

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

% **W.P.(CRL.) 818/2010**

+ **Date of Decision: 1st April, 2013**

DIWAKAR SHARMA **Petitioner**

! Through: Mr. Sudhanshu Batra, Sr. Advocate
with Mr. Sanjeev Ralli & Mr. S.D.
Singh, Advocates

versus

\$ **CBI** **Respondent**

Through: Mr. Narender Mann, Spl. P.P. for CBI
with Mr. Devendra Dedha, Advocate

AND

% **CRL.M.C. 3030/2011**

DIWAKAR SHARMA **Petitioner**

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with Mr. Sanjeev Ralli & Mr. S.D.
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CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

Four decades back the Apex Court of the country had in a labour matter (“*D.P. Maheshwari vs. Delhi Admn. & Ors.*”, 1983 SCC (4) 293) expressed its strong disapproval of the dilatory tactics being adopted by the employers by raising preliminary objections before the industrial courts while defending labour disputes with the intention of delaying the adjudication of the disputes on merits and then challenging the adverse orders by approaching higher Courts in which process decades were consumed and the real disputes remained pending consideration adjudication. This is what was observed by their Lordships of the Apex Court at the start itself of the said judgment:-

“It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Art. 226 of the Constitution and to this Court under Art. 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade.....”

.....Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down.....”

2. I was reminded of these observations of the Apex Court, though made in a labour matter, while dealing with these petitions which arise out of a criminal case since these days in criminal cases also, particularly where public servants are sought to be prosecuted by CBI

on charges of corruption and they are not arrested during investigation, invariably raise some kind or the other preliminary objections before the trial Courts to prolong the consideration of their cases on merits.

3. In the present case, the petitioner-accused, who was a public servant at the relevant time, was sought to be prosecuted by the CBI for amassing wealth disproportionate to his known sources of income (an offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988). When after completion of the investigation, during which period he was not arrested, charge sheet was filed against him in the Court of the Special Judge in the year 2007 by the CBI he was summoned by the Special Judge after taking cognizance. After entering appearance in the matter he instead of allowing the trial Court to examine whether any case was made out or not for framing of charge against him and his trial for the aforesaid offence he took recourse to the dilatory tactic by moving an application that the proceedings against him should be dropped straightaway because the sanction order dated 11th June, 2007 obtained by the CBI for his prosecution, as was required to be obtained under Section 19 of the Prevention of Corruption Act, 1988, was vitiated because the same has been obtained by the CBI by concealing material facts from the sanctioning authority and also because the sanctioning authority had accorded the sanction without application of mind.

4. That application was rejected by the learned Special Judge vide order dated 19th February, 2010 on the ground that this being a case of invalid sanction, according to the petitioner-accused, the objection in that regard was a matter for trial. But he did not show the patience to wait for the appropriate stage to reach and instead decided to have recourse to another dilatory tactic by approaching this Court and taking a chance to stall his prosecution by filing a criminal writ petition (being Crl. W.P. No. 818 of 2010) under Articles 226 and 227 of the Constitution of India. In that petition he had challenged the validity of the sanction order dated 11th June, 2007, the charge-sheet and the Special Judge's order dated 19th February, 2010. However, subsequently the petitioner-accused sought permission of this Court to file an independent petition for challenging the order dated 19th February, 2010 of the Special Judge which he was permitted to do and that is how the second petition (being Crl.M.C. No. 3030 of 2011) came to be filed in which Section 482 of the Code of Criminal Procedure, 1973 only was invoked by the petitioner-accused.

5. Both the petitions were, however, taken up for hearing at the same time. Since the only point pressed into service in both the petitions by Shri Sudhanshu Batra, learned senior counsel for the petitioner-accused, for seeking quashing of the sanction order, charge sheet as well as the Special Court's order dated 19th February, 2010 was the invalidity of the sanction order both the petitions are being disposed of by this common order.

