2024 INSC 952

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 4964 OF 2024
(@ SLP (CRL.) No. 16978/2024 @ D. No. 9288/2018)

CENTRAL BUREAU OF INVESTIGATION ...APPELLANT(S)

VS.

JAGAT RAM ...RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Delay Condoned. Leave granted.

2. The Central Bureau of Investigation is in appeal against the judgment of Punjab and Haryana High Court allowing the criminal appeal[1] filed by the accused under the Prevention of Corruption Act, 1988[2].

3. On the basis of F.I.R. on 02.12.1994, the C.B.I registered a case under Sections 7, 13(1)(d) r/w 13(2) of the Act and a trap was arranged leading to the respondent-accused getting caught demanding and collecting a bribe as evidenced by a positive test

[1] CRA-S-No. 1192-SB of 2002 dated 10.05.2017.
[2] Hereinafter referred to as the 'Act'.

for phenolphthalein and sodium bicarbonate. After trial, the Special Judge, Chandigarh convicted the accused under Sections 7, 13(1)(d) r/w 13(2) of the Act and sentenced him to undergo rigorous imprisonment for two years and also imposed a fine of Rs.1000/-.

4. Having considered the evidence in detail, the High Court came to the following conclusion:

> *"9. I agree with the findings of the fact which are based on evidence and, therefore, I hold that the prosecution proved the demand and acceptance. The defence failed to rebut the prosecution evidence. Presumption arises under Section 20 of the Act regarding acceptance of money."*

However, the High Court then took up the issue of sanction and found that though PW-9, M.S. Mahi Pal had proved the sanction order Exhibit PW-9/A, it came to the conclusion that the prosecution had "*not examined any official who had actually applied his/her mind and given the sanction*". In this view of the matter, learned Judge proceeded to acquit the accused.

5. Heard Ms. Rukhmini Bobde, learned counsel appearing on behalf of the CBI and Mr. Sangram S. Saron, learned counsel appearing on behalf of the respondent. For our analysis, Section 19 of the Act, to the degree its relevant, is reproduced herein as follows:

> *"Sec. 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,-*

[…]

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(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 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;

(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 any inquiry, trial, appeal or other 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."

6. It is clear that under sub-section 3(a) of Section 19 of the Act, no finding, sentence or order by a Special Judge shall be reversed by a court of appeal on the ground of absence, error, omission or irregularity in the sanction. This is the first principle. However, such a restraint against reversal or alteration is always subject to the opinion of the court that failure of justice has in fact been occasioned thereby. Sub-section (4) of Section 19 of the Act further provides that while construing whether the absence, error, omission or irregularity has occasioned or resulted in failure of justice, the court will examine the fact that whether an objection

could and should have been raised at an earlier stage in the proceedings.

7. *Failure of Justice*, what it entails and the scope of such enquiry was explained by this Court in *C.B.I* v. *Ashok Kumar Aggarwal*[3] in the following terms:

> *"18. ……The failure of justice would be relatable to error, omission or irregularity in the grant of sanction. However, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice or has been occasioned thereby.*
>
> *19. The court must examine whether the issue raised regarding failure of justice is actually a failure of justice in the true sense or whether it is only a camouflage argument. The expression "failure of justice" is an extremely pliable or facile an expression which can be made to fit into any case. The court must endeavour to find out the truth. There would be "failure of justice" not only by unjust conviction but also by acquittal of the guilty as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be overemphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence. "Prejudice" is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under legal jurisprudence, the accused can seek relief from the court."*

[3] (2014) 14 SCC 295.
[Vide Nageshwar Shri Krishna Ghobe v. State of Maharashtra [(1973) 4 SCC 23 : 1973 SCC (Cri) 664 : AIR 1973 SC 165] , Shamnsaheb M. Multtani v. State of Karnataka [(2001) 2 SCC 577 : 2001 SCC (Cri) 358] , State v. T. Venkatesh Murthy [(2004) 7 SCC 763 : 2004 SCC (Cri) 2140] , Rafiq Ahmad v. State of U.P. [(2011) 8 SCC 300 : (2011) 3 SCC (Cri) 498] , Rattiram v. State of M.P. [(2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] , Bhimanna v. State of Karnataka [(2012) 9 SCC 650 : (2012) 3 SCC (Cri) 1210] , Darbara Singh v. State of Punjab [(2012) 10 SCC 476 : (2013) 1 SCC (Cri) 1037 : AIR 2013 SC 840] and Union of India v. Ajeet Singh [(2013) 4 SCC 186 : (2013) 2 SCC (Cri) 347 : (2013) 2 SCC (L&S) 321]

8. The meaning behind the text of the phrase 'failure of justice' must be understood in the context of the object behind the larger public policy on sanction for prosecution. The inter-relationship or the nexus between the act complained of and the discharge of official duties and the test to be applied has been explained in the decision of this Court in *State of Bihar* v. *Rajmangal Ram*[4], where this Court held that:

> *"4. The object behind the requirement of grant of sanction to prosecute a public servant need not detain the court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute an honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test, therefore, always is—whether the act complained of has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bona fide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. However, realising that the dividing line between an act in the discharge of official duty and an act that is not, may, at times, get blurred thereby enabling certain unjustified claims to be raised also on behalf of the public servant so as to derive undue advantage of the requirement of sanction, specific provisions have been incorporated in Section 19(3) of the Prevention of Corruption Act as well as in Section 465 of the Code of Criminal Procedure which, inter alia, make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent court*

[4] 2014 (11) SCC 388.

unless in the opinion of the court a failure of justice has been occasioned. This is how the balance is sought to be struck."

