HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc. (Pet.) No. 1219/2022

Ranidan Singh S/o Sawai Singh, aged about 47 years, resident of 64, Bhawanipura, Pokhran, Jaisalmer (Raj.) Currently Police Inspector, Police Station Gangashehar, Bikaner.

----Petitioner

Versus

1. State of Rajasthan through PP
2. Surendra Dhariwal S/o Rajpal Dhariwal, aged about 38 years, resident of House No. A-5B, Janakpuri, Delhi Police Station Janakpuri, Delhi.

----Respondents

Connected With

S.B. Criminal Misc. (Pet.) No. 1380/2022

Jagdish Kumar S/o Sh. Sadasukh Bishnoi, aged about 43 years, resident of Near Rajput Hostel, Nokha, Bikaner presently working as Assistant Sub Inspector, Police Station Gangasahar, Bikaner.

----Petitioner

Versus

1. State of Rajasthan through PP
2. Surendra Dhariwal S/o Rajpal @ Raj Singh, aged about 38 years, resident of House No. A 5B, Janakpuri, Delhi Police Station Janakpuri, Delhi.

----Respondents

For Petitioner(s)	:	Mr. Vikas Balia, Sr. Advocate with Mr. Sachin Saraswat. Mr. Ashok Choudhary. Mr. Chandra Shekhar Kotwani and Mr. Manoj Choudhary.
For Respondent(s)	:	Mr. Lalit Kishor Sen, PP. Mr. Sharwan Singh Rathore, PP. Mr. Rajak Khan, for the complainant- Mr. Prameshwar Pilania and Surendra Dhariwal.. Mr. Sandeep Saraswat, Additional Superintendent of Police, S.I.U., A.C.B., Jaipur.

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

REPORTABLE

08/10/2024

1. Petitioners before the Court are the then Circle Inspector (C.I.) and the then Assistant Sub-inspector of Police Station Ganga Shahar, Bikaner and they are seeking quashing of FIR No. 14/2022 dated 18.01.2022, registered against them under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and Sections 201, 384 and 120B of Indian Penal Code at Central Police Station, ACB Jaipur, District, Jaipur.

2. I have heard Shri Vikas Balia, learned Senior Advocate assisted by Shri Sachin Saraswat, learned counsel Shri Chandra Sekhar Kotwani assisted by Shri Manoj Choudhary for the petitioners and learned Public Prosecutor assisted by Shri Rajak Khan, learned counsel for complainant and have perused the case file.

3. Narrated briefly, the facts appertain are that a FIR bearing number 226/2021 was registered against some persons, at Police Station Ganga Sahar, Bikaner for offences punishable under Sections 420, 467, 468, 471, and 120B of the Indian Penal Code, related to cheating in a competitive examination. On 08.11.2021, in connection with investigation of above FIR, Jagdish Kumar ASI (Petitioner in Case No. 1380/2022) of the said police station along with four police constables, went to a firm namely "Prathviraj Enterprises" located in Delhi. This firm, owned by the complainant of present F.I.R. Surendra Dhariwal (Respondent No. 2), deals in electronic devices. They arrested the complainant, alleging that he had sold illegal devices/goods to the accused involved in the

above F.I.R. As per allegations, they seized Rs. 1,02,000, two mobile phones, three CPUs, two laptops and one DVR from the complainant's shop. The complainant was then taken to Bikaner, where he was brought to Ranidan Singh,CI (Petitioner in Case No. 1219/2022) at the police station, who allegedly beat him and demanded Rs. 5,00,000. When the complainant expressed his inability to pay, he was threatened with false charges and subsequently implicated in the F.I.R. mentioned above. After being released on bail, complainant visited the police station on 07.01.2022 to collect his belongings. However, the two policemen were not present and over the phone, they stated that his belongings would only be returned if he paid them. They also threatened to entangle the complainant in another false case.

