

Pramod Kumar Pathak Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Nov-07-2008

Reported in : 2009CriLJ1397; 2009(1)WLN133

Judge : H.R. Panwar, J.

Appellant : Pramod Kumar Pathak

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

ORDER

H.R. Panwar, J.

1. By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the order Annex. 3 and Annex. 4 dated 26-7-2008 and 7-8-2008 respectively as also seeks quashing of FIR No. 27/2004 (Annex. 1) registered by Anti Corruption Department under the provisions of Prevention of Corruption Act, 1988.

2. I have heard learned Counsel for the petitioner at length. Carefully gone through the orders impugned as also the FIR.

3. It appears that an FIR came to be registered vide Annex. 1 on 9-2-2004 by the Additional Superintendent of Police, Anti Corruption Bureau, Udaipur for the offences under Sections 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 and under Sections 120B, 420, 467 and 471, I.P.C. After thorough investigation, the police filed challan against the petitioner for the offences under Sections 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 and under Sections 420, 467, 468, 471, 477A and 120B, I.P.C. before the Special Court having jurisdiction to try such cases. Thereafter by order Annex. 3 dated 26-7-2008, the Chief Engineer accorded sanction to prosecute the petitioner under Section 197, Cr.P.C. The petitioner has also been placed under suspension by order Annex. 4 dated 7-8-2008 on the ground that a charge sheet has been filed against the petitioner for the offences punishable under the various sections of the Prevention of Corruption Act and I.P.C. as noticed above and a sanction to prosecute the petitioner under Section 197, Cr.P.C. has been accorded and therefore, in exercise of the powers conferred under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the CCA Rules, 1958' hereinafter), the petitioner has been placed under suspension. By the instant writ petition, the order placing the petitioner under suspension as also the FIR and the order according sanction to prosecute the petitioner under Section 197, Cr.P.C. have been challenged.

4. It is contended by learned Counsel for the petitioner that the Sanctioning Authority is required to give requisites of a valid sanction and in absence of requisites of valid sanction, the sanction accorded is bad in the eye of law. Learned Counsel for the petitioner has relied on decision of Hon'ble Supreme Court in *Mansukhlal Vithaldas Chauhan v. State of Gujarat* : 1997 CriLJ4059 and in *State (Anti-Corruption Branch), Govt. of NCT of Delhi and Anr. v. Dr. R.C. Anand and Anr.* : 2004 CriLJ3121 as also a decision of this Court in *Rajendra Singh Rathore v. The Director, Agriculture Marketing and Ors.* passed in SBCW No. 4604/2007 decided on 19-9-2008.

5. I have given my thoughtful consideration to the submissions made by learned Counsel for the petitioner.

6. In *Mansukhlal Vithaldas Chauhan v. State of Gujarat* (supra), considering Section 197 of the Criminal Procedure Code, 1973, the Hon'ble Supreme Court held that independent application of mind to the facts of the case as also material and evidence collected during investigation by the authority competent to grant sanction is essential. In that case, the sanction was issued by the authority on the directions of the High Court. The Apex Court held that the sanction has only been issued on the direction of the High Court and therefore, the Sanctioning Authority did not apply its mind independently and therefore, there was no independent application of mind by that authority and as such the sanction was held to be bad in law. In that case, a trap against the appellant therein a Divisional Accountant in an irrigation project in the State was laid on 4-4-1983 on a complaint of partner of a firm having official dealings with the appellant. The appellant was alleged to have been caught accepting the bribe. The Secretary, Gujarat Vigilance Commission, wrote to the Government to grant sanction for prosecution but the Government did not immediately grant sanction. Meanwhile, the partner of the complainant firm filed a petition under Article 226, for a direction to the State of Gujarat and Ors. to grant sanction for prosecution. The High Court directed the Secretary of the Department in which the appellant was working to accord sanction under the relevant provisions of the Prevention of Corruption Act to prosecute the appellant within one month from the receipt of the writ of the Court. In view of these directions of the High Court, sanction was granted and the appellant was prosecuted. The Apex Court held that the Central or the State Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that public servant is to be prosecuted or not. Since Section 6 of the Prevention of Corruption Act, 1947 (since repealed), prohibits the Court from taking cognizance of the offences specified therein, it envisages that the Central or the State Government or the other authority, has not only the right to consider the question of grant of sanction, it also has the discretion to grant or not to grant sanction. The sanction is not intended to be, nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. One of the guiding principles for sanctioning authority is to keep in mind the public interest and, therefore, the probation available under Section 6 to a public servant

cannot be said to be absolute. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.

