Thakur, Additional Advocate General with Mr. Rishabh Tayal and Mr. K.L. Vishnoi, for the respondents. BY THE COURT:(Per Hon'ble Ms. Jaishree Thakur,J.) 1. The present appeal has been filed to challenge the judgment dated 23.5.2014 passed in S.B. Civil Writ Petition No.1231/2012 dismissing the writ petition filed seeking to quash an order dated 19.1.2012 granting sanction to prosecute the appellant-petitioner herein.

2. Brief facts of the case are that the appellant was appointed on the post of Lower Division Clerk on 26.2.1977 and he was subsequently promoted to the post of Upper Division Clerk in the year 1999. While posted at District Industries Centre, Nagaur, the appellant was trapped and caught red handed with Rs.5,000/- on 4.11.2009. Pursuant to the trap, an FIR No.292/2009 was lodged on 6.11.2009. The appellant was taken in 2 custody by the Anti-Corruption Bureau. Thereafter, the Commissioner, Industrial Department, Jaipur passed suspension order on 5.11.2009 by which the services of the appellant were suspended. The appellant thereafter made a representation on 28.9.2010 to the respondent-authorities requesting them that he may be given an opportunity of personal hearing before issuance of any sanction order to prosecute under the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act of 1988.). In the representation, the appellant took all possible defenses as to how he has been wrongly implicated in the case. The Deputy Inspector General of Police, Anti-Corruption Bureau, Jaipur at the same time addressed a communication to the Commissioner, Industrial Department at Jaipur on 8.3.2011 requesting the Commissioner to issue the prosecution sanction order while referring to certain circulars. While forwarding the request for grant of sanction to prosecute the appellant, the respondent Deputy Inspector General of Police also enclosed format of the prosecution sanction to be signed and issued by the Commissioner Respondent no.2 . The Commissioner opined that there was no need to issue prosecution sanction against the appellant on the note-sheet dated 30.5.2011. In response to letter received from the Deputy Inspector General of Police, the Commissioner sent a letter dated 31.5.2011 whereby he stated that he had carefully examined the matter in question and was of the view that the prosecution sanction against the appellant was not required. Thereafter, Additional Director General of Police, Anti Corruption Bureau addressed a letter dated 8.6.2011 to the respondent-State requesting that the matter should be 3 carefully examined along with the evidence available and appropriate decision may be passed. Thereafter, a reminder was sent. On request of the Principal Secretary, Department of Industries, the Commissioner, Department of Industries again re-examined the matter and came to the conclusion that the prosecution sanction against the appellant is not needed to be issued. On the matter being put up again the Minister, Department of Industries

directed that order be issued to prosecute. On 19.1.2012 the sanction to prosecute was issued by the Commissioner. Aggrieved against the said order, the appellant filed a writ petition in this High Court challenging the sanction to prosecute granted primarily on the ground that once the prosecution sanction has been refused by the competent authority, the same cannot be re-opened without there being fresh material on record.

3. The learned Single Judge framed a question in the writ petition that whether any estoppel or res judicata applies for a competent authority, if he once decides not to grant such sanction for prosecution of a public servant under Section 19 of the Prevention of Corruption Act, 1988 and later on grants it on a consideration of the same material or at the instance of a higher authority?.. Relying upon various judgments, the learned Single Judge dismissed the writ petition. Aggrieved against this, the present appeal has been filed.

4. Mr. Mahesh Bora, Senior Advocate assisted by Ms. Meenu Purohit, Advocate has contended that the Commissioner had examined the matter in detail twice and had come to the conclusion that there was no need to grant sanction to prosecute the appellant and this decision had been arrived at after appreciating the evidence available on record.

5. It is further contended that once the competent authority had refused to accord prosecution sanction to prosecute the appellant, the Minister had no occasion to direct otherwise. Reliance has been placed on a judgment reported as *State of Himachal Pradesh v. Nishant Sareen*, 2011(1) Crimes

47) SC), to contend that the order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority and the same must be preceded by application of mind.

6. Per contra, the counsel appearing on behalf of the respondents has vehemently argued that the file of the appellant-petitioner was put up before the Minister who opined that the order should be issued regarding grant of sanction to prosecute and, accordingly, the order dated 19.1.2012 was passed by the competent authority. It is further argued that there is no bar for the sanctioning authority to

revise its opinion.

