

R.N.R

Before M. M. Kumar & Mahinder Singh Sullar, JJ

DR. BHUPESH KUMAR GOEL—Appellant

versus

STATE OF PUNJAB AND ANOTHER—Respondents

LPA No. 902 of 2010 in

CWP No. 15011 of 2008

3rd August, 2010

Constitution of India, 1950—Art. 226—Prevention of Corruption Act, 1988—Ss. 7, 13(2), 19 and 88—Charges of accepting bribe against a Veterinary Doctor—Suspension—Reinstatement—Government declining request of Vigilance Bureau for sanction to prosecute petitioner— On fresh proposal of VB competent authority according sanction—Whether Government has power of review to grant sanction—Held, yes—Competent authority could review its earlier order on the basis of fresh material—Appeal dismissed, order of Single Judge dismissing petition of appellant upheld.

Held, that in cases where fresh material has been brought before the sanctioning authority, the power to review an earlier order is not barred. The bar may be only in such cases where there is no fresh material placed before the sanctioning authority. The Vigilance Bureau placed on record fresh material which included insurance claim form which was signed and attested by the

accused-appellant along with the photographs on the date of the raid. He had demanded money in lieu of filling up and signing those forms. The other issue was placed in correct perspective by stating that the complainant would have succeeded in receiving the amount of compensation from the Insurance Company irrespective of the cause of death of the buffalo either from some ailment or snake bite, which fact had earlier weigh in favour of the accused-appellant while refusing sanction. Moreover, the question of granting sanction is procedural in nature and does not involve any principles of substantive law and, therefore, error of procedure would always be subjected to overriding principles of failure of justice. With these added reasons we uphold the view taken by the learned Single Judge and find that the appeal is wholly without merit.

(Para 14)

Akshay Bhan, Advocate, *for the appellant.*

M. M. KUMAR, J.

(1) The instant appeal filed under Clause X of the Letters Patent is directed against order dated 17th March, 2010, passed by the learned Single Judge dismissing CWP No. 15011 of 2008 filed by the petitioner-appellant.

(2) Brief facts of the case are that the petitioner-appellant was posted as a Veterinary Doctor in the Veterinary Hospital, Samana. On 9th November, 2005, the buffalo of one Mann Singh son of Amar Singh, resident of Village Sahijpura Khurd, Tehsil Samana (for brevity, 'the complainant'), District Patiala, allegedly died because of snake-bite. The petitioner-appellant conducted the post-mortem of the dead buffalo. The complainant required the post-mortem report and photographs of the dead buffalo to submit his claim to the insurance authorities. On 9th December, 2005, when the complainant reached the Veterinary Hospital, Samana to get the postmortem report, the petitioner-appellant allegedly demanded a bribe of Rs. 1,500 from him for submitting a favourable report and asked him to come on the next day along with the money.

(3) The complainant approached the police authorities at Police Station Sadar, Samana, who took him to the Deputy Superintendent of Police, Vigilance Bureau, Samana. On the basis of the statement made by the complainant, the Vigilance Bureau, Patiala, laid a trap and asked Shri Vinod

Kumar, Block Development and Panchayat Officer, Patran and Shri Kushwinder Kumar, Accountant, Office of the B.D.P.O. Patran, to remain present as an independent witnesses. The Vigilance Authorities handed over to the complainant currency notes amounting to Rs. 1000 i.e. one currency note of the denomination of Rs. 500 and 5 notes of the denomination of Rs. 100 each, which were sprinkled with Phenyl-pathogen powder, for using the same as bribe. The complainant presented the said currency notes to the accused-appellant and when he accepted the bribe the raiding party caught hold of him red handed. Eventually an FIR No. 75, dated 10th December, 2005, under Sections 7, 13(2), 88 of the Prevention of Corruption Act, 1988 (for brevity, 'the Act'), was registered at Police Station Vigilance Bureau, Patiala, against the accused-appellant (P-1). He was sent to the judicial custody and he was also placed under suspension. ---vide order dated 25th January, 2006. On 22nd February, 2006, he was reinstated and allowed to resume his duties as Veterinary Doctor at Animal Husbandry, Gajewas, Patiala.

(4) After investigation, the Vigilance Bureau applied for statutory sanction under Section 19 of the Act, which was, however, declined by the Financial Commissioner and Secretary to Government of Punjab, Animal Husbandry, Fish Farming and Dairy Development Department. ---vide order dated 12th February, 2007 (P-2), *inter alia*, for the following reasons : -

5. That whereas the question of taking bribe in lieu of post-mortem report is concerned, original postmortem report was not recovered from the Veterinary Officer but a photocopy of the same was alleged to be recovered from the drawer. On this postmortem report, signatures of the Veterinary Officer was of date 9th November, 2005 and Vigilance case was registered on 10th December, 2005. In addition to this, the fee for the postmortem report has already been deposited with Senior Veterinary Officer Samana in November, 2005. It is clear that postmortem report has already been issued. Then, for what the complainant gave bribe. In this way, there is no ground for a case of bribe.
6. That it is alleged by the complainant that his buffalo died because of snake bite whereas as per the postmortem report his buffalo died because of Parakaunt Taripano Semi Asies disease.

