

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

% *Reserved on :03.12.2014*
Pronounced on :11.12.2014

+ W.P.(CRL) 265/2013 & CRL.M.A. 2178/2013

YOGINDER SINGH VERMA Petitioner

Through : Mr. Maninder Singh, Adv. with
Mr.Sanjay Chaubey, Mr.Dinhar
Takiar, Mr.Prateek Sisodia,
Mr.Jaskaran Sibia and Ms.Aekta
Vats, Advs.

versus

C B I Respondent

Through : Mr. Sanjeev Bhandari, Standing
Counsel for the CBI.

AND

+ W.P.(CRL) 1739/2013 & CRL.M.A. 15883/2013

YOGINDER SINGH VERMA Petitioner

Through : Mr. Maninder Singh, Adv. with
Mr.Sanjay Chaubey, Mr.Dinhar
Takiar, Mr.Prateek Sisodia,
Mr.Jaskaran Sibia and Ms.Aekta
Vats, Advs.

versus

C B I Respondent

Through : Mr. Sanjeev Bhandari, Standing
Counsel for the CBI.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The Petitioner before this Court appears to be of the nature of litigants

that find mention in *Santosh De & Anr. vs. Archana Guhar & Ors. (1994) 2 SCC 420*. The observation made by the Apex Court in para 15 of the report describes such litigants and approach of the High Court towards such litigation. Para 15 of the report reads as under :

'15. The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory order is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 CrPC. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Such frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system.'

2. The Petitioner was facing trial before learned Special Judge (CBI) for committing the offences punishable under Sections 7, 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 and Section 120-B IPC. During the stage of hearing on charge, he allegedly questioned the validity of the sanction. But when the charge was ordered to be framed against him, he approached this Court by filing Crl.M.C. No.1853/2011 challenging the order dated 30.03.2010 directing framing of charge against him for committing the offences punishable under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and under Section 120-B IPC on the

ground that sanction was not accorded by the authority competent to remove the Petitioner from office as required under Section 19(1)(c) of Prevention of Corruption Act. CBI submitted before this Court that validity of the sanction has to be challenged before the Trial Court at the appropriate stage. The Petitioner withdrew CrI.M.C. No.1853/2011 with liberty to raise all available grounds before learned Special Judge challenging the validity of the sanction accorded for prosecution of the Petitioner.

3. After withdrawal of CrI.M.C. No.1853/2011, the Petitioner filed an application before learned Special Judge when case was already at the stage of prosecution evidence. The application was disposed of by learned Special Judge vide order dated 27.09.2012 concluding as under :

'46. In view thereof, the application filed by the accused/applicant Y.S.Verma is allowed.

47.Accused/applicant Y.S.Verma is accordingly released from the present proceedings at this stage.

48.Before parting with this order, I would hasten to clarify that this release of accused Y.S.Verma at this stage from the proceedings, would not amount to disposal of his trial/case on merits.

49.CBI is at liberty to file fresh charge sheet against this accused after getting this necessary/requisite sanction from the competent authority.

50.It is ordered accordingly.'

4. Thereafter the sanction order was obtained by CBI from the competent Authority. Chargesheet was filed alongwith sanction order pursuant to which cognizance was taken by learned Special Judge (CBI) and Petitioner was summoned as an accused. Despite the fact that order dated 27.09.2012 was never challenged by the Petitioner, he filed W.P.(CrI.) No.265/2013 invoking the jurisdiction of this Court praying for quashing of

the summoning order dated 21.01.2013. Thereafter when the charge was ordered to be framed against the Petitioner, he filed another writ petition bearing W.P.(Crl.) No.1739/2013 challenging the order on charge dated 18.09.2013 as well the formal charge framed on 21.09.2013 and this despite the fact that in the meantime, the Petitioner had already attained the age of superannuation.

5. By this common order, I intend to dispose of both the writ petitions i.e. W.P.(Crl.) No.265/2013 and W.P.(Crl.) No.1739/2013 as basically the grievance of the Petitioner is that second chargesheet could not have been filed by the CBI after obtaining sanction from the competent authority and that the proceedings consequent to filing of second chargesheet need to be quashed. In addition, the material on record was not sufficient to prima facie establish a case against him for framing the charge.

