

Panchoo Lal Sharma Vs. State

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Court : Rajasthan

Decided On : Dec-08-1997

Reported in : 1998(3)WLC670; 1997(2)WLN684

Judge : M.A.A. Khan, J.

Appeal No. : S.B. Cr. Misc. Petition No. 821 of 1997

Appellant : Panchoo Lal Sharma

Respondent : State

Judgement :

M.A.A. Khan, J.

1. Notice was given to P.P. and the learned Counsel for the parties were heard.
2. The petitioner had been working as Head Constable in the police Force Rajasthan in the year of 1995. It appears that he had been entrusted with the investigation of a case during which he allegedly demanded bribe from one of the party to that case the matter Was reported to the Anti Corruption Department and First Information Report being No. 68/95, was registered against the petitioner. After investigation of the case the police submitted final report. The Special Judge did not accept such report. Instead, he was of the opinion that offence punishable under Section 120B IPC appeals to have been committed by the petitioner, Durga

Lal and Gopal. He, therefore, directed that the papers be. put before sanctioning authority. It was further observed by him that the opinion of the sanctioning authority be communicated to him.

3. It was urged that the learned Special Judge could not have directed the Sanctioning Authority in the way he has done. It was submitted that the learned Special Judge could have taken cognizance of the offence on the basis of material which was there before him in the negative police report and other documents, if he could have legally done that but could not have asked the sanctioning authority to grant sanction for prosecution of the petitioner.

4. It is settled view that the functions of the Court start when the functions of the police end. Role of police and that of the court are supplementary to each other and not overlapping. Whereas in the provision contained in Chapter XII Cr. P.C. the Magistrate has been conferred upon certain powers to issue orders regarding grant of remand, etc. in the course of the investigation, he can not effectively guide or control or direct the Investigating Agency to act in a particular way. Therefore, he can not direct the police to put up a chargesheet in a particular case before him because on a submission of a negative report if any,, before him, he himself is competent to take cognizance on the basis of such negative report. He may simply require clarification for further collection of evidence by the Investigating Agency on certain specified points relevant to the offence alleged to have been committed in a case.

5. In so far as the question of issuing sanction for the prosecution of an accused is concerned it is within the discretion of the Sanctioning Authority whether to issue or not to issue sanction for prosecution of the accused. While returning a negative police report to the police the court is required to pass its order in such away as does not carry with it any element of compulsion or create any obligation on the sanction authority to act and behave in a particular manner. If sanctioning authority grants sanction in pursuance of the orders of the court it may be an instance of the granting of sanction in compliance or obedience of the orders of the Court and of not granting the sanction by the sanctioning authority after application of its own mind on the facts of the case. Granting sanction is an independent act and

Sanctioning Authority has to apply his mind and to consider whether the accused should or should not be prosecuted. His discretion can not be controlled by the Magistrate at that point of time. It is altogether a different proposition whether a Court, especially a higher court, may or may not take cognizance of the particular offence in the peculiar facts and circumstances of a case.

6. In the present case direction of the Learned Special Judge for putting papers before sanctioning authority for considering the grant of sanction of prosecution of the petitioner, carries with it, in my opinion an implied direction to the sanctioning authority to grant sanction. That would be against the legal position on the subject. Therefore, the order dt. 2.8.1997 relating to. the directions given by the Learned Special Judge for putting up papers before Sanctioning Authority for consideration of issuing requisite sanction under Section 197 Cr. P.C. or the relevant provision of some other law is deleted from his order. The Sanctioning Authority would not at all feel influenced by such direction of the learned Special Judge and may, in his discretion and on the application of his own mind consider the question of grant or refusal to grant sanction for prosecution of the present accused.

7. The petition is disposed of in the manner stated above.