Dr. Bhupesh Kumar Goel stated in his application that complainant wants to get a new postmortem report prepared in which reason for death be shown as snake biting instead of any disease. But on his refusal this conspiracy was hatched. It came out that the complainant after obtaining the postmortem report might have pressurized the above veterinary officer to change the postmortem report and to show the cause of death as snake biting instead of any disease and on his refusal this conspiracy might have been hatched.”

(5) The Financial Commissioner and Secretary came to the conclusion that *‘the complainant intentionally hatched this conspiracy to involve Dr. Bhupesh Kumar Goel, Veterinary Officer in this false case of brief.’*

(6) The Vigilence Bureau again submitted a fresh proposal to the State Government demonstrating that :

- (a) The postmortem report of the dead buffalo though was prepared by the petitioner-appellant on 9th November, 2005 but the Insurance claim forms were signed and attested by him alongwith the photographs on the date of the raid and he had demanded the money in lieu of filing and signing those forms :
- (b) The petitioner’s plea that the complainant wanted the petitioner to change the cause of death of the buffalo from ‘ailment to’ snake bite’ so as to claim compensation from the Insurance Company, is also false on the face of it as even if the buffalo of the complainant had died of some ailment, as mentioned in the postmortem report, yet he would have received the same amount of compensation as if his buffalo had died due to the snake bite.

(7) After re-considering the matter, the Competent Authority accorded sanction to prosecute the petitioner-appellant.—*vide* order dated 14th March, 2008 (P-3), which was subject matter of challenge in CWP

No. 15011 of 2008. The learned Single Judge dismissed the writ petition by observing as under :—

“[11] It goes without saying that grant of sanction or refusal to prosecute under the Act by the Competent Authority is an onerous duty to be performed objectively upon consideration of the entire material on record. If the Competent Authority is satisfied that the object of launching prosecution is to persecute a Government servant for his straight forwardness and transparent performance of duties who refuses to extend illegitimate favour to the complainant or in whom the complainant is interested, the Competent Authority shall come forward and protect such Government servant. The power vested with the Competent Authority, however, does not clothe it with the judicial jurisdiction to pronounce a verdict in respect of innocence or falsehood of the allegations. The Competent Authority cannot assume in itself the jurisdiction which is otherwise vested with the Special Judge under the provisions of the Act. It would necessarily imply that where ever the material collected by the prosecution is *prima-facie*, sufficient to launch prosecution, the Competent Authority shall not pre-empt the Special Court from giving its verdict.

[12]. It is equally well settled that once the Competent Authority has applied its mind to the material on record and arrived at a conclusion that no case of prosecution is made out, ordinarily, it cannot review its decision unless the new material is collected by way of re-investigation and/or the prosecution produces some material which was not taken into consideration earlier while declining the sanction.

[13]. If one applies these parameters to the facts and circumstances of the case in hand, it appears that while declining the sanction, the Competent Authority did fail to consider the material aspect that in terms of the Insurance Scheme, the complainant would have got the equal amount of compensation for the death of his buffalo. This, by itself, tantamounts to over-looking the material on record warranting reconsideration. The Competent

(9) In our opinion, the view taken by the learned Single Judge on facts and law does not suffer from any illegality or infirmity warranting interference of this Court. However, on our part we would like to supplement the reason and the basic rationale which emerges from the true construction of Section 19 of the Act. In view of the principles which have been laid down after interpretation of Section 19(3), the argument raised on behalf of the accused-appellant would not merit acceptance. It would thus, be necessary first to read Section 19, which is as under :-

“19. Previous sanction necessary for prosecution.---

- (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,---
 - (a) in the case of a person who is 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 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.
- (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 the 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.—

(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, 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 inquiry, trial, appeal or order 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 person or any requirement of a similar nature.”

