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CRL.A(MD).Nos.419 & 420 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A.(MD)Nos.419 and 420 of 2017

Crl.A.(MD)No.419 of 2017:-

K.Muthumuniyandi

... Petitioner

VS.

State through
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Virudhunagar.
(in Cr.No.2 of 2000)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records pertaining to the judgment passed by the learned Chief Judicial Magistrate cum Special Judge for Vigilance and Anti-Corruption Cases, Virudhunagar District at Srivilliputhur convicting the appellant in Special C.C.No.49 of 2014 (Old Special C.C.No.05 of 2004) dated 20.10.2017 and set aside the same.

For Appellant :Ms.A.L.Gandhimathi

Senior Counsel
for Mr.S.Balakarthick

For Respondent :Mr.T.Senthil Kumar

Additional Public Prosecutor

Crl.A.(MD)No.420 of 2017:-



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... Appellant

VS.

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The Deputy Superintendent of Police,
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(in Cr.No.2 of 2000)

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For Appellant :Mr.M.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates

For Respondent :Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

Since these criminal appeals are arising out of the same crime, these cases are taken up for hearing together and disposed of by way of this common judgment.



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2.The appellant in Crl.A.(MD)No.419 of 2017 was working as an Overseer in the Rajapalayam Panchayat Union. The appellant in Crl.A.(MD)No.420 of 2017 was working as Panchayat Assistant in the Rajapalayam Panchayat Union Office. In the said Panchayat Union, there was a scheme programme to clean the drainage in Rajapalayam, Krishnapuram, Melapattam and Karisalkulam and other places under the Jawahar Yojana Programme.

3.As per the scheme, the appellants and the remaining accused 3 and 4 are duty bound to carryout the work through workers by preparing NMR list. After completion of the work, the amount would be disbursed to the said workers fund in the NMR list. Before disbursing the amount, appellant/A1 in Crl.A.(MD).No.420 of 2017 has to prepare the NMR list and bills and submit to the remaining accused to verify and confirm the same. Subsequently, the said list and bill would be verified and confirmed by the remaining accused. In the present case, without doing the work, they prepared forged NMR list and forged bills and have misappropriated the amount to the tune of Rs.70,685/-, thereby, they committed the offence of criminal breach of trust under Section 409 of IPC. By way of preparing the forged NMR list and forged bills, they not



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only committed the offences under the IPC, but also committed offence of misconduct under Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. Hence, after registering the case in Cr.No.02 of 2000, the Vigilance department completed the investigation and filed the final report before the learned Chief Judicial Magistrate-cum-Special Judge for Vigilance and Anti-Corruption Cases, Virudhunagar District at Srivilliputhur.

4.The learned Special Judge took the case on file in Spl.C.C.No.5 of 2004 and summoned the accused and furnished the copies under Section 207 Cr.P.C. After serving the copies, the learned Trial Judge framed necessary charges and questioned the accused. During the course of trial, A2, A3 and A4 died. After the death of the three accused, the charges were altered on 20.10.2007. The appellant denied the charges and pleaded not guilty. To prove the charges the prosecution examined PW-1 to PW-58 and marked Ex-P1 to Ex-70 and on the basis of the evidence and the documents, the learned Trial Judge questioned the accused under Section 313 Cr.P.C., regarding incriminating materials available in the prosecution evidence, and the accused denied the same as false and hence, the case was posted for examination of witnesses on



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the side of defence. The appellants neither examined any witness nor produced any documents .

5.The learned trial Judge after considering all the facts and particularly, considering the misappropriation of the panchayat funds to the tune of Rs.70,685/-, found A1 and A2 guilty and imposed the sentence against A1 and A2 for the alleged offence under Sections 120(b), 409 r/w 109, 467, 471, 477A of IPC and Sections 13(1)(c) and (d) and 13(2) of Prevention of Corruption Act. Challenging the same, the appellants filed the above appeals.

6.The learned Senior Counsel appearing for the appellant in Crl.A. (MD)No.419 of 2017 made the following submissions:

6.(i).The appellant was not vested with the duty to prepare the nominal Muster Roll and he has no role in the preparation of NMR list. According to the learned Senior Counsel, the sanctioning authority, without applying his mind, granted sanction. Hence, the cognizance by the learned Trial Judge is vitiated for the non application of the mind by the Sanctioning authority while granting sanction, for which, he placed reliance on the judgment of Hon'ble Supreme Court in **(2007) 11 SCC**



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6.(ii).The learned Senior Counsel further submitted that the sanctioning authority specifically admitted that he did not peruse the NMR bills. Hence, without perusal of the NMR bills, the sanctioning authority accorded sanction and hence, there is total non application of mind. The prosecution failed to produce the documents relating to the appellant's involvement in the preparation of Nominal Muster Roll and preparation of forged bills. Without any evidence, the Trial Court convicted the appellants. According to the prosecution, A1 was duty bound to prepare the list and same was overseen by A4 and A5. In this case, the prosecution never produced any documents to show that A1 prepared the list and hence, without any evidence, the conviction and sentence passed against him is not legally maintainable.