7. In *State (Anti-Corruption Branch), Govt. of NCT of Delhi and Anr. v. Dr. R.C. Anand and Anr.* (supra), the Hon'ble Supreme Court held that the validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence including the transcript of the tape record have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

8. In the instant case, the Sanctioning Authority has taken into consideration all the facts and circumstances of the case including the fact that the matter has been thoroughly investigated by the police and police recorded the statement of various witnesses and the fact that at the relevant time the petitioner while working on the post of Junior Engineer at Mahi Project in Main Canal was undertaking remodeling work of RD No. 19670 to 21000, and he was to take use of the usable stones in other works by getting the stones broken as per provisions of the B. C. R. 1991 which was not done. Only 8400 cubic meter stones has been handed over to Shri Ramesh Chand Mathur, Junior Engineer on his transfer but neither Shri Ramesh Chand Mathur has produced any document in this regard to the Bureau nor the same is found verified from the records received from Mahi Project. In Contract No. 37/95-96, in respect of RD No. 20150 meter to 20350 meter, according to measurement book No. 1700 page No. 18, payment of 11397.04 Cubic meter has been made at the distance of 0.50 kilometer, but the petitioner in the third running bill in respect of that very contract, shown the aforesaid quantity 11397.04 cubic meter at a distance of 1 km. in the measurement book No. 1700 at page No. 39 and thereby payment has been made to the contractor contrary to rules. The

petitioner in connivance with Mahesh Mathur, Assistant Engineer and Contractor Harish Patel M/s. Hema Construction Company and entering into a conspiracy got the payments made contrary to rules to the Contractor. The petitioner has also made interpolation in the entries made at page No. 73-74 of measuring book No. 789 for underwater payment which bears the initials of the petitioner. The Sanctioning Authority while taking into note every material placed before it, prima facie came to the conclusion that by entering into a criminal conspiracy, forging of a document in order to benefit the contractor and for his own benefit, loss to the State amounting to Rs. 34,67,213/- has been caused and as such prima facie offences punishable under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act and under Sections 420, 467, 468, 471, 477A and 120B, I.P.C. are made out. The Sanctioning Authority has also gone through the charge sheet filed by the police after thorough investigation against the present petitioner before the Special Court trying the Anti-Corruption Cases and also the statements of the witnesses recorded by them. On going through the order sanctioning prosecution in my view, the order fulfills the requisites of valid sanction as has been held by Hon'ble Supreme Court in the decisions referred hereinabove. It cannot be said that the sanction is granted without independent application of mind by the authority according sanction.

9. So far as, the quashing of FIR for the offences punishable as noticed above is concerned, in my view after thorough investigation, the police prima facie found the case and filed charge sheet and the petitioner is facing trial before the competent Court. The scope of quashing FIR has been considered by Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal* : 1992 CriLJ527 .

10. In *State of Haryana and Ors. v. Bhajan Lal and Ors.* (supra), the Hon'ble Supreme Court held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare case. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Apex Court further held that the investigation of an offence is the field exclusively reserved for the police

officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offence is legitimately exercise in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds.

11. In *Union of India and Ors. v. B.R. Bajaj and Ors.* : 1994 CriLJ2086 , the Hon'ble Apex Court held that the inherent power under Section 482 of the Code cannot be exercised to quash the FIR when the allegations in FIR discloses commission of a cognizable offence because several aspects of the FIR still to be investigated by the police. At that stage, the High Court cannot go into the question whether offences alleged in the FIR are made out or not. The statutory power of police to investigate cannot be interfered with in exercise of inherent power by the High Court.

12. In *M.L. Bhatt v. M.K. Pandita and Ors.* : JT2002(3)SC89 , the Hon'ble Supreme Court held that the High Court would be entitled to only examine the allegations made in the FIR and would not be entitled to appreciate by way of shifting the materials collected in course of investigation including the statement recorded under Section 161 of the Code of Criminal Procedure. But by no means the Court would be justified in quashing of FIR by appreciating and shifting the materials collected during the investigation.

13. In the instant case, the police after thorough investigation prima facie found the case against the petitioner and filed challan against him for the offences under Sections 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 and under Sections 420, 467, 468, 471, 477A and 120B, I.P.C. before the Special Court having jurisdiction to try such cases. On bare perusal of the FIR and the investigation papers and the fact that after investigation the police has prima facie found case and filed charge sheet, in my view, no case for quashing FIR is made out.

