

SB CRIMINAL MISC. PETITION NO.357/1998.

Ladu Ram Verma Vs. The State of Raj. & Anr.

Date of order:- 20th December, 2007

HON'BLE MR. JUSTICE RAGHUVENDRA SINGH RATHORE.

Mr. Rinesh Gupta, for the petitioner.
Mr. Jainendra Jain, Public Prosecutor.

This Criminal Misc. Petition under Section 482 Cr.P.C. is directed against the order dated 17.01.1998 passed by the learned Special Judge, Anti corruption Cases, Jaipur in First Information Report No.129/1995, whereby it has directed the prosecution to put up the file before the concerning authority to decide the matter to grant sanction or otherwise for prosecution against the petitioner and thereafter, to place the result of the investigation before him.

2. In brief, the facts of the case are that the petitioner, at the relevant time, was working as Chief Depot Manager, Rajasthan State Road Transport Corporation, Ajmer Depot, Ajmer.

The complainant non-petitioner No.2 had submitted a complaint on 21.9.1995 to the Additional Superintendent of Police, Rajasthan State Bureau of Investigation, Ajmer, alleging a demand of Rs.1,000/- by the petitioner for passing an order in favour of the complainant in respect of the case where he remained absent for three days from duty, about 14 year back. Thereafter, a trap is said to have been arranged by the Addl. S.P. and he along with the complainant came to the house of the petitioner.

3. The alleged amount was recovered by the Members of the State Bureau of Investigation from Balu Ram, a driver. When the hands of the petitioner were washed, no phenolphthalein was found on it.

4. Thereafter, the Bureau of Investigation, Ajmer, investigated the matter and came to the conclusion that no case was made out against the petitioner and the allegation levelled by the complainant was with the malafide intention.

After holding that no case under the Prevention of Corruption Act was made out against the petitioner, the Investigating Officer submitted a final report in the matter on 30.12.1996 before the trial Court (Annexure-1). A notice was then issued to the complainant non-petitioner No.2, who appeared before the Court-below, through his counsel, and contested the case. The learned trial Court after hearing both the parties, on the question of final report, did not pass any order on it and directed the Investigating Officer to place the matter before the concerning authority for the purpose of granting sanction or otherwise for prosecuting the petitioner. Further it was ordered that thereafter, the result of the investigation be again placed before it.

5. It is against the order, passed by the Court-below, on 17.1.1998 that the accused petitioner has preferred this Misc. Petition before this Court. Learned counsel for the petitioner has seriously contested the matter on various grounds and submitted that the order

passed by the Court-below, is illegal, without jurisdiction and contrary to the established procedure of law. Learned counsel for the petitioner has invited my attention to the various reasons as given in ground (c) of his petition, given by the Investigating Officer for arriving at a conclusion that no case is made out against the accused petitioner. Therefore, he has further submitted that the final report submitted after investigation ought to have been accepted by the learned trial Court. It has also been submitted that a bare reading of the impugned order goes to show that the learned trial Court has indirectly given its mind for not accepting the final report. It seems that the Court-below was not satisfied with the final report, otherwise, there was no occasion for it for issuing a direction as mentioned above, to the Investigating Agency. In this view of the matter, the learned counsel for the petitioner has submitted that the learned trial Court has exceeded its jurisdiction and passing of the impugned order certainly amounts to abuse of the

process of the Court. Learned counsel for the petitioner has urged that there is no procedure for the trial Court to direct the Investigating Officer, to first place the file before the concerning authority with regard to sanction for prosecution, before deciding, accepting or otherwise of the final report.

6. Learned Public Prosecutor has supported the impugned order passed by the Court-below. He has submitted that under the relevant law, a sanction for prosecution against the delinquent officer is a condition precedent before initiating the prosecution against him. He has also submitted that the matter would still be placed before the trial Court and further orders would be passed by it, in accordance with law.

7. Before going to the jurisdictional powers of the trial Court and legality of the impugned order dated 17.1.1998, I consider it proper to first deal with the question with regard to locus-standi of the accused petitioner

in filing the present petition. This is relevant in view of the fact that prior to the stage of taking cognizance by a Court, the accused petitioner does not come into picture at all. In the instant case, the final report had been submitted by the Investigating Agency and the requirement of law has been fulfilled by issuing notice to the complainant who had appeared before the Court, through his counsel and contested the case. Admittedly, no cognizance has been taken nor any process has been issued so far against the accused petitioner by the trial Court.

8. A bare perusal of the provisions incorporated in Chapter XV (Sections 200 to 204) of the Code of Criminal Procedure, which prescribe the procedure of private complaint, goes to show that the entire scheme is that the accused person does not come in the picture at all till a process is issued against him. It is a settled principle of law that the accused may be present in person or through his counsel or agent with a view to inform the proceedings but he has

no right to take part in it nor the Magistrate has the jurisdiction to permit him to do so. The learned Magistrate cannot put any question to the witnesses at the instance of the accused nor can he examine any witness in his defence, though the learned Magistrate himself is free to put such question to the complainant or his witnesses as he may think proper. But nothing more than this can be done by the learned Magistrate. The right of the accused to be heard in person is in existence only when the process is issued under Section 204 of the Code of Criminal Procedure.

9. Likewise, when a first information report is filed before the police Officer, the investigation commences from the recording of the report under Section 154 Cr.P.C. and ends with the submission of the report under Section 173 (2) Cr.P.C. The law does not require that the Police Officer should hear the accused during the investigation or when the report is submitted on the conclusion of it.

10. But, in the facts and circumstances of the present case, the question which crops up for consideration is that when the learned Special Judge has neither accepted the final report nor had rejected the same and he had issued directions to place the file before the sanctioning authority for grant of sanction or otherwise, then in that situation can the petitioner challenge such an order by filing a petition before this Court.

11. The nature of order passed by the learned Special Judge in the present case, in my opinion, is an implied direction to the sanctioning authority to grant sanction for prosecuting the petitioner. In other words, it is by implication that the learned Judge had rejected the negative report. Such an order certainly affects the rights of the petitioner. Apart from implied rejection of the negative report, the directions to the sanctioning authority to grant sanction furthermore entitles the petitioner to challenge such an order before

this Court. Moreover, the principle of natural justice demands that if an order adverse to the petitioner is passed without giving him an opportunity of hearing, then he may seek redress under the inherent powers of this Court. I am of the considered opinion that this Court, in an order of present nature passed by the learned Judge, in order to secure ends of justice and to prevent the abuse of the process of the court can entertain a petition filed by the petitioner.

12. Now coming to the merits of the case, as stated above, the direction issued by the learned Judge to put the papers before the sanctioning authority for considering the grant of sanction of prosecution of the petitioner, carries with it implied direction to the sanctioning authority to grant sanction. Therefore, the question which arises for consideration in this case is whether the sanction from the sanctioning authority is a prerequisite for filing a final report under Section 173 Cr.P.C, even when the prosecution on account

of lack of evidence is not in a position to charge the petitioner with the offences? In other words, can the learned Judge, compel the Investigating Agency, to obtain sanction particularly when it is not asking the Court to take cognizance of the offence as there is no sufficient material to link the petitioner with the offence.

13. In order to appreciate the said question, it would be worthwhile, to refer some of the relevant provisions. The Prevention of Corruption Act, 1947 had been amended by the act No. 49/1988. The act was amended to make it more effective by widening the coverage and by strengthening the object. But so far as the scheme of the Act is concerned, there appears to be no substantial change and that has almost remained the same. Under the Act of 1947 Section 6(1) related to sanction for prosecution against the public servant which reads as under : -

Section 6(1) : - " No court shall take cognizance of an offence punishable under Section

161 (or Section 164) or Section 165 of the Indian Penal Code or under sub-section (2) (or sub-section 3(A)) of Section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction."

14. In the act of 1988, Section 19(1) also provides previous sanction for prosecution in the case of a person, employed in connection with the affairs of the Union, State Government or other authorities. Therefore, this provision is analogous to Section 6(1) of the Act of 1947 except clause 19(3) which provides that on the ground of irregularity of sanction, no finding of the court can be reversed. The underlying policy to such provisions is that a public servant should not be unnecessarily harassed and to save him from malicious prosecution.

15. Now, coming back to the facts of the present case, and the aforesaid intention of the legislature for obtaining sanction for prosecution from the competent authority to protect the public servant against the malicious

prosecution, the question is when the prosecuting agency finds that there is no material, even then asking it to approach the sanctioning authority is nothing but an effort in futility. Therefore, in my opinion a bare reading of the aforesaid relevant provisions of the law makes it clear that for final report to close the case, no sanction is required.

16. The relevant law does not provide that the police was not competent to submit the final report in the matter in the absence of previous sanction. The provisions under Section 6 of the Act of 1947 as well as the section 19 of the Act of 1988 only provides that no court shall take cognizance for an offence punishable under, the specific offences provided therein of the IPC and the one Prevention of Corruption Act, alleged to have been committed by a public servant, except with the previous sanction of the authority. Therefore, provision contained in these sections is to the taking of cognizance of an offence by a court and not to the institution of a police case or the submission of the final report by the

police under Section 173 of the code of Criminal Procedure. In other words, the previous sanction is necessary for the purposes of prosecuting or filing a charge sheet but is not necessary for the purposes of filing a final report by the investigating agency, as in this case.

17. For the above reasons I set-aside the impugned order dated 17.01.1998, passed by the learned Special Judge Anti Corruption Cases, Jaipur and remand the case back to the court below to reconsider the final report

(RAGHUVENDRA S. RATHORE), J.

Bhatt.