

**Court No. - 9**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 21264 of 2020

**Petitioner :-** Prof. Vipin Saxena

**Respondent :-** State Thru The Inspector Of Police Cbi/Acb Lucknow

**Counsel for Petitioner :-** Pranjal Krishna, Prashant Singh Atal

**Counsel for Respondent :-** Anurag Kumar Singh

**Hon'ble Rajan Roy, J.**

**Hon'ble Mrs. Jyotsna Sharma, J.**

Second supplementary counter affidavit filed on behalf of the opposite party is taken on record.

Heard Shri Pranjal Krishna, learned counsel for the petitioner and Shri Anurag Kumar Singh, learned counsel for the opposite party.

This writ petition has been filed seeking the following reliefs:-

*"(I) To issue a writ, order or direction in the nature of certiorari quashing the accusation of the petitioner with entire prosecution/investigation carried out on the basis of the aforesaid First Information Report RC0062017A0020 of 2017 under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988, registered with Police Station - Hazaratganj, District- Lucknow as contained in Annexure no. 8, to the Writ Petition in respect of the petitioner, in the interest of justice;*

*(II) To issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to carry-out any consequential proceedings on the basis of the aforesaid First Information Report RC0062017A0020 of 2017 under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988, registered with Police Station - Hazaratganj, District- Lucknow during the pendency of the present writ petition before this Hon'ble Court so as to meet the ends of justice;"*

On the earlier date we have been informed that sanction for prosecution under Section 19 of the Prevention of Corruption Act, 1988 has been declined on 16.06.2022 by the competent authority.

Shri Anurag Kumar Singh, learned counsel for the opposite party had then informed the Court that the application seeking sanction for prosecution is pending before the Central Vigilance Commission (hereinafter referred to as 'the CVC'), which, according to him, was maintainable.

We asked learned counsel for the opposite party to satisfy as to what role the CVC has in the matter, especially, when the sanction has been declined by the competent authority.

On 04.08.2023 this Court had passed the following order:-

*"Heard.*

*This petition was filed in the year 2020 seeking for the following reliefs:*

*"(I) To issue a writ, order or direction in the nature of certiorari quashing the accusation of the petitioner with entire prosecution/investigation carried out on the basis of the aforesaid First Information Report RC0062017A0020 of 2017 under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988, registered with Police Station-Hazaratganj, District-Lucknow as contained in Annexure no. 8, to the Writ Petition in respect of the petitioner, in the interest of justice:*

*(II) To issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to carry-out any consequential proceedings on the basis of the aforesaid First Information Report RC0062017A0020 of 2017 under Section 13(2) z/w 13(1)(e) of Prevention of Corruption Act, 1988, registered with Police Station-Hazaratganj, District Lucknow during the pendency of the present writ petition before this Hon'ble Court so as to meet the ends of justice."*

*Shri Pranjal Krishna, learned counsel for petitioner says that the Central Bureau of Investigation (C.B.I.) conducted an investigation and sought sanction for prosecution of the petitioner from the appointing authority i.e. Board of Governor the Babasaheb Bhimrao Ambedkar University, Lucknow. The said sanction was declined vide order dated 16.06.2022, copy of which has been brought on record along with supplementary affidavit dated 10.08.2022, the said decision is annexed as SA-3. The submission is that in the absence of sanction, prosecution cannot take place.*

*However, Shri Anurag Kumar Singh, learned counsel for C.B.I. says that permission seeking sanction for prosecution is pending before the Central Vigilance Commission (C.V.C.).*

*Let the C.B.I. satisfy the Court that C.V.C. is the authority competent to sanction prosecution of petitioner and also that once such sanction has been declined by the appointing authority if it is the competent authority in this regard then such permission can be sought from the C.V.C.*

*List on 28.08.2023."*

Thereafter, on 08.11.2023 the following order was passed by this Court:-

*"Sri Anurag Kumar Singh, learned counsel for CBI is present. He says that he is in possession of certain circulars, according to which, sanction for prosecution under Section 19 of Prevention of Corruption Act is to be given by the Central Vigilance Commission (CVC), if the appointing authority does not accord sanction.*

*However, Sri Pranjal Krishna, learned counsel for the petitioner says that subsequent to this circular, there is another circular, according to which, the opinion of the CVC is to be taken by the appointing authority prior to grant or refusal of sanction and CVC does not have any role to play once*

*the sanction has been refused by the appointing authority.*

*List this case on 16.11.2023 as a first case of the day.*

*No adjournment shall be granted to learned counsel for parties on the next date.*

*Affidavit, if any, to be filed by the CBI before the next date."*

It is not in dispute that charge sheet had been filed against the petitioner.

Learned counsel for the opposite party has filed second supplementary counter affidavit which is sworn by Shri Rohit Kumar Kaithal, Inspector of Police, C.B.I., ACB, Lucknow. Annexure No. S.A. 2 is the Letter dated 19.07.2022 of the under Secretary to the Government of India which is addressed to the Chief Vigilance Officer, Babasaheb Bhimrao Ambedkar University, Vidya Nagar, Raebareli Road, Lucknow i.e. the employer of the petitioner. Another Letter dated 17.10.2023 which is also annexed with the said counter affidavit. From the said pleadings it appears that prior to consulting the CVC, the appointing authority of the petitioner declined to grant sanction for prosecution to CBI and communicated its decision to the CBI, therefore, the CVC has expressed its opinion that review of its decision is not possible, however, for the future it has counseled the appointing authority to adhere to the procedure prescribed in the Vigilance Manual of CVC.

Shri Pranjal Krishna, learned counsel for the petitioner says that the decision of the Sanctioning Authority was based on report of the CVO who is an Officer sub-ordinate to CVC, however, Shri Anurag Kumar Singh, learned counsel for the opposite party says that this is not the correct procedure which has been adopted. The advise of the CVC should have been taken and not the CVO.

Be that as it may, it is not in dispute and Shri Anurag Singh, learned counsel for the opposite party could not show any sanction for prosecution by the CVC assuming that it had authority to grant it as was being claimed on the earlier dates. In fact the letters annexed by CBI with the supplementary affidavit show that the appointing authority having declined sanction for prosecution CVC can not review the decision.

Shri Pranjal Krishna, learned counsel for the petitioner says that once the sanction has been declined by the Competent Authority under Section 19 of the Prevention of Corruption Act, 1988, then, the trial Court can not take cognizance of the offence.

As far as we are concerned the only challenge before us is with regard to the F.I.R. impugned herein and the Investigation being carried out. The charge sheet having already been filed there is nothing left for us to adjudicate in these proceedings. The trial Court of course will take this aspect into consideration at the time of cognizance.

Leaving all pleas open for being raised before the trial Court, we **dispose of** this writ petition with the aforesaid observations.

(Mrs. Jyotsna Sharma,J.)      (Rajan Roy,J.)

**Order Date :- 23.11.2023**  
R.K.P.