

ITEM NO.10

COURT NO.5

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 7647/2009

(Arising out of impugned final judgment and order dated 16/04/2009 in CRLM No.45437/2006 passed by the High Court of Punjab & Haryana at Chandigarh)

HARSH KUMAR SHARMA

Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION AND ORS.

Respondent(s)

(with appln. (s) for directions and office report)

Date : 01/09/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Petitioner-in-person,Adv.

Mr. Animesh Rastogi, Adv.

For Respondent(s) Mr. Arvind Kumar Sharma,Adv.

Mr. V. Madhukar, AAG

Ms. Anvita Cowshish, Adv.

Mr. Kuldip Singh, AOR

Ms. Pinky Anand, ASG

Mr. P.K. Dey, Adv.

Mr. Shailendra Saini, Adv.

Mr. Naresh Sharma, Adv.

Mr. B.V. Balram Das, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Harsh Kumar Sharma, the petitioner-in-person and Ms. Pinky Anand, learned Additional Solicitor General for the respondents.

Mr. Sharma, the petitioner-in-person, has referred to a letter dated 4.2.2011 issued by the Ministry of Environment & Forests (Vigilance Section), Government of India, wherein it has been stated thus :

"I am directed to refer to this Ministry's letters of even number dated 14th May, 2009, 1st April, 2010, 10th June, 2010 and also D.O. letter dated 8th July, 2010 wherein the State Government was requested to furnish parawise comments on the representation of Shri Harsh Kumar, IFS. The comments of the State Government are still awaited.

2. However, based on the new facts in the representation of Shri Harsh Kumar, the advice of the ministry of Law was sought. The Ministry of Law in their advice has agreed to withdraw the prosecution sanction issued against Shri Harsh Kumar. They have advised "As held by the Supreme Court, the order of sanction is an administrative act and therefore, it is open to the competent authority to reconsider its earlier order. Hence, the sanction orders in case of Shri Harsh Kumar dated 16.12.2008 may be withdrawn and the court be informed accordingly.

3. The Government of Punjab is once again requested to expedite the matter and take action as per Government of India's instructions and furnish their comments to this Ministry immediately for further consideration of the case."

He has also drawn our attention to the order dated 11.8.2010 passed by the Secretary and Legal Adviser. The relevant part of the said order reads as follows :

"2. The referring Ministry has stated that earlier it was decided in consultation with the Central Vigilance Commission to issue sanction of prosecution against three IFS Officers of the Government of Punjab namely S/Shri J.S. Samundri, Harsh Kumar and Parveen Kumar as after the receipt of the CBI Investigation Report, comments of the Government of Punjab were not forthcoming.

3. In the case of Shri Harsh Kumar, it has been stated that he has submitted a representation highlighting a number of new facts as mentioned at pp. 11-16/ante and in view thereof his request to review the sanction of prosecution is found to be justified as stay granted by the Supreme Court on the High Court order, the change of nature of land from forest to non forest, filling of

criminal defamation case against Shri R.K. Bajaj by Shri Harsh Kumar and denial of Shri Bajaj having met Shri Harsh Kumar, filing of perjury case by Shri Harsh Kumar against Shri S.K. Bhati. These facts were not brought out by the CBI in its Report.

4. It is now well-settled that before granting sanction, the authority or the appropriate government must have before it the necessary report and the material facts which prima facie establish the commission of the offence charged for and that the appropriate Government would apply their mind to those facts. The order of sanction only is an administrative act and not a quasi-judicial one, nor there is a lis involved (vide *State of Bihar v. P.P. Sharma*, AIR 1991 SC 1260). In the present case, it has been brought out at pp. 11-16/ante that in the light of new facts the request of Shri Kumar for withdrawal of sanction of prosecution is found to be justified and there appears to be no report or any other material on record which *prima facie* establishes the commission of an offence by Sh. Kumar as his action was in public interest. In that view of the matter, the present case does not appear to be fit for grant of sanction for prosecution.

5. As held by the Supreme Court, the order of sanction is an administrative act and thereof, it is open to the competent authority to reconsider its earlier order. Hence, the sanction order in case of Shri Harsh Kumar dated 16.12.2008 may be withdrawn and the court be informed accordingly."

Ms. Pinky Anand, learned Additional Solicitor General, has brought to our notice letter dated 17.05.2012 issued by the Ministry of Environment & Forests (Vigilance Section), Government of India, which suggested thus :

"I am directed to refer to this Ministry's letters of even number dated 14th May, 2009, 1st April, 2010, 10th June, 2010, 10th June, 2010 and also D.O. letter dated 8th July, 2010 wherein the State Government was requested to furnish parawise comments on the representation of Shri Harsh Kumar, IFS. The comments of State Government are still awaited.

2. However, based on the new facts in the

representation of Shri Harsh Kumar, the advice the Ministry of Law was sought. The Ministry of Law in their advice has agreed to withdraw the prosecution sanction issued against Shri Harsh Kumar. They have advised "As held by the Supreme Court, the order of sanction is an administrative act and therefore, it is open to the competent authority to reconsider its earlier order. Hence, the sanction orders in case of Shri Harsh Kumar dated 16.12.2008 may be withdrawn and the court be informed accordingly."

3. The Government of Punjab is once again requested to expedite the matter and take action as per Government of India's instructions and furnish their comments to this Ministry immediately for further consideration of the case."

The said letter has been communicated to the Financial Commissioner and Secretary, Government of Punjab, Department of Forests and Wildlife, Chandigarh.

Learned Additional Solicitor General has also brought to our notice an order passed in CWP No.28172 of 2013. The relevant part of the said order is as follows :

"Please refer to this Ministry's letter of even No. dated 9th January, 2012 on the above subject. In this case, from the copy of the noting of the relevant file of Govt. of Punjab, as enclosed by Sh. Harsh Kumar, IFS with his representation dated 30/12/2011, it has been noticed that earlier Secretary (Forests) had termed the facts brought out by Sh. Harsh Kumar IFS as new facts.

2. As regards the case in Supreme Court of India is concerned it is observed that the prayer of the applicant before the Supreme Court of India is for quashing of FIR and not for the review of prosecution sanction.

3. The Stage Govt. in their letter dated 20/12/2011 has already written that if absolutely new facts are placed before the competent authority, it can review the prosecution sanction.

4. As per Law Ministry's advice, it was categorically written to the State Government

that prosecution sanction is an administrative matter and it is open to the competent authority to reconsider its earlier decision. Law Ministry had also advised to inform the court accordingly. Vide letter dated 3rd February, 2011 the advice of the Law Ministry was sent to Punjab Govt. to act as per Government of India instructions.

5. You are once again requested to do the needful immediately and furnish your reply to this Ministry urgently."

Be it noted, the said order forms a part of the order passed in the writ petition which is filed by the petitioner himself.

In view of the aforesaid, we would like the Additional Solicitor General to obtain instructions whether the Union of India is inclined to withdraw the prosecution, regard being had to the earlier orders passed by it. The statement to that effect shall be filed by way of an affidavit within four weeks hence. We may hasten to clarify that pendency of these proceedings before this Court will not be an impediment to express the view on the part of the Union of India.

List the matter after four weeks.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master