6. Mr. Sudhanshu Batra's contention before this Court was that during the investigation stage petitioner's department, where he was working, had asked him to furnish details of his assets and sources of their acquisition since CBI was making enquiry in that regard and then he had written to the CBI in the month of February, 2006 to supply him copies of some documents which it had seized during the raid at his premises to enable him to give his explanation in respect of his assets and sources of their acquisition but the CBI did not even respond to that request and then another request to that effect was made in August, 2006 but still the CBI did not bother to reply to his letters. Instead, the CBI went ahead to obtain sanction for his prosecution from the competent authority without disclosing to the sanctioning authority that the petitioner had asked for copies of certain seized documents to enable him to furnish his explanation but those documents were not furnished to him. Learned senior counsel further submitted that the sanctioning authority was thus misled into believing that the petitioner had not offered any explanation during investigation stage in respect of his alleged possession of assets disproportionate to his known sources of income and it was evident from a bare reading of the sanction order dated 11th June, 2007 which records that the petitioner had failed to offer any explanation in respect of acquisition of assets which were alleged to be disproportionate to his known sources of income. Mr. Batra's submission was that had this fact been brought to the notice of the sanctioning authority and still sanction had

been granted the matter would have been different but concealment of this vital fact shows that the sanctioning authority was deprived of the opportunity to examine vital material and that suppression of material from it by the CBI vitiates the sanction justifying dropping of the criminal proceedings against the petitioner-accused straightaway. Mr. Batra further submitted that the fact that the petitioner had made such a request to the CBI stands admitted by it in its response to the present petitions by not specifically refuting the same despite the fact that this Court had specifically directed CBI vide order dated 26th March, 2012 to respond to this contention of the petitioner and, therefore, no evidence is required to be led by any party on this aspect and this Court can and should quash the ongoing proceedings before the trial Court since all these submissions were made before the Special Judge also but the Special Judge did not even deal with the same and simply dismissed the petitioner's application by wrongly relying upon the judgment of the Supreme Court in Prakash Singh Badal's case(2007(1) SCC 1) since that judgment was not applicable to the case in hand. Mr. Batra also cited one Single Judge Bench judgment dated 3rd October, 2007 of this Court in Crl.R.P.No.589/2007, "**Ashok Kumar Aggarwal vs CBI**" MANU/DE/2659/2007. In that case, this Court while disposing of the criminal revision petition filed by the accused public servant, who was also being sought to be prosecuted for the offence under Section 13(1)(e) for acquiring assets disproportionate to his known sources of income, challenging the decision of the Special

Judge declining to discharge him even before the stage of charge because of the invalidity of the sanction order because of suppression of relevant material from the sanctioning authority by CBI, had remanded back the matter to the trial Court with the direction to decide afresh the objection against the validity of the sanction and to record a finding if the alleged infirmities in the sanction had resulted in failure of justice or not. The trial Court was also permitted to record evidence, if considered necessary even before the stage of charge keeping in view Section 311 Cr.P.C. Learned senior counsel also cited another Single Judge Bench decision of this Court reported in 1995(1) Apex Decisions(Delhi) 991, “State vs Ravinder Singh” in support of the argument that it is not necessary for the Special Judge to record complete prosecution evidence before deciding the controversy regarding the validity of the sanction order raised an accused public servant and the accused can be discharged even after framing of charge and before even completion of entire evidence.

7. Learned special public prosecutor for the CBI, Mr. Narinder Mann, on the other hand, while supporting the trial Court’s decision had submitted that the objection of the accused regarding validity of the sanction order could not be decided without trial and so the trial Court had rightly not gone into that aspect at the stage when it was raised on behalf of the accused. It was also submitted that on checking the case diary it was found that there was no reference to the two letters allegedly written by the petitioner-accused during investigation to CBI