7. We have heard the learned counsel for the parties and have perused the record of the case.

8. Admittedly, the appellant-petitioner was placed under suspension on account of the charges of receiving illegal gratification of a sum of Rs.5,000/- while working as a Upper Division Clerk in the Department of Industries. The competent authority, to remove the appellant-petitioner from employment , i.e., the Commissioner, by an office note dated 30.5.2011 did not deem it fit to accord sanction to prosecute the appellant. The Deputy Inspector General of Police, Anti Corruption Department 5 wrote to the Principal Secretary, Department of Industries asking that the matter be looked into and sanction be accorded to prosecute the appellant. On receipt of this communication, the Principal Secretary, Department of Industries requested the Commissioner to re-examine the matter as per the recommendations of the respondents the Additional Director General of Police. The Commissioner re-examined the matter and came to the conclusion that there is no need to grant sanction to prosecute the appellant-petitioner. However, on 19.1.2012, the Commissioner issued prosecution sanction against the petitioner at the behest of the Minister. Section 19 of the Act of 1988 reads as follows:-

19. Previous sanction necessary for prosecution

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013(1 of 2014)- (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 6 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 7 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 requirement of a similar nature..

9. Section 19 has been enacted in order to grant a protection to a public servant to the extent that under Section 19(1)(c) of the Act of 1988, no Court shall take cognizance of an offence punishable under Sections 7,10,11,13 and 15 of the Act

of 1988 without previous sanction given by the competent authority to remove him from office. The object under Section 19 of the Act of 1988 is to ensure that a public servant does not suffer harassment on account of false and frivolous complaints made against him. In *Mansukhdas Vithal Das Chauhan vs. State of Gujarat*, 1997(7) SCC622 Hon'ble the Apex Court has observed that Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecutions and is a safeguard for the innocent but not a shield for the guilty.

. The competent authority in the present case, looked at the evidence on record and came to a definite conclusion that there was no need to grant sanction to prosecute the appellant. The Commissioner had occasion to look at the file, not once but twice and he maintained his opinion that there would be no need to prosecute. A perusal of the record annexed along with the writ petition shows that the matter was put up again and the noting of the file reads as issue orders. as signed by the Minister Industries. There is nothing to show the subjective satisfaction of the Minister or any reasoning recorded as to why the order refusing to grant sanction to prosecute the appellant should be altered. It is incumbent upon an authority who seeks to change or alter any decision taken to give adequate and cogent reasons to differ with such decision. The failure of the Minister to record reasons or independently apply his mind vitiates the order passed.

10. The Hon'ble Apex Court in the *State of Himachal Pradesh vs. Nishant Sareen*(supra) while dealing with similar set of facts, wherein the competent authority had refused to grant sanction to prosecute on one occasion, subsequently granted permission, which came to be challenged, held as under:- It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider

the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course. 11. In the present case too, there is nothing on record to show that there is any fresh evidence available with the respondent-authorities empowering them to review the matter. There is no doubt about the fact that a competent authority can review alter its earlier decision declining grant of sanction to prosecute but such permission can only be granted in case there is some fresh evidence available on the record. A perusal of the record further shows that the competent authority being the Commissioner signed the sanction order on 19.1.2011, which happens to be verbatim copy of the sanction order prepared on an earlier date. No changed circumstances warranted the signing of the sanction order dated 19.1.2011, when the Commissioner had refused to sign the earlier draft copy of the sanction order.

12. Mr. K.L. Thakur, counsel appearing on behalf of the State has sought to place reliance on the circular issued on 6.4.2002 and has argued that the circular permits issuance of an order granting sanction to prosecute by the Minister. This argument is ill-founded since the circular has to be read in its entirety. Reading of the circular shows that emphasis has been laid in the circular that it would not be proper for the next higher authority to issue the sanction for prosecution where the competent authority is of the view that it is not a case where sanction for prosecution should be accorded.

. The circular issued notes that power of according sanction for prosecution vests in the authority which is empowered to remove the government servant from service and should be exercised only by such authority.

. In the present case, after the competent authority, namely, the Commissioner, had looked into the matter and had formed an opinion that there was no need to grant sanction to prosecute the appellant, the Minister, without due application of mind or recording any cogent reasons for setting aside the opinion of the Commissioner, issued direction that the 11 sanction order to prosecute should be passed. This itself is in direct contravention of the procedure detailed in circular issued in 2002.

13. Therefore, while holding that without any fresh evidence being brought forward, the competent authority erroneously granted permission to prosecute, especially when the same authority had already declined to grant permission to do so on two earlier occasions.

14. Resultantly, the appeal is allowed and the order of the learned Single Judge dated 23.5.2014 and the order dated 19.1.2012 passed by Commissioner, Industrial Department, Jaipur are hereby quashed and set aside. (JAISHREE THAKUR),J (GOVIND MATHUR),J.

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