9. Apart from the clear statutory prescription of Section 19 of the Act, as informed by relevant court precedents, the High Court has also lost sight of Section 465 of the Criminal Procedure Code, 1973[5], which provides that a sentence or an order passed by the court of competent jurisdiction shall not be reversed or altered by a court of appeal, confirmation or revision on account of any error or irregularity in any sanction for the prosecution unless in the opinion of the court, a failure of justice has in fact been occasioned thereby. Section 465 of the Cr.P.C is as under:

> *"Sec. 465 Finding or sentence when reversible by reason of error, omission or irregularity:- (1) Subject to the provisions hereinbefore contained, on finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.*
>
> *(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."*

[5] Hereinafter referred to as 'Cr.P.C'.

10. The substantial principle of requiring a sanction for prosecution and at the same time the principle in not negating the sentence or order of a court of competent jurisdiction are both incorporated in the Prevention of Corruption Act and the Criminal Procedure Code. The Court balances these values by the measure of whether failure of justice has in fact been occasioned.

11. Though a contrary view seems to have been taken in *State of Goa* v. *Babu Thomas*[6], a larger bench of this Court in *State of M.P.* v. *Virender Kumar Tripathi*[7] has explained the position and affirmed the principles as laid down in *Ashok Tshering Bhutia* v. *State of Sikkim*[8].

12. Justice Gogoi, (as he then was) has explained this position in *State of Bihar* (supra):

> *"6. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in State v. T. Venkatesh Murthy[9] wherein it has been inter alia observed that:*
>
> > *"14. … Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the*

[6] (2005) 8 SCC 130
[7] (2009) 15 SCC 533
[8] (2011) 4 SCC 402
[9] (2004) 7 SCC 763: 2004 SCC (Cri) 2140 paras 10 and 11, SCC p. 767, para 14

court records the satisfaction that such error, omission or irregularity has resulted in failure of justice."

7. The above view also found reiteration in Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 (para 29)] wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Parkash Singh Badal [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 (para 29)] it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in R. Venkatkrishnan v. CBI [(2009) 11 SCC 737 : (2010) 1 SCC (Cri) 164] . In fact, a three-Judge Bench in State of M.P. v. Virender Kumar Tripathi [(2009) 15 SCC 533 : (2010) 2 SCC (Cri) 667] while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19(3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and the evidence is led (para 10 of the report).

8. There is a contrary view of this Court in State of Goa v. Babu Thomas [(2005) 8 SCC 130 : 2005 SCC (Cri) 1995] holding that an error in grant of sanction goes to the root of the prosecution. But the decision in Babu Thomas [(2005) 8 SCC 130 : 2005 SCC (Cri) 1995] has to be necessarily understood in the facts thereof, namely, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect to validate the cognizance already taken on the basis of the initial sanction order. Even otherwise, the position has been clarified by the larger Bench in State of M.P. v. Virender Kumar Tripathi [(2009) 15 SCC 533 : (2010) 2 SCC (Cri) 667] ."

13. Really speaking, nothing remains for us to consider if absence, omission, error or irregularity of the sanction order has occasioned

or resulted in failure of justice as the High Court came to the conclusion that findings of fact of the Trial Court, *are based on evidence*. The High Court also held that, '*the prosecution proved the demand and acceptance. The defence failed to rebut the prosecution evidence. Presumption arises under Section 20 of the Act regarding acceptance of money'*. We have already extracted the relevant portion of the High Court judgment.

14. Mr. Sangram S. Saron, learned counsel has submitted that one more opportunity may be given to the respondent to demonstrate that '*irregularity in the sanction order has led to failure of justice*'. It appears that the High Court has taken up the issue of sanction, rather than the proof of sanction on its own and without the assistance of the learned counsel for the respondent-accused. In the circumstances and in the interest of justice, even if it is a formality we consider it appropriate to permit the respondent to raise and contest this issue of failure of justice due to irregularity in sanction before the High Court.

15. For the reasons stated above, we allow the appeal and set aside the judgment and order dated 10.05.2017 in CRA-S-No. 1192-SB of 2002 by the High Court to the extent that it set aside the sanction and the consequent acquittal. While we confirm the other findings, we remand the matter to the High Court for considering the

question of legality of the order of sanction under Section 19 of the Act to consider if the irregularity, if any, has occasioned or resulted in a failure of justice.

16. The Criminal Appeal is disposed of in above terms.

17. Pending application(s), if any, shall stand disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J
[MANOJ MISRA]

NEW DELHI;
DECEMBER 03, 2024