

Manish Mathur Vs. State of Raj. and anr

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Court : Rajasthan Jodhpur

Decided On : Dec-19-2012

Appellant : Manish Mathur

Respondent : State of Raj. and anr

Judgement :

(1) IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER S.B. CIVIL WRIT PETITION NO.12684/2012 Manish Mathur Versus State
of Rajasthan & Anr. Date of Order :

19. 12.2012 PRESENT HON'BLE MR. JUSTICE GOVIND MATHUR Mr. Kuldeep Mathur for the petitioner Mr. M.A. Siddiqui for the respondents BY THE COURT : While working as Foreman-I in the Department of Mines and Geology, a criminal case was registered against the petitioner at Anti Corruption Bureau Outpost, Jodhpur, Police Station Anti Corruption Bureau, Jaipur on 05.08.2010 for the offences punishable under Section 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (for short, hereinafter referred to as 'the Act of 1988') and Section 201 of the Indian Penal Code. As a consequent to lodging of the case aforesaid, the petitioner was placed under suspension under an order dated 23.08.2010 passed by the Director, Mines and Geology. Under a letter dated 26.09.2010, the Director, Mines and Geology, Government of Rajasthan, Udaipur, received a draft (2) sanction letter from the Anti Corruption Bureau, Jaipur for according sanction as required for prosecution of a Government servant according to Section 19 of the Act of 1988. The Director, Mines and Geology, Udaipur, vide a

communication dated 18.09.2012 conveyed the Anti Corruption Bureau, Jaipur regarding grant of sanction in the terms of the draft sent by the Bureau. Being aggrieved by the same, this petition for writ is preferred. The only argument advanced by the learned counsel for the petitioner is that as per Section 19 of the Act of 1988, the competent authority is required to apply its own mind while considering the issue for grant of sanction for prosecution of a Government servant, but in the instant matter, a draft for granting sanction was sent by the Anti Corruption Bureau to the Director, Mines and Geology and the Director, Mines and Geology without independent application of mind just put his signatures on the draft and granted sanction and such sanction is against the spirit of the provisions of Section 19 of the Act of 1988. To substantiate the contention, learned counsel for the petitioner has placed reliance upon the judgment of this court in Ganga Ram Vs. State of Rajasthan & Ors. [S.B. Civil Writ Petition No.9599/2009] decided on 13.12.2010. (3) Learned counsel for the respondents, looking to the fact that the issue involved in this petition for writ is akin to the issue adjudicated in the case of Ganga Ram (supra), consented to argue the writ petition without filing reply to the same. Heard learned counsel for the parties. It is not in dispute that the sanction granted by the Director, Mines and Geology under the letter dated 18.10.2012 is ad verbatim same to the draft sent by the Anti Corruption Bureau for grant of prosecution sanction as per Section 19 of the Act of 1988. This court in the case of Ganga Ram (supra), while adjudicating the controversy of same nature and facts held as under :- The petitioner has placed on record the draft prosecution sanction (Annex.-7) as remitted to the Director, Department of Mines and Geology, Udaipur by the Anti Corruption Bureau. The order granting sanction to prosecute the petitioner dated 31.7.2009 is also available on record as Annexure- 9. On comparison of both the documents, it is apparent that the sanctioning order is at verbatim to the draft as remitted by the Anti Corruption Bureau for grant of prosecution sanction. From examination of the entire reply to the writ petition, it nowhere reveals that as to how the competent authority independently applied its mind on the record, on basis of which prosecution of the petitioner is desired. On the contrary, it is apparent that the competent authority accepted the draft prosecution report ipse-dixit. It is well settled that the competent authority is required to (4) apply its own mind while considering the issue

regarding the grant of prosecution sanction. This Court in its recent judgment in Subhash Bhatia and ors. Vs. State of Rajasthan and ors. (S.B.Civil Writ Petition No.590/2010) decided on 10.12.2010, while dealing with the issue relating to the responsibility of the competent authority while granting sanction for prosecution held as under:- The authority competent to remove a public servant from service is clothed with the power to grant sanction for prosecution to such public servant by the Legislature with a definite intention as that authority being having administrative and disciplinary control on the person concerned is in a position to assess and weigh the accusation on basis of intimate knowledge of the work and conduct and also having day to day knowledge of overall administrative interest of the department. The sanction for prosecution represent a deliberate decision and that requires objective satisfaction of the competent authority about a prima facie case against the person facing accusation. The authority competent while granting sanction is also required to record reasons for launching prosecution and is further required to specify its need in public interest. This important duty can be discharged only on independent application of mind to all the relevant facts on basis of which prosecution is proposed. If any extraneous pressure is mounted on the authority competent then there shall be all chances of frivolous and malicious prosecution. To (5) maintain the spirit of the provisions for the grant of sanction to prosecute a public servant, the authority competent is required to act independently, objectively and with an intention for not saving a culprit from prosecution but at the same time with a view to afford a reasonable protection to a public servant from unnecessary harassment and undue hardship through vexatious prosecution. Keeping in mind, the above mentioned intention of the Legislature, Hon'ble Supreme Court in State of Karnataka Vs. Ameerjan (supra) authoritatively held that the order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. For the same reason, this Court too in the case of Kishan Lal (supra) held that the statutory power given to the authority competent is required to be exercised by the authority concerned and not by any body else. In view of the factual and legal position discussed above, it is apparent that in the instant matter, the competent authority just acted upon the instructions given by the Anti Corruption Bureau, without any independent application of mind at his own part.

Such mechanical exercise of powers is not at all permissible while granting sanction to prosecute the public servant as per provision of Section 19(1)(c) of the Act of 1988. As such, the grant of sanction under the order impugned dated 31.7.2009 is bad. (6) As already stated, in the instant matter too the sanction granted and the draft to grant sanction are ad verbatim same. The Director, Mines and Geology appears to have adopted the draft ipse dixit. Section 19 of the Act of 1988 postulates absolute authority to grant sanction for prosecution to the competent authority, as such, the competent authority is required to apply its own mind by considering all relevant facts. The competent authority may avail assistance of other persons, but in no case, any other authority can initiate the process of consideration for grant of sanction and instruct the competent authority for granting sanction. In the case in hand, the consideration for grant of sanction, as a matter of fact, was initiated by the Anti Corruption Bureau by sending a draft for granting sanction for prosecution. The Anti Corruption Bureau could have communicated all relevant facts on the basis of which prosecution sanction could have been granted, but in no case, the Bureau could have instructed for grant of prosecution sanction under a proposed and drafted document. The prosecution sanction granted in the instant matter by the Director, Mines and Geology, Udaipur under the letter dated 18.10.2012 on face depicts non-application of mind and abdication of the powers by the Anti Corruption Bureau. The (7) same, therefore, is illegal. The writ petition in view of the discussion made above deserves acceptance. Accordingly, the same is allowed. The sanction granted for prosecution of the petitioner under the letter dated 18.10.2012 is declared illegal, hence, quashed. However, the competent authority is at liberty to reconsider the entire matter afresh at its own in accordance with law for grant of sanction to prosecute the petitioner under the provisions of the Act of 1988. [GOVIND MATHUR],J.

Pramod

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