

Raj Kumar Sharma Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-24-2008

Reported in : RLW2009(2)Raj932

Judge : Mahesh Chandra Sharma, J.

Appellant : Raj Kumar Sharma

Respondent : State of Rajasthan

Judgement :

Mahesh Chandra Sharma, J.

1. By moving misc. stay application under Section 397 read with Section 401 Cr.P.C, the accused petitioners have prayed to direct the prosecution and the department not to take any step in furtherance of grant of sanction vide order dated 1.9.2008 during pendency of this criminal revision.

2. Brief facts of the case in nutshell are that petitioner No. 1 was posted as A.En., Irrigation Department, whereas accused petitioners No. 2 and 3 were J.Ens., in the' same department. A complaint was lodged as FIR No. 46/1996 by the Anti Corruption Bureau, Bharatpur wherein the works of providing Spillway in Wire mesh creates in Banganga River at Kharbara Kenal was made the subject of inquiry.

3. Mr Madhav Mitra, Counsel for the accused petitioners submit that copy of the order dated 1.9.2008 has neither been served on the petitioners nor any copy has been given to the petitioner. The order dated 19.7.2005 passed by the Special Judge, Sessions Court, Anti Corruption Act, Kota by which it forwarded the matter to the competent officer for according prosecution sanction is patently illegal and it has exceeded its jurisdiction which is vested in it and it has passed the order dated 1.9.2008 in a mechanical manner. The mind of the sanctioning authority should not have been under any pressure from any quarter nor any external force has to be used at the time of taking such decision.

4. Mr. Mitra drawn attention of this Court to the following Judgments:

1. Mansukhlal Vithalda Chauhan v. State of Gujarat : 1997 CriLJ4059 ; and

2. Prabhulal Gaur v. State of Rajasthan 2000 (1) WLC (Raj.) 135 : RLW 1999 (3) Raj. 1436.

Per contra Mr. B.N. Sandu & Mr. D.D. Sharma, Public Prosecutor vociferously controverted the aforesaid arguments and submitted that the order dated 19.7.2005 passed by Special Judge, Sessions Court, Anti Corruption Act, Kota is neither in the directive form nor in the mandatory form.

5. He has drawn attention of the Court to the case of Satya Narayan Sharma v. State of Rajasthan : 2001 CriLJ4640 , the head note A & B of which are reproduced here-in-below:

(A) Prevention of Corruption Act (49 of 1988). Section 19 -Stay of trial - Trial of public servant for corruption charges - No stay can be granted by Court by use of any power - This is also applicable to High Court when it exercises inherent jurisdiction under Section 482 Cr.P.C.

(B) Prevention of Corruption Act (49 of 1988). Section 19(3)(b) - Criminal P.C. (2 of - 1974) Sections 482, 397 - Prohibition against stay of proceedings - Error, omission, or irregularity in sanction - Should not normally be a ground to grant stay - Merely because objection regarding sanction was raised at early stage is not ground that there was failure of justice - Over-ruling objection on ground of

sanction does not result in failure of justice.

6. Para 29 of this Judgment is reproduced here-under:

29. It has been brought to our attention that in large number of cases stays have been granted by the High Courts in matters under the Prevention of Corruption Act, even though there is a specific bar against the grant of any stay. We, therefore, direct the Registrar of all the High Courts to list all cases in which such stay is granted before the Court concerned so that appropriate action can* be taken by that Court in the light of this decision. The Registrar of this Court is directed to send a copy of this order to the Registrar of all the High Courts.

7. Hon'ble Apex Court this case in regard to grant of stay in Anti Corruption Cases, in para 8 has held as under:

We are informed that several High Courts, over-looking the said ban, are granting stay of proceedings involving offences under the Act pending before Courts of Special Judges. This might be on account of a possible chance of missing the legislative ban contained in Clause (c) of Sub-section (3) of Section 19 of the Act because the title to Section 19 is 'previous sanction necessary for prosecution.' It could have been more advisable if the prohibition contained in Sub-section (3) has been included in a separate Section by providing a separate distinct title. Be that as it may, that is no ground for by-passing the legislative prohibition contained in the sub-section.

Lastly Mr. Sandu drawn attention of the Court to Sub-clause (b) of Sub-section 3 of the Section 19 of the Prevention of Corruption Act, 1988, which is reproduced as under:

19. Previous sanction necessary for prosecution (1) ' '.

(2) ' '.

(3) (A) ' '.

(b) no court shall stay the proceeding 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.

8. Thus, the stay application filed by the accused petitioners is not maintainable and liable to be rejected.

9. I have heard Counsel for both the parties and carefully gone through the entire material made available to this Court including the judgments cited by both the counsel.

10. The facts of the judgments cited by Mr. Madhav Mitra Counsel for the accused petitioners and the case in hand are entirely different and are not applicable in the instant case.

11. In my view, it is not a fit case where this Court can grant stay in favour of the accused petitioners. The stay application is devoid of merits and stand rejected but at the same time I direct the S.H.O./I.O. of the case that in the event of arrest of the accused petitioners, they shall be enlarged on bail, provided each of them shall furnish a personal bond of Rs. 20,000/- (Rs. Twenty Thousand only) with two sureties of Rs. 10,000/- in the like amount to the satisfaction of the SHO/IO concerned.

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