6.(iii).The learned Senior Counsel submitted that according to the prosecution, the work was completed as per G.O.Ms.No.70. As per G.O.Ms.No.70, the Block Development Officer is the competent person to grant sanction. But in this case, sanction was granted by the Collector, superior to the Block Development Officer. The said Government Order was not marked and intentionally it was suppressed and hence, adverse inference against the prosecution is to be drawn, for which, he placed



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reliance on the judgment of Honourable Supreme Court in (2006) 7 SCC 172, wherein, it is held that the document in possession of the public functionary must be produced before the Court, otherwise adverse inference can be drawn against him. Hence, the learned Senior Counsel submitted that the prosecution miserably failed to prove the case.

6.(iv).The learned Senior Counsel further submitted that the sanctioning authority is not the competent authority to issue sanction and hence, his sanction is invalid in law, for which, he relied upon the judgment of this Court reported in **2004 1 LW (crl) 274**. The learned Senior Counsel further submitted that the prosecution never produced any evidence to prove that the appellant prepared Nominal Muster Roll with fictitious names and also forged the signatures.

7.The learned Senior Counsel Mrs.Gandhimathi appearing in Crl.A.(MD).No.419 of 2017 and Mr.Ajmal Khan appearing in Crl.A.(MD).No.420 of 2017 submitted that no witnesses stated regarding the involvement of A5. In the entire process of the preparation of the NMR list and preparation of the forged bills, no witness stated that A5 was involved in the above occurrence. No NMR list was signed by A5 and the same was not properly considered by the learned trial Judge. Hence, the



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learned Senior Counsel submitted that the judgment of the Trial Court is perverse.

8.The learned Senior Counsel also reiterated the submissions of the learned Senior Counsel appearing for A1 that the sanctioning authority has granted the sanction without application of mind. The sanctioning authority stated that the signature of A5 was found in number of documents. Per contra, no such signature was found in the documents. Hence, the sanctioning authority has not applied his mind. Hence, the sanction is without application of mind and it is not valid one and on the basis of the invalid sanction, the cognizance taken by the Court below is illegal. Hence, the learned Senior Counsel seeks to set aside the conviction and sentence.

9.In many number of exhibits, the appellant's name is not found, only the A1's signature is found. The learned Senior Counsel has stated that no evidence is adduced to prove the active participation of the appellant in the crime. For proving the conspiracy, no evidence was adduced by the prosecution to prove meeting of minds with the other accused. Hence, the learned Senior Counsel seeks to set aside the judgment passed by the learned Trial Judge.



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10.The learned Additional Public Prosecutor submitted that the preparation of the Nominal Muster Roll with the fictitious persons is proved through the evidence of number of witnesses. The prosecution examined the villagers from the particular villages and they deposed that they did not attend any work and they did not receive any amount. Apart from that, the bills were compared by the Handwriting Expert and the report positively established the handwriting of the accused. Apart from that, there is a specific finding that the work was not done as per the programme of Jawahar Yojana Scheme. In Ex-P5, the signature of the A5 is found. Ex-P65 is the forged Nominal Muster Roll. The same was put to the accused during the questioning under Section 313 Cr.P.C. He has not denied the same.

11.The learned Additional Public Prosecutor further submitted that the learned Trial Judge meticulously analysed the evidence available against each accused in Item Nos.2 and 3 in the tabular column No.4 relating to A5, it is clearly stated that A1 made the counter sign and A5 affixed signature as Overseer. It is the duty of the Overseer to verify the preparation of Muster Roll and also make spot inspection to verify the completion of the work by persons mentioned in the NMR list. The same



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was not done and hence, there is a clear conspiracy between the accused to swindle the amount of Rs.70,685/-. Hence, the prosecution in all aspects proved the case through legal evidence. The learned Trial Judge meticulously discussed about the evidence and correctly came to the conclusion that the appellant committed the offences and hence, seeks no interference in the Judgment of the trial Court.

12.This Court perused the records and also the impugned order and considered the detailed submissions made by both learned Senior Counsel and the learned Additional Public Prosecutor.

13.The following questions arise for consideration of this appeal:

13.1.Whether the prosecution proved the case beyond reasonable doubt against the appellants?

14.Discussion on the preparation of the “forged NMR and bills”

The prosecution case in brief is that the appellants and the remaining accused were working in Rajapalayam Panchayat Union Office. A1 was working as an Assistant in the Panchayat Union Office



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and A2 and A3 were working as Block Development Officers of the said Panchayat Union. A4 and A5 were working as Overseers of the said Panchayat Union. As per the Jawahar Yojana Programme, the Panchayat Union entrusted the work of cleaning the drainage channel of four places, namely, Rajapalayam, Krishnapuram, Melapattam and Karisalkulam. As per the scheme, the NMR list of the workers is to be prepared and through NMR workers, the work has to be completed. The same has to be overseen by the appellants and the remaining deceased accused. Here, all the accused prepared the Nominal Muster Roll with fictitious persons, prepared forged bills and misappropriated the funds without doing any work. To prove the same, the prosecution examined the persons, who claimed that their names were falsely included. The persons available in the village but fictitiously added in NMR without being allotted any work, categorically deposed that they were not allotted any work and they did not receive any amