

made in the written statement filed by the Excise and Taxation Officer, Ropar, is that the impugned country liquor vend has been opened as a result of detection of cases of illicit distillation, some of which have been detailed in the list R. 1. In view of this averment, there is hardly any justification to conclude that the opening of the impugned country liquor vend in village Landran is liable to be stopped being violative of Order 5.

(6) In the result, the writ petition fails and is dismissed with no order as to costs.

H.S.B.

*Before M. M. Punchhi, J.*

STATE OF PUNJAB,—*Petitioner.*

*versus*

BHIM SAIN,—*Respondent.*

*Criminal Revision No. 458 of 1984.*

May 2, 1985.

*Code of Criminal Procedure (II of 1974)—Section 465—Prevention of Corruption Act (II of 1947)—Section 5(2)—Indian Penal Code (XLV of 1860)—Section 161—Criminal trial—Prosecution and defence evidence recorded—Accused raising a plea about the invalidity of the sanction at the stage of arguments—Such plea—Whether should be entertained at that stage—Sanction file put up to the Minister with a self-explanatory note—Minister appending his signatures—Application of the mind by the Minister—Whether to be presumed.*

*Held*, that Section 465 of the Code of Criminal Procedure, 1973 specifically says that subject to the provisions hereinbefore contained, a superior court cannot alter the findings or sentence or order passed by a Court of competent jurisdiction on account of any error or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. Further in determining whether failure of justice has occasioned, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. As is plain, the objection was taken when the trial had practically concluded and the matter was at the argument stage. The accused without showing any cause why the objection could not be raised at an earlier instance and whether in fact any

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failure of justice was about to occasion thereby, straightaway raised the plea at the fag end of the trial. The sanction order was produced in evidence by a witness who had appeared in Court long back. It is at that stage that the point of sanction ought to have been raised. Thereafter the prosecution led evidence followed by the statement of the accused and the defence evidence. No effort, however, was made in the meantime in that regard. Thus, on the principles of section 465 of the Code, the late raising of the question of sanction, unless any failure of justice could be pointed out, by itself was fatal to the plea raised in the facts and circumstances of the case.

(Para 3)

*Held*, that the evidence of the witness cannot be doubted if he on oath says that he under the rules of business was authorised to sign for and on behalf of the Governor of Punjab. It is he who had dealt with the file and had identified the signatures of the Minister. There is a presumption that all official acts have been done by the respective functionaries in discharge of the duties enjoined on them under the law. When the sanction file had been put up before the Minister containing a self-explanatory note, whereupon he appends his signatures, it is presumed that he had applied his mind thereto and thereafter as a token of accord put his signatures thereon.

(Para 4)

*Petition under Section 401 Cr. P.C. for revision of the Order of the Court of Shri K. R. Mahajan, Special Judge, Barnala, dated 23rd November, 1983 discharging the accused.*

P. S. Kang, Advocate, for A.G. Punjab.

Harbans Singh, Sr. Advocate and M. P. Gupta, Advocate with him, for the Respondent.

JUDGMENT

M. M. Punchhi, J. (Oral)

(1) In a trial under section 5(2) of the Prevention of Corruption Act and section 161, Indian Penal Code, the accused-respondent, after the prosecution evidence had been concluded, his statement under section 313, Code of Criminal Procedure recorded, and his having led defence evidence, raised at the time of arguments the plea that there was no valid sanction to prosecute the respondent. That plea found favour with Shri K. R. Mahajan, Special Judge, Barnala, who ordered discharge of the accused on the ground that

no valid sanction had been obtained before launching the prosecution against the respondent. The State of Punjab aggrieved against that order has come up in revision.

(2) The learned Special Judge found fault with the statement of Shri K. D. Arora, IAS, Deputy Secretary, Revenue, Punjab, Chandigarh, who had appeared as PW-1 to depose that he was authorised to sign for and on behalf of the Governor of Punjab under the rules of business. Doubt was cast on such statement by the learned Judge, being of the view that it was the Revenue Minister, who was head of the Revenue Department, who could accord the sanction. Here, the signatures of Shri Beant Singh, the then Revenue Minister, appeared on the noting Exhibit PA/1, but the learned Judge thought that there was nothing on the file from which it could be disclosed that he had applied his mind while according sanction, and that mere appendage of the signatures did not necessarily mean that he had applied his mind and accorded the sanction as required under the law. The learned Judge further observed that Shri K. D. Arora, IAS, Deputy Secretary, could be right that he was authorised to sign on behalf of the Governor under the rules of business, had the prosecution produced a copy of the rules of business in that behalf. Thus, he came to the view that express authorisation had not been proved in the present case. He relied upon certain observations of the Supreme Court in *Gour Chandra Rout and another v. The Public Prosecutor, Cuttack*, (1).

(3) Section 465, Code of Criminal Procedure, specifically says that subject to the provisions, hereinbefore contained, a superior court cannot alter the findings or sentence or order passed by a Court of competent jurisdiction on account of any error or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. And further in determining whether failure of justice has occasioned, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. Now here, as is plain, the objection was taken when the trial had practically concluded and the matter was at the arguments stage. ~~The accused-respondent~~, without showing any cause why the objection could not be raised at an earlier instance and whether in fact any failure of justice was about to occasion thereby, straightaway raised the plea at the fag end of the trial. The sanction order

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(1) AIR 1963 S.C. 1198.

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Exhibit PA had been adduced in evidence on 8th August, 1983 when Shri K. D. Arora, IAS, PW-1 had appeared in the Court on 8th August, 1983. He was cross-examined in that regard from all possible angles. It is at that stage that the point of sanction ought to have been raised. Thereafter the prosecution led evidence upto 27th October, 1983 followed by the statement of the accused and the defence evidence. No effort, however, was made in the meantime in that regard. Thus, on the principles of section 465, Code of Criminal Procedure, I am of the view that late raising of the question of sanction, unless any failure of justice could be pointed out, by itself was fatal to the plea raised in the facts and circumstances of the present case.

(4) Even keeping that apart, the evidence of Shri K. D. Arora, IAS, PW-1, cannot be doubted, if he on oath says that he under the rules of business was authorised to sign for and on behalf of the Governor of Punjab. It is he who had dealt with the file and had identified the signatures of Shri Beant Singh, the then Revenue Minister. There is a presumption that all official acts have been done by the respective functionaries in discharge of the duties enjoined on them under the law. When the sanction file had been put up before the Minister, containing a self-explanatory note, whereupon he appends his signatures, it is presumed that he had applied his mind thereto and thereafter as a token of accord put his signatures thereon. The view taken by the learned Special Judge, appears to me in the circumstances, overly technical, requiring rectification at this end. In no event, could it be held that the rules of business did not authorise Shri K. D. Arora, IAS, to sign for and on behalf of the Governor of Punjab and nowhere could it be held that the Minister had not put his accord to the proposal for according sanction to prosecute the accused-respondent.

(5) Thus for both the views, afore expressed, that is, on the timing of the objection raised and the objection otherwise being untenable, this petition of the State succeeds, the impugned order is set aside and the matter is remitted back to the learned Judge for proceeding with the trial from the stage where it was towards final culmination. The parties through their counsel are directed to put in appearance before the learned Special Judge, Barnala, on May 30, 1985.

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N.K.S.