(10) The aforesaid provision has been subject matter of interpretation by Hon'ble the Supreme Court in numerous judgments. We would like to place reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **State versus T. Venkatesh Murthy, (1)**. In that case the irregularity in grant of sanction was even graver than the one presented by the facts of the present case. There a charge sheet was filed against the accused for commission of offences relatable under Section 7, 13(1)(d) read with Section 13(2) of the Act. Even the charges were framed by the trial Court under the aforesaid provisions and evidence of witnesses had also been recorded. It was at that stage that the Public Prosecutor filed an application for adjudication of the question relating to validity of sanction for prosecution. The accused, in fact, did not raise any objection to it. The sanction was accorded by the Superintending Engineer of the Karnataka State Electricity Board. The trial Court held that the competent authority for according sanction could not be the Superintending Engineer and, therefore, the accused was entitled to discharge at that stage for want of sanction by a competent authority. However, the trial Court granted liberty to the prosecution to obtain fresh sanction and then file fresh charge sheet. The order was eventually challenged before Hon'ble the Supreme Court after the High Court dismissed the revision petition. While interpreting sub-sections (3) and (4) of Section 19 of the Act Hon'ble the Supreme Court observed in paras 7 to 11 as under :—

- “7. A combined reading of sub-sections (3) and (4) make the position clear that notwithstanding anything contained in the Code no finding, sentence and 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.
8. Clause (b) of sub-section (3) is also relevant. It shows that no Court shall stay the proceedings under the 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.

9. Sub-section (4) postulates that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in the 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.
10. Explanation appended to the Section is also of significance. It provides, that for the purpose of Section 19, error includes competency of the authority to grant sanction.
11. The expression "failure of justice" is too pliable or facile an expression, which could be fitted in any situation of a case. The expression, "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in **Town Investments Ltd. versus Department of Environment**, (1977) 1 All ER 813. The criminal Court particularly the superior Court should make a close examination to ascertain whether there was really a failure of justice or it is only a camouflage. [See **Shamnssheb M. Multani versus State of Karnataka**, (2001) 2 SCC 577]."

(11) On interpretation, the principle laid down by their Lordships' of Hon'ble the Supreme Court is that the Courts are not to quash or stay the proceedings under the Act merely on the ground of an error, omission or irregularity in the sanction granted by the authority unless it is satisfied that such error, omission or irregularity has resulted in failure of justice. While determining whether the absence of, or any error, omission or irregularity in the sanction has occasioned or resulted in *failure of justice*, the Court is to take into account whether an objection could and should have been raised at an earlier stage in the proceedings. The aforesaid view by their Lordships have been reiterated in the cases of **Shankerbhai Laljibbai Rot versus State of Gujarat (2)**, **Parkash Singh Badal versus State of Punjab (3)**, **Paul Varghese versus State of Kerla and State of M.P. versus Virender Kumar Tripathi (4)**. In all these one overriding principle which

(2) (2004) 13 S.C.C. 487

(3) (2007) 1 S.C.C. 1

(4) (2009) 15 S.C.C. 533

permeaters the judgments is that unless there is failure of justice on account of error, omission or irregularity in grant of sanction for prosecution, the proceedings under the Act could not be vitiated.

(12) In the present case, on the fresh material furnished to the Government, sanction was accorded *vide* order dated 14th March, 2008 (P-3), which was challenged in the writ petition. The question whether on the basis of fresh material the competent authority could review its earlier order or not came up for determination before Hon'ble the Supreme Court in the case of **State of Punjab versus Mohammed Iqbal Bhatti (5)**. In para 2 of the judgement, their Lordships' have frame the question of law, which reads as under :

- "2. The short question which arises for consideration in this appeal is as to whether the State has any power of review in the matter of grant of sanction in terms of Section 197 of the Code of Criminal Procedure, 1973."

(13) After noticing the facts and various judgments, their Lordships' have concluded in para 22 and 23 as under : -

- "22. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to.
23. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise."

(14) A perusal of the aforesaid paras in unequivocal terms shows that in cases where material has been brought before the sanctioning authority, the power to review an earlier order is not barred. The bar may be only in such cases where there is no fresh material placed before the sanctioning authority. In the present case the Vigilance Bureau placed on record fresh material which included insurance claim form which was signed and attested by the accused-appellant along with the photographs on the date of the raid. He had demanded money in lieu of filling up and signing those forms. The other issue was placed in correct perspective by stating that the complainant would have succeeded in receiving the amount of compensation from the Insurance Company irrespective of the cause of death of the buffalo either from some ailment or snake bite, which fact had earlier weigh in favour of the accused-appellant while refusing sanction. Moreover, the question of granting sanction is procedural in nature and does not involve any principles of substantive law and, therefore, error of procedure would always be subjected to overriding principles of failure of justice. With these added reasons we uphold the view taken by the learned Single Judge and find that the appeal is wholly without merit.

(15) As a sequel to the above discussion, this appeal fails and the same is dismissed.

(16) In view of the fact that the appeal has been dismissed on merit, we do not feel the necessity of passing any order on the miscellaneous applications filed along with the appeal.

R. N. R.