

Court No. - 10

Case :- APPLICATION U/S 482 No. - 8292 of 2018

Applicant :- Dr. Syed Fareed Haider Rizvi @ Dr. S.F.H. Rizvi

Opposite Party :- C.B.I. Thru. S.P./A.C.B. Lko

Counsel for Applicant :- Nandit Kumar Srivastava,Pranjal Krishna

Counsel for Opposite Party :- Bireshwar Nath

Hon'ble Dinesh Kumar Singh,J.

1. Heard Mr. Nandit Kumar Srivastava, learned Senior Counsel, assisted by Mr. J.P. Awasthi and Mr. Mohd. Ibrahim Khan Advocates, representing the applicant as well as Mr. Anurag Kumar Singh, learned counsel for the respondent - CBI, and gone through the record.

2. This application under Section 482 of The Code of Criminal Procedure, 1973 (hereinafter referred to as the "CrPC") has been filed, impugning the order dated 13.12.2018, issuing non-bailable warrants of arrest against the applicant in connection with Criminal Case No.1968 of 2018 (CBI Vs. Sachidanand Dubey and others) under Sections 120-B read with Sections 420 and 409 Indian Penal Code, 1860 (hereinafter referred to as the "IPC") and Sections 13(2) read with Sections 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "PC Act"), pending in the Court of learned Special Judge, CBI, Court No. 2, Lucknow, arising out of Crime No. RC0062014A0008 lodged at Police Station CBI/ACB, Lucknow.

3. The applicant was a public servant, employed/posted as District Development Officer, Balrampur during the years 2007 to 2009; at the relevant time, large scale of financial bungling, gross irregularities and misappropriation of public funds allocated under the National Rural Employment Guarantee Scheme (hereinafter referred to as the "NREGS") was reported to have been done by the then government officers/officials in criminal conspiracy and connivance with the private suppliers in purchase of stationery and other materials.

4. Public Interest Litigation Petition No.12802 (M/B) of 2011 came to be filed by Mr. Sachchidanand Gupta before this Court regarding large scale corruption, bungling and misappropriation of NREGS funds by the Block Development Officers and other government officers/officials in connivance with the private suppliers in the centralized purchase of stationery and other items worth Rs. 1,81,18,602/- on exorbitant price by the then Chief Development Officer, Project Director, D.R.D.A. and other officers of District Balrampur. These government officers/officials and private persons had allegedly caused huge loss to the government exchequer and made corresponding gains to themselves. A prayer was made for registration of the FIR and investigation by the Central Bureau of Investigation (hereinafter referred to as the "CBI").

5. This Court, vide judgment and order dated 31.01.2014 passed Public Interest Litigation Petition No.12802 (M/B) of 2011, issued a Mandamus directing the CBI to investigate the abuse and misappropriation of funds allocated under the NREGS with regard to seven districts of State of Uttar Pradesh, namely, Balrampur, Gonda, Mahoba, Sonbhadra, Sant Kabir Nagar, Mirzapur and Kushinagar during the years 2007 to 2010 and take appropriate action and prosecute the persons involved, in accordance with law.

6. Pursuant to the said order, reports of State Quality Monitor (hereinafter referred to as "SQM") in respect of seven districts, mentioned above, for the relevant period, were examined by the CBI. It was revealed that in District Balrampur during the period 2007-2008 and 2008-2009 large scale financial bungling, gross irregularities and misappropriation of NREGS funds had been found to have been done by the Block Development Officer and other government officers/officials in connivance with private suppliers in the central purchase of stationery and other items worth Rs. 1,81,18,602/- on exorbitant price by the then Chief Development Officer, Project Director, D.R.D.A. and other officers of District Balrampur in

connivance with the private suppliers and thereby they had caused a huge loss to the government exchequer and made corresponding gains to themselves.

7. A regular case, mentioned above, got registered against the then Chief Development Officer, Project Director and other officers/officials of the District Balrampur along with the private suppliers.

8. The CBI after conducting a thorough investigation, lodged the FIR on 21.02.2014 and filed charge-sheet under Section 173(2) CrPC dated 15.11.2018 under Section 120-B read with Sections 420 and 409 IPC and Sections 13(2) read with Sections 13(1)(d) of the PC Act and substantive offences thereof.

9. The CBI found the applicant as one of the architects of the crime, who was posted at the relevant time as District Development Officer, Balrampur. However, he got retired from service when the charge-sheet came to be filed.

10. The learned trial Court took cognizance on 23.11.2018 and issued summons for appearance of the applicant and co-accused on 30.11.2018.

11. The applicant did not appear on 30.11.2018 and thereafter non-bailable warrants of arrest were issued.

12. The only ground, which has been urged by Mr. Nandit Kumar Srivastava, learned Senior Counsel, appearing for the applicant, is that without seeking sanction from the competent authority, the order, taking cognizance on charge-sheet and further proceedings, including issuance of non-bailable warrants of arrest, are nullity. The learned Senior Counsel has submitted that in view of amendment in PC Act (Amending Act No. 16 of 2018) the sanction for prosecution of a person, who was a public servant at the time of commission of the offence, is must. The learned Senior Counsel has further submitted that the cognizance was taken on 23.11.2018 and the amendment in

[4]

Section 19 PC Act received President's assent on 26.07.2018 and published in the official gazette on the same day, and it came into force with effect from 26.07.2018 itself. Since the order of cognizance has been passed after the amendment in Section 19 PC Act came into effect with effect from 26.7.2018, the same is bad in law, and the entire subsequent proceedings after cognizance are nullity.

13. On the other hand, Mr. Anurag Kumar Singh, learned counsel for the respondent - CBI has submitted that the amendment in Section 19 PC Act (Amending Act No. 16 of 2018) has no application in respect of the applicant inasmuch as the alleged offence was committed by the applicant and co-accused during the years 2008 to 2010. The Amending Act will have prospective effect and would be applicable in respect of the offences which were/are committed after the amendment came into force in Section 19 PC Act. It will have no effect on a government servant who got retired before the Amendment came into force. In the present case, the applicant allegedly committed the offence before 26.07.2018. The learned counsel has, therefore, submitted that the application has no merit and substance and the same is liable to be rejected.

14. The CBI undertook the investigation in compliance of the Mandamus issued by this Court vide judgment and order dated 31.01.2014 passed in Public Interest Litigation Petition No.12802 (MB) of 2011. The following two questions need to be considered in the present case:-

(I) whether when the CBI or any other agency undertakes investigation of an offence in compliance of the judgment and order passed by the Constitutional Court (High Court/Supreme Court) and the role of public servant comes as an accused for committing offence under the PC Act, sanction under Section 19 PC Act from the competent authority for prosecuting such public servant would be sine-qua-none before taking cognizance by the Court?

(II) Whether the Amending provisions of Section 19 PC Act would have prospective effect that is to say offence allegedly committed after 26.07.2018 or the Amending Act would be

applicable in respect of the offence which was allegedly committed before 26.07.2018?

15. Section 19 PC Act, after Amending Act No. 16 of 2018 would read as under:-

"19. Previous sanction necessary for prosecution.—(1) *No court shall take cognizance of an offence punishable under [Sections 7, 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, or as the case may be, was at the time of commission of the alleged offence 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, or as the case may be, was at the time of commission of the alleged offence 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 the authority competent to remove him from his office.

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction

to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression “public servant” includes such person—

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(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 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."

16. It is well settled that the CBI cannot take any investigation in respect of an offence without the consent of the State Government concerned, as mandated under Section 6 of The Delhi Special Police Establishment Act, 1946 (hereinafter referred to as "DSPE Act"). The powers of the Constitutional Courts are not fettered by statutory restrictions of the DSPE Act. Under the constitutional scheme and division of powers between the Centre and the States, the State Police is under Schedule-VII, List-2 of the Constitution. Normally, investigation of a crime is to be undertaken by the police of the concerned State where the case is registered. In some cases, where the nature of crime is such and to maintain confidence of the people in fair and impartial investigation, the investigation may be entrusted to the CBI, either with the consent of the State Government concerned or on orders of the Constitutional Court. The mandate of Section 6 DSPE Act is done away with when the Court entrusts investigation to the CBI. If after investigation the role of a public servant is found as an accused in commission of the offence.

17. In recent past, several States have withdrawn general consent under Section 6 DSPE Act for investigation of an offence by the CBI, but the Constitutional Courts still have entrusted the investigation for

offence(s) in such States where the impartial and fair investigation had been doubted in the hands of the State Police. If the sanction for prosecution of a public servant is mandated where the investigation of the crime has been handed over to the CBI on the order of the Constitutional Court, it may result in a futile exercise as such a State Government which has withdrawn the consent under Section 6 of DSPE Act may not accord sanction for prosecution of a public servant.

18. In view of the aforesaid, I am of the considered view that where the investigation of an offence has been entrusted to the CBI pursuant to the order passed by the Constitutional Court and role of a public servant comes as an accused for committing such an offence, no prior sanction under Section 19 PC Act would be required for prosecuting such a public servant.

19. The relevant date for applicability of law in respect of a crime would be the date of commission of the crime. Subsequent amendment in the statute would not govern the investigation and prosecution of an accused for an offence which was committed before the Amendment in the statute came into force.

20. The Supreme Court in the Case reported in **(2019) 19 SCC 87 (State of Telangana Vs. Managipet alias Mangipet Sarveshwar Reddy)** has held that Amending Act No. 16 of 2018 would not be applicable for an offence which was committed prior to amendment being carried out. Whether any offence has been committed or not has to be examined in the light of the provisions of the statute as existed prior to the Amendment carried out on 26.07.2018 in the PC Act. It would be apt to quote paragraphs-35, 36 and 37 of the said judgment:-

"35. We also do not find any merit in the argument that there has been no sanction before the filing of the report. The sanction can be produced by the prosecution during the course of trial, so the same may not be necessary after retirement of the accused officer. This Court in K. Kalimuthu v. State [K. Kalimuthu v. State, (2005) 4 SCC 512 : 2005 SCC (Cri) 1291] held as under : (SCC p. 521, para 15)

“15. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage.”

36. *The High Court has rightly held that no ground is made out for quashing of the proceedings for the reason that the investigating agency intentionally waited till the retirement of the accused officer. The question as to whether a sanction is necessary to prosecute the accused officer, a retired public servant, is a question which can be examined during the course of the trial as held by this Court in K. Kalimuthu [K. Kalimuthu v. State, (2005) 4 SCC 512 : 2005 SCC (Cri) 1291] . In fact, in a recent judgment in Vinod Kumar Garg v. State (NCT of Delhi) [Vinod Kumar Garg v. State (NCT of Delhi), (2020) 2 SCC 88 : (2020) 1 SCC (Cri) 545 : (2020) 1 SCC (L&S) 146] , this Court has held that if an investigation was not conducted by a police officer of the requisite rank and status required under Section 17 of the Act, such lapse would be an irregularity, however unless such irregularity results in causing prejudice, conviction will not be vitiated or be bad in law. Therefore, the lack of sanction was rightly found not to be a ground for quashing of the proceedings.*

37. *Mr Guru Krishna Kumar further refers to a Single Bench judgment of the Madras High Court in M. Soundararajan v. State [M. Soundararajan v. State, 2018 SCC OnLine Mad 13515] to contend that amended provisions of the Act as amended by Act 16 of 2018 would be applicable as the amending Act came into force before filing of the charge-sheet. We do not find any merit in the said argument. In the aforesaid case, the learned trial court applied amended provisions in the Act which came into force on 26-7-2018 and acquitted both the accused from charge under Section 13(1)(d) read with Section 13(2) of the Act. The High Court found that the order of the trial court to apply the amended provisions of the Act was not justified and remanded the matter back observing that the offences were committed prior to the amendments being carried out. In the present case, the FIR was registered on 9-11-2011 much before the Act was amended in the year 2018. Whether any offence has been committed or not has to be examined in the light of the provisions of the statute as it existed prior to the amendment carried out on 26-7-2018."*

21. This Court vide judgment and order dated 22.10.2018 reported in **2018 SCC OnLine All 5546 (Kaushlesh Kumar Sinha Vs. CBI)** has

[10]

also rejected the contention that after the Amending Act No.16 of 2018 came into force with effect from 26.07.2018, the sanction in respect of a public servant, who got retired, before cognizance could be taken by the learned trial Court is a must.

22. In view thereof, I do not find the argument of Mr. Nandit Kumar Srivastava, learned Senior Counsel, representing the applicant impressive and, therefore, the application is hereby **rejected**. However, the applicant is granted *four days time from today* to surrender and apply for regular bail and if does so, his application for regular bail shall be considered and decided expeditiously, in accordance with law.

[D.K. Singh, J.]

Order Date :- 29.11.2022

MVS/-