6. The case of the Petitioner Yoginder Singh Verma is that he was working as Senior Intelligence Officer with DRI but at the time of filing of the petition, he had retired. The Petitioner was chargesheeted for committing the offences punishable under Sections 7 and 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 and under Section 120-B of Indian Penal Code. During hearing on charge, he raised the issue of sanction being invalid as granted by a person not competent to remove him from the office. He was ordered to be charged on 30.03.2010. The order dated 30.03.2010 was challenged by the Petitioner by filing Crl.M.C. no.1853/2011, as referred to above.

7. As stated above, the application was filed by the Petitioner before learned Special Judge challenging the validity of the sanction order which was disposed of vide order dated 27.09.2012, relevant paragraphs of which

have already been extracted above.

8. On 10.01.2013 CBI filed fresh chargesheet with photocopies of the statement of witnesses and documents alongwith fresh sanction against the Petitioner. However, without issuing any notice to the Petitioner or applying judicial mind, learned Special Judge took cognizance of the chargesheet having the photocopies only and issued summons to the Petitioner. The Petitioner, on seeing the file, came to know that no proceedings had taken place from the date of his discharge in the matter till filing of the fresh sanction order against him alongwith chargesheet and in fact the learned Special Judge had been monitoring the investigation by CBI for procuring fresh sanction against the Petitioner. Since this procedure followed by learned Special Judge was contrary to the principles of natural justice, the summoning order on taking cognizance on the second chargesheet has been challenged by the Petitioner by filing W.P.(Crl.) No.265/2013.

9. Further grievance of the Petitioner is that when he appeared before learned Special Judge on 18.02.2013, he was forced to write an application adopting all the proceedings which took place in the previous chargesheet and his subsequent application seeking withdrawal of that application was also dismissed.

10. The Petitioner has also impugned the order on charge on the ground that the learned Special Judge, without appreciating the fact that there was no valid sanction on record, the material on record was not sufficient to form an opinion about the existence of a prima facie case, the transcript of the version recorded and relied upon by the prosecution did not show demand or acceptance of bribe, framed a charge against him. Impugning the order on charge dated 18.09.2013 and also the charge framed on 21.09.2013, the

Petitioner has filed the second writ petition i.e. W.P.(Crl.) No.1739/2013 praying for the following reliefs :

- (i) to pass an order calling the Trial Court Record in RC No.4(A)/2005/CBI/ACU-VI New Delhi in case titled as 'CBI vs. Yoginder Singh Verma' pending in the Court of Sh.Kanwaljeet Arora, learned ASJ, CBI, Dwarka Court, Delhi.
- (ii) to pass an order issuing a writ of certiorari thereby quashing the order on charge dated 18.09.2013 and framing of charge order dated 21.09.2013 passed by the Court of Sh.Kanwaljeet Arora, learned ASJ, CBI, Dwarka Court, Delhi in RC No.4(A)/2005/CBI/ACU-VI New Delhi whereby the Ld. Special Judge wrongly framed charges against the Petitioner on the basis of second chargesheet.
- (iii) to pass an order setting aside order dated 21.09.2013 whereby the Ld. Special Judge suo moto adopted the earlier proceedings which took place in the first chargesheet from which the Petitioner got discharges and clubbed both the first and second chargesheet.

11. I have heard Mr.Maninder Singh, learned counsel for the Petitioner and Mr.Sanjeev Bhandari, learned Standing Counsel for the CBI. In addition, brief written synopsis have also been filed by the parties.

12. Mr.Maninder Singh, learned counsel for the Petitioner has submitted that once the Petitioner was discharged by the Court, the learned Special Judge could not have taken cognizance on the basis of sanction order obtained subsequently and filed alongwith second chargesheet. He has further submitted that even the second sanction order was not valid for the reason that it was monitored by the Court and in fact the sanction order has been given under pressure of the Court. He emphasized that during the

period the Petitioner was discharged for want of valid sanction and till re-summoned after sanction was obtained allegedly from the competent authority, the trial did not proceed before learned Special Judge which in itself is sufficient to quash the impugned orders. It has been further submitted by learned counsel for the Petitioner that as per CBI Manual, the sanctioning authority was required to peruse the original material but the second sanction has been granted on the basis of photocopies which itself is sufficient to consider the second sanction also to be not valid and proper. Even the chargesheet filed alongwith the second sanction order contained photocopies and no cognizance could have been taken on such chargesheet.

