IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

118 **CWP-4521-2025**
Date of Decision : March 10, 2025

VIJAY KUMAR SYAL **-PETITIONER**

V/S

STATE OF PUNJAB **-RESPONDENT**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arvind Pal Singh Grover, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

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KULDEEP TIWARI, J. (ORAL)

1. The solitary grievance engendering the instant writ petition originates from the order dated 08/09.08.2024 (Annexure P-17), wherethrough, the competent authority has accorded sanction for prosecution of the petitioner in FIR No.07 dated 05.04.2016, under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code, and, Section 13(1)(D) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'P.C. Act'), registered at P.S. Vigilance Bureau, Bathinda Range, Bathinda, District Bathinda.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER

2. The arguments, as pitched by the learned senior counsel for the petitioner, in his endeavoring to decimate the validity of the impugned

sanction order, are compendiously extracted hereinafter:-

(i) In respect of the same set of allegations, departmental enquiry became launched against the petitioner and culminated in his exoneration, however, the said enquiry report has not been taken into account by the sanctioning authority while according sanction for prosecution of the petitioner;

(ii) The sanction for prosecution of the petitioner is the outcome of mala fide intent on the part of the sanctioning authority inasmuch as the petitioner had, owing to bribe becoming demanded from him, made complaint against the ministerial staff deployed in the office of the Chief Secretary;

(iii) The sanction for prosecution of the petitioner suffers from the vice of delay inasmuch as the FIR in the case at hand was registered way back in the year 2016, however, sanction for prosecution was sought in the year 2022 and it was finally granted in the year 2024. Therefore, the sanction has been accorded in violation of the provisions enclosed in Section 19 of the P.C. Act.

(iv) There is likelihood of the investigating agency not producing the complete challan before the sanctioning authority, hence the dearth of complete record before the latter makes the impugned sanction order amenable for interference, inasmuch as, in such circumstances, it is merely a mechanical exercise conducted by the competent authority.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

3. The arguments advanced by the learned senior counsel for the petitioner have been vociferously opposed by the learned State counsel by making the hereinafter summarized submissions:-

(i) The allegations embodied in the present FIR were thoroughly investigated into by the Vigilance Department and statements of witnesses were also recorded, which not only duly established demand, but also acceptance of bribe by the petitioner, thereby inviting the mischief of the P.C. Act;

(ii) After concluding enquiry, the enquiry officer concerned requested the competent authority, through proper channel, to accord sanction for prosecution of the prosecution. Initially, this request was sent to S.P. (Vigilance), which was subsequently marked to Director (Vigilance), and, then to the Chief Secretary. Finally, the Chief Secretary, after having sanction from the Chief Minister of the State, granted the sanction for prosecution of the petitioner.

(iii) The allegations of mala fide intent, as alleged by the petitioner, cannot be looked into at this stage, especially when the legality of the impugned sanction order is amenable for being examined by the trial Court. Not only this, the issue of mala fide intent is a disputed question of fact, which can only be adjudicated by the trial Court after appreciation of evidence, as becomes adduced before it by the parties.

(iv) The impugned sanction order has been passed while taking into account the essential and substantial material/evidence, including the statements of witnesses recorded under Section 161 Cr.P.C. Hence, the impugned sanction order cannot be said to be passed without appreciation of apposite material.

EVALUATING THE LEGALITY OF THE IMPUGNED SANCTION ORDER

4. This Court has heard at length the rival submissions of the contesting litigants and also made a thorough perusal of the record, and in aftermath thereof, this Court is coaxed to formulate the following issues for adjudication of lis.

(i) Whether the impugned sanction order, nature whereof is primarily administrative, can be subjected to judicial review?

(ii) Whether the impugned sanction order is banked upon consideration and application of mind to the material placed before the author thereof by the investigating agency?

5. For penning down an affirmative opinion upon the first issue, this Court deems it imperative to refer to the judgment rendered by the Hon'ble Supreme Court in ***"State of Punjab and another Vs. Mohammed Iqbal Bhatti", (2009) 17 Supreme Court Cases 92,*** inasmuch as, it has been categorically held therein that, the legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the

superior courts. The relevant paragraphs of this judgment are reproduced hereinafter:-

> *"6. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts.*
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> *7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidence must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidence may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. [See Mansukhlal Vithaldas Chauhan v. State of Gujarat]. [(1997) 7 SCC 622]. The authority concerned cannot also pass an order of sanction subject to ratification of a higher authority. [See State v. Dr. R.C. Anand] [(2004) 4 SCC 615]."*