for supply of documents and R&I department of CBI did not have records of the year 2006. It was also submitted that even if the petitioner-accused had made any request to CBI during the investigation for supply of some documents and the same had not been supplied the sanction for his prosecution can still not be held to be vitiated since one of the allegations against the petitioner-accused is that he had not gave any information to his department about the acquisition of the questionable assets during the check period. Therefore, even if he had offered some explanation about the sources of those acquisitions he would still be liable to be prosecuted since his known sources of income would only be those which he had informed his department as per the government's rules applicable to public servants and he had not informed his department about those acquisitions. Mr. Mann also informed the Court that since this Court had not stayed the proceedings before the trial Court the learned Special Judge had after considering the material placed before him already framed charge against the petitioner for the offence of acquiring assets disproportionate to his known sources of income and over thirty witnesses have also been examined by the CBI in support of its case and, therefore, for this reason also this Court need not enter into any enquiry as to what material was placed before the CBI before the sanctioning authority and whether any relevant material was suppressed and all this should be left to the trial Court for decision after evidence stands recorded.

8. In order to see as to how this objection raised by the petitioner-accused was dealt with by the learned Special Judge, the relevant portions of the impugned order dated 19th February, 2010 are reproduced below:

“7. The point raised by the accused/applicant is that the relevant materials along with correct facts were not placed before the sanctioning authority while obtaining the sanction to prosecute him which proved detrimental to his interest and amounted a misleading representation of the case before the Sanctioning Authority. It is also stated that sanction order dated 11.6.2007 is invalid and unsustainable as the Sanctioning Authority did not apply its mind while according the sanction , in fact the same has been passed in a mechanical and pre-determined manner.

12. In Prakash Singh Badal Vs. State of Punjab (2007) 1 SCC 1 and Laloo Prasad Vs. State of Bihar (2007)1 SCC 49 wherein the Hon'ble Supreme Court has observed "The sanction in the instant case related to functions relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The former question can be agitated at threshold but the later is a question which has to be raised during trial." In so far as the validity of the sanction on account of non-application of mind is concerned, the same is the subject matter of trial.

13. After applying the ratio of the judgment, I find no merits in the application. With these observations, application stands dismissed.”

9. It is clear from the above observations of the learned Special Judge that he did not go into the question of validity of the sanction relying upon the decision of the Apex Court in Prakash Singh Badal’s case wherein it was held that challenge to the validity of sanction for

the prosecution of a public servant is a matter of trial. The petitioner's challenge to the sanction for his prosecution thus has been kept open by the learned Special Judge for consideration at an appropriate stage. No fault can be said to have been committed by the trial Court by not going into the merits of the objection of the petitioner-accused at the pre-charge stage and there is no scope whatsoever for any interference in the decision of the learned Special Judge by this Court either under Articles 226 and 227 of the Constitution of India or in exercise of the inherent powers under Section 482 Cr. P.C. Since the learned Special Judge himself has kept the entire aspect in respect of the petitioner-accused's challenge to the validity of the sanction open for decision at an appropriate stage there is no justification for the High Court to assume the role of a Court of facts and to make an enquiry into the petitioner's allegation that there was suppression of relevant material by the CBI from the sanctioning authority. Whether the petitioner-accused had made any demand for supply of seized documents or not and whether CBI was obliged to supply to him any documents and whether the CBI was expected to inform the sanctioning authority that the petitioner had asked for some documents or not and whether they were supplied or not are the questions which the trial Court itself shall have to answer at first instance at the appropriate stage and not by the High Court.

10. There is, thus, no merit in any of the two petitions and, therefore, the same are dismissed. However, it is clarified that since this court

has not gone into the merits of the petitioner's challenge to the validity of the sanction if that challenge is once again raised by the petitioner-accused before the trial Court, which he shall be entitled to raise, after examination of the sanctioning authority, relying upon the judgment of this court in Ashok Aggarwal's case(supra) or at the final stage in the trial that objection shall be dealt with by the learned Special Judge in accordance with law uninfluenced by the rejection of the present petitions and any observation made in the order dated 19th February,2010.

P.K. BHASIN, J

APRIL 1, 2013