



2025:DHC:4586



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on:26.03.2025
Pronounced on: 28th May, 2025*

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W.P. (Crl.)1300/2019

SHIV DUTT BAKSHI
S/o Late Col. O.D. Bakshi
R/o C-293, Defence Colony,
New Delhi-110024.

.....Petitioner

Through:

versus

1. **COMMISSIONER OF POLICE**
Delhi Police Headquarters,
MSO Bulding,
New Delhi-110002.

2. **DEPUTY COMMISSIONER OF POLICE (SOUTH)**
Hauz Khas Police Station
New Deli-110016.

3. **SHO**
P.S. Lodhi Colony

4. **GOVERNMENT OF NCT OF DELHI**
Through its Chief Secretary
New Secretariat
I.P. Estate, New Delhi-110002.

5. **SANJEEV SHARMA**
319, Rosewood Estate, Barwara Road
Dera Bassi Nagar,
Mohali, Punjab.

....Respondents

Through:



CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Writ Petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C has been filed on behalf of the Petitioner against the Order dated 15.04.2019 of learned ASJ, New Delhi, whereby he has set aside the Order of the learned M.M dated 19.01.2019 in Complaint Case No.CTNo.4902/2018 dated 31.05.2018, directing registration of FIR on an Application under Section 156(3) Cr.P.C. filed by the Petitioner, Shiv Dutt Bakshi, as being illegal and not sustainable.

2. *Briefly stated*, the Petitioner had made a Complaint dated 09.04.2018 and 18.05.2018 to the SHO, P.S. Lodhi Colony, wherein he stated that the Respondent Sanjeev Sharma, Director had been appointed as an Enquiry Officer in a Disciplinary proceedings initiated against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in which the Complainant had been charged vide Order dated 06.04.2017. Shri A.K. Patari, Assistant Director was appointed as the Presenting Officer under Rule 14 of the CCS (CCA) Rules, 1965 read with Rule 40 of the Sports Authority of India Service Byelaws and Conditions of the service regulations.

3. Shri Sanjeev Sharma, the Respondent conducted the Enquiry Proceedings during which the Petitioner pleaded not guilty and the evidence was led by him as well as by the Department.



4. The Complainant alleged that while the evidence was being recorded, the Respondent demanded bribe and with adishonest intention to put him in fear and to create terror in his mind, told him that if he wants the change of the outcome of Enquiry and if he follows his instructions, he would even allow him to prepare the Enquiry Report. At the same time he threatened him that if he did not fulfil the illegal demand of Rs.5 lakhs prior to making of the Report, he would change the nature of Enquiry and he would have to face the consequences.

5. One day, the Respondent told him that till then no money had been provided to him and that now he would face the consequences as he would be defamed and punished very soon due to his Report and none would be able to save him. While the Enquiry was ongoing, he also made a Complaint dated 24.11.2017 of an incident of 23.11.2017 when a Contractor had brought huge amounts of money in the office of the Respondent and the same was also published in the Newspaper.

6. It was claimed that the Respondent was in a habit of indulging in illegal and immoral acts. Further, the Respondent told him that he had very good connections with Mr. Sandeep Pradhan, Dy. Director General, Sports Authority of India and that he can manage every Senior Officer in the Department and again threatened that he would have to face the dire consequences for not fulfilling his demands. The Complainant alleged that the Respondent tried to take advantage of his situation while making a demand for Rs.5 lakhs as bribe.

7. The Complainant further stated that he informed about this conduct of the Respondent to the Director General, SAI through a confidential Letter dated 09.04.2018 which was endorsed to Secretary, SAI, Chief Vigilance



Officer, SAI. However, instead of replacing and taking action against him, the Senior Officials have not taken any action and allowed him to continue as the Enquiry Officer. He has given a false and vague Enquiry Report against him with an intention to tarnish his reputation. ***Therefore, a prayer was made for initiating investigations and for registration of the FIR against the Respondent.***

8. The Complaint CTNo.4902/2018 under Section 200 Cr.P.C. supported with Application under Section 156(3) Cr.P.C., was filed before the learned M.M, wherein an ***Action Taken Report*** was filed on behalf of the State, wherein it was stated that the Petitioner had submitted transcript of the alleged correspondence with the Respondent along with the CD and Certificate under Section 65B Indian Evidence Act 1872. The Enquiry into the Complaint revealed that the Disciplinary Enquiry had been concluded against the Petitioner in the month of April, 2018 after which the Petitioner had made these counter-Complaints. Nothing incriminating was found in regard to demand or acceptance of the bribe. It was concluded that the Complaint was found to be motivated and lacked evidence and was based on unsubstantiated allegations.

9. It was further found during the Enquiry that Petitioner was involved in a sting operation of bribe at Karni Singh Shooting Range, New Delhi and a case was registered against him by the CBI, which is pending investigations. It has emerged that Petitioner wants to pressurize the Respondent by making false Complaints against him.

10. The learned ***M.M. in his impugned Order dated 19.01.2019*** relied upon the transcript of the conversation between Petitioner and the Respondent whereby the Respondent had asked him to get the Report



prepared through some Advocate. It was concluded that prima facie the allegations made by the Complainant disclosed the commission of cognizable offence. Consequently, the FIR was directed to be registered under appropriate provisions of law.

11. The ***Respondent challenged this Order before the learned ASJ*** who in the impugned Order dated 15.04.2019 observed that there was no cogent reason decipherable from the Order of the learned MM as to why he did not agree to the Action Taken Report and for what reasons he had directed the registration of FIR. Reference was made to *Harpal Singh Arora vs. State & Other* decided by this Court on 01.05.2008, wherein it was noted that where the CAW Cell comes to the conclusion that no cognizable offence is made out, the Magistrate cannot brush aside that conclusion lightly. The dictum of the said judgment was held to have not been followed by the learned M.M. It was also noted that since Respondent was a public servant, but no prior Sanction had been obtained under Section 197 Cr.P.C. or Section 19(1) Prevention of Corruption Act and consequently, no directions for registration of FIR could be given, as held in the case of *Anil Kumar and Others vs. M.K. Aiyappa and Anr.* (2013) 10 SCC 705. ***Consequently, the Order of the learned M.M directing registration of FIR was set aside as illegal and not sustainable.***

12. Aggrieved by the said Order of the learned ASJ, the present Petition has been filed to challenge the Order on the grounds that the protection available under Section 197 Cr.P.C or Section 19(1) Prevention of Corruption Act, 1988 is only for official acts and not for illegal/criminal acts. The Respondent had misused his official position for personal gains and committed misconduct punishable under Section 7, 8, 12 and 14 of the



PC Act. It is only after the FIR is registered and the Chargesheet is to be submitted in the Court, that the Sanction is required for taking cognizance of the illegal acts of the accused. Mere registration of FIR is not equivalent to taking cognizance by the Court; therefore, the reasoning given by the learned ASJ for setting aside the directions for registration of FIR, is contrary to law.

13. Reliance has been placed on the case of Devender Pratap Singh vs. State of Bihar and Anr. Criminal Appeal No.579 of 2019, wherein it was observed by the Apex Court that no prior Sanction to prosecute a Government official under Section 197 Cr.P.C is required, unless the alleged offences are done while discharging the official duty purporting to act in discharge of his official duties.

14. It is contended that in asking the Petitioner to make an Enquiry Report on his behalf and also expecting hospitality from him, would clearly not fall within the domain of official duty of the Enquiry Officer performing quasi-judicial role in conducting the Departmental Enquiry. Therefore, the case was not covered under Section 197 Cr.P.C.

15. It is further contended that the Sanction is required for the purpose of cognizance and it can be construed to be applicable only at post-cognizance stage and not pre-cognizance stage. Therefore, the requirement of Sanction does not arise prior to taking cognizance or while an Order for registration of FIR or for directing investigations under Section 156(3) Cr.P.C. is made for which reliance has been placed on Anil Kumar & Others (supra).

16. Similarly, reliance has been placed on Subramanian Swamy vs. Manmohan Singh (2012) 3 SCC 64, wherein the Apex Court observed that requirement of Sanction was only at the time of taking cognizance and never



during investigations. No matter, howsoever you may be high (in position), but there can be no immunity from being probed and investigations. Reliance has also been placed on State of H.P. vs. M.P. Gupta (2004) 2 SCC 349; State of Kerala vs. Padmanabhan Nair (1999) 5 SCC 690; Harihar Prasad vs. State of Bihar (1972) 3 SCC 89. It is, therefore, submitted that the impugned Order of learned ASJ be set aside and the Order of the learned M.M be upheld.

17. **Status Report** has been filed on behalf of the State wherein it has been reasserted that the learned ASJ has rightly observed that there can be no investigations against the Public Servant without first obtaining Sanction under Section 197 Cr.P.C or Section 19(1) Prevention of Corruption Act.

18. The **Respondent No.5 Sanjeev Sharma(the Enquiry Officer) in his detailed Reply** asserted that the present Petition is nothing but an abuse of the process of law. Hewas an Enquiry Officer in the Departmental Enquiry against the Petitioner and had discharged his duties honestly and in accordance with law. The Enquiry was concluded on 07.03.2018 and the Report was submitted to the DG, SAI for further action. On 06.04.2018, the DG, SAI returned the Report back to the Respondent with the comments of the Chief Vigilance Officer, SAI that the Report be filed in proper format thereby including the testimony of all the witnesses and other evidences. In compliance thereto, a subsequent Report as in the proper format was submitted on 17.04.2018.

19. The Petitioner being aware of the Report having been returned by the CVO, SAI looked at it as an opportunity to alter the Report against him and to avoid the consequence of being found guilty, he filed a false and frivolous Complaint dated 09.04.2018 before DG, SAI making allegations against the



Respondent No. 5, that he had demanded money. The Complaint was, however, received by DG, SAI only on 28.05.2019.

20. The timing of filing of the Complaint is crucial as it reflects the intent and motive behind filing of this Complaint. It is submitted that the Petitioner had been found guilty in both the Reports, submitted by him. The transcript of the conversation between the Petitioner and him claiming to establish a demand for bribe, does not contain any such demand. The Police, on inquiry, did not find any substance in the allegations made in the Complaint. It is submitted that the learned ASJ in a well reasoned Order has dismissed the Application under Section 156(3) Cr.P.C.

21. It is further pointed out that in the meanwhile, the Petitioner had filed an *Appeal before the Appellate Board, Secretary (Sports) and Chairman in July, 2019 which has been dismissed* with the observations that the penalty upon the Petitioner should have been of removal from service. It is submitted that there is no merit in the present Petition which is liable to be dismissed.

Submissions heard and record perused.

22. To put it in nutshell, the basic allegations against the Respondent that were made by the Petitioner in his Complaint dated 18.05.2018 to SO, P.S. Lodhi Colony was that the Respondent No. 5 Sanjeev Sharma while conducting an Departmental Enquiry against him, had made a demand of bribe of Rs.5 lakhs for giving a Report in his favour.

23. The Respondent Sanjeev Sharma has made certain pertinent and relevant points. The Enquiry got initiated on 27.02.2017 and the Final Report was submitted by him to DG, SAI on 07.03.2018. It got returned by DG, SAI on 06.04.2018 to be submitted in the proper format along with all



the evidence. No Complaint till then, was made by the Petitioner. The Report again got submitted on 17.04.2018.

24. It has been rightly pointed out that once his First Report holding the Petitioner guilty was submitted on 07.03.2018, strategically the Complaint gets filed on 09.04.2018 to DG, SAI, New Delhi. Significantly, no such Complaint Case was made during the holding of the Enquiry and there was no specific date given on which such demands of bribe were allegedly made by the Respondent. The timing of making the First Report on 09.04.2018 clearly shows his malafide as the Final Report submitted on 07.03.2018 had been returned to the Respondent No.5 for re-writing. The Petitioner apparently saw an opportunity to get the Report modified or changed in his favour and with that malafide intent, the first Complaint gets made on 09.04.2018. *What prevented the Petitioner from making such Complaint while the Enquiry was ongoing, it left for anybody to guess.*

25. The only evidence to which reference has been made by the learned M.M is the transcript of the conversation between the Petitioner and Respondent No.5. The only factor which emerges from that conversation is that the Petitioner had been given an offer of getting the Report prepared from a counsel for the convenience of the Respondent. Such conduct may amount to some kind of misconduct, but definitely cannot be a factor to show that there is any demand for illegal gratification.

26. Furthermore, even if the Report was sought to be prepared through the Petitioner, but there can be no conclusion that had the Report been prepared by the Petitioner, the same would have been accepted as the Final Report by the Respondent.



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27. All the averments made in the Complaint are more in the realm of speculation and imagination, which cannot take the place of a suspicion, what to talk of a grave suspicion. The entire Complaint made by the Petitioner only smells of malafide against the Respondent on account of his having given an adverse Report against the Petitioner.

28. There is no merit in the present Petition, which is hereby dismissed.

29. The Petition along with the pending Application(s), stands disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 28th, 2025