

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

Judgment reserved on : November 24, 2010
Judgment delivered on : December 10, 2010

+ **CRIMINAL REVISION PETITION NO.208/2005 &
CRL.M.A. NO.3408/2005**

GULAB TULSIANI

..... PETITIONER

Through: Mr.K.K.Sud, Senior Advocate with
Mr.Dinesh Monga, Advocate.

Versus

STATE(THROUGH CBI)

..... RESPONDENT

Through: Mr.Vikas Pahwa, Standing Counsel
with Mr.Tarun Verma, Advocate.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. Instant Revision Petition is directed against the order dated 16.2.2005 passed by learned Special Judge in FIR R.C.No.40/86-DLI P.S. SUI/AC Branch CBI whereby learned Special Judge framed charges under Section 5(2) read with Section 5(1)(d) of the old Prevention of Corruption Act (for short 'P.C. Act') and Section 161 IPC.

2. Briefly stated, facts relevant for the disposal of this petition are that the petitioner Gulab Tulsiyani, a judicial officer was charge sheeted for having demanded and accepted a sum of Rs.2,000/- as illegal gratification from Shri Ajesh Mittal of M/s Mittal Paint and Chemicals, Railway Road, Samaepur, Delhi for showing him favour in a challan case.

3. The petitioner filed a petition under Section 482 Cr.P.C. for quashing of the charge sheet on the ground that sanction for prosecution accorded by the Lt. Governor Delhi was invalid. Said petition was dismissed by Ld. Single Judge of this court vide order dated 1.12.89, observing that sanction for prosecution was validly accorded by the Administration of Delhi.

4. Aggrieved by the order of learned Single Judge, petitioner filed Writ Petition No.174/98 and Crl.Misc. No.1317/98 before the High Court. Vide order dated 19.05.98, the High Court dismissed the said writ petition and application as not maintainable in view of the order passed by Ld. Single Judge on 1.12.89. The High Court, however, made it clear that irrespective of dismissal of the writ petition, it would be open to the petitioner to challenge the validity of sanction in view of the decision of Division Bench of this court in the matter of **B.S. Chaudhary Vs. Lt.Governor & Ors., 1994 (3) CCC 308**. In view of the above observations, the petitioner raised the question of validity before the trial court and learned Special Judge, vide order dated

30.03.2002, discharged the petitioner, holding the sanction to be invalid.

5. CBI again filed a charge sheet on 16.11.2002 without obtaining sanction for prosecution of the petitioner, pleading that in the intervening period, the petitioner had retired from service, as such no sanction for his prosecution was required. The petitioner filed an application challenging the taking of cognizance against him and also for his discharge on the ground that neither the sanction under Section 6 of the P.C. Act 1947 nor the sanction under Section 197 of the Code of Criminal Procedure (for short `Cr.P.C.'), which is sine qua non for taking cognizance, was obtained by the prosecution.

6. The learned Special Judge, vide impugned order dated 16.2.2005 rejected the plea of the petitioner, observing that since the act alleged to have been committed by the petitioner was not done in discharge of his official duty, sanction under Section 197(1) Cr.P.C was not required. Learned Special Judge also took the view that since at the time of filing of the subsequent charge sheet, the petitioner was no more in service, as per the law laid down by the Supreme Court, sanction for his prosecution under Section 6 of the P.C. Act was not required. Learned Special Judge, on consideration of the material placed before him, framed charges under Section 161 IPC and Section 5(1)(d) read with Section 5(2) of the P.C. Act against the petitioner.

7. The petitioner has assailed the impugned order on the ground that cognizance taken by the Special Judge and consequent framing of charge against him is bad for want of sanction for prosecution of the petitioner under Section 197 Cr.P.C. as well as under Section 6 of the P.C. Act. Learned counsel for the petitioner submitted that admittedly, the petitioner was working as a Magistrate at the relevant time and the allegations against him relate to abuse of his office, therefore the sanction for his prosecution under Section 197 Cr.P.C. by the State Govt. was sine qua non for taking cognizance of the charge sheet filed against the petitioner. Learned counsel submitted that admittedly, no sanction under Section 197(1) Cr.P.C. has been placed on record, therefore taking of cognizance as well as framing of charge against the petitioner is bad in law.

8. I am not convinced with the above submissions made on behalf of the petitioner. Section 197(1) of the Cr.P.C. reads thus:-

“Section 197 - Prosecution of Judges and public servants

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]”

9. Bare perusal of above provision makes it clear that protection under Section 197(1) Cr.P.C. is available to Judges and public servants only in relation to the offence alleged to have been committed by them while acting or purporting to act in discharge of their official duty. As per the allegations in the charge sheet, the petitioner is stated to have demanded illegal gratification from the complainant for showing him official favour in a challan case pending in the court. Aforesaid act of demanding bribe for official favour, by no stretch of imagination, can be termed as an act purported to have been done in discharge of the official duty of a Magistrate. Therefore, in my considered view, Section 197(1) Cr.P.C. is not attracted in this case and the sanction for prosecution of the petitioner for demanding and accepting bribe, under this provision of law, is not necessary.

10. In my aforesaid view, I find support from the judgment of the Supreme Court in the matter of ***Shambhu Nath Misra Vs. State of U.P. (1997) 5 SCC 326*** wherein it was observed thus:-

“4. Section 197(1) postulates that “when any person who is ... a public servant not removable from his office, save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction” of the appropriate Government/authority. The essential requirement postulated for the sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant’s act is in furtherance of the performance of his official duties. If the act/omission is integral to the performance of public duty, the public servant is entitled to the protection under Section 197(1) of CrPC. Without the previous sanction, the complaint/charge against him for the alleged offence cannot be proceeded with in the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of the sanction by competent authority or appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a finding that the crime and the official duty are not integrally connected.

5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it

is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.”

11. Next contention on behalf of the petitioner is that once the petitioner was discharged by the Special Judge vide order dated 16.2.2005 with the observation that the prosecution may file fresh charge sheet against the petitioner after obtaining a proper sanction or removing the defects in the sanction, the prosecution, while filing the second charge sheet, was under obligation to obtain sanction for prosecution of the petitioner under Section 6 of the P.C. Act 1947 and it could not have taken shelter of the fact that no sanction was required as the petitioner had already retired from service.

12. It is admitted case of the prosecution that the charge sheet against the petitioner has been filed without obtaining sanction for his prosecution under Section 6 of the P.C. Act 1947. The plea taken by the prosecution is that there was no need of sanction for prosecution as by the time the charge sheet was filed, the petitioner had already ceased to hold the Office of Metropolitan Magistrate. The question of law which requires consideration is whether or not after the cessation of office by a public servant either by retirement or termination of service, sanction for his prosecution under Section 6 of the P.C. Act 1947 is *sine qua non* for taking cognizance of the offences purportedly

committed by him. Law on this issue is well settled. It has been held by the Supreme Court in various pronouncements that once a public servant accused of an offence under P.C. Act has ceased to hold public office, no sanction for his prosecution is required.

13. In the case of **Kali Charan Vs. State of Orissa**, (1998) 6 SCC 411, it was held that a public servant who committed an offence mentioned in the P.C. Act while he was a public servant can be prosecuted with the sanction contemplated in Section 19 of the P.C. Act 1988 (corresponding to Section 6 of the P.C. Act 1947) if he continues to be a public servant when the Court take cognizance of the offence. But, if he ceases to be a public servant by that time, the Court can take cognizance of offence without any sanction.

14. In the matter of **State of Kerela Vs. Padmanabhan**, 1999(6) AD (SC) 363, it was held that an accused facing prosecution for offence under P.C. Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date on which the Court took cognizance of offence.

15. Petitioner has relied upon the case **R.Balakrishna Pillai Vs. State of Kerela and Another**, AIR 1996 SC 901. Even in that case, the Supreme Court, while dealing with the issue of sanction under Section 6 of the P.C. Act 1947 in the case of a public servant who had ceased to be in office at the time of taking cognizance of offence by the Court, upheld the view of the High Court that in such a case,

sanction for prosecution was not required. From the above pronouncements of Supreme Court, it is apparent that once a public servant ceases to hold the office, he cannot take shelter of the protection granted under Section 6 of the P.C. Act 1947 to evade prosecution and punishment for the offence of corruption committed by him.

16. The next submission on behalf of the petitioner is that once the Special Judge had discharged the petitioner vide order dated 30.3.2002 and observed that prosecution may file fresh charge sheet after obtaining a proper and valid sanction for prosecution and once that order had become final, the successor court could not have taken a view that no sanction for prosecution was required because the petitioner had retired because as such, the order amounts to review of the earlier order passed by the Court.

17. I find no substance in this contention. On perusal of the order dated 30.3.2002 of the then Special Judge, it transpires that while discharging the petitioner, the Special Judge gave opportunity to the prosecution to file fresh charge sheet after obtaining proper sanction, after removing the defect/infirmities in the sanction order. From this, it is obvious that by that order, the Special judge left a window open for the prosecution to file a fresh charge sheet. Once the fresh charge sheet was filed, in my considered view, the then Special Judge who dealt with the charge sheet was within his powers to consider the

charge sheet and take cognizance on the strength of the facts prevailing at that stage. Since the petitioner had retired before the filing of subsequent charge sheet, there was no requirement of law to obtain sanction for his prosecution. Therefore, I find that the learned Special Judge, while passing impugned order dated 16.2.2005 rightly took the view that no sanction for prosecution was required and framed charges against the petitioner on the basis of the material produced by the prosecution.

18. The petitioner further submitted that filing of the initial challan by the respondent CBI without obtaining proper sanction for prosecution has caused immense mental, physical and emotional stress as well as harassment to the petitioner for more than 24 years. The petitioner contended that speedy trial is a right of every citizen and it is an integral part of right to life and liberty enshrined in Article 21 of the Constitution of India. It is urged that continuation of further proceedings against the petitioner after more than 24 years of his arrest would be contrary to the basic principles of Article 21 of the Constitution and consequently, the charge sheet as well as the charges framed against the petitioner are liable to be set aside. In support of this contention, petitioner has relied upon the judgment of Supreme Court in the matter of **Motilal Saraf vs. State of Jammu & Kashmir & Anr.**, IV (2006) CCR 141 (SC).

19. Learned counsel for the CBI, on the other hand, has submitted that this is not a fit case in which the prosecution should be quashed on the ground of delay. He has submitted that in the matter of **State of Karnataka Vs. C. Nagarajaswamy**, (2005) 8 SCC 370, the Supreme Court allowed the appeals of the State against the order of the High Court quashing the trial proceedings, declining to discharge or acquit the accused and requested the Trial Court to dispose of the matter at an early date, preferably within six months.

20. It is true that speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 of the Constitution and the law must ensure reasonable, just and fair procedure for trial of an accused. It is also true that in both the judgments relied upon by the petitioner as well as CBI respectively, Supreme Court emphasised on the importance of right to speedy trial. In the matter of **State of Karnataka vs. C. Nagarajaswamy**(supra), Hon'ble Supreme Court discussed several pronouncements of the Supreme Court and Privy Council and concluded thus:

“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."

21. From the above, it is apparent that whether or not the prosecution should be allowed to continue would depend upon the facts and circumstances of the case.

22. Allegations against the petitioner are that, he being a judicial officer holding the office of Metropolitan Magistrate, demanded and accepted illegal gratification for showing official favour in the trial of a challan case pending in the Court. Judicial officer holds a sacred office and it is his duty to uphold and enforce the laws. It is expected of a Judicial Officer to maintain impeccable integrity because when all the doors are closed to the ordinary citizen, he looks up to judicial officers/Judges for justice. Thus, there can be no denial that the allegations against the petitioner are of grave nature, which if true, ought not to go unpunished. Now, coming to the question of delay. On perusal of the history of this case earlier noted in paras 3 to 6 of this order, it is apparent that the delay in prosecution of this case is mainly for the reason that there was a lack of clarity about the legal position about the procedure for according the sanction for prosecution of a judicial officer guilty of the offence under P.C. Act. The confusion got cleared by the judgment of the Division Bench of this Court in the case of **B.S. Chaudhary (supra)** in the year 1994. When the aforesaid judgment came, the petitioner took another chance to wriggle out of

the prosecution by challenging the sanction accorded by the Lt. Governor on the ground that it was not accorded in consultation with the High Court. The writ petition filed by the petitioner was, however, dismissed as not maintainable but the High Court permitted him to raise this issue before the trial court. The petitioner accordingly raised the issue before the trial court and ultimately the charge sheet was quashed and the petitioner was discharged for want of valid sanction, vide order dated 30.3.2002. By that time, the petitioner had ceased to hold the office of judicial officer. Therefore, the prosecution filed fresh charge sheet without undertaking the exercise of obtaining fresh sanction for prosecution because as per the settled law, in the case of an accused who ceased to hold his office, a sanction for his prosecution under P.C. Act is not required. Despite that being settled position of law on sanction, the petitioner took a chance and again challenged the order of cognizance taken by the Special Judge on the ground that charge sheet has been filed without obtaining fresh sanction in the light of the law enunciated in **B.S. Chaudhary's** case(supra). Learned Special Judge dismissed his plea against which present Revision Petition is filed. From this, it is clear that to a large extent the petitioner and accused is responsible for delay in trial. As such, he cannot be permitted to take advantage of his own wrong to wriggle out of the prosecution for the offence allegedly committed by him. Thus, going by the ratio of the judgment in the matter of **State of**

Karnataka vs. C. Nagarajaswamy(supra), I am of the view that this is not a case which should be quashed.

23. Thus, going by the ratio of judgment in the matter of **State of Karnataka vs. C. Nagarajaswamy**(supra) and keeping in view the facts and circumstances of the case, I am of the opinion that interest of justice shall be served if, while dismissing the petition of the petitioner, trial court is requested to dispose of the matter at an early date, preferably within six months from the date of communication of this order. In the event trial is not completed within aforementioned period, it would be open to the petitioner to approach the High Court again for appropriate directions.

24. In view of the above, the petition is dismissed.

DECEMBER 10, 2010
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AJIT BHARIHOKE
(JUDGE)