13. While referring to the transcript, learned counsel for the Petitioner has submitted that there is no demand by the Petitioner, hence the Petitioner could not have been charged under any of the provisions of Prevention of Corruption Act, 1988. Learned counsel for the Petitioner has further submitted that in the circumstances, not only the order taking cognizance on the basis of an invalid sanction accorded on photocopies is required to be quashed but even the subsequent order on charge without there being any material for demand of bribe also needs to be quashed by this Court in exercise of writ jurisdiction. Learned counsel for the Petitioner has relied upon *Rambhai Nathabhai Gadhvi & Ors. vs. State of Gujarat (1997) 7 SCC 744*, *Mansukh Lal Vitthal Das vs. State of Gujarat 1997 SCC 622*, *Karambir Singh vs. CBI (2012) (1) JCC 12*, *A.Subair vs. State of Kerala 2009 IV AD (CR.) (SC) 21*, *P.Parasurami Reddy vs. State of A.P. (2011) 12 SCC 294* and *Surajmal vs. State of Delhi (1979) 4 SCC 725* in support of his contentions.

14. On behalf of CBI, Mr.Sanjeev Bhandari, learned Standing Counsel

has submitted that the Petitioner was discharged on the ground that the sanction earlier granted was not by the competent authority. It has been further submitted that there is no bar in considering the photocopies for the purpose of grant of sanction as it is for the sanctioning authority to arrive at the satisfaction on perusal of the material available against the accused. In the instant case, since the originals were already in the chargesheet filed earlier before the learned Special Judge, the photocopies were sent to the competent authority for consideration and sanction was granted. It has been further submitted that the Petitioner was earlier discharged on technical grounds and once the sanction has been granted by the competent authority, there was no bar in taking cognizance on the basis of proper and valid sanction order by the competent authority and summon the accused and proceed against him. It has been further submitted that these writ petitions have been filed by the Petitioner just to delay the trial and the same may be dismissed.

15. I have considered the rival contentions and carefully gone through the record.

16. First of all, it is necessary to record that the case law relied up by learned counsel for the Petitioner in support of his contentions has no application to the present case. In the case of ***Rambhai Nathabhai Gadhvi & Ors.vs. State of Gujarat*** (Supra), it was held that designated Court has no jurisdiction to take cognizance of an offence without a valid sanction. It was in the given facts and circumstances of that particular case, **the sanction was held to be vitiated on the ground of non-application of mind**. So far as the case in hand is concerned, the trial is yet to take place and for purpose of taking cognizance, at the time of filing the chargesheet, there was a

sanction. Thereafter when there was a challenge to the sanction being granted by the authority not competent to remove the Petitioner, sanction has been again obtained from the competent authority. Thus, the Petitioner cannot claim that cognizance has been taken in the absence of sanction order.

17. In the case of *Mansukhlal Vithaldas Chauhan vs. State of Gujarat* (Supra) relied upon by the Petitioner, emphasis was on independent application of mind to the facts of the case by the sanctioning authority. **It was held that sanction issued by an authority on the direction of High Court was invalid because there was no independent application of mind by that authority.** In the instant case, there was no such direction by learned Special Judge or any other Court to the sanctioning authority, hence placing reliance of *Mansukhlal Vithaldas Chauhan's case* is of no help to the Petitioner.

18. In *Karambir Singh vs. CBI* (Supra), a Co-ordinate Bench of this Court quashed the order vide which cognizance was taken on obtaining fresh sanction. Observing that fourteen years have elapsed and it may take more number of years for conclusion of the case at the trial Court level depriving the Petitioner to his right to have speedy justice for no fault or contribution of his own, in the peculiar facts the petition was allowed. The order passed in *Karambir Singh's case* in the peculiar circumstances of the case, does not lay down any legal proposition.

19. The other cases *A.Subair vs. State of Kerala* (Supra), *P.Parasurami Reddy vs. State of Andhra Pradesh* (Supra) and *Suraj Pal vs. State (Delhi Administration)* (Supra) relied upon by learned counsel for the Petitioner were appeals against conviction whereas in the instant case, the Petitioner,

by filing W.P.(Crl.) No.265/2013 is challenging the order taking cognizance against him and by filing W.P.(Crl.) No.1739/2013, he is challenging the order on charge.

20. It may be noted here that this is the second round of litigation by the present Petitioner despite the legal position well settled in this regard which shall be discussed at the appropriate state.

W.P.(Crl.) No.265/2013

21. The main ground on which the Petitioner is seeking quashing of the summoning order is that fresh chargesheet in the matter could not have been filed to fill-up the lacuna by obtaining fresh sanction at an advanced stage of trial and that too based on the perusal of photocopies. Further the learned Special Judge had no power to monitor the progress in filing the chargesheet. Another ground of challenge to the summoning order passed after obtaining the sanction from the competent authority is that in the absence of valid sanction, when the case was at an advanced stage of recording prosecution evidence, it should have been a ground of acquittal and not of discharge. Further filing of fresh chargesheet has led to denovo trial after disclosure of the defence of the accused and such trial is against principles of fair trial.

22. The above contentions raised by the Petitioner need to be rejected in view of the settled legal position in the regard. In the case of ***Deepak Khinchi vs. State of Rajasthan (2012) 5 SCC 284***, the Appellant was involved in commission of offences punishable under Sections 3, 4, 5 and 6 of Explosive Substance Act, 1908. Section 7 of the Act provided that “*No Court shall proceed to the trial of any person for an offence against this Act*

except with the consent of the Central Government.” Although the sanction was accorded by District Magistrate, Chittorgarh on 01.04.2008, the request of the prosecution for framing charge against the Appellant under the said Act was rejected by the learned Session Judge and the learned Session Judge directed the charges for committing the offences punishable under Sections 285/286/304 of Indian Penal Code to be framed against the Appellant. The Prosecution did not challenge the said order and instead obtained fresh sanction dated 01.06.2010 which was allowed by learned Session Judge. The said order was challenged by the Appellant before Rajasthan High Court but the same was upheld. Aggrieved by the decision of Rajasthan High Court, the Appellant preferred appeal before the Supreme Court contending that :

- (i) the Courts below erred in allowing the application filed by the prosecution after a delay of about three years;
- (ii) it was not open to the prosecution to make repeated attempts to get sanction from the competent authority;
- (iii) the Trial Court has subjected the Appellant to the ordeal of a trial for the offence under the said Act after a period of three years and this has resulted in miscarriage of justice; and
- (iv) since the prosecution had deliberately delayed obtaining sanction, it cannot be now allowed to fill in the lacuna and such a course will result in abuse of process of Court.

23. While rejecting the above contentions, the Apex Court held as under :

*‘13. In this connection, we may usefully refer to the judgment of this Court in **State of Goa v. Babu Thomas** MANU/SC/0776/2005 : (2005) 8 SCC 130. In that case, the Respondent therein was employed as Joint Manager in Goa Shipyard Limited, a Government of India*

Undertaking under the Ministry of Defence. He was arrested by the CID, Anti-Corruption Bureau of Goa Police on the charge that he demanded and accepted illegal gratification from an attorney of M/s. Tirumalla Services in order to show favour for settlement of wages, bills/arrears certification of pending bills and to show favour in the day-to-day affairs concerning the said contractor. The first sanction to prosecute the Respondent was issued by an incompetent authority. The second sanction issued retrospectively after the cognizance was taken was also by an incompetent authority. This court held that when Special Judge took cognizance, there was no sanction under the law authorizing him to take cognizance. This was a fundamental error which invalidated the cognizance as being without jurisdiction. However, having regard to the gravity of the allegations leveled against the Respondent, this court permitted the competent authority to issue a fresh sanction order and proceed afresh against the Respondent from the stage of taking cognizance of the offence. It is pertinent to note that the offence therein was committed on 14/9/1994. Looking to the seriousness of the offence, this Court permitted the competent authority to issue fresh sanction order after about 10 years. We have no hesitation in drawing support from this judgment. The offence in this case is equally grave. At no stage, sanction was refused by the competent authority. It is not the case of the Appellant that sanction is granted by the authority, which is not competent. It is true that the proceedings are sought to be initiated under the said Act against the Appellant after three years. But, in the facts of this case, where 14 innocent persons lost their lives and several persons were severely injured due to the blast which took place in the Appellant's shop, three years period cannot be termed as delay. It is also the duty of the court to see that perpetrators of crime are tried and convicted if offences are proved against them. We are not inclined to accept the specious argument advanced by Learned Counsel for the Appellant that the lapse of three years has caused prejudice to the accused. The case will be conducted in accordance with the law and the Appellant will have enough opportunity to prove his innocence. Besides, equally dear to us are the victim's rights.

14. It is true that learned Sessions Judge has, by his order dated 13/9/2007 discharged the Appellant of the charges Under Sections 3, 4, 5 and 6 of the said Act because there was no sanction. But, the

prosecution has now obtained sanction. The Sessions Judge has accepted the sanction and has directed that the trial should be started against the Appellant for offences Under Sections 3, 4, 5 and 6 of the said Act, as well. The order of the Sessions Judge is affirmed by the impugned order passed by the High Court. In view of the legal position as discussed above, and in the facts of the case, as narrated above, we see no reason to interfere in the matter and we direct the trial court to frame additional charges against the Appellant Under Sections 3, 4, 5 and 6 of the said Act and to proceed with the trial. Needless to say that the stay of further proceedings granted by this Court on 5/7/2011 shall stand vacated.'

24. The object behind obtaining a sanction to prosecute a public servant as well the bar under Section 19(1) of Prevention of Corruption Act on the Court not to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 of the Act except with the previous sanction, is mainly to save the honest public servants from prosecution for the acts done by them in discharge of their official duty.

25. The scope of interference by the High Court in matters where an accused challenge the criminal prosecution on the ground of sanction being invalid in law, has come up for consideration in a recent decision by the Supreme Court in ***State of Bihar vs. Rajmangal Ram AIR 2014 SC 1674***.

26. In ***Rajmangal Ram's case*** (Supra), the Respondent had challenged his prosecution before the High Court of Patna contending that the sanction was invalid in law as sanction had been granted by Law Department of the State and not by the Parent Department to which the Respondent belong. The criminal proceedings were interdicted by High Court of Patna while accepting the plea of Respondent on the ground of sanction being not granted by the parent Department. The State of Bihar challenged the

decision of Patna High Court by filing Criminal Appeal Nos.708, 709 and 710 of 2014. The Supreme Court not only considered the scope of power of High Court to quash the criminal prosecution on such ground i.e. validity of sanction but also the object behind requirement of obtaining sanction to prosecute a public servant and the question of law arising in the appeals preferred by the State of Bihar. The question of law arising for decision as well the object behind obtaining sanction to prosecute public servant and the scope of power of High Court to quash the criminal prosecution on such ground have been considered at length.

27. The question of law and the object behind requirement of obtaining the sanction, have been discussed in para 4 and 5 of the report as under :

‘4. Though learned Counsels for both sides have elaborately taken us through the materials on record including the criminal complaints lodged against the Respondents; the pleadings made in support of the challenge before the High Court, the respective sanction orders as well as the relevant provisions of the Rules of Executive Business, we do not consider it necessary to traverse the said facts in view of the short question of law arising which may be summed up as follows:

Whether a criminal prosecution ought to be interfered with by the High Courts at the instance of an accused who seeks mid-course relief from the criminal charges levelled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant such sanction?

5. The object behind the requirement of grant of sanction to prosecute a public servant need not detain the court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute a honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test, therefore, always is-

-whether the act complained of has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bonafide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. However, realising that the dividing line between an act in the discharge of official duty and an act that is not, may, at times, get blurred thereby enabling certain unjustified claims to be raised also on behalf of the public servant so as to derive undue advantage of the requirement of sanction, specific provisions have been incorporated in Section 19(3) of the Prevention of Corruption Act as well as in Section 465 of the Code of Criminal Procedure which, inter alia, make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent court unless in the opinion of the court a failure of justice has been occasioned. This is how the balance is sought to be struck.'

28. After considering the provisions of Section 19 of Prevention of Corruption Act, 1988 and Section 465 of Code of Criminal Procedure, it was further observed as under :

'7. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in State by Police Inspector v. T. Venkatesh Murthy MANU/SC/0731/2004 : (2004) 7 SCC 763 (paras 10 and 11) wherein it has been inter alia observed that,

14. Merely because there is any omission, error or irregularity in the matter of according sanction, that does not

affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice.

8. *The above view also found reiteration in Prakash Singh Badal and Anr. v. State of Punjab and Ors. MANU/SC/5415/2006 : (2007) 1 SCC 1 (para 29) wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Prakash Singh Badal (supra) it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in R. Venkatkrishnan v. Central Bureau of Investigation MANU/SC/1411/2009 : (2009) 11 SCC 737. In fact, a three Judge Bench in State of Madhya Pradesh v. Virender Kumar Tripathi MANU/SC/0668/2009 : (2009) 15 SCC 533 while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19(3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report).*

9. *There is a contrary view of this Court in State of Goa v. Babu Thomas MANU/SC/0776/2005 : (2005) 8 SCC 130 holding that an error in grant of sanction goes to the root of the prosecution. But the decision in Babu Thomas (supra) has to be necessarily understood in the facts thereof, namely, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect to validate the cognizance already taken on the basis of the initial sanction order. Even otherwise, the position has been clarified by the larger Bench in State of Madhya Pradesh v. Virender Kumar Tripathi (supra).*

10. *In the instant cases the High Court had interdicted the criminal*

proceedings on the ground that the Law Department was not the competent authority to accord sanction for the prosecution of the Respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High Court.'

29. Reverting to the facts of the present case when examined in the light of settled legal principles, I am of the considered view that there was no legal bar to file a fresh chargesheet after obtaining sanction from the competent authority and thereafter taking cognizance by learned Special Judge in the matter. Since the order dated 21.01.2013 taking cognizance of the offence does not suffer from any illegality or infirmity, W.P.(Crl.) No.265/2013 filed by the Petitioner is hereby dismissed.

W.P. (Crl.) No.1739/2013

30. In the subsequent writ petition bearing W.P.(Crl.) No.1739/2013, the Petitioner is aggrieved by the order on charge claiming that the transcript does not contain the 'demand' of bribe. I am of the considered view that it is no ground to discharge the Petitioner. It may be noted that vide detailed order dated 18.09.2013 on charge, the learned Special Judge had dealt with all the contentions raised before this Court as well. It is not necessary for this Court to again deal with each and every contention in view of limited scope of interference in writ jurisdiction as laid down by this Court in **Anur KumarJain vs. CBI 178 (2011) DLT 501**, wherein the question referred was:

"Whether an order on charge framed by a Special Judge under the provisions of Prevention of Corruption Act, being an interlocutory

order, and when no revision against the order or a petition under Section 482 of Code of Criminal Procedure lies, can be assailed under Article 226/227 of the Constitution of India, whether or not the offences committed include the offences under Indian Penal Code apart from offences under Prevention of Corruption Act?”

31. The above Reference was answered in para 33 of the report as under :

33. In view of our aforesaid discussion, we proceed to answer the reference on following terms:

(a) An order framing charge under the Prevention of Corruption Act, 1988 is an interlocutory order.

(b) As Section 19(3)(c) clearly bars revision against an interlocutory order and framing of charge being an interlocutory order a revision will not be maintainable.

(c) A petition under Section 482 of the Code of Criminal Procedure and a writ petition preferred under Article 227 of the Constitution of India are maintainable.

(d) Even if a petition under Section 482 of the Code of Criminal Procedure or a writ petition under Article 227 of the Constitution of India is entertained by the High Court under no circumstances an order of stay should be passed regard being had to the prohibition contained in Section 19(3)(c) of the 1988 Act.

(e) The exercise of power either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India should be sparingly and in exceptional circumstances be exercised keeping in view the law laid down in Siya Ram Singh (supra), Vishesh Kumar (supra), Khalil Ahmed Bashir Ahmed (supra), Kamal Nath and Ors. (supra) Ranjeet Singh (supra) and similar line of decisions in the field.

(f) It is settled law that jurisdiction under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India cannot be exercised as a "cloak of an

appeal in disguise" or to re-appreciate evidence. The aforesaid proceedings should be used sparingly with great care, caution, circumspection and only to prevent grave miscarriage of justice.

32. The learned Trial Court while forming an opinion that a prima facie case existed for framing of charge against the Petitioner, recorded that apart from the transcript which, as per the Petitioner, did not contain any demand for bribe, considered the statement of witnesses, pre-trap memo and post-trap memo as well symbolic dominion over the envelope containing currency notes. In addition, in para 82 of the impugned order, it has also been observed as under :

'82. Apart from the above, mere presence of accused Y.S.Verma at the house of accused Mahender Kumar, on the date of incident, knowing fully well the presence of complainant and his relatives there, is inexplicable. Accused Y.S.Verma being a senior officer of DRI having knowledge of the fact that a raid was conducted by DRI at the premises of complainant Ashwini Kumar Aggarwal, who as such was a potential candidate for initiation of appropriate proceedings against him, had no business or occasion being a public servant to meet such a person for any reason whatsoever at any place, except the office of DRI and that too, for official purposes.'

33. Thus, it cannot be contended by the Petitioner that charge has been ordered to be framed against him without there being any material to form a prima facie opinion about the offence for which he has been ordered to be charged.

34. When the case of the Petitioner is examined in the light of decision of this Court in **Anur Kumar Jain's case** (Supra), I do not find it to be a fit case falling in exceptional circumstances as envisaged in **Anur Kumar Jain's case** (Supra) so as to call for any interference by this Court in

exercise of writ jurisdiction.

35. In view of above discussion, both the writ petitions are hereby dismissed.

PRATIBHA RANI, J

DECEMBER 11, 2014

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