

**REPORTABLE**

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Writ Petition No. 372/2022

Jageshwar Sharma S/o Shri Mukut Bihari Sharma, Aged About 55 Years, R/o 85 Sultan Nagar, Gurjar Ki Thadi Jaipur (Raj.)
(Environment Engineer, Rajasthan State Pollution Control Board
(Jaipur South) Jaipur)

----Petitioner

Versus

1. State Of Rajasthan, Through P.P.
2. Chairman Rajasthan State Pollution Control Board,
Headquarter 4 Institutional Area, Jhalana Doongri, Jaipur
302004

----Respondents

For Petitioner(s) : Mr. S.S. Hora
Mr. T.C. Sharma
Mr. Devanshu Gupta
Ms. Shubhi Gaur

For Respondent(s) : Mr. Prashant Sharma, Dy.G.A.
Mr. Vaibhav Thakuriya

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Judgment reserved on : 20.10.2022

Judgment pronounced on : 24.11.2022

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the order of sanction to prosecute dated 28.4.2020, on the ground that the order suffers from non application of independent mind. The petitioner has further sought for quashing of the order of cognizance dated 9.2.2021 which is based on a void sanction order. Further prayer is that the petitioner had filed an application dated 11.2.2022 before the court below praying therein for rejecting the sanction



order which is inconsistent with the requirement of Section 19 of the Prevention of Corruption Act (for short, 'the P.C. Act'). By the impugned order dated 10.05.2022, the Court below deferred the hearing of the petition till framing of the charges.

2. The background of writ petition is that one Shyam Singh Katewa engaged in the business of Mining on lease hold property made a complaint to the Inspector General of Police, Anti Corruption Bureau on 19.12.2019, alleging therein that co-accused Sanjay Kothari, the Regional Officer and petitioner Jageshwar Sharma, the Environmental Engineer have demanded Rs. 50,000/- and Rs. 30,000/- respectively for grant of order of "consent to operate" the mines. The allegation was verified by the ACB authority and finding substance in the same, on the same day in the evening, a trap was organized. Co-accused Sanjay Kothari was apprehended while accepting Rs.30,000/- in his official Chamber in Room No. 222, however, the petitioner who was sitting in Room No. 224 got information of what was happening in Room No. 222 and escaped trap on the basis of other materials including pendency of the file of the complainant before the petitioner, the petitioner was also suspected to be involved in the commission of offence under Section 7 of the P.C. Act. Accordingly, FIR No. 394/2019 was registered. After collection of oral and documentary evidence, the investigation of the case was completed and by order dated 11.02.2020, addressed to respondent No.2, the Chairman, Rajasthan State Pollution Control Board, who was competent to accord sanction, a request was made for grant of sanction. The letter is very specific that request



was to go-through the entire report of investigation by ACB and the evidences and thereafter to take independent decision for sanction. The request letter is at Annexure-9. Along with the request letter, detail gist of the case history, evidence of oral witnesses, documents collected during investigation and conclusion of investigation was also transmitted to the sanctioning authority. The ACB had also put a draft of the sanction order along with the request letter. On 04.02.2020, a reminder was sent for decision on pending issue of sanction and along with this letter also, investigation report of ACB along with draft for prosecution was submitted before the sanctioning authority.

3. Mr. S.S. Hora, learned counsel for the petitioner submits that the sanctioning authority did not apply its independent mind rather was swayed away by the draft submitted by the prosecution wing, therefore, the sanction to prosecute the petitioner is suffering from non-application of independent mind as such is vitiated in law.

4. Mr. Vaibhav Thakuriya, learned counsel appearing for respondent No. 2, the sanctioning authority submits that respondent No.2, has filed a separate affidavit denying the averments of the petitioner and made specific statement on oath that the sanction to prosecute is not based on the draft placed, rather is based on the material collected by the ACB which disclosed commission of offence by the petitioner and co-accused.

5. Mr. Prashant Sharma, Dy.G.A. appearing for the State contends that this is not the proper stage to examine the validity of sanction order. Learned counsel has relied on the judgment of



the Hon'ble Supreme Court in **Central Bureau of Investigation Vs. Ashok Kumar Aggarwal, (2014) 14 SCC 295** wherein the Hon'ble Supreme Court reiterated the earlier view in Dinesh Kumar vs. Airport Authority of India and Prakash Singh Badal vs. State of Punjab and held that "in our view, having regards to the facts of the present case, now since cognizance has already been taken against the appellant by the trial Judge, the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the trial Court and giving liberty to the appellant to raise the issue concerning the validity of sanction order in course of the trial".

6. Since at the stage on hearing on charge, the court below did not consider the identical prayer of the petitioner, this Court is inclined to look into that. On careful perusal of the sanction order at Annexure-5, it is evident that the sanctioning authority not only looked to the prosecution case as disclosed in the FIR, rather in para 9, considered the evidence of the witnesses collected by the ACB and the documents which were produced for consideration.

This Court further finds that the draft starts with in every paragraph that 'it was brought to the notice'. The same is not there in the sanction order nor the paragraphs of sanction order is verbatim reproduction of the draft.

7. Learned counsel for the petitioner relied on the following observations of the Hon'ble Supreme Court in **State of Karnataka vs. Ameer Jan (2007) 11 SCC 273:**

"10.....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. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority."

The aforesaid case is distinguishable as in the present case the letter of request for sanction and connected papers which include conclusion of the investigation including gist of the statement of the witnesses were placed before the sanctioning authority. The sanction order in the case on hand is a speaking order which was passed after considering the oral evidences as well as documentary evidences.

8. Learned counsel for the petitioner has further relied on the following observations of the Hon'ble Supreme Court in **Mansukhlal Vithaldas Chauhan vs. State of Gujarat (1997) 7 SSC 622:**

"19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to



apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

In the case on hand, the sanctioning authority has taken into note the evidence collected during investigation before coming to the conclusion for grant of sanction, hence, it cannot be argued that the sanction order was influenced by the draft of ACB produced. There is no material to substantiate that the sanctioning authority was under an obligation or compulsion or constraint to grant the sanction.

9. Learned counsel for the petitioner has next relied on judgments of this Court in **Himanshu Yadav Vs. State of Rajasthan and Manish Mathur Vs. State of Rajasthan**. A judgment is rendered on the facts and circumstances of a particular case which reflects from the material brought on record.

In **Himanshu Yadav** (supra), a bench of this Court said that the sanction order must reflect consideration of relevant material and application of mind. The sanction order passed in this case reflects the material which was considered and application of independent mind.

10. In **Manish Mathur** (supra) also the ACB had sent a draft for sanction. A Bench of this Court observed that the ACB could have communicated all relevant facts on the basis of which prosecution sanction could have been granted but in no case the ACB could have instructed for grant of prosecution sanction under a proposed and drafted document.



In the case on hand, the ACB had communicated all the relevant facts on which the prosecution relied and has not instructed or asked the sanctioning authority to accord sanction rather specifically requested the sanctioning authority to go-through the material on record and apply independent mind for grant of sanction.

11. Learned counsel for the petitioner has referred to some trivial and typographical error in the sanction order regarding some dates which were there in the draft also. The error of date was printed as 20.01.2019 whereas the date should have been 20.01.2020. Evidently, the error is a typographical mistake because the incident had itself taken on 19.12.2019, hence, in no circumstance, the order would be dated as 20.01.2019. Learned counsel further submits that the draft contains name of witness Rameshwar Prasad Sharma which is reproduced in the sanction order though the real name of witness was Ramesher Prasad Jat. It would be decided during trial whether the same person was known by both names or both were two different persons. Learned counsel submits that four samples were collected as R/1, R/2, L/1 and L/2 indicating right and left hand. However, the draft as well as the sanction order does not refer to R/2. Other infirmities are also referred in the tabular chart.

12. The whole object to grant the sanction to prosecute is to consider substantial material either for prosecuting the accused or for refusal of sanction. For some technical and trivial errors which some times occurs in the judgment also, would not affect the



sanctity of sanction order unless failure of justice has been caused.

The petitioner has not shown that failure of justice has been caused due to the aforesaid defects/errors.

13. In **C.B.I. vs. Ashok Kumar Aggarwal (supra)**, the Hon'ble Supreme Court held that failure of justice would be relatable to the error or irregularity in the grant of sanction. However, a mere error or irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice or has been occasioned thereby. The failure of justice should be in true sense and not a camouflage argument. The Hon'ble Supreme Court held thus:

15. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter-alia on the ground that the order suffers from the vice of total non-application of mind.

(Vide: Gokulchand Dwarkadas Morarka v. King MANU/PR/0001/1948 : AIR 1949 PC 82; Jaswant Singh v. State of Punjab MANU/SC/0050/1957 : AIR 1958 SC 124; Mohd. Iqbal Ahmed v. State of A.P. MANU/SC/0181/1979 : AIR 1979 SC 677;





State through Anti-Corruption Bureau, Govt of Maharashtra v. Krishanchand Khushalchand Jagtiani MANU/SC/0476/1996 : AIR 1996 SC 1910; State of Punjab v. Mohd. Iqbal Bhatti MANU/SC/1352/2009 : (2009) 17 SCC 92; Satyavir Singh Rathi, ACP v. State MANU/SC/0546/2011 : AIR 2011 SC 1748; and State of Maharashtra v. Mahesh G. Jain MANU/SC/0561/2013 : (2013) 8 SCC 119).

16. In view of the above, the legal propositions can be summarised as under:

16.1 The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

16.2 The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3 The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4 The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

16.5 In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law. of application of independent mind by the sanctioning authority.

14. In **L. Narayana Swamy Vs. State of Karnataka and Ors (2016) 9 SCC 598**, the Hon'ble Supreme Court said that the necessity of sanction would be there only if the accused is





continuing in the said office on the date of taking of cognizance of the alleged offence. If on the date of cognizance, the accused ceased to hold office which he held as public servant at the time of commission of alleged offence, sanction is not required to be obtained for his prosecution even if he thereafter continued to be a public servant in a different capacity/office.

Nothing has been brought on the record that the petitioner was continuing in the same office on the date of cognizance of this issue would arise in future, the trial Judge is to examine the same and pass a reasoned order on the basis of material on record.

15. It is evident that a gist of entire relevant material collected during investigation was placed before the sanctioning authority along with the letter of request to grant sanction. The letter of request is clear enough requesting the sanctioning authority to go through the material and apply its independent mind. The sanction order reveals that the competent authority has consciously scrutinized the whole record produced by the prosecution and has applied its independent mind taking into consideration all the relevant facts before grant of sanction. The record does not substantiate that the sanctioning authority was prejudiced merely by production of a draft of sanction order by the prosecution or was in any way not independent due to any external pressure and persuasion. The trivial anomalies has not caused any failure of justice or goes to the root of the case.

16. Therefore, this Court is of the view that the order of sanction to prosecute the petitioner dated 28.04.2020 does not suffer from



non-application of mind. Consequently, the cognizance order is not vitiated on this ground.

17. In the result, this Court does not find any merit in this petition, accordingly, it is dismissed.

(BIRENDRA KUMAR),J

BRIJ MOHAN GANDHI /77/37



RAJASTHAN HIGH COURT



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