Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 30 of 2023

Date of Decision: 31.07.2023

Dr. Dinesh Bhatia	Vs.	The Superintendent of Central Bureau of Investigation (ACB)

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.Ch. Gautam, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

J U D G M E N T

1. Challenged in this petition is the order dated 25.01.2023 passed by the learned Special Judge (CBI), Shillong in Special (CBI) Case No. 6 of 2021 wherein the operative portion of the order would show that the prayer of the petitioner/accused for discharge has been denied and the conclusion reached by the learned Trial Court is that there is prima facie material to frame charge against the petitioner/accused under section 120B read with section

420/468/471 IPC and section 7 of the Prevention of Corruption Act and that there is no illegality in the prosecution sanction granted by the Registrar of the North Eastern Hill University (NEHU).

2. Heard Mr. K.Ch. Gautam, learned counsel for the petitioner, who has submitted that the petitioner herein is an Associate Professor with a distinguished service towards the University.

3. The petitioner was also functioning as a Coordinator of the Environmental Information System Resource Partner (ENVIS-RP) Centre in NEHU. In course of his functioning as Coordinator, the petitioner was accused of having misappropriated Government funds under the said project, such funds being amounting to about 11,60,066/- resulting in wrongful loss to NEHU and corresponding wrongful gain to himself and others.

4. The concerned authority has then got an FIR registered being FIR No. RC0202021A0001 dated 25.02.2021 and the matter was investigated into by the Central Bureau of Investigation. On investigation being completed charge sheet was filed before the competent court of jurisdiction and eventually Special (CBI) Case No. 6 of 2021 was registered before the Court of the Special Judge (CBI), Shillong.

5. The petitioner at the stage of consideration of charges had made a plea seeking discharge upon which, after hearing all the parties involved the learned Special Judge had rejected the plea vide the impugned order. Hence this petition.

6. The learned counsel has submitted that the limited ground urged upon by the petitioner in this petition is with regard to the sanction for prosecution said to have been accorded by the competent authority, that is, the Registrar,

NEHU. Such sanction has been accorded without jurisdiction and without application of mind.

7. It is the submission of the learned counsel that grant of sanction is irrefragably a sacrosanct act and is intended to provide safeguard to public servant against frivolous and vexatious litigations. Reference is made to the provision of section 19 of the Prevention of Corruption Act, 1988 to say that the provision forbids courts from taking cognizance of any offence punishable under sections 7, 10, 11, 13 and 15 against public servants except with the previous sanction of the competent authority.

8. The learned counsel has further submitted that the prosecution sanction granted was accorded by the Registrar, NEHU who has no authority to sanction the same. The competent authority ought to have been the Executive Council and in cases where sanction is to be conveyed, it is always done through the Vice-Chancellor and not through the Registrar. The Registrar as per NEHU Acts and Statutes 4(5) is the ex-officio Secretary of the Executive Council but cannot be deemed to be a member of the Executive Council. The powers of the Registrar under Rule 4(4)(a) of the NEHU Statutes is to take disciplinary action against employees of the University excluding teachers and academic staff. The petitioner herein being a teacher, as such, is not under the direct control of the Registrar.

9. The case against the petitioner and others having been instituted without a proper sanction the same must fail because of the manifest defect in the prosecution and as such the entire proceedings are rendered void ab initio, the impugned order is therefore without any legal basis, the same is liable to be set aside and quashed and the petitioner to be discharged accordingly, submits the learned counsel.

10. In support of his contention the learned counsel has relied on the following case laws:

i. P.L. Tatwal v. State of Madhya Pradesh; (2014) 11 SCC 431 paras 7, 9, 12, 13, 14 and 16;

ii. Vijay Rajmohan v. Central Bureau of Investigation (Anti-Corruption Branch); (2023) 1 SCC 329, paras 16, 22 and 23;

iii. Manoranjan Samal v. State of Orissa (Vig); Crl. Rev. No. 298 of 2016.

11. Per contra, Dr. N. Mozika, learned DSGI speaking for the respondent/CBI has countered the submission made by the petitioner to say that the prosecution sanction in this case has been accorded by an authority competent to do so.

12. It is contended that the Executive Council is the principal executive body of NEHU which is the competent authority to appoint and therefore to remove or take disciplinary action against the employees of the University, in this case, members of the teaching faculty or academic staff, the petitioner being one such member of the academic or teaching staff.

13. As to the role of the Registrar, as far as the prosecution sanction is concerned, the learned DSGI has submitted that under the relevant rules of NEHU, under rule 4(5) of the Statutes, the Registrar is the ex-officio Secretary of the Executive Council, the Academic Council and the Boards of Schools and under clause 4(6)(d) of the said Statutes, he is to conduct the official correspondence of the Court, the Executive Council and the Academic Council. It is, therefore, in this capacity that the Registrar has conveyed the

Prosecution Sanction on behalf of the Executive Council.

14. As to the contention of the petitioner that in another case also under the PC Act, registered as Special (CBI) Case No. 1 of 2020, wherein, the prosecution sanction against the petitioner herein was accorded by the Vic-Chancellor and as such, there is a clear case of inconsistency as far as according of prosecution sanction is concerned, the learned DSGI has reiterated that the Executive Council is the only competent body to grant the prosecution sanction, but the same may be conveyed to the person concerned either through the Vice-Chancellor or the Registrar as the case may be, therefore there is no illegality in such exercise.

15. On the assertion of the petitioner that the sanction itself was illegal, not based upon or after due application of mind and bereft of any valid grounds to prosecute the petitioner, the learned DSGI has submitted that in such a situation, there are two scenarios which can be presented or contemplated, one is, when there is a challenge to the absence of sanction itself, and the other is when there is sanction, but the same is invalid.

16. To answer this situation, the case of Dinesh Kumar v. Chairman, Airport Authority of India & Anr. reported in (2012) 1 SCC, 532 at para 9 was referred to by the learned DSGI to say that in this case, the Hon'ble Supreme Court has held that the question of absence of sanction can be raised at the inception and threshold by an aggrieved person, however, when sanction order exists, but its legality and validity is put to question, such issue has to be raised in course of trial. This proposition was further referred to by the Hon'ble Supreme Court in the case of Central Bureau of Investigation & Ors. v. Pramila Virendra Kumar Agarwal & Anr.; (2020) 17 SCC 664 at para 11.

17. The learned DSGI, while maintaining that the impugned order passed by the learned Trial Judge is valid and there is no infirmity with the same, all relevant issues having been dealt with, however, as to the observation that there is no illegality in the sanction so accorded, this aspect of the matter may be considered by this Court looking into the totality of the case against the petitioner herein, it is submitted.

18. This Court having heard the parties and on perusal of the written submission made, would agree that the first limb of argument advanced by the petitioner, that is, whether the Registrar is the competent authority to accord sanction as was perceived to have been done in this case, has to be answered first.

19. That the Registrar is the ex-officio Secretary of the Executive Council, the Academic Council and the Boards of Schools is not a disputed facts, the relevant Rules having been confirmed, particularly Rule 4(5) of the said NEHU statutes. That under rule 4(6)(d) the Registrar is to conduct the official correspondence of the Executive Council is also not subject to any question.

20. Now, coming to the power of the Executive Council, under the said NEHU statutes, Statute 12 details the constitution of the Executive Council. The powers and functions of the Executive Council under Statute 13 (ii) is to appoint Professors, Readers, Lecturers and other academic staff.

21. In the case cited by the petitioner, that is, the case of P.L. Tatwal(supra) at para 7 also relied upon by the petitioner, it has been observed that *"...The competent authority to give previous sanction is the authority competent to remove one from service. No doubt the appointing authority is the authority competent to remove him from service..."*. In the case in hand, document

annexed by the petitioner to this petition at Annexure-III, page 104 clearly shows that the Executive Council has accorded sanction for prosecution of the petitioner as the heading reads as " Prosecution Sanction Order".

22. There is no doubt in this case that there is present a sanction for prosecution order issued by the competent authority, that is, the Executive Council. That the same was conveyed by the Registrar was also validly done inasmuch as the relevant rules, rule 4(6)(d) provides for the same. The argument of the learned counsel for the petitioner on this count cannot therefore be accepted by this Court.

23. As to the second aspect of the matter, that is, the validity of the sanction itself, parties are agreed that it is only through the process of a trial and on evidence being tendered therein that this question can be answered appropriately. The authority cited by the learned DSGI, that is, the case of Dinesh Kumar(supra) at para 9 would confirm this. In fact, in the case of P.L. Tatwal(supra) at para 13 and 14, 14.1,14.2, 14.3 and 14.4 has also indicate the mind of the Hon'ble Supreme Court in this regard. The same is reproduced herein below as:

> *"13. In a recent decision in State of Maharashtra v. Mahesh G. Jain [(2013) 8 SCC 119], the Court has referred to the various decisions on this aspect from para 8 onwards. It has been held at para 8 as follows:*
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> > *"8. In Mohd. Iqbal Ahmed v. State of A.P. [(1979) 4 SCC 172] this Court lucidly registered the view that it is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out constituting an offence and the same should be done in two ways; either (i) by producing the original*

sanction which itself contains the facts constituting the offence and the grounds of satisfaction, and (ii) by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio."

14. After referring to subsequent decisions, the main principles governing the issue have been culled out at para 14 which reads as follows:

"14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence."

24. The only conclusion that this Court can arrive at is that there is sanction for prosecution present for prosecution against the petitioner herein as the Registrar is only the conveying authority while the sanction was accorded by

the Executive Council. However, as to the validity and as to whether the same was issued after considering all aspects of the case and with due and proper application of mind by the authority according the same, this is a matter of evidence and since no evidence has been led in this respect, the petitioner is at liberty to challenge the validity of the said sanction during trial.

25. In view of the above observations, this Court would hold that the impugned order cannot be faulted, except to the observation and finding at para 53 of the same, which under the circumstances, could not have been observed or concluded without evidence being led in that regard. This part of the impugned order is struck off.

26. The parties are directed to participate in the trial and no prejudice will be caused to the petitioner, if he is allowed to challenge the validity of the said sanction during trial.

27. Petition disposed of. No costs.

Judge

Meghalaya
31.07.2023
"Tiprilynti–PS"