

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.2170-2171 OF 2011
[ARISING OUT OF S.L.P. (CRL) NOS. 10278-10279 OF 2010]

DINESH KUMAR

... APPELLANT(S)

Versus

CHAIRMAN, AIRPORT AUTHORITY OF INDIA AND ANOTHER .

RESPONDENT(S)

J U D G M E N T

R.M. LODHA, J.

Leave granted.

2. The appellant is being prosecuted for the offences punishable under Section 13(2) read with Sections 13(1)(d) and 13(1)(a) of the Prevention of Corruption Act, 1988 (for short, "P.C. Act").

3. On November 4, 2009, the sanctioning authority granted sanction to prosecute the appellant for the offences indicated above. After the sanction order was challenged by the appellant in the High Court on November 26, 2009, the charge-sheet has been filed by the Central Bureau of Investigation (CBI) -respondent No. 2- against the appellant on November 30, 2009 in the Court of Special Judge, Ernakulam. Following that, summons came to be issued to the appellant on December 18, 2009. During the pendency of the

matter before the High Court, wherein the sanction order has been challenged by the appellant, the Court of Special Judge has taken cognizance against the appellant.

4. The Single Judge of the High Court was not persuaded with the contentions raised by the appellant and dismissed the appellant's Writ Petition on July 19, 2010.

5. Against the order of the Single Judge, the appellant preferred an intra-court appeal. The Division Bench of the High Court dismissed the intra-court appeal on September 29, 2010 observing that it was open to the appellant to question the validity of the sanction order during trial on all possible grounds and the CBI could also justify the order of granting sanction before the Trial Judge.

6. Mr. Deepak Bhattacharya, learned counsel for the appellant referred to Section 19(4) of the P.C. Act and submitted that the appellant challenged the legality and validity of the sanction order at the first available opportunity, even before the charge-sheet was filed and, therefore, the Division Bench was not justified in relegating the appellant to agitate the question of validity of sanction order in the course of trial. He relied upon the decisions of this Court in *Mansukhlal Vithaldas Chauhan vs. State of Gujarat*¹; *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.*²; *Abdul Wahab Ansari vs. State*

1 (1997)7SCC 622

2 1998(5) SCC 749

of *Bhar and another*³ and *State of Karnataka vs. Ameerjan*⁴.

7. Mr. Deepak Bhattacharya, in view of the law laid down by this Court in the above decisions, submitted that the High Court ought to have gone into the merits of the challenge to sanction order. According to learned counsel, on its face, the sanction order suffers from non-application of mind.

8. On the other hand, Mr. H.P. Raval, learned Additional Solicitor General for the Central Bureau of Investigation – respondent No. 2- supported the view of the Division Bench. He submitted that in a case where validity of the sanction order is sought to be challenged on the ground of non-application of mind, such challenge can only be made in the course of trial. In this regard, he heavily relied upon a decision of this Court in *Parkash Singh Badal and another vs. State of Punjab and others*⁵. He also relied upon a recent decision of this Court in *Ashok Tshering Bhutia vs. State of Sikkim*⁶.

9. This Court has in *Mansukhlal Vithaldas Chauhan*¹ considered the significance and importance of sanction under the P.C. Act. It has been observed therein that the sanction is not intended to be, nor is an empty formality but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and it

3 (2000)8 SCC 500

4 (2007)11 SCC 273

5 (2007)1 SCC 1

6 (2011)4 SCC 402

is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty. This Court highlighted that validity of a sanction order would depend upon the material placed before the sanctioning authority and the consideration of the material implies application of mind.

10. The provisions contained in Section 19(1),(2),(3) and (4) of the P.C. Act came up for consideration before this Court in Parkash Singh Badal and another⁵. In paras 47 and 48 of the judgment, the Court held as follows:

"47: The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard.

48: The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."

11. While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in Parkash Singh Badal⁵ expressed in no uncertain terms that the absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in

question, such issue has to be raised in the course of trial. Of course, in Parkash Singh Badal⁵, this Court referred to invalidity of sanction on account of non-application of mind. In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind – a category carved out by this Court in Parkash Singh Badal⁵, the challenge to which can always be raised in the course of trial.

12. In a later decision, in the case of Aamir Jaan⁴, this Court had an occasion to consider the earlier decisions of this Court including the decision in the case of Parkash Singh Badal⁵. Ameerjan⁴ was a case where the Trial Judge, on consideration of the entire evidence including the evidence of sanctioning authority, held that the accused Ameerjan was guilty of commission of offences punishable under Sections 7,13(1)(d) read with Section 13(2) of the P.C. Act. However, the High Court overturned the judgment of the Trial Court and held that the order of sanction was illegal and

the judgment of conviction could not be sustained. Dealing with the situation of the case wherein the High Court reversed the judgment of the conviction of the accused on the ground of invalidity of sanction order, with reference to the case of Parkash Singh Badal⁵, this Court stated in Ameerjan⁴ in para 17 of the Report as follows:

"17. Parkash Singh Badal, 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."

13. In our view, having regard 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 validity of sanction order in the course of trial. Such course is in accord with the decision of this Court in Parkash Singh Badal⁵ and not unjustified.

14. Mr. Deepak Bhattacharya submits that the appellant resides in Delhi and he would be put to grave hardship if the question of validity of sanction is left open to be decided in the course of trial as the appellant will have to remain present before the Trial Court at Ernakulam on each and every date of hearing. He, however, submits that

if the personal appearance of the appellant is dispensed with, unless required by the Trial Court, the appellant will not be averse in raising the issue of validity of sanction before the Trial Judge.

15. Mr. H.P. Raval has no objection if a direction in this regard is given by us.

16. In view of the above contentions and the factual and legal position indicated above, we are satisfied that the impugned order does not call for any interference. Appeals are, accordingly, dismissed. However, it will be open to the appellant to raise the issue of invalidity of sanction order before the Trial Judge. In the peculiar facts and circumstances of the present case, appellant is permitted to appear before the Trial Court through his advocate. His personal appearance shall not be insisted upon by the Trial Court except when necessary.

JUDGMENT

.....J.
(R.M. LODHA)

.....J.

(H.L. GOKHALE)

NEW DELHI
NOVEMBER 22, 2011.