14. So far as the suspension of the petitioner is concerned, the order placing the petitioner under suspension is appealable under Rule 22 of the CCA Rules, 1958 which provides that a Govt. servant may appeal against an order of suspension to

the authority to which the authority which made or is deemed to have made the order, is immediately subordinate. In view of the fact that alternative remedy of appeal is available, and without exhausting remedy of appeal, the petitioner has filed the instant writ petition, therefore the writ petition cannot be entertained, in view of catena of decisions of Hon'ble Supreme Court.

15. A Constitution Bench of the Hon'ble Supreme Court, in *G. Veerappa Pillai v. Raman & Raman Ltd.* : [1952]1SCR583 , held that if there is statutory remedy of appeal/revision available to a person, the writ jurisdiction should not be invoked in such matters.

16. In *C.A. Ibrahim v. I.T.O.* : [1961]41ITR425(SC) and *H.B. Gandhi v. Gopinath & Sons* , the Hon'ble Apex Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

17. A Division Bench of this Court in *Laxman Singh Verma v. State of Rajasthan and Ors.* 2000 (1) RLR 137 : 2000 Lab IC 1656 has considered this issue elaborately and after discussing large number of decisions of this Court and the Hon'ble Supreme Court in *Gopilal Teli v. State* 1995 (1) RLR 1; *Whirlpool Corporation v. Registrar of Trade Marks* : AIR 1999 SC22 ; *Tin Plate Co. of India Ltd. v. State of Bihar* : AIR 1999 SC74 ; and *Deepak Kumar Khinvsara v. Oil India Ltd.* 1996 (1) RLR 95, came to the conclusion that writ should not generally be entertained if statute provides for remedy of appeal and even if it has been admitted, parties should be relegated to the appellate forum.

18. In *Sheela Devi v. Jaspal Singh* : AIR 1999 SC2859 , the Hon'ble Supreme Court held that if the statute itself provides for a remedy of revision, writ jurisdiction cannot be invoked.

19. A Constitution Bench of the Hon'ble Supreme Court, in *K.S. Rashid & Sons v. Income Tax Investigation Commission and Ors.* AIR 1954 SC 207, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. The said power is limited. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion

to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

20. Again, a Constitution Bench of the Hon'ble Supreme Court, in *Union of India and Ors. v. T.R. Verma* : (1958)11LLJ259SC , held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. The Apex Court held that existence of another remedy does not affect the jurisdiction of the Court to issue a writ, but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such remedy is exhausted, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds therefor.

21. Yet another Constitution Bench of the Hon'ble Supreme Court, in *State of U.P. and Ors. v. Mohammed Nooh* AIR 1958 SC 86, considered the scope of exercise of writ jurisdiction when remedy of appeal was there and held that writ would lie provided there is no other equally effective remedy.

22. Another Constitution Bench of the Hon'ble Supreme Court, in *State of Madhya Pradesh and Anr. v. Bhailal Bhai etc. etc.* : [1964]6SCR261 , held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power.

23. In *S.T. Mathuswami v. K. Natrajan and Ors.* : [1988]2SCR759 , the Hon'ble Supreme Court held that the High Court cannot be justified to exercise the power in writ jurisdiction if an effective alternative remedy is available to the party.

24. In *Secretary, Minor Irrigation and Rural Engineering Service, U.P. and Ors. v. Sangoo Ram Arya and Anr.* : 2002 CriLJ2942 the Apex Court held that where the statute has provided for the Constitution of a Tribunal for adjudicating the disputes of a Government servant, the fact that the Tribunal had no authority to grant an interim order, would be no ground to by-pass the said Tribunal.

25. In U.P. State Spg. Co. Ltd. v. R.S. Pandey : (2005)8SCC264 , the Hon'ble Supreme Court held in categorical terms that the writ petition under Article 226 of the Constitution of India should not be entertained when the statutory remedy is available under the Act unless exceptional circumstances are made out.

26. In Uttaranchal Forest Development Corporation v. Jabar Singh and Ors. : (2007)11LLJ95SC , the Hon'ble Supreme Court held that the High Court should not deviate from the general view and interfere under Article 226 of the Constitution except when a very strong case is made out for making a departure. There are several decisions to the same effect. The Apex Court further held that the petitioners, who have not invoked the jurisdiction of the Tribunal are not entitled to any relief in the writ petitions.

27. In this view of the matter, I do not find any merit in the writ petition and it is accordingly dismissed. There shall be no order as to costs.

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