6. Also, in the verdict rendered in ***"Mansukhlal Vithaldas***

Chauhan Vs. State of Gujarat", (1997) 7 SCC 622, the Hon'ble Supreme Court has, while concurring with the ratio of law laid down in ***"Sterling Computers Ltd. Vs. M&N Publications Ltd.", (1993) 1 SCC 445,*** held that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision-making process. The relevant paragraph of Mansukhlal Vithaldas Chauhan's verdict (supra) is reproduced hereunder:-

> *"28. In Sterling Computers Ltd. vs. M & N Publications Ltd., AIR 1966 SC 51, it was pointed out that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision-making process? In this case, the following passage from Professor Wade's Administrative Law was relied upon :*
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> > *"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended."*

7. In view of the above, this Court can delve upon the exercise of gauging the legality of the impugned sanction order, whereby, sanction for prosecution of the petitioner has been granted.

8. Insofar as the second issue is concerned, the Hon'ble

Supreme Court has, in ***"State of Karnataka Vs. Ameerjan", (2007) 11 Supreme Court Cases 273***, held that 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 application of mind on the part of the sanctioning authority. The relevant paragraphs of this verdict are reproduced as under:-

> *"9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled 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 for his prosecution or not.*
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> *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 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 Lokayuktha 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."

9. Furthermore, in ***Mansukhlal Vithaldas Chauhan's verdict (supra),*** it has also been held that, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. 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. The relevant paragraphs of this verdict are reproduced hereunder:-

"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 vs. State of Punjab, AIR 1958 SC 124; State of Bihar vs. P.P. Sharma, 1991 Cri. L.J. 1438).

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 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 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 had 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."*

10. On the anvil of the hereinabove discussed legal propositions of law concerning the issue No.(ii), this Court proceeds to adjudicate the legality of the impugned sanction order.

11. Although it is a trite law that, refusal to take into consideration a relevant fact or acting on the basis of irrelevant and extraneous factors not germane to the purpose of arriving at the conclusion would vitiate an administrative order and certainly requires judicial review, however, in the instant case, the competent authority has taken into account all the relevant factors and material while drawing the impugned sanction order. The reasons for drawing this inference are elaborated hereinafter.

12. The allegations voiced in the present FIR are that, the petitioner while him being posted as D.T.O., Faridkot, registered a Verna car in Faridkot, despite its seller and buyer being residents of Rajasthan. The other allegations are that, the petitioner got appointed one Rakesh Kumar Sharma as Data Entry Operator through Smart Chip Company Private Limited and got allotted him D.T.O. Office employee seat L.L. Testing in place of Harkamal Singh @ Hari, who was already posted there. Moreover, the petitioner is alleged to be taking work of Smart Card

MS for about 02 months from co-accused Rakesh Kumar Sharma, which was required to be done by the employees of D.T.O. Apart from this, various irregularities committed by the petitioner, while him being posted as D.T.O. Faridkot, have also been narrated in the FIR. Not only these allegations, but, the allegations of collection of bribe by petitioner's co-accused at his behest, have also been substantiated by the witnesses in their statements recorded under Section 161 Cr.P.C.

13. The impugned sanction order makes vivid display that, all the material evidence including the statements of witnesses recorded under Section 161 Cr.P.C., as collected by the investigating agency while conducting detailed investigation, were placed before the maker thereof for consideration. The sanctioning authority made studied survey of the material evidence placed before it and found the same to be lending vigour to the allegations levelled against the petitioner and accordingly granted sanction for prosecution of the petitioner. The relevant portion of the impugned sanction order, which reflects due application of mind by the sanctioning authority to the material placed before it, is reproduced hereunder:-

> *"4. On viewing the complete file of the aforementioned case along with the statements of the witnesses under section 161 Cr.P.C. the competent is fully convinced that during his deployment DTO Vijay Kumar Syal collected money through cheating and collecting bribe money, in this way he has committed offence under sections 420, 467, 468, 471, 120-B IPC and 13(I) D read with 13(2) PC Act 1988."*

14. In summa, this Court has no hesitation to hold that, the impugned sanction order is banked upon consideration and application of mind to the material placed before the author thereof by the investigating agency, hence there is no ground to interfere in the same.

15. Insofar as the argument with regard to delay is concerned, the purported vice of delay does not ipso facto render the impugned sanction order, which otherwise passed the test of legality on the anvil of other considerations, to be illegal.

16. Consequently, the instant writ petition is **dismissed** and the impugned sanction order is upheld.

(KULDEEP TIWARI)
JUDGE

March 10, 2025
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No