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

+ W.P.(CRL) 464/2013

% **Judgment dated 18.11.2013**

SATISH CHAND GUPTA Petitioner
Through: Mr.Shiv Charan Garg, Mr.Imran Khan
and Ms.Jyoti Sinha, Advocates

versus

STATE & ORS. Respondent
Through: Mr.Rajesh Mahajan, Adv. for State

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Aggrieved by the order passed by the Special Judge, Anti Corruption on 18.9.2012, the petitioner has filed the present petition.
2. In this case, the petitioner has made a complaint under Section 156(3) Cr.P.C. to the Special Judge, to register an FIR. The prayer made before the Special Judge was declined, as the petitioner had failed to obtain sanction under Section 19 of the Prevention of Corruption Act.
3. Counsel for the petitioner submits that at the stage of section 156(3) Cr.P.C., sanction is not required.
4. Counsel for the State disputes the submissions made by counsel for the petitioner. Mr.Mahajan, counsel for the State has placed reliance upon a recent judgment passed by the Apex Court in the case of **Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr.** reported at 2013 X AD (S.C.) 386, as per which requirement of sanction is a pre-condition for ordering investigation under Section 156(3) Cr.P.C. even at a pre-cognizance stage.

Relevant paragraphs of the judgment read as under:

“8. We may first examine whether the Magistrate, while exercising his powers under Section 156(3) Cr.P.C., could act in a mechanical or casual manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in ***Maksud Saiyed*** case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order.

The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

9. We will now examine whether the order directing investigation under Section 156(3) Cr.P.C. would amount to taking cognizance of the offence, since a contention was raised that the expression “cognizance” appearing in Section 19(1) of the PC Act will have to be construed as postcognizance stage, not pre-cognizance stage and, therefore, the requirement of sanction does not arise prior to taking cognizance of the offences punishable under the provisions of the PC Act.

The expression “cognizance” which appears in Section 197 Cr.P.C. came up for consideration before a three-Judge Bench of this Court in ***State of Uttar Pradesh v. Paras Nath Singh*** (2009) 6 SCC 372, and this Court expressed the following view:

“6. And the jurisdiction of a Magistrate to take

cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to *Black's Law Dictionary* the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

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xxx xxx xxx”

In *State of West Bengal and Another v. Mohd. Khalid and Others* (1995) 1 SCC 684, this Court has observed as follows:

“It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after

considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.”

10. The meaning of the said expression was also considered by this Court in *Subramaniam Swamy* case (supra). The judgments referred to herein above clearly indicate that the word “cognizance” has a wider connotation and not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C. and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at precognizance stage.

11. A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and, therefore, clothed with all the magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options. He may take cognizance of the offence under Section 190 Cr.P.C. or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) Cr.P.C. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) Cr.P.C.

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13. Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order.

In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that

there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in *Paras Nath Singh* and *Subramaniam Swamy* cases (supra).”

5. Heard counsel for the parties and having regard to the observations made by the Supreme Court in the case of *Anil Kumar (Supra)*, wherein it has been categorically held that sanction under section 19(3) of the Prevention of Corruption Act, is a mandatory requirement even at the pre-cognizance stage, thus there is no infirmity in the order dated 18.9.2012 passed by the Special Judge, Anti Corruption.
6. Counsel for the petitioner submits that a direction be issued to the police to give a report as to why an FIR has not been registered. The prayer made by the petitioner, is declined in view of the fact that the order of the Special Judge, Prevention of Corruption Act, is clear as no sanction has been obtained by the petitioner, thus it is not necessary for the Police to say so separately in writing to the petitioner. At this stage, counsel for the petitioner submits that he will take recourse to such remedies, which are available to him in accordance with law.
7. Accordingly, the petition is dismissed, in above terms.

NOVEMBER 18, 2013
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G.S.SISTANI, J