IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11381-2016 (O&M)
Reserved on: 23.08.2023.
Pronounced on: 15.09.2023

Tulsi Ram Mishra **… Petitioner**

Versus

State of Punjab and others **... Respondents**

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Vaibhav Sehgal, Advocate for the petitioner.

Mr. Luvinder Sofat, DAG, Punjab.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Anandeshwar Gautam, Advocate and
Ms. Tejaswini, Advocate for respondent No.2.

Mr. Satyapal Jain, Additional Solicitor General of India with
Mr. Dheeraj Jain, Senior Panel counsel for respondent No.3.

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ANUPINDER SINGH GREWAL, J.

This petition has been preferred under Section 482 of the Cr.P.C. impugning the order dated 08.01.2015 whereby the Special Judge, SAS Nagar, has discharged respondent No.2 in a criminal case arising out of FIR No.9 dated 09.11.2009, registered under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act').

I. Submissions on behalf of the petitioner

2. Learned counsel for the petitioner had submitted that the allegations against respondent No.2 were serious inasmuch as he was caught red-handed while accepting illegal gratification of Rs.2 lacs in the presence of two witnesses. The State Government had accorded sanction on 27.04.2010 to prosecute respondent No.2 as he was serving in the State of Punjab. The challan had been filed on 29.04.2010 along with the sanction to

prosecute accorded by the State Government. Respondent No.2 was serving in the State Government as the Director, Department of Industries & Commerce and, therefore, it could not be said to be an invalid sanction. He had further submitted that even if it is considered to be an invalid sanction, respondent No.2 could not have been discharged and only at the conclusion of trial, the validity of sanction could have been examined and he had to prove that the order of sanction had caused grave prejudice to him in view of Section 19 of the PC Act. He had, therefore, submitted that impugned order be set aside and respondent No.2 be prosecuted under the PC Act. In support of his submissions, he had relied upon the judgments of the Supreme Court in the cases of **Dharamaraj Vs. Shanmugam, (2022) SCC Online SC 1186, K. Shanthamma Vs. State of Telangana, (2022) 4 SCC 574, State through Deputy Superintendent of Police Vs. R. Soundirarasu, (2022) SCC Online SC 1150, Vijay Rajmohan Vs. Central Bureau of Investigation (Anti Corruption Branch), (2023) 1 SCC 329, State of Rajasthan Vs. Tejmal Choudhary, (2021) SCC Online SC 3477, Neeraj Dutta Vs. State (Government of NCT of Delhi), (2023) 4 SCC 731, State of Chattisgarh Vs. Aman Kumar Singh, (2023) SCC Online SC 198 and Sheonandan Paswan Vs. State of Bihar, (1987) 1 SCC 288**.

II. <u>Submissions on behalf of respondent No. 1</u>

3. Learned State counsel while relying upon the reply had submitted that legality or validity of the sanction for prosecution has to be raised in the course of the trial and has to be decided at the conclusion of the trial. A wrong or improper sanction from some other authority would not render the case of the prosecution as null and void. He has cited the judgments in the cases of **Vijay Rajmohan Vs. Central Bureau of**

Investigation (Anti Corruption Branch), (2023) 1 SCC 329, CBI Vs. Ashok Kumar Aggarwal, (2014) 14 SCC 295. In the reply filed by respondent No.1/State, it is also stated that merely on account of sanction not being accorded by the competent authority the whole trial would not be vitiated. The prayer in the reply is that the petition be allowed in view of the submissions made by counsel for the petitioner as well as answering respondents and impugned order be set aside.

III. Submissions on behalf of respondent No. 2

4. Learned senior counsel had submitted that respondent No.2 had been rightly discharged by the impugned order because the sanction accorded by the State Government was not proper as it was not the competent authority. The Central Government was the competent authority to grant sanction. Although the State Government had sent the matter to the Central Government but later it had re-examined the matter, upon a representation preferred by respondent No.2 dated 14.07.2014. The State Government, with due application of mind and considering the relevant material, had arrived at the conclusion that sanction to prosecute respondent No.2 was unwarranted. Therefore, the State Government had withdrawn the request for grant of sanction of prosecution sent to the Central Government vide communication dated 26.03.2018. Subsequently, the Central Government, vide letter dated 01.05.2018, had sent back the proposal for issuance of prosecution sanction against respondent No.2 along with the relevant documents. Respondent No.2 has an unblemished service record and had been unnecessarily facing malicious and frivolous proceedings initiated by the petitioner. The petition is motivated, it deserves to be dismissed and no further action is called for at this stage.

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5. In the reply filed by respondent No.2, it is also submitted that respondent No.2 had been falsely implicated in a fake and sham case of corruption orchestrated by the then Deputy Chief Minister of the State of Punjab. Respondent No.2 had also filed an application before learned JMIC, Chandigarh, against those who had falsely implicated him in the case who include the petitioner herein and certain officers of the Vigilance Bureau, Ludhiana, under Section 156 (3) Cr.P.C. This application under Section 156(3) Cr.P.C. was treated as a complaint. The learned JMIC, vide order dated 30.11.2019 (Annexure R-10), had held that *prima facie* case against him (respondent No.2) was a result of criminal conspiracy and false charges were made against him and evidence was fabricated. It is further stated that the petitioner had filed a Civil Writ Petition bearing No.1406 of 2020 challenging the validity of the withdrawal of the proposal by the State Government vide letter dated 26.03.2018 which was sent to the Central Government by State Government on 06.05.2014, but the same was dismissed as withdrawn on 18.08.2022 (Annexure R-7) before the Coordinate Bench of this Court. The citations of 32 judgments relied upon by counsel for respondent No.2 in the course of arguments, part of compilation furnished to this Court by him and referred to in his reply dated 08.08.2023, are set out hereunder:-

1. State of Karnataka Lokayukta Police v. S. Subbegowda, Criminal Appeal No.1598 of 2023, Decided on 03.08.2023
2. State of Madhya Pradesh Vs. Pradeep Kumar Gupta, (2011) 6 SCC 389;
3. Devendra Nath Singh Vs. State of Bihar and others, (2023) 1 SCC 48;
4. Nanjappa v. State of Karnataka, (2015) 14 SCC 186;

5. SanjaysinhRamrao Chavan Vs. Dattatray Gulabrao Phalke and others, (2015) 3 SCC 123;
6. Manzoor Ali Khan v. Union of India, (2015) 2 SCC 3;
7. Subramanian Swamy v. Director, Central Bureau of Investigation, (2014) 8 SCC 682;
8. Anil Kumar v. M.K. Aiyappa, (SC) 2013 (4) R.C.R.(Criminal) 586;
9. K. Devassia v. State of Kerala, SC (2006) 10 SCC 447;
10. State Inspector of Police v. Surya Sanhkaram Karri, (SC) 2006 (4) R.C.R. (Criminal) 53;
11. State of Karnataka v. C. Nagarajaswamy, (2005) 8 SCC 370;
12. State of Goa v. Babu Thomas, (2005) 8 SCC 130;
13. Ashok Mehta and another Vs. Ram Ashray Singh and others, (2006) (2) RCR (Criminal) 330;
14. Mohandas v. State of Kerala, 2003 (9) S.C.C. 504;
15. Manoranjan Prasad Choudhary v. State of Bihar, 2002 (10) SCC 688;
16. Ram Krishan Prajapati v. State of U.P., 2000(10) SCC 43;
17. R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183;
18. Rajpal Singh Vs. State of Punjab (P&H) 2019 (4) RCR (Criminal) 728;
19. Neelam Kumar v. State of Haryana (P&H) 2019 (2) R.C.R. (Criminal) 698;
20. Hari Kesh v. State of Punjab, (P&H) 2019(3) Law Herald 2366;
21. Darshan Singh v. State of Punjab (P&H) 2018(5) R.C.R.(Criminal) 89;
22. Jagat Ram v. Central Bureau of Investigation, (P&H) 2017(3) R.C.R. (Criminal) 244;
23. Ram Singh Dhall v. State of Punjab (P&H) 2015(3) R.C.R.(Criminal) 667;
24. Rajinder Kumar v. State of Punjab (P&H) 2015(8) R.C.R.(Criminal) 986;

25. Gursewak Singh v. State of Punjab (P&H), 2012(25) RC.R.(Criminal) 230;
26. Kulbir Singh Patwari v. State of Punjab, (P&H) 2006(2)R.C.R.(Criminal)567;
27. Dr. Jaswant Singh v. State of Punjab, (P&H) 2006(4) R.C.R.(Criminal) 525;
28. Om Raj v. State of Punjab, (P&H) 2002 (1) R.C.R.(Criminal) 799;
29. Naginder Singh Rana v. State of Punjab, (P&H) 2002 (3) R.C.R.(Criminal) 32;
30. Harmesh Kumar v. State of Punjab, (P&H) 1999(2) CLJ (Criminal) 47;
31. AvinashChander Sharma v. State of Haryana, (P&H) 1993(3) RCR(Criminal) 726; and
32. C.V. Balan Vs. State of Kerela, O.P. Criminal 510 of 2022 (Kerela High Court)

IV. Submissions on behalf of respondent No. 3

6. Learned counsel for respondent No.3-Union of India had submitted that the competent authority to accord sanction is the Central Government and the State Government had also sent the proposal on 06.05.2014 to the Central Government for according necessary sanction. The Central Government had, on 03.02.2015, sought comments from the Investigating officer and Supervisory officer on the issue and communications were addressed to the State Government for the same. Meanwhile, the Department of Personnel and Training (DoPT), Government of India, had issued instructions on 20.05.2016 to send proposals seeking sanction through a Single Window System to avoid delay in proceedings but the State Government had not complied with the same. The letter/communication dated 23.01.2017 (Annexure R-3) was sent later to the

Central Government along with the comments of Investigating Officer and supervisory officer which had been sought earlier by the Central Government on 03.02.2015. Subsequently, on 25.07.2017, a communication was again sent to the Chief Secretary, Government of Punjab, whereby the Central Government had requested the State Government to send a complete proposal along with the information and documents through the Single Window System but before the Central Government could receive the complete proposal, consider it and apply its mind, the State Government had withdrawn its proposal vide letter dated 26.03.2018 (Annexure R-5).

7. Learned counsel for respondent No.3 had also submitted that the Supreme Court in the case of **State of Uttar Pradesh Vs. Vishwanath Chaturvedi, (2013) 11 SCC 567,** had upheld the view of Division Bench of Allahabad High Court in the case of **Vishwanath Chaturvedi Vs. Union of India, (2010) SCC Online All 2339,** to the extent that in case no decision on the grant of sanction is taken by the competent authority within six months then it shall be deemed to have been granted. This judgment was in operation when the proposal for grant of sanction was sent by the State Government on 06.05.2014 and the impugned order was passed on 08.01.2015 by the Special Judge. The judgement was applicable throughout the country as it relates to the PC Act which is a Central Act. In support of his submissions, he had cited the judgements of Supreme Court in the cases of **M/s Kusum Ingots and Alloys Ltd. Vs. Union of Indian and another, (2004) 6 SCC 254** and **All India Jamiatul Quresh Action Committee Vs. Union of India, 2017 (3) RCR (Civil) 845.** Thus, sanction should be deemed to have been accorded and respondent No. 2 could not have been

discharged. The trial ought to have proceeded and taken to its logical conclusion.

V. Factual matrix

8. FIR No.9 dated 09.11.2009 was registered against respondent No.2 under Sections 7 and 13(2) of the PC Act at Police Station Vigilance Bureau, Flying Squad-1, Mohali. The allegations against respondent No.2 were that while was working as Director, Department of Industries and Commerce, he is alleged to have accepted an illegal gratification of Rs.2 lacs. It is alleged that a demand of Rs.6 lacs had been raised by respondent No.2 for allotment of vacant plot adjoining the existing broiler factory of the petitioner at Focal Point, Ludhiana. The deal was struck at Rs.5 lacs and the petitioner on 09.11.2009 had gone to pay a sum of Rs.2 lacs to respondent No.2, who allegedly accepted the same. The recovery had been effected in the presence of two witnesses, namely, Sukhmander Singh, Research Officer, Planning Department, Punjab, Chandigarh and Sh.Subhash Chawla, Superintendent Grade-I, Office of Director, Education Department, Punjab, Chandigarh.

9. The Governor of Punjab had accorded sanction under Section 19 of the PC Act to prosecute respondent No.2 on 27.04.2010. This order was challenged by respondent No.2 by preferring CWP No.10055 of 2010 which was dismissed by the Single Bench of this Court on 24.01.2014 while granting liberty to respondent No.2 to raise the issues before the trial Court.

10. Respondent No.2 had subsequently challenged the order of the Single Bench by preferring LPA No.689 of 2014 which was also dismissed by the Division Bench on 11.08.2014 and the order passed by the learned Single Bench was upheld. As the charges had not been framed at that time,

liberty was granted to respondent No.2 to raise the points taken therein before the trial Court. The operative part of the judgment of the Division Bench is reproduced hereunder:-

> "We have been informed that before the trial Court the appellant has moved an application for discharge raising the question of validity of granting the sanction by the Punjab Government as well as the jurisdiction of Special Court, Mohali, to try the case, and the said application is still pending. No charge has been framed as yet against the appellant.
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> In view of these facts, we are of the view that since the appellant has already moved applications for discharge before the trial Court raising the same issue and availed the effective remedy in this regard, we do not find any illegality in the order passed by the learned Single Judge. We give liberty to the appellant to raise all the points raised herein before the trial Court. We hope that the trial Court will not be influenced by any observations made by the learned Single Judge in its order. He further hope that the trial Court will decide the above applications before framing the charge against the appellant.
>
> With the aforesaid observations this Letters Patent Appeal is dismissed."

11. In the meantime, the State Government had addressed a communication dated 06.05.2014 (Annexure R-1/A) to the Central Government (competent authority) for obtaining sanction to prosecute respondent No.2.

12. The Special Judge while considering the application for discharge had passed the impugned order on 08.01.2015 vide which the applicant (respondent No.2 herein) was discharged for time being on the ground that the competent authority for granting sanction to prosecute an IAS officer is the Central Government while the sanction had been granted

by the State Government. It was, however, observed that the respondent No.2 is discharged for the time being for want of proper sanction and the matter can be revived as and when the valid sanction is accorded by the competent authority. It was also noticed by the Special Judge that the matter for according sanction was pending consideration before the Central Government.

VI. Analysis

(a) The competent authority to accord sanction to prosecute an officer of the Indian Administrative Service serving in the State Government.

13. The first issue which falls for determination in the instant case is as to which is the competent authority to accord sanction to prosecute respondent No.2. Respondent No.2 was a member of the Indian Administrative Service and serving in the State Government as Director, Department of Industries and Commerce, at the time of the alleged incident. The appointing authority of an officer of the Indian Administrative Service is the Central Government as provided in Rule 6(1) of the Indian Administrative Service (Recruitment) Rules, 1954 which is reproduced hereunder:-

> "6. Appointment to the Service:-
>
> (1) All appointments to the Service after the commencement of these rules shall be made by the Central Government and no such appointment shall be made except after recruitment by one of the methods specified in rule 4."

An officer of the Indian Administrative Service is allocated a State cadre by the Central Government to serve the State Government. Reference may be made to Rule 6 (1) of the Indian Administrative Service

(Cadre) Rules, 1954, which provides that a cadre officer may, with the concurrence of the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government. Rule 6 (1) is reproduced hereunder:-

> "6 (1) A cadre officer may, with the concurrence of the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.
>
> Provided that in case of any disagreement, the matter shall be decided by the Central Government and the State Government or State Governments concerned shall give effect to the decision of the Central Government."

The competent authority which can dismiss or remove from service an officer of the Indian Administrative Service is the Central Government as stipulated in Rule 7(2) of the All India Service (Discipline & Appeal) Rules, 1969, which is reproduced hereunder:-

> "The penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the Service except by an order of the Central Government."

14. Article 311 (1) of the Constitution of India states that no person, who is a member of a civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Article 311 (1) of the Constitution of India is reproduced hereunder:-

> "(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

Even in terms of Section 19 (1) of the PC Act, the competent authority to accord sanction for prosecution of a public servant is the authority which is competent to remove him from his office. The relevant extract of the provision is reproduced hereunder:-

> "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,—
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office."

15. It is apt to notice that the State Government, after having considered the matter, had accorded sanction to prosecute respondent No.2 on 27.04.2010, but the State Government, after granting the sanction, appears to be conscious of the fact that the competent authority to accord sanction was the Central Government and therefore, it had addressed the communication to the Central Government on 06.05.2014 to consider the

issue of grant of sanction which was later withdrawn on 26.03.2018 (Annexure R-5). The trial Court has also relied upon the instructions issued by the Central Government on 27.10.1999 wherein it is stated that the competent authority to accord sanction in respect of the members of the Indian Administrative Service is the Central Government. The relevant paragraphs no.1 and 3 of the instructions dated 27.10.1999 issued by the Department of Personnel and Training, Government of India to the Chief Secretaries of all State Governments/Union Territory Administrations, is reproduced hereunder:-

> "1. As you are aware, under Section 19 of the P.C. Act, 1988 (corresponding Section 6 of the P.C. Act, 1947), it is necessary for prosecuting agency to seek previous sanction of the appropriate administrative authority for launching prosecution against a public servant for the alleged P.C. Act offences mentioned in the Investigation Report. In respect of members of the Indian Administrative Service, such sanction is required to be accorded by the Department of Personnel & Training in the Central Government as in terms of Section 19(1) of the P.C. Act, 1988, the Central Government (Department of Personnel & Training) alone is competent to remove such officers from service.
>
> 2. xxxxxxxxxxxxxxxx
>
> 3. When such sanction under the P.C. Act is required against an IAS officer by the State Government and the concerned officer is serving in connection with the affairs of the State Government, the Competent Authority under the State Government is required to examine the case on the basis of evidence on records and forward the documents to the Central Government along with their views/recommendation thereon and also enclosing the

> sanction, if any, issued by the State Government u/s 197(1) of the Cr.P.C."

It is, thus, manifest that the competent authority to accord sanction to prosecute an officer of the Indian Administrative Service is the Central Government.

(b) Deemed sanction

16. It is difficult to accept the contention of counsel for respondent No.3 that as the matter was pending consideration before the Central Government for over four years, the sanction was deemed to be accorded and respondent No.2 be prosecuted under the law. Reference can be made to the judgment of the Supreme Court in the case of **Vijay Rajmohan Vs. Central Bureau of Investigation (Anti Corruption Branch) (supra)** wherein while examining consequences of sanctioning authority not taking a decision within four months it was held that deemed sanction in such cases would cause prejudice to the accused as there would be non-application of mind. It was also held that non-compliance of the mandatory period cannot automatically lead to the quashing of criminal proceedings because the prosecution of a public servant for corruption has an element of public interest having a direct bearing on the rule of law and it must also be kept in mind that the complainant or victim has no other remedy available for judicial redressal if the criminal proceedings stand automatically quashed. The relevant paragraphs of the judgement are reproduced hereunder:-

> "30. The intention of the Parliament is evident from a combined reading of the first proviso to Section 19, which uses the expression 'endeavour' with the subsequent provisions. The third proviso mandates that the extended period can be granted only for one month after reasons are recorded in writing. There is no further

extension. The fourth proviso, which empowers the Central Government to prescribe necessary guidelines for ensuring the mandate, may also be noted in this regard. It can thus be concluded that the Parliament intended that the process of grant of sanction must be completed within four months, which includes the extended period of one month.

31. If it is mandatory for the sanctioning authority to decide in a time-bound manner, the consequence of non-compliance with the mandatory period must be examined. This is a critical question having no easy answer. In Subramanian Swamy, this Court suggested that Parliament may consider providing deemed sanction if a decision is not taken within the prescribed period. The Appellant herein contends the very opposite that the criminal proceedings must be quashed if the decision is not taken within the prescribed period.

32. **In the first place, non-compliance with a mandatory period cannot and should not automatically lead to the quashing of criminal proceedings because the prosecution of a public servant for corruption has an element of public interest having a direct bearing on the rule of law. This is also a non-sequitur. It must also be kept in mind that the complainant or victim has no other remedy available for judicial redressal if the criminal proceedings stand automatically quashed. At the same time, a decision to grant deemed sanction may cause prejudice to the rights of the accused as there would also be non-application of mind in such cases**."

(Emphasis supplied)

17. In the view of the law laid down by the Supreme Court in the case of **Vijay Rajmohan Vs. Central Bureau of Investigation (Anti Corruption Branch) (supra)**, it is difficult to hold that sanction to

prosecute respondent No.2 be deemed to be accorded by the Central Government as the matter was pending before it for about four years. The Central Government had not applied its mind as proposal for sanction was incomplete.

(c) Consequences of invalid sanction

18. Now, this Court would proceed to determine the consequences of invalid sanction or sanction accorded by an incompetent authority. I would not accept the contention of counsel for the petitioner that the question of improper or invalid sanction could only be determined at the conclusion of the trial and the accused has to prove that the order had caused grave prejudice to him for the reason that this question is no longer *res integra*. The Supreme Court in the case of **Nanjappa v. State of Karnataka (supra)**, after examining the provisions of Sections 19(1), 19(3) and 19(4) of the PC Act, had held that sub-sections (3) and (4) of Section 19 of the PC Act stipulate challenge to the validity of the order of sanction or validity of proceedings at the appellate or revisional stage before the higher court and not before the Special Judge and that it does not forbid a Special Judge from passing an order of discharge if a valid order sanctioning prosecution is not produced in terms of Section 19 (1) of the PC Act. The relevant paragraphs of the judgement are reproduced hereunder:-

> "7. We have heard the learned counsel for the parties at considerable length. **This appeal must, in our opinion, succeed on the short ground that in the absence of a valid previous sanction required under Section 19 of the Prevention of Corruption Act, the trial court was not competent to take cognizance of the offence alleged against the appellant.**

10. A plain reading of Section 19(1)(supra) leaves no manner of doubt that the same is couched in mandatory terms and forbids courts from taking cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 against public servants except with the previous sanction of the competent authority enumerated in clauses (a), (b) and (c) to sub-section (1) of Section 19. The provision contained in sub-section (1) would operate in absolute terms but for the presence of sub-section (3) to Section 19 to which we shall presently turn. But before we do so, we wish to emphasise that the language employed in sub-section (1) of Section 19 admits of no equivocation and operates as a complete and absolute bar to any court taking cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 of the Act against a public servant except with the previous sanction of the competent authority.

11. A similar bar to taking of cognizance was contained in Section 6 of the Prevention of Corruption Act, 1947 which was as under:

"6.Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under Section 161 or Section 165 of the Penal Code, 1860 or under sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government … of the Central Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government … of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

"22. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids 1 (2015) 14 SCC 186 taking of cognizance by the court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non est in

the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

23. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub- section (3) to Section 19, which starts with a non obstante clause. Also relevant to the same aspect would be Section 465 CrPC which we have extracted earlier.

23.1. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of Explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny.

23.2. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court

finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub- section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.3. Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.

23.4. **The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub- section (4) according to which the appellate or the revisional court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a**

higher court and not before the Special Judge trying the accused.

23.5. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning the prosecution under Section 19(1). Failure of justice is, what the appellate or revisional court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision."

24. In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. The trial court held that the authority who had issued the sanction was not competent to do so, a fact which has not been disputed before the High Court or before us. The only error which the trial court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case. As observed by this Court in Baij Nath Prasad Tripathi case [Baij Nath Prasad Tripathi v. State of

> Bhopal, AIR 1957 SC 494 : 1957 Cri LJ 597] , the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent court was bound to be invalid and *non est* in law."
>
> (Emphasis supplied)

19. This judgment had been followed by the Supreme Court in the case of **State of Karnataka Lokayukta Police v. S. Subbegowda, (2023) SCC OnLine SC 911**, wherein it was also observed by the Supreme Court that interlocutory application seeking discharge in the midst of the trial would not be maintainable as it would scuttle the proceedings before the trial Court. In that case, the first application for discharge had been preferred on the ground that sanction had been granted without application of mind. The application was dismissed by the trial Court and in revision the High Court disposed of the matter directing the trial Court to consider the documents made available by the respondents during the investigation and produced by prosecution with the charge-sheet. Thereafter, the second application preferred by the accused seeking discharge was dismissed as not pressed by him. The third application for discharge was preferred by him, when the trial had proceeded and 17 witnesses had been examined, on the ground that sanctioning authority was not the competent authority and investigating officers had suppressed the material evidence. The application was rejected by the trial Court but the petition under Section 482 Cr.P.C. preferred thereagainst was allowed by the High Court. The Supreme Court had held that application for discharge on the ground of validity of sanction could have been preferred at an initial stage, but after the commencement of the trial the question of invalid sanction can only be decided at the conclusion of

the trial. The judgment of the High Court was set aside but the respondent was afforded liberty to raise the issue of the validity of the sanction at the final stage of the arguments in the trial.

20. I have also considered the judgments which have been cited by learned senior counsel for respondent No.2 including those in the compilation of judgments as well as those referred in his reply for consideration of this Court. There is no denying the proposition of law laid down that sanction to prosecute from competent authority is necessary before prosecuting a public servant. Prosecution in absence of sanction would be vitiated. The public servant may take objections with regard to validity or absence of a valid sanction at cognizance stage but after the commencement of the trial he may take objections at the time of conclusion of the trial, but the trial shall not be scuttled in the midst. The necessity to obtain sanction before prosecuting public servants is to ensure that they are protected from frivolous, vexatious and concocted complaints otherwise it will be difficult for the public servants to discharge their function fearlessly. Therefore, there does not seem to be any legal infirmity in discharging the respondent No.2 for the time being for want of sanction from the competent authority.

(d) Further course of action to be adopted after discharge due to invalid sanction

21. In the communication addressed by the State Government to the Central Government on 26.03.2018, it was stated that investigating officers were not able to substantiate the allegations against respondent No.2 beyond reasonable doubt and hence the matter has been closed. The communication dated 26.03.2018 (Annexure R-5) is reproduced hereunder:-

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> "I am directed to refer to your letter No.107/7/2014-AVD.I dated 25.07.2017 on the subject mentioned above. The views/comments of the State Government in respect of sanction of prosecution under the PC Act, 1988 along-with opinion of Law Department of the State Government on the merits of the case have been sought vide above mentioned letter.
>
> 2. The competent authority has re-examined the matter and has concluded that the investigating officers have neither clearly rebutted the issues raised by Sh. Vijay Kumar Janjua, IAS nor have they answered the points raised by him in his representation dated 14.07.2014, and, therefore, the benefit of inadequate rebuttal and non-reply by the investigating officers should go to the concerned officer. As allegations against the officer have not been substantiated beyond reasonable doubt by the investigating officers, hence, the matter has been closed."
>
> 3. In the light of above, it is intimated that the prosecution sanction sought vide letter dated 06.05.2014 of the State Government is not required and this letter may be treated as withdrawn. Therefore, keeping in view the decision taken by the State Government, the views/comments of the State Government and Law Department of State Government on sanction of prosecution are not required."

22. The Central Government, consequently, vide letter dated 01.05.2018, on the request of the State Government had sent back the proposal along with the documents. The relevant paragraphs of the letter dated 01.05.2018 is reproduced hereunder:-

> "I am directed to refer to your letter dated 26.03.2018 on the subject mentioned above in reference

> to this Department's letter of even number dated 25.07.2017. The proposal of the State government of Punjab has not been construed to receive by this Department under Single window system being incomplete.
> 2. Proposal sent to this Department along with the documents for issuance of prosecution sanction against Sh. Vijay Kumar Janjua, IAS (PB: 89) in case no. 09 dated 09.11.2009 registered by State Vigilance is returned herewith in original subsequent to the decision of the State Government of Punjab regarding closing of matter."

23. It is noteworthy that the sanctioning authority has to only see, whether a *prima facie* case for commission of offence is made out or not. The allegations can be proved beyond reasonable doubt only after appreciation of evidence by the trial Court at the conclusion of the trial. It is not mentioned in the communication dated 26.03.2018 (Annexure R-5) as to whether any fresh material except a representation by respondent No.2 dated 14.07.2014 had come to the light due to which the State Government had withdrawn its proposal from the Central Government. The challan had been filed on 29.04.2010 and no further investigation appears to have been carried out thereafter. The order dated 27.04.2010 granting sanction by the State Government has neither been specifically withdrawn nor reviewed by the State Government although the State Government is not the competent authority to accord sanction. Even otherwise, it is well settled that once an order has been passed by the competent authority under Section 19 of the PC Act, it is not permissible for the sanctioning authority to review or reconsider the matter on the same material again. However, the matter can be reconsidered by the sanctioning authority only in the light of fresh

material. Reference may be made to the judgment in the case of **State of Himachal Pradesh Vs. Nishant Sareen (2010) 14 SCC 527.** The relevant paragraph of the judgment is reproduced hereunder:-

> "12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course."

24. The Supreme Court in the case of **State of Goa v. Babu Thomas (supra)** held that sanction to prosecute the respondent therein who was employed as a Joint Manager in the Goa Shipyard Limited had been granted by an incompetent authority. The Supreme Court, taking into account the gravity of the allegations against the respondent therein, had permitted the competent authority to issue fresh sanction order and directed the trial Court to proceed afresh against the respondent from the stage of taking cognizance of the offence. The allegations against the respondent therein were that he had demanded and accepted an illegal gratification of Rs.3,68,000/- for showing favour to a contractor. The relevant extract of the operative part of the judgment in the case of **State of Goa v. Babu Thomas (supra)** is reproduced hereunder**:-**

> "14. Having regard to the gravity of the allegations leveled against the respondent, we permit the competent authority to issue a fresh sanction order by an authority competent under the Rules and proceed afresh against the respondent from the stage of taking cognizance of the offence and in accordance with law."

25. I may also refer to the judgment of the Supreme Court in the case of **State of Karnataka v. C. Nagarajaswamy (supra)** wherein the allegation against the accused therein, who was Manager in the Bank was that she had misappropriated a sum of Rs.40,000/-. The sanction to prosecute the accused therein had been initially granted by an incompetent authority and the accused was discharged. Subsequently, the sanction had been granted by the competent authority and fresh charge sheet was filed which was challenged by the accused. The High Court quashed the proceedings by holding that *de novo* proceedings were bad in law. The

appeal thereagainst was allowed by the Supreme Court and the judgment of the High Court was set aside. The Supreme Court did not accept the contention of the respondent therein that she should not be put to trial again. The Supreme Court requested the trial Court to dispose of the case expeditiously. The relevant extract of the judgment in the case of **State of Karnataka v. C. Nagarajaswamy (supra)** is reproduced hereunder**:-**

> "26. The learned counsel for the respondent next contended that having regard to the fact that the respondents herein have faced ordeal of trial for a long time, it would not be in the interest of justice to put them on trial once again. In this behalf he relied on the decision of this Court in State of M.P. v. Bhooraji [(2001) 7 SCC 679 : (2001) SCC (Cri) 1373 : JT (2001) 7 SC 55] wherein it is observed that fresh trial should be ordered only in exceptional cases of "failure of justice". In Bhooraji [(2001) 7 SCC 679 : (2001) SCC (Cri) 1373 : JT (2001) 7 SC 55] the specified court being a Sessions Court took cognizance of the offence under the SC and ST (Prevention of Atrocities) Act without the case being committed to it. It convicted and sentenced the accused. During pendency of appeal by the accused before the High Court, this Court took the view that committal proceedings are necessary for a specified court to take cognizance of offences to be tried under the Act. The High Court, therefore, quashed the entire proceedings and directed trial de novo. In that context this Court held that ordering de novo trial was not justified and as the trial was conducted by a "competent court", the same cannot be erased merely on account of a procedural lapse. We may notice that in a case where the trial was conducted by a court of competent jurisdiction ending in conviction or acquittal, a retrial may not be directed. Interpreting Section 465 of the Code, this Court in

Bhooraji [(2001) 7 SCC 679 : (2001) SCC (Cri) 1373 : JT (2001) 7 SC 55] held : (SCC p. 689, para 22)

> "22. The bar against taking cognizance of certain offences or by certain courts cannot govern the question whether the court concerned is 'a court of competent jurisdiction', e.g. courts are debarred from taking cognizance of certain offences without sanction of certain authorities. If a court took cognizance of such offences, which were later found to be without valid sanction, it would not become the test or standard for deciding whether that court was 'a court of competent jurisdiction'. It is now well settled that if the question of sanction was not raised at the earliest opportunity the proceedings would remain unaffected on account of want of sanction. This is another example to show that the condition precedent for taking cognizance is not the standard to determine whether the court concerned is 'a court of competent jurisdiction'."

27. xxxxxxx

28. xxxxxxx

29. xxxxxxx

30. xxxxxxx

31. Keeping in view the aforementioned principles and having regard to the facts and circumstances of this case, however, we are of the opinion that the interest of justice shall be subserved if while allowing these appeals and setting aside the judgments of the High Court, the trial Court is requested to dispose of the matters at an early date preferably within six months from the date of communication of this order, subject, of course, to rendition of all cooperation of the respondents herein. In the event the trial is not completed within the aforementioned period it would be open to the

respondents to approach the High Court again. These appeals are disposed of with the aforementioned directions. No costs."

26. It would be difficult to accept the contention of learned counsel for respondent No.2 that as the case was lodged against the petitioner in a *mala fide* and motivated manner, the matter ought to be closed at this stage as it has been rendered infructuous. Reliance has been placed upon the judgment of the Supreme Court in the case of **Nanjappa Vs. State of Karnataka (supra)**. This judgment is clearly distinguishable on facts and would not be applicable to the case of respondent No.2 for the reason that the accused therein who was working as a Bill Collector with the Gram Panchayat was alleged to have accepted illegal gratification of Rs.500/- for furnishing a copy of the resolution of the Panchayat. The accused therein had faced the trial. He had been convicted and sentenced. On the contrary, respondent No.2 is the member of the Indian Administrative Service and the allegation pertains to illegal gratification of Rs.2 lacs.

27. Curiously, the criminal proceedings appear to have had no effect on respondent No.2 who rose to the positions of Financial Commissioner, Revenue and Chief Secretary of the State, which is the highest post in the State bureaucracy.

28. It is a settled proposition of law that criminal prosecution if otherwise justifiable and based on adequate evidence is not vitiated on account of *mala fide* of the first informant. Reference can be made to the judgments of the Supreme Court in the cases of **Sheonandan Paswan Vs. State of Bihar (supra)** and **Krishna Ballabh Sahay and others vs. Commission of Enquiry &others, 1969 SCR (1) 387**.

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29. This Court would not opine on the merits of the case at this stage but the allegations against respondent No.2, who was occupying a senior post in Indian Administrative Service, are rather serious because he had allegedly demanded Rs.6 lacs for allotting the vacant plot adjacent to the broiler factory of the petitioner. Although the deal was struck at Rs.5 lacs, an amount of Rs.2 lacs was to be paid initially to him while the remaining amount of Rs.3 lacs was to be paid after the completion of work. On the statement of the complainant, a trap was laid by the Vigilance Bureau on 09.11.2009 and the currency notes, which were handed over by the petitioner to respondent No.2, were covered with phenolphthalein powder and later, the demonstration of reaction of phenolphthalein powder with solution of sodium carbonate was conducted and the alleged recovery to the tune of Rs.2 lacs was effected in the presence of two witnesses, namely, Sukhmander Singh, Research Officer, Planning Department, Punjab, Chandigarh and Sh. Subhash Chawla, Superintendent Grade-I, Office of the Director Education Department, Punjab, Chandigarh.

30. It deserves to be noticed that although the salaries of the government employees have increased handsomely over the years but corruption continues unabated as there is no limit to human greed. The social stigma attached to corruption is also diminishing. The element of risk for indulging in corrupt practices needs to be increased to serve as a deterrent. Corruption appears to be a low risk and high profit venture and it is imperative that it becomes a low profit and high risk venture if it has to be ultimately eradicated. It is need of the hour to adopt a zero tolerance approach to corruption.

31. The Supreme Court in the case of **State of Chhattisgarh and another Vs. Aman Kumar Singh and others (supra)** has expressed grave concern over the malaise of corruption and observed that the investigations or inquiries that follow these scams are botched and assume the proportion of bigger scams than the scams themselves. The relevant paragraph of the judgment is reproduced hereunder:-

> *"*49. xxxxxxx…..Though it is a preambular promise of the Constitution to secure social justice to the people of India by striving to achieve equal distribution of wealth, it is yet a distant dream. If not the main, one of the more prominent hurdles for achieving progress in this field is undoubtedly 'corruption'. Corruption is a malaise, the presence of which is all pervading in every walk of life. It is not now limited to the spheres of activities of governance; regrettably, responsible citizens say it has become a way of one's life. Indeed, it is a matter of disgrace for the entire community that not only on the one hand is there a steady decline instead fastly pursuing the lofty ideals which the founding fathers of our Constitution had in mind, degradation of moral values in society is rapidly on the rise on the other. Not much debate is required to trace the root of corruption. 'Greed' regarded in Hinduism as one of the seven sins, has been overpowering in its impact. In fact, unsatiated greed for wealth has facilitated corruption to develop like cancer. If the corrupt succeed in duping the law enforcers, their success erodes even the fear of getting caught. They tend to bask under a hubris that rules and regulations are for humbler mortals and not them. To get caught, for them, is a sin. Little wonder outbreak of scam is commonly noticed. What is more distressing is the investigations/ inquiries that follow. More often than not, these are

> botched and assume the proportion of the bigger scams than the scams themselves. xxxxxx"

32. It is trite law that in the event of discharge of a public servant for want of sanction or illegality of sanction, the matter ought not be closed but revived on the grant of sanction by the competent authority as held by the Supreme Court in the cases of **State of Goa v. Babu Thomas (supra)** and **State of Karnataka v. C. Nagarajaswamy (supra)**.

33. The petitioner had preferred the writ petition bearing CWP No.1406 of 2020 challenging the withdrawal of the proposal sent by the State Government to the Central Government for granting sanction to prosecute respondent No.2. That petition had been preferred much after the instant petition which was preferred in the year 2016. It is noteworthy that respondent No.2 was the Chief Secretary, Punjab, when CWP bearing No.1406 of 2020 was withdrawn on 18.08.2022. The petition has been dismissed as withdrawn and there was no adjudication on merits.

34. This Court cannot shut its eyes to the serious allegations against the petitioner. If this Court allows the matter to be closed or brushed under the carpet at this stage it would be failing in its duty to ensure that justice is not only done but seem to be done in cases involving corruption by high government functionaries. It is the sacred duty of this Court to uphold the rule of law and any leniency in corruption cases would erode the faith of the common man in the rule of law. Respondent No.2 was a member of the Indian Administrative Service and posted as the Director, Department of Industries and Commerce, Punjab, when the FIR was registered against him in the year 2009.

35. It is true that this Court cannot direct the competent authority to accord sanction. It is entirely up to the competent authority to independently decide the issue of grant of sanction.

36. However, this Court while exercising jurisdiction under Section 482 Cr.P.C. would direct the competent authority to apply its mind to the issue of granting sanction to prosecute respondent No.2 after considering the relevant material and take a decision in accordance with law.

VII. Concealment of material particulars by respondent No.2

37. It is important to note that respondent No.2, in his reply, has referred to the order passed by the Magistrate on 30.11.2019 on the application preferred by respondent No.2 under Section 156(3) Cr.P.C. for directing the SHO, Police Station Sector 17, UT, Chandigarh, to carry out the investigation after registration of FIR against the Police/Vigilance officers and the petitioner herein for fabricating evidence and filing a false case against him.

38. The trial Court treated the application under Section 156(3) Cr.P.C. as a complaint and summoned the petitioner herein and the Police/Vigilance officers by order dated 30.11.2019 while opining that a *prima facie* case for commission of various offences is made out. Respondent No.2 had also placed on record a copy of the order dated 30.11.2019 as Annexure R-10 by preferring application bearing CRM No. 8228 of 2023 on 16.02.2023. There is no mention in the application about the subsequent orders or the outcome of these proceedings and, therefore, this Court learnt about the status of those proceedings from the website of this Court as well as the District Court, Chandigarh, which revealed startling facts not disclosed by respondent No.2. The order dated 30.11.2019 was

challenged by the petitioner herein by preferring a petition bearing CRM-M No.8764 of 2020 before this Court. The petition was dismissed as withdrawn before the Coordinate Bench of this Court on 13.04.2023 after the Court had been informed that the main criminal complaint was withdrawn by respondent No.2 before the trial Court on 16.08.2022. The operative part of the order passed on 13.04.2023 in CRM-M No.8764 of 2020 is reproduced hereunder:-

> "Report submitted by the trial Court is ordered to be taken on record.
>
> As per the report submitted by the learned trial Court, the main criminal complaint already stands dismissed as withdrawn vide order 16.8.2022.
>
> Faced with the aforesaid situation, the counsel for the petitioner prays for permission to withdraw the petition.
>
> Dismissed as withdrawn."

39. A copy of the order dated 16.08.2022 passed by the trial Court whereby the complaint had been dismissed as withdrawn as downloaded from the website of the e-courts Chandigarh is reproduced hereunder:-

> "File taken up today on the application filed by counsel for complainant for withdrawing the present complaint. Sh. Anandeshwar Adv has filed POA on behalf of the complainant. Statement of complainant has been recorded, withdrawing the present complaint. Therefore, in view of the statement of the complainant, the present complaint stands dismissed as withdrawn. Accused stands discharged. File be consigned."

40. It is, thus, patent that respondent No.2 has placed heavy reliance on the interim order passed by the Judicial Magistrate (trial Court) on 30.11.2019 without disclosing the factum that the complaint itself had

been withdrawn by him on 16.08.2022. The reply on behalf of respondent No.2 in the instant petition was filed on 08.08.2023. The relevant extract of the reply wherein the order dated 30.11.2019 passed by the Magistrate is referred to by respondent No.2 is reproduced hereunder:-

> "4. That the purpose of prior prosecution sanction u/s 19 of the PC Act, 1988 is to protect the honest officers and to ensure that no innocent person is subjected to vexatious, frivolous or malicious prosecution. To protect the public servants from harassment the provision of prior sanction has been provided. Only if a prima facie case is made out the competent authority grants prosecution sanction. The Learned Judicial Magistrate of Chandigarh, on an application filed 156(3) Cr.P.C. by the respondent No.2, vide his order dated 30.11.2019 (Annexure R-10) has held that prima facie the case against the respondent was result of criminal conspiracy, false charge was made against him and evidence was fabricated. This order was passed after nearly 8 years of trial and the relevant portion has been extracted below:
>
> > "On the basis of above discussions, prima facie commission of offence punishable under Section 120B (criminal conspiracy), 166 (Public servant disobeying law), 167 (Public servant framing an incorrect document), 186 (obstructing a public servant), 195 (for fabricating false evidence), 211 (False charge with intent to injure), 218 (Public servant framing incorrect record), 347 (wrongful confinement to extort property), 353 (assault on public servant), 355 (criminal force to dishonor person), 357 (criminal force to confine a person), 365 (Kidnapping to confine secretly), 386 (Extortion by putting a person in fear of grievous injury), 452 (Criminal Trespass) and 500 (Defamation) of IPC, 1860 by the accused namely S.S. Mand, SP Vigilance, Ludhiana Ravcharan Singh Brar, DSP Vigilance

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> Ludhiana, SP Singh SP Vigilance (Retd.), Tulsi Ram Misra and Ram Swarth Misra appears to have been committed."

41. It was incumbent upon respondent No.2 to have disclosed the factum of withdrawal of the complaint. Once the complaint has been withdrawn by respondent No.2, he ought not to have relied upon the interim order passed therein. The conduct of respondent No.2 does not redound to the credit of a person who has held the high office of Chief Secretary of a State.

42. Even otherwise, the order summoning the accused to face trial after recording preliminary evidence has been passed by the Magistrate without considering the defence version and without issuance of notice to the accused. The Magistrate at that stage was not required to evaluate the merits of the material or sufficiency of evidence of the complainant (respondent No.2 herein). Respondent No.2 has relied upon the call details and the location of the petitioner herein and others including police/Vigilance officers. These are issues which would require determination at the trial after appreciation of evidence led by the parties.

VIII. Conclusion

43. In the result, this Court does not find any manifest illegality in the impugned order discharging respondent No.2 for the time being, but at the same time this Court deems it fit to direct the State of Punjab to forward all documents pertaining to the consideration for grant of sanction to prosecute respondent No.2 to the Central Government. The Chief Secretary, Punjab shall forward the papers within a month to the Secretary, Department of Personnel and Training, Government of India. The competent authority in the Central Government would consider the issue and take a final decision in

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accordance with law within a period of three months extendable by another month from the receipt of the papers.

44. Needless to say that the observations made hereinbefore are for the purpose of deciding this petition and would not be construed as an expression of opinion on the merits of the case against respondent No.2.

45. In case, the sanction is accorded to prosecute respondent No.2, the trial Court shall proceed in accordance with law and conclude the trial expeditiously.

46. The petition stands disposed of accordingly. Pending application(s), if any, also stands disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

Pronounced on: 15.09.2023
SwarnjitS

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No