4. When he went to the police station again in the evening, Ranidan Singh, C.I. was present. Ranidan Singh showed the complainant his three CPUs and after asking, kept one for himself and returned two to the complainant. When the complainant Surendra Dhariwal asked for the return of his money and the rest of his belongings, Ranidan Singh told him not to mention it and asked the complainant for his assistance in other cases related to his police station.

5. When the complainant came out of the chamber, Ranidan Singh and other policemen became suspicious of him. They apprehended the complainant and took him to another room, where Ranidan Singh took away his digital voice recorder. However, the complainant managed to keep a pen drive voice recorder with himself. The complainant was made to sit at the police station and was threatened with arrest under Section 151 of

Cr.P.C. Subsequently, Ranidan Singh left the police station with the mask digital voice recorder, a mobile phone, two CPUs and a power bank. When an ACB constable Indra Singh arrived at the police station, the complainant secretly handed over him the pendrive voice recorder. The entire conversation was captured on the pendrive voice recorder. A separate F.I.R regarding the incident of Ranidan Singh fleeing with the above-mentioned goods of complainant from the police station was lodged by said Indra Singh which was registered as F.I.R. Number 13/2022 at the same police station Ganga Sahar.

6. As per case of prosecution, although the trap laid to catch the petitioners red-handed had failed, the allegation of demanding gratification was supported by a voice recording, stored in a pendrive voice recorder. Following this, the ACB officials undertook the necessary further proceedings and on 18.01.2022, investigation was started by lodging F.I.R. No. 14/2022 against Ranidan CI and Jagdish Kumar ASI at the Central Police Station, ACB Jaipur, District, Jaipur.

7. Shri Vikas Balia, learned Senior Advocate and Shri Chandra Shekhar Kotwani, learned counsel representing petitioners vehemently urged that after the amendment in the Act of 1988 brought in the 2018,no police officer can conduct any enquiry or investigation in relation to an offence alleged to have been committed by a public servant under the Prevention of Corruption Act without prior approval of the competent authority of the State and before lodging of the FIR or commencing investigation, it was required of the ACB officials to have taken prior approval of the

competent authority as mandated under Section 17A of the Act of 1988.

8. They urged that in the present case, the investigating officer is proceeding to investigate the matter against the petitioners for the offences under the P.C. Act without the prior approval of the Government and as such, entire proceedings are a mockery of law and, therefore, the impugned FIR deserves to be quashed.

9. Reliance was placed on the following judgments by the learned counsels for the petitioners in support of their arguments:

1. Yashwant Sinha Vs. C.B.I.
   MANU/SC/1564/2019
2. Himanshu Yadav Vs. State of Rajasthan
   SB Civil Writ Petition No. 17545 / 2021 (Rajasthan)
   Decided on 19.01.2022
3. Kailash Chandra Agrawal Vs. State of Rajasthan
   SB Cri. Misc. Petition No. 159/20018 (Rajasthan)
   Decided on 07.04.2020
4. State of Rajasthan Vs. Tejmal Choudhary
   Criminal Appeal No. 1647/2021 (SC)
   Decided on 16.12.2021
5. Dr Ashok Vs. The State
   Criminal Petition No. 531/2022 (Karnataka)
   Decided on 04.07.2023
6. Charan Singh Vs.State of Maharashtra
   LL 2021 SC 179

10. Conversely, learned Public Prosecutor appearing for the State and Shri Rajak Khan, learned counsel appearing for the complainant, vehemently and fervently opposed the submissions advanced by the petitioners' counsel. Nonetheless, they too are not in a position to dispute the fact that no approval of the competent Government was taken before registering the formal FIR. He would seek dismissal of the petition.

11. Learned counsels for the respondents have referred to the following cases in support of their submissions: -

1. Rajesh Kumar vs. State of Rajasthan (Rajasthan)
   S.B.Cr.Misc. Petition No. 427/2022
   Decided on 18.02.2022
2. CBI Vs. Santosh Karnani
   Criminal Appeal No. 1148 / 2023 (SC)
   Decided on 17.04.2013
3. Devender Kumar Vs. CBI
   WP (Criminal) 3247 / 2018 (Delhi)
   Decided on 11.01.2019

12. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

13. Before considering the matter, it is pertinent to note the genesis and significance of Section 17A of Prevention of Corruption Act, 1988. Section 17A was brought into force on 26th July, 2018 as part of a series of amendments to the Prevention of Corruption Act, introduced by the Amending Act of 2018. Section 17A reads as follows:-

> ***"17A. Enquiry or Inquiry or investigation of offences relatableto recommendations made or decision taken by public servant in discharge of official functions or duties: —***
>
> *No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—*

In the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

In the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

In the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed.

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

14. When elements of this provision are analyzed, the following ingredients emerge: -

1 No police officer shall conduct any enquiry or investigation

2- into any offence

3- alleged to have been committed by a public servant

4- under this Act,

5- where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties,

6- without the previous approval of Government.

15. It's crucial to note that Section 17A of the Act applies only to offences arising from acts or decisions directly linked to the public servant's official functions. If the alleged offence involves personal misconduct or acts not covered by the public servant’s official duties, this protection does not apply.

16. This can be understood through an example. When an accountant of a P.W.D. demands gratification from a contractor in order to prioritize the passing of his pending bill, the offence is directly relatable to his duties and functions as an accountant. Therefore, this offence (demand of gratification) would have been committed in the discharge of his official functions. However, if the same accountant tells the same contractor that his wife is Chairman of the Municipal Council and demands for gratification to help secure a road construction contract from that Municipal Council, this offence cannot be considered relatable to his official work or as having been committed during the discharge of his official functions. In other words when act of a public servant, which is not directly and reasonably connected with his official functions or duties, he is not entitled to get the protection under Section 17A of the Act.

17. There is no dispute in the fact that demanding gratification is not an official duty or function of a public servant. Rather, it is an offence and the provision of Section 17A of the Act provides for approval of enquiry or investigation of such offence, if the demand for gratification was made in the context of any of his official functions.

Section 17A of the Act is triggered only if there is an allegation of offence mentioned under the P.C. Act.

18. Here, it is important to note that if a public servant demands gratification, then no approval is required under Section 17A to trap him. If the trap proceeding is successful or unsuccessful, then the crime of accepting or attempting to accept gratification is said to have been committed by him, only thereafter, question of inquiry or investigation of that crime and approval for it arises. Thus, what is restricted by the provision is the process of enquiry or inquiry or investigation into the offences without previous approval of the Government. The Section by itself, requires that an enquiry or inquiry or investigation shall not be undertaken without prior approval of the Government. However, the first proviso also states that such approval shall not be necessary where a public servant has been caught on the spot, in the act of committing an offence under the Prevention of Corruption Act, and thereafter, an inquiry and investigation are to be conducted for that offence.

19. The key purpose of this provision is to mandate prior approval before any investigation can be initiated against a public servant for offenses under the PCA. The prior approval is designed to protect public officials from malicious, vexatious and baseless complaints that might be filed against them while they are performing their official duties. It ensures that no investigation is initiated without a preliminary examination of the allegations by the competent authority. By introducing a safeguard mechanism through prior approval, the section aims to ensure that legitimate actions in the course of official duties are not hindered by the fear

of legal repercussions. It creates a protective filter for vexatious and frivolous prosecution.

20. Manifestly, the newly inserted provision prohibits the conducting of any inquiry or investigation into an offence under this Act by a public servant, except in cases of on-the-spot arrest, where the alleged act is related to any recommendation made or decision taken by the public servant in the discharge of official functions or duties, unless prior approval from the competent authority is obtained.

21. So far as, facts of the present case are concerned, the plan of ACB to trap the petitioners red-handed had failed, meaning thereby, this is not a case of on-the-spot arrest of the petitioners while they were committing or attempting to commit an offence under the Prevention of Corruption Act.

22. The alleged acts or attempted offences under the Prevention of Corruption Act, committed by both petitioners, were carried out in connection with the investigation of F.I.R. Number 226/2021, lodged at Police Station Ganga Sahar, and during the discharge of their duties. Had they not been involved in the investigation of the case, there would have been no occasion for them to commit the alleged offence, that is, the offence alleged against them arises out of the actions done during their official duties. In other words, the questioned acts of both the petitioners were in discharge of their official duties.

23. The F.I.R. No. 13/2022 filed by a member of the ACB team, regarding Ranidan Singh C.I. fleeing from the scene with alleged

electronic devices has also resulted in a negative final report after investigation. Merely pending of a protest petition in this regard has no legal significance.

24. The embargo under section 17A of the Act operates wherever the alleged offence is claimed to have been committed in connection with the discharge of official duties. In the present case, indisputably, the allegation of demanding illegal gratification relates to discharge of official duties of the petitioner and no prior approval of the competent authority has been obtained. Hence, so far as petitioner's assertion about the absence of prior approval of the competent authority is concerned it is admitted by respondents.

25. Therefore, before initiating investigation against petitioners under the provisions of the P.C. Act, prior approval of the Government was a sine-qua-non and the F.I.R. could not have been registered without such approval. As the petitioners cannot be prosecuted in the matter without prior approval of the Government, therefore, registration of the FIR by the Anti-Corruption Bureau against the petitioners is totally illegal and amounts to a gross abuse of process of law.

26. Approval of the competent authority in terms of section 17A of the Act of 1988 is a sine-qua-non has been held by the Supreme Court in the celebrated case of **Yashwant Sinha Vs. CBI (2020) 2SCC 338**. Para 117 of the judgment reads as under:-

"117. In terms of Section 17A, no Police Officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his Office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation ….. Relief which is sought in the complaint which is to register an FIR under various provisions."

27. Instant matter is squarely covered by the judgment rendered by the Hon'ble Apex Court in the case of ***Yashwant Sinha*** (supra) and the decision of this Court in the case of ***Himanshu Yadav*** (supra), on which the learned counsel for the petitioners has placed reliance. Facts of the present case are clearly similar to those in the above-referred cases.

28. The principle put forward by the respondents in the case of ***Rajesh Kumar*** (supra) is not found to be of any assistance to them, as in that case public servant Naresh Meena, was caught on the spot red-handed, while accepting gratification. As discussed earlier, prior approval is not required in cases of on-the-spot arrest matters under the P.C. Act, for which there is a clear exception in Section 17A of the Act. The main question in the case of ***CBI vs. Santosh Karnani*** (supra) was whether the petitioner was entitled

to benefit of anticipatory bail in an offence under the P.C. Act. No observation was made in that judgment regarding the principle enunciated by the three-judge bench in ***Yashwant Sinha's*** *(supra)* case. In fact, that principle was neither referred to nor discussed. The principle propounded by Hon'ble Delhi High Court in the case of ***Devender Kumar*** (supra) predates the principle laid down by the Hon'ble Supreme Court in ***Yashwant Sinha's*** case. In the context of the present dispute, the principle established in ***Yashwant Sinha's*** case is fully applicable, as Hon'ble the Supreme Court has clarified the position regarding the matter at hand.

29. As such, lodging of FIR against the petitioners without the approval of the competent authority is void ab initio. According to this Court, investigations is proscribed sans prior approval of the competent authority. Therefore, provision of section 17A of the Act of 1988 would create a road block in the way of the investigating officer to proceed further.

30. In the wake of the discussion made herein above, present Miscellaneous Petitions deserve to be allowed.

31. Resultantly, both the Criminal Misc. Petitions, therefore, succeed. Impugned F.I.R. Number 14/2022 dated 18.01.2022 registered against both the petitioners at CPS, ACB, Jaipur District, Jaipur is, hereby, quashed.

32. Stay petitions also stand disposed of accordingly.

(RAJENDRA PRAKASH SONI),J

Mohan/-