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

+ CRL.REV.P. 156/2012 & CrI. M A 3746/2012

VISHAL SHARMA @ RINKU ..... Petitioner  
Through Mr. Baldev Raj, Advocate

versus

STATE (GOVT OF NCT OF DELHI) ..... Respondent  
Through Mr. Manoj Ohri, APP for State with  
Mr. Laxmi Narain, ACP, PS Preet  
Vihar Insp. Om Prakash, PS, Preet  
Vihar.

15 CRL.REV.P. 248/2012 & CrI. M As. 5548-5549/2012

VARUN KUMAR @ SHERU ..... Petitioner  
Through Mr. Sumit Choudhary, Advocate

versus

STATE (GOVT OF NCT OF DELHI) ..... Respondent  
Through Mr. Manoj Ohri, APP for State with  
Mr. Laxmi Narain, ACP, PS Preet  
Vihar Insp. Om Prakash, PS, Preet  
Vihar.

% Date of Decision : 03<sup>rd</sup> September, 2012

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

## **J U D G M E N T**

### **MANMOHAN, J : (Oral)**

1. The present Revision Petitions have been filed challenging the order on charge dated 21<sup>st</sup> January, 2012 and 7<sup>th</sup> February, 2012 by virtue of which, the trial Court has taken cognizance under Section 3(1) (ii), 3(2), 3 (4) and 3(5) and under Section 3(5) of the Maharashtra Control of Organised Crime Act, 1999.

2. Learned counsel for the petitioners submits that the trial Court has taken cognizance against the present petitioners without previous sanction having been obtained under Section 23 (2) of MCOCA.

Section 23(2) of MCOCA reads as under :-

*(2) “No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Commissioner of Police.”*

3. Having heard the parties at length and having perused the Section, this Court is of the view that the aforesaid provision is a mandatory one. It prohibits a Special Court from taking cognizance of any offence under MCOCA without any previous sanction of an

police officer not below the rank of Additional Commissioner of Police. Consequently, this Court sets aside the cognizance order dated 4<sup>th</sup> July, 2012 as well as all subsequent orders passed by the trial Court.

4. However, keeping in view the fact that now sanction has been obtained under Section 23 (2) of MCOCA on 16<sup>th</sup> November, 2011, the trial Court is directed to re-consider the issue of cognizance.

5. In fact, this approach of the Court is in consonance with the judgment of the Supreme Court in ***Balbir Singh Vs. State of Delhi***, (2007) 6 SCC 226. In the said case, the Supreme Court in similar circumstances upheld a High Court judgment, in which it was held that when an accused is discharged, the trial Court is competent to take cognizance once again. The relevant portion of the Supreme Court judgment is re-produced hereinbelow:-

*3. "The appellant and one Paljit Kaur @ Richpal Kaur @Pali, wife of Paramjit Singh had allegedly committed offence punishable under Sections 3, 4, 5 and 6 of the TADA Act and Sections 25 and 26 of the Arms Act. Charge sheet was filed on 20.8.1993. The allegations related to alleged commission of offence on 5.12.1992. By amendment to the TADA Act, Section 20-A(2) was introduced with effect from 22.5.1993 i.e., prior to filing of the charge sheet. Charges were framed on*

*16.12.1993. Bail was granted to the appellant on 6.5.1994. Subsequently, on expiry of eight years' currency period, the term of the TADA Act expired on 23.5.1995. By order dated 19.4.1997, the Designated Court held that in absence of sanction of the Commissioner of Police as required under sub section (2) of Section 20-A of the TADA Act, the proceedings were non est and the cognizance taken by the court for offences under the TADA Act was bad in law.*

*4. The expression used by the court concerned in the judgment dated 19.4.1997 was "acquittal of the accused persons for the want of sanction". Subsequently, pursuant to the order by the court concerned goods seized were retained on 3.2.1998. On 4.7.2001 sanction was accorded and the order in that regard was passed and the charge-sheet was filed on 18.7.2001 and summons were issued on 2.3.2002 by the impugned order.*

*5. The court overruled the objections raised by the appellant that the proceedings were non est as it virtually amounted to infraction of Section 300 of the Code of Criminal Procedure, 1973 (in short "the Code"). The Designated Court did not accept the plea and observed that though the expression "acquittal" was used, in essence it cannot be an order of acquittal on merits of the case and could only operate as an order of discharge.*

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*16. The impugned order passed by the Designated Court does not suffer from any infirmity to warrant interference. However, the trial court is requested to dispose of the matter as*

*early as practicable preferably within 6 months from the date of communication of this order.”*  
(emphasis supplied)

6. Similarly, this Court in ***Govt. of NCT of Delhi Vs. Rajesh***, in Crl. Rev. P. No. 286/2009, has held as under :-

*“11. It is well settled that as soon as the court comes to the conclusion that there is no valid sanction for prosecuting the accused under Section 25 of the Act, the court becomes incompetent to proceed further with the matter and has to discharge or acquit the accused. However, such an acquittal or discharge cannot bar a second trial of the same accused on the same facts. In the case of Yusofalli Mulla vs. The King reported as AIR (36) 1949 Privy Council 264, while holding that a prosecution instituted without a valid sanction was a nullity, it was observed that fresh institution after valid sanction was permissible. The relevant observations of the Privy Council are reproduced herein below :*

*“16. The next contention was that the failure to obtain a sanction at the most prevented the valid institution of a prosecution, but did not affect the competency of the Court to hear and determine a prosecution which in fact was brought before it. This suggested distinction between the validity of the prosecution and the competence of the court was pressed strenuously by Mr. Page, but seems to rest on no foundation. A Court cannot be competent to hear and determine a prosecution the institution of which is prohibited by law and Section 14 prohibits*

the institution of a prosecution in the absence of a proper sanction. The learned Magistrate was no doubt competent to decide whether he had jurisdiction to entertain the prosecution and for that purpose to determine whether a valid sanction had been given, but as soon as he decided that no valid sanction had been given the Court became incompetent to proceed with the matter. Their Lordships agree with the view expressed by the Federal Court in Agarwalla's case : AIR (32) 1945 F.C. 16:46 Cr.L.J. 510 that a prosecution launched without a valid sanction is a nullity." (emphasis added)

12. In the case of L D Healy vs. State of Uttar Pradesh reported as (1969) 2 SCR 948, the Supreme Court held that a fresh trial of the same accused on the same set of facts was not barred, when the earlier order of acquittal was passed in the absence of proper sanction. The observations of the Supreme Court in the aforesaid case are as under :-

"Para 4 (i) ....The Court may take cognizance of an offence against a public servant for the offences set out in Section 6 of the Prevention of Corruption Act only after the previous sanction of the specified authority is obtained. The Special Judge who had taken cognizance of the case on a sanction given by the Deputy Chief Commercial Superintendent was incompetent to try the case, and an order of acquittal passed by a court which had no jurisdiction does not bar a retrial for the same offence. It is unnecessarily, therefore, to consider whether the order quashing the proceeding amounted to an order of

*acquittal.” (emphasis added)*

*13. In the case of Ramesh Sharma (supra), a Single Judge of this Court, after taking note of the aforesaid judgments as also the judgments in the case of Om Prakash (supra), arrived at a conclusion that there was no prohibition in law in filing fresh/supplementary charge sheet after obtaining sanction in accordance with law.*

*14. This Court finds no reason to differ with the aforesaid view. While there can be no quarrel with the proposition that mandate of Sanction 39 of the Act requires a previous sanction for prosecution to be instituted against a person in respect of an offence under Section 3 of the Act, once such a sanction is obtained by the concerned authority, there is no bar on proceedings against the same person in respect of the same offence on the same sets of facts. In the present case, originally, there was no sanction order for prosecuting the respondent under Section 25 of the Act. The first charge sheet was filed on 23.6.2005 and the records reveal that a supplementary charge sheet filed by the State/petitioner on a subsequent date, i.e, on 30.12.2006, was taken on the record on 3.1.2007. Hence, the learned ASJ could have entertained the supplementary charge sheet by treating the same as a fresh charge sheet from the date of its institution, ie., 30.12.2006/3.1.2007. At the said stage, the documents enclosed with the supplementary charge sheet including the sanction order dated 29.12.2006 as also the examination report of the CFSL dated 13.9.2005 could be considered.*

*15. As the parties are still at the stage of framing of charges against the respondent, the present petition is disposed of with directions to the learned ASJ to treat the supplementary charge sheet as a fresh*

*charge sheet from the date of its institution and to proceed further in the matter. The date of the incident is 21.4.2005 and 5 years have since expired. The learned ASJ is therefore requested to proceed further in the matter as expeditiously as possible.”*

(emphasis supplied)

7. In view of the aforesaid, the cognizance order dated 4<sup>th</sup> July, 2012 as well as all subsequent orders dated 21<sup>st</sup> January, 2012 and 7<sup>th</sup> February, 2012 are set aside, but the trial Court is directed to reconsider the issue of taking cognizance of both the main as well as the supplementary charge-sheet on 12<sup>th</sup> September, 2012.

8. Needless to say that the rights and contentions of both the parties are left open.

**MANMOHAN, J**

**SEPTEMBER 03, 2012**

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