Ct. Case No. 04/2020
PS P.T. Street
u/s 156(3) Cr.P.C.
Brinda Karat and another v. State

26.08.2020

Present : Ld. Counsels Ms. Tara Narula, Sh. Adit S. Pujari, Ms. Aparajita Sinha, Sh. Chaitnaya and Ms. Tusharika Mattoo for the complainants.

1. Due to spreading of Corona Virus (COVID-19), special measures taken by the Government to prevent it by ordering a nationwide lockdown, the hearing of the urgent matter has been conducted through Video Conference using CISCO WEBEX app after taking consent of the parties, in terms of directions issued by the Ld. District and Sessions Judge, Rouse Avenue District Courts and vide circular no. Endst. No. 1977-2009/DHC/2020 dated 30.07.2020 issued by Hon'ble High Court of Delhi.

2. Arguments on the pending application u/s 156(3) Cr.P.C. have already been heard on earlier occasion. As the Hon’ble High Court of Delhi was also seized of the same matter and this was brought to the notice of this court, hence, this court desisted from passing any order and waited for the outcome of the said petition. Now order dated 05.08.2020 passed by Hon’ble High Court of Delhi has been received whereby this court has been directed to decide the present application expeditiously as possible and practicable in accordance with law while allowing the withdrawal of the petition by the complainants.

3. The present application and the complaint has been filed against Mr. Anurag Thakur, Minister of State for Finance, Government of India and Mr. Pravesh Verma, Member of Parliament by the complainants Ms. Brinda Karat and Mr. K.M. Tiwari who are also the political figures. By way of the present application the complainants seek order of registration of FIR against the respondents for the alleged offences u/s 153A/153B/295A/298/504/505/506 IPC.

4. For prosecution of respondents u/s 153A/153B/295A/505 IPC the prior sanction of competent authority i.e. Central Government is required as per section 196 Cr.P.C. During the adddressing of arguments by Ld. Counsels for the complainants, a question was put to Ld. Counsels as to whether any sanction has been procured by them to which the answer was replied in negative. Ld. Counsels for the complainants argued that sanction is only required before taking cognizance by the court and not before passing of order of registration of FIR u/s 156(3) Cr.P.C. Ld. Counsels for the complainants filed brief written submissions on this aspect and in support of their submissions they relied upon the following judgments:-

(i). Gopal Das Sindhi vs State of Assam, AIR 1961 SC 986.

(ii). Samaj Parivartan Samudaya And Ors. Vs State of Karnataka, (2012) 7 SCC 407;

(iii). *Anil Kumar & ors. v. M.K. Aiyappa and Anr (2013) 10 Supreme Court Cases 705.*

(iv). Manju Surana vs Sunil Arora, (2018) 5 SCC 557;

***(v).* State of Karnataka and Another vs Pastor P. Raju, (2006) 6 SCC 782;**

(vi). Anju Chaudhary vs State of Uttar Pradesh and Another, (2013) 6 SCC 384;

5. Submissions have been heard at length. Before adverting to the merits of the case it has to be seen whether prior sanction for prosecuting the respondents is mandatorily required even at the stage of ordering of registration of FIR u/s 156(3) Cr.P.C. if the answer to this question remains in affirmative then it will be futile to go on merits of the case.

6. It has been held by Hon'ble Apex Court in ***Anil Kumar & ors. v. M.K. Aiyappa and Anr Criminal Appeal nos. 1590-1591 of 2013*** that ***"requirement to obtain sanction is mandatory requirement and not directory in nature. If there is***

no prior sanction, the Magistrate cannot order investigation against a public servant while invoking powers under section 156(3) Cr.P.C.". The Hon'ble Apex Court observed in following paras:

9. *We will now examine whether the order directing investigation under Section 156(3) Cr.P.C. would amount to taking cognizance of the offence, since a contention was raised that the expression "cognizance" appearing in Section 19(1) of the PC Act will have to be construed as post cognizance stage, not pre- cognizance stage and, therefore, the requirement of sanction does not arise prior to taking cognizance of the offences punishable under the provisions of the PC Act.*

11. *The scope of Section 156(3) Cr.P.C. came up for consideration before this Court in several cases. This court in Maksud Saiyed case examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of section 156(3) or section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under section 156(3) Cr.P.C. should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the Learned Special Judge which, in our view, has stated no reasons for ordering investigation.*

12. *We will now examine whether the order directing investigation under Section 156(3) Cr.P.C. without amount to taking cognizance of the offence, since a contention was raised that the expression "cognizance" appearing in section 19(1) of the PC Act will have to be construed as post cognizance stage, not pre cognizance stage and, therefore, the requirement of sanction does not arise prior to taking cognizance of the offences punishable under the provisions of PC Act.*

13. *The expression "cognizance" which appears in Section 197 Cr.P.C. came up for consideration before a three-Judge Bench of this Court in State of Uttar Pradesh v. Paras Nath Singh (2009) 6 SCC 372, and this Court expressed the following view:*

> *"6. .....And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a*

complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

14. *In State of West Bengal and Another v. Mohd. Khalid and Others (1995) 1 SCC 684, this Court has observed as follows:*

> *"It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out."*

21. *Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to herein-above, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramanium Swamy cases (supra).*

7. Similar view was reiterated and held by Hon'ble Apex Court in ***L. Narayana Swamy v. State of Karnataka & ors. Criminal Appeal No. 721 of 2016.***

8. The judgment relied upon by the Complainants in **State of Karnataka and Another vs Pastor P. Raju, (2006) 6 SCC 782,** the facts of the case were different and it was the police agency who registered the FIR on its own and the issue before the Hon'ble Court was limited to the extent as to whether remanding of the accused to judicial custody when produced before the Magistrate amounts to taking cognizance or not. The said judgment being distinguishable on the facts does not apply in the present case. The judgment **Gopal Das Sindhi vs State of Assam, AIR 1961 SC 986** is also distinguishable from the facts and circumstances of the present case as the question of prior sanction was not involved in the aforementioned judgment, hence, this judgment is also of no help to the complainants for supporting their contentions.

9. Ld. Counsel for the complainant heavily relied upon the judgment ***Manju Surana vs Sunil Arora, (2018) 5 SCC 557*** and submitted that the Hon'ble Court having divergent opinion on the issue of previous sanction at the stage of 156(3) Cr.P.C. have referred the matter to larger bench, hence, the judgment of ***Anil Kumar & ors. v. M.K. Aiyappa*** is per-incuriam.

The reference made by the Hon'ble Supreme Court in the aforesaid case to a larger bench has not been taken up or decided yet. This court does not agree with the contention raised by the Ld. Counsel for the complainants simply for the reason that as on date the judgment passed by the Hon'ble Supreme Court in ***Anil Kumar & ors. v. M.K. Aiyappa*** and in ***L. Narayana Swamy v. State of Karnataka and others*** stands as precedent to be followed.

10. The contention of Ld. Counsels for the complainants was that the aforementioned judgments pertains to offences under Prevention of Corruption Act and does not apply in the present case. Though the aforementioned judgments pertains to complaint under Prevention of Corruption Act but the ratio applies in all such cases where previous sanction is required. The same analogy can be drawn and applied in the

case in hand as well. The contention of the Ld. Counsels for the complainants in this respect is misconceived and cannot be said to be tenable in the eyes of law.

11. The judgments i.e. **Anju Chaudhary vs State of Uttar Pradesh and Another, (2013) 6 SCC 384** and **Samaj Parivartan Samudaya and Ors. Vs State of Karnataka, (2012) 7 SCC 407;** relied upon by the complainants pertains to the merits of the case which this court does not deem it appropriate to consider as the present application and the complaint is not sustainable without the prior sanction i.e. technical requirement of law.

12. Admittedly, there is no previous sanction obtained by the complainants from the competent authority to prosecute the respondents for the offences alleged in the complaint. Hence, in view of the settled position of law in ***Anil Kumar & ors. v. M.K. Aiyappa*** and ***L. Narayana Swamy v. State of Karnataka and others*** application u/s 156(3) Cr.P.C. and the complaint deserves to be dismissed being not tenable in the eyes of law. Accordingly, same stands dismissed.

13. Copy of the order be provided to the Ld. Counsel for the complainant as prayed for. Order be also uploaded on the website.

14. File be consigned to record room after due compliance.

VISHAL PAHUJA
Digitally signed by VISHAL PAHUJA
Date: 2020.08.26 15:39:56 +0530

[Vishal Pahuja]
ACMM-I/RADC/ND/26.08.2020