

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

Judgment delivered on: August 10, 2011

+ **CRIMINAL APPEAL No.976/2010**

K.C. SINGH

....APPELLANT

Through: Mr. D.N. Goburdhun, Advocate with
Mr. P. Bagchi, Advocate.

Versus

CBI

.....RESPONDENT

Through: Mr. Harish Gulati, Advocate with
Mr. Anindya Malhotra, 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. (ORAL)

1. K.C.Singh, the appellant herein, vide impugned judgment dated 24th July, 2010 in corruption case No. 37/2004, RC No. DAI-2001-A-0029/CBI/ACB/New Delhi and the consequent order on sentence dated 27th July, 2010 has been convicted for the offences under Section 7 & 13(2) read with Section 13(1)(d) of P.C.Act, 1988 for having demanded illegal gratification of ₹ 5000/- from the complainant for issue of bus permit (on transfer) pursuant to his application and accepting the amount from his partner Nawab Khan to undergo RI for the period of 03

years and also to pay fine of ₹ 2500/-, in default, to undergo RI for a period of 03 months on respective charges. Feeling aggrieved by the aforesaid conviction and order on sentence, the appellant has preferred this appeal.

2. The appellant, in his grounds for appeal, apart from challenging the impugned judgment on merits, has taken a plea that the impugned judgment is liable to be set aside for the reason that the cognizance taken in this case is bad as the order granting sanction for the prosecution of the appellant is illegal, having been issued without application of mind to the facts and circumstances of the case.

3. Learned Sh. D.N. Goburdhun, Advocate appearing for the appellant submitted that as per the scheme of Section 19 of the Prevention of Corruption Act, 1988, a public servant accused of having committed an offence under Section 7,10,11,13 & 15 of the P.C. Act is protected from prosecution unless there is a valid sanction for his prosecution accorded by the competent authority as envisaged in Section 19 of the P.C. Act, 1988. It is submitted that in the instant case, the sanction order relied upon by the prosecution is invalid and bad in law for the reason that the aforesaid sanction order has been passed arbitrarily without any application of mind to the material collected during investigation by the sanctioning authority. In support of this contention, learned counsel for the appellant has referred to the testimony of the competent authority

PW3 Ms. Sindhu Shree Khullar, the then Secretary (Transport), wherein she admitted that along with the request for grant of sanction for prosecution of the appellant, SP, CBI had also forwarded the draft sanction order. Learned counsel contended that comparison of draft sanction order with the sanction order Ex.PW3/A would show that it is the verbatim copy of the draft, which gives rise to an inference that the competent authority has accorded sanction for prosecution of the appellant arbitrarily without referring to the incriminating material collected during investigation by signing on verbatim copy of the draft sanction order. Learned counsel contended that aforesaid inference finds strength from the fact that the draft sanction order Mark DX-I as well as sanction order Ex.PW3/A records in Para 9 "that the said washes were sent to CFSL for opinion of the expert vide letter No. 3220 dated 29th March, 2001" meaning thereby that if at all the sanctioning authority had considered the material placed before it, it had considered the CFSL report mentioned in Para 9, which obviously is not the CFSL report regarding chemical analysis of hand washes and pant pockets wash allegedly collected during raid. This is evident from the CFSL report No. CFSL-2001/C-0138 and not report CFSL-2001/C-0176 dated 30th April, 2001. From this, learned counsel for the appellant has urged this court to infer that sanction has been accorded by the sanctioning authority either on the basis of wrong CFSL report or

without referring to the material collected during investigation, as such, it is contended that sanction order is bad in law, having been issued arbitrarily without application of mind to the material collected during investigation, by appending signatures on the verbatim copy of the draft sanction order sent by S.P., CBI. Learned counsel submitted that from the above, it is apparent that the cognizance taken by the learned Special Judge was also bad in law, therefore, the entire trial stands vitiated and the conviction of the appellant is liable to be set aside. In support of this contention, learned counsel for the appellant has relied upon the judgment of Supreme Court in the matter of **State of Karnataka Vs. Ameerjan**, (2007) 11 SCC 273.

4. Learned counsel appearing for the CBI, on the contrary, has refuted the above contention. He submits that witness PW3 Sindhu Shree Khullar was not confronted with this aspect of the matter, as such, the appellant cannot take advantage of this infirmity because he did not seek any explanation for this infirmity from the witness. Learned Prosecutor has also relied upon the judgment of Supreme Court in the matter of **State (Anti-Corruption Branch), Govt. of NCT of Delhi & Anr. Vs. Dr. R.C.Anand & Anr.**, 2004 (4) SCC 615 wherein, the Supreme Court did not attach any importance to non-production of report of the expert pertaining to tape-recording before the sanctioning authority at the time of grant of sanction.

5. I have considered the rival submissions and perused the record. Section 19 of the Prevention of Corruption Act, 1988 provides for a complete bar on the powers of the court to take cognizance of the offences punishable under Sections 7, 10, 11, 13 & 15 of the P.C. Act against a public servant except with the previous sanction of the sanctioning authority as defined under Section 19 (a) to (c) of the P.C. Act. The object behind this provision is to provide a reasonable protection to the public servant against undue harassment by disgruntled elements against whom he might have taken some decision during the course of his official duty. The grant of sanction, thus, is a solemn function which, the sanctioning authority is required to perform with due care and due application of mind to the material placed before him/her along with the request for sanction for prosecution.

6. In the matter of **State of Karnataka Vs. Ameerjan (supra)**, the Supreme Court, while dealing with the role of sanctioning authority while granting the sanction for prosecution under P.C. Act observed thus:

“10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof

or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced”.

7. The Privy Council, in **Gokulchand Dwarkadas Morarka Vs. King**, AIR 1948 PC 82, opined that the object of the provision for sanction is that the authority giving it should be able to consider for itself the evidence, before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden, stating:

“In Their Lordships’ view, to comply with the provisions of Clause 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since Clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction.”

The said decision has been referred to by the Supreme Court, with approval, in Jaswant Singh V. State of Punjab”.

From the above, it is obvious that the concerned authority, while considering the request for grant of sanction for prosecution, is expected to apply his/her mind carefully to the incriminating material collected during investigation, failing which, the sanction order would not pass the test of validity.

8. The case of the prosecution is that after the recovery of bribe money from the appellant, he was made to dip his respective hands in freshly prepared Sodium Carbonate solution, which in both events, turned pink. Similarly, the left side pocket wash of his pant was also dipped in Sodium Carbonate solution. It also turned pink. The respective hand washes and the left side pant pocket wash were seized in separate bottles. During investigation, those washes were sent to CFSL and as per the CFSL report Ex.PW1/A, being report No. CFSL-2001/C-0176 dated 30th April, 2001, chemical analysis of the washes confirmed the presence of phenolphthalein in the respective washes. From this scientific evidence, the prosecution is seeking to support the ocular evidence regarding demand and acceptance of bribe by the appellant. Thus, it is obvious that CFSL report is a very important piece of evidence and the sanctioning authority was expected to carefully consider the same. However, perusal of the sanction order Ex.PW3/A, which admittedly is the verbatim copy of the draft sanction order sent by SP, CBI, so far as facts of the case are concerned, reveals that it

refers to some other CFSL report being CFSL-2001/C-0138 dated 21st March, 2001 and not the CFSL report pertaining to this case. This factor, by itself, shows non-application of mind by the sanctioning authority to the material collected during investigation of the case. Had PW3 Sindhu Shree Khullar perused the CFSL report, this infirmity would not have occurred in the sanction order Ex.PW3/A. This infirmity coupled with the fact that sanction order is verbatim copy of the draft sanction order wherein the similar error is there, is clear indication of the fact that the sanction order Ex.PW3/A is the result of non-application of mind by the sanctioning authority. Accordingly, it does not stand the scrutiny of law and is liable to be quashed.

9. Since the sanction for prosecution accorded against the appellant is invalid, the cognizance taken by the learned Special Judge is bad in law in view of Section 19 of the P.C. Act, therefore, the entire trial stands vitiated for want of a valid sanction. Thus, under the circumstances, I am constrained to accept the appeal and set aside the impugned judgment of learned Special Judge dated 24.07.2010 and consequent order on sentence.

10. The appellant is accordingly acquitted. It is, however, made clear that this order shall not prevent the CBI from filing fresh

charge sheet after obtaining valid sanction from the competent authority.

11. Appeal stands disposed of.

(AJIT BHARIHOKE)
JUDGE

AUGUST 10, 2011
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