

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

**+ Crl. M.C. No. 2183/2011**

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Reserved on: 18<sup>th</sup> January, 2012  
Decided on: 8<sup>th</sup> February, 2012

JIWAN RAM GUPTA

..... Petitioner

Through: Mr. Rajinder Mathur, Mr. Ajeet  
Kumar, Advs.

versus

STATE THR. CBI

..... Respondents

Through: Mr. Narender Mann, Spl. P.P. for CBI  
with Mr. Manoj Pant, Adv.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By this petition the Petitioner seeks quashing of proceedings initiated by the Respondent in RC-104(A)/95SPE/CBI/ACB/New Delhi under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (in short PC Act). The facts giving rise to the filing of the present petition are that the Petitioner was arrested in a trap case on 24<sup>th</sup> November, 1995. The grievance of the Petitioner is that he was falsely implicated by the then Commissioner, Land Management, DDA as the Petitioner while working as Manager, Land Management, DDA pointed out to the Vice Chairman, DDA wrong allotment of Petrol Pump Site at Pitampura in the name of Smt. Rashmi Choudhary which was subsequently cancelled. On 12<sup>th</sup> August, 1996 the CBI obtained sanction for prosecution under Section 19 PC Act from the Finance Member, DDA and filed the charge-sheet. The Petitioner agitated that the sanction was granted by an authority not competent to grant the same and thus he could not be

prosecuted. After framing of the charge, the Petitioner filed an application before the Learned Trial Court contending that the prosecution could be initiated against him only after grant of valid and legal sanction i.e. by the Delhi Development Authority (DDA) and the Finance Member, DDA was not the competent authority to accord sanction under Section 19 of the PC Act. The Learned Trial Court vide order dated 27<sup>th</sup> January, 2010 acquitted the Petitioner on the ground that the sanction order passed by PW1, the then Finance Member, DDA was invalid in the eyes of law. However, the CBI was given liberty to take further legal action, if any, as deemed fit under law. In the meantime the Petitioner had retired on 29<sup>th</sup> February, 2004. Since the Petitioner had retired on 29<sup>th</sup> February, 2004 the Respondent again filed the charge-sheet dated 7<sup>th</sup> April, 2010 vide CC No. 2/2010 without obtaining any sanction against the Petitioner on the same grounds. The contention of the Respondent was that since the Petitioner had retired, no sanction was now required to be obtained. The Petitioner filed an application dated 3<sup>rd</sup> December, 2010 under Section 227 of the Cr.P.C. seeking dropping of the proceedings pleading therein that a fresh charge without the sanction after retirement of the Petitioner is bad in law. However, the Learned Trial Judge has not decided the said application and hence the present petition.

2. Learned counsel for the Petitioner contends that the Petitioner has already faced an ordeal of trial for 16 years. The Petitioner is a senior citizen and in view of the delay which is not attributable to the Petitioner the proceedings against him are liable to be quashed. Reliance in this regard is placed on *S.G. Nain Vs. Union of India 1995 Supp (4) SCC 552*; *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat (1997) 7 SCC 622*; *Mahendra Lal*

*Das Vs. State of Bihar and Ors. (2002) 1 SCC 149; Vakil Prasad Singh Vs. State of Bihar 2009 LawSuit (SC) 53; S.K. Mittal Vs. CBI Crl.M.C. 2215/2004 decided by this Court on 13<sup>th</sup> September, 2007 and Dharam Vir Singh Vs. CBI Crl.M.C. 3554/2007 decided by this Court on 7<sup>th</sup> March, 2008.*

3. Learned counsel for the Respondent/CBI on the other hand contends that the decisions relied upon by the learned counsel for the Petitioner have no applicability. In the abovementioned decisions, the proceedings were quashed because there was enormous delay during trial and the delay was not on account of the accused. In the present case a charge-sheet was filed against the Petitioner, however the Learned Trial Court held that the sanction was not granted by the competent authority and thus acquitted the Respondent with liberty to take action in accordance with law. Since the Petitioner has retired, the proceedings against him can now be initiated without the sanction and hence there is no ground for quashing of the proceedings. Reliance is placed on *State of Karnataka Vs. C. Nagarajaswamy (2005) 8 SCC 370; Chittaranjan Das Vs. State of Orissa (2011) 7 SCC 167; Manguesh Jaiwant Sinai Vs. State AIR 1969 Goa, Daman & Diu 106 and The State Vs. Bharat Chandra Rout 1993 Crl.L.J. 2499*. Thus the present petition is liable to be dismissed.

4. I have heard learned counsel for the parties. The short issue that arises for consideration is that the Petitioner having been acquitted earlier in the same proceedings for want of sanction by the competent authority whether is liable to be tried again without sanction since he is retired and whether the

proceedings should not be quashed in view of the protracted trial faced by the Petitioner.

5. In *S.G. Nain* (supra) the Hon'ble Supreme Court quashed the proceedings under Section 409 IPC in view of the fact that the prosecution was pending for 14 years out of which 11 years were spent in the Supreme Court. It was held that the Petitioner had suffered mental agony, had an adverse affect on his service career and there was impossibility to ensure a fair trial after such a long lapse of time. Thus, the trial was held to be sheer wastage of public time and money apart from causing harassment to the Appellant therein. In *Mansukhlal Vithaldas Chauhan* (supra) the Hon'ble Supreme Court observed that normally when the sanction order is held to be bad, the case is remitted back to the authority for re-consideration of the matter and to pass a fresh order of sanction in accordance with law. But in the said case the incident was of the year 1983 and it was held that after a lapse of 14 years it would not be fair and just to direct that the proceedings be initiated from the stage of sanction so as to expose the Appellant to another innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution. In *Vakil Prasad Singh* (supra) their Lordships quashed the proceedings on account of the fact that there was a callous and inordinate delay of more than two decades in investigation and trial. In *S.K. Mittal and Dharam Vir Singh* (supra) this Court quashed the proceedings under Section 7 and 13(2) read with 13(1)(d) of the PC Act on the ground of inordinate delay. The proceedings were quashed because the complaint was filed in the year 1981 and till the year 2007 even pre-charge evidence had not been recorded.

6. However the issue whether in a case where trial proceedings terminates for want of sanction, whether the public servant be again directed to undergo the rigmarole of the prosecution was considered by the Supreme Court in *Chittaranjan Das* (supra). It was held:

“8. We do not find any substance in the submission of Mr. Tripathy and the decision relied on is clearly distinguishable. Sanction is a device provided by law to safeguard public servants from vexatious and frivolous prosecution. It is to give them freedom and liberty to perform their duty without fear or favour and not succumb to the pressure of unscrupulous elements. It is a weapon at the hands of the sanctioning authority to protect the innocent public servants from uncalled for prosecution but not intended to shield the guilty. Here in the present case while the Appellant was in service sanction sought for his prosecution was declined by the State Government. Vigilance Department did not challenge the same and allowed the Appellant to retire from service. After the retirement, Vigilance Department requested the State Government to reconsider its decision, which was not only refused but the State Government while doing so clearly observed that no prima-facie case of disproportionate assets against the Appellant is made out. Notwithstanding that Vigilance Department chose to file charge-sheet after the retirement of the Appellant and on that Special Judge had taken cognizance and issued process. We are of the opinion that in a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of Public Servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility.”

7. In *State of Karnataka* (supra) their Lordships considering the factum of more than 13 years in granting the sanction for prosecution of the Appellants for possessing disproportionate assets of about Rs. 50,600/- directed the Trial Court to dispose of the matter at an early date preferably within six months. It was held:

“17. It is true that in terms of clause (2) of Article 20 of the Constitution no person can be prosecuted and punished for the same offence more than once. Section 300 of the Code was enacted having regard to the said provision. Sub-section (1) of Section 300 of the Code reads as under:

“300. *Persons once convicted or acquitted not to be tried for same offence.*—(1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.”

18. The essential conditions for invoking the bar under the said provision are:

- (i) the court had requisite jurisdiction to take cognizance and tried the accused; and
- (ii) the court has recorded an order of conviction or acquittal, and such conviction/acquittal remains in force.

19. The question came up for consideration before the Federal Court in *Basdeo Agarwalla v. King Emperor*, AIR 1945 FC 16 wherein it was held that if a proceeding is initiated without sanction, the same would be null and void.

25. In view of the aforementioned authoritative pronouncements, it is not possible to agree with the decision of the High Court that the trial court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Code as, even then, it would be held to have been rendered illegally and without jurisdiction.

30. Yet again in *P. Ramachandra Rao v. State of Karnataka*, (2002) 4 SCC 578 this Court while categorically holding that no period of limitation can be prescribed on which the trial of a criminal case or criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused observed: (SCC p. 603, para 29)

“29. (4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in ‘*Common Cause*’ *A Registered Society v. Union of India*, (1996) 4 SCC 33, *Raj Deo Sharma (I) v. State of Bihar*, (1999) 7 SCC 507 and *Raj Deo Sharma (II) v. State of Bihar*, (1997) 7 SCC 604 could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in *Common Cause case (I)*, *Raj Deo Sharma cases (I) and (II)*. At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in *A.R. Antulay case*, (1992) 1 SCC 225 and decide whether the trial or proceedings have become so inordinately delayed as to be

called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.”

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.”

8. In view of the law laid down by the Hon’ble Supreme Court since in the present case the proceedings against the Petitioner terminated on account of the fact that the sanction against him was granted by an incompetent authority and the same have now been initiated without sanction as the Petitioner has retired, I find no merit in the petition. Further the pronouncement of the Supreme Court in *P. Ramachandra Rao v. State of Karnataka (2002) 4 SCC 578* holds that no period of limitation can be prescribed in which the trial of a criminal case must be closed mandatorily. Thus, I find no reason to quash the summoning order and the proceedings arising therefrom.

**(MUKTA GUPTA)**  
**JUDGE**

**FEBRUARY 08, 2012/‘ga’**