BALBHADRA PARASHAR

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 2431 of 2014)

DECEMBER 10, 2015

[ANIL R. DAVE AND DIPAK MISRA, J.]

Prevention of Corruption Act, 1988 – s.13(1)(e) – Sanction to prosecute the accused – Grant of sanction – Validity – Held: While granting sanction, a detailed reasoned judgment is not required to be passed – On facts, nothing brought on record to substantiate that the sanction was granted in an absolutely mechanical manner – The authority concerned had applied its' mind – Sanction granted in the case did not suffer from any infirmity so as to declare it as illegal.

Makhanlal Vithaldas Chauhan v. State of Gujarat **(1997) 7 SCC 622 : 1997 (3) Suppl. SCR 705;** *State of Karnataka v. Ameerjan* **(2007) 11 SCC 273 : 2007 (9) SCR 1105;** and *Prakash Singh Badal v. State of Punjab* **(2007) 1 SCC 1 : 2006 (10) Suppl. SCR 197 – referred to.**

Case Law Reference

1997 (3) Suppl. SCR 705	**referred to.**	**Para 5**
2007 (9) SCR 1105	**referred to.**	**Para 6**
2006 (10) Suppl. SCR 197	**referred to.**	**Para 7**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2431 of 2014.

From the Judgment and Order dated 25.07.2014 of the High Court of Madhya Pradesh Bench at Gwalior in Miscellaneous Criminal Case No. 4277 of 2014.

A Prashant Shukla, Pashupathi Nath Razdan, Advs., for the Appellant.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. In this appeal, by special leave, the B appellant has called in question the legal propriety of the order dated 25.07.2014 passed by the Division Bench of the High Court Madhya Pradesh at Jabalpur, Gwalior Bench in M.Cr.C. No. 4277 of 2014 whereby the High Court has declined to interfere in the petition preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the CrPC") wherein the grant of C sanction was called in question.

2. The facts, in a nutshell, are that the appellant was a Manager of the Primary Agriculture Credit Co-operative Society, Village Pipraua, District Gwalior. On the basis of allegations made, a case under Section 13(1)(e) of the D Prevention of Corruption Act, 1988 (for short, 'the 1988 Act') was registered against him. After investigation it was found that he had secured assets and property of Rs. 1,05,44,604/- and, accordingly, sanction was sought to launch prosecution against him, and it was granted. As the factual matrix would E reveal, the trial court proceeded and charges were framed against him. The order of framing the charge was assailed in a Writ Petition which stood dismissed.

3. In the petition under Section 482 CrPC it was F contended before the High Court that the sanction to prosecute the accused had not been granted in accordance with law as there had been no application of mind. The High Court, after hearing the learned counsel for the parties, has held as under:-

"We have perused the judgments of the Hon'ble Supreme G Court and facts and evidence on record of the case. In our opinion, the sanctioning authority has considered all the facts of the case. There is *prima facie* evidence against the petitioner in regard to acquiring property and assets in excess to his known source of income. In

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granting sanction to prosecute under the Prevention of Corruption Act, 1988 it is not necessary for the authority to pass a detailed reasoned judgment and order. The authority has to apply its mind. Even otherwise, there is sufficient evidence *prime facie* to prosecute the petitioner." A B

4. In this appeal on a perusal of the grounds, we find that there are numerous reference to M.P. Vishesh Nyayalaya Adiniya, 2011. The constitutionality of the said Act was not questioned before the High Court as it could not have been questioned under Section 482 Cr.P.C. However, we may note that almost similar Acts, namely, the Orissa Special Courts Act, 2006 and the Bihar Special Courts Act, 2009, have been treated to be valid by this Court in Civil Appeal Nos. 6448-6452 of 2011 titled ***Yogendra Kumar Jaiswal Etc. v. State of Bihar & Ors***. C D

5. It is contended that the grant of sanction is not an empty formality and there has to be application of mind in support of the said sanction. We have been commended to ***Mansukhlal Vithaldas Chauhan v. State of Gujarat***[1] wherein a two-Judge Bench while dealing with grant of sanction has observed:- E

"18. 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 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. (See also *Jaswant Singh* v. *State of Punjab*, AIR 1958 SC 124, and *State of Bihar* v. *P.P. Sharma*, 1992 Supp. (1) SCC 222.) F G

[1] (1997) 7 SCC 622 H

A 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
B 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
C 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
D 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."

E 6. In ***State of Karnataka v. Ameerjan***[2], while dealing with the grant of sanction, it has been held thus:-

"9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled
F that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction
G for his prosecution or not.

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper

H [2] (2007) 11 SCC 273

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. In the event, the order of sanction does not indicate application of mind as (*sic* to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."

7. Be it noted that in the said case, the decision in ***Prakash Singh Badal v. State of Punjab***[3] was distinguished and in that context, it has been opined:-

"*Parkash Singh Badal* (supra), therefore, is not an authority for the proposition that even when an order of sanction is held to be wholly invalid inter alia on the premise that the order is a nullity having been suffering from the vice of total non-application of mind. We, therefore, are of the opinion that the said decision cannot be said to have any application in the instant case."

8. In the case at hand, we are only concerned with validity of grant of sanction and nothing else. The only ground of attack is that there has been no application of mind. The High Court,

[3] (2007) 1 SCC 1

A as is demonstrable, has opined that while granting sanction a detailed reasoned judgment is not required to be passed. It has also come to hold that the authority had applied its mind. Nothing has been brought on record to substantiate that the sanction was granted in an absolutely mechanical manner.

B 9. In view of the aforesaid premised reasons, we are of the considered view that the sanction granted in this case does not suffer from any infirmity so as to declare it as illegal. Therefore, we are not inclined to interfere with the order passed by the High Court.

C 10. Resultantly, the appeal, being devoid of merit, stands dismissed.

Bibhuti Bhushan Bose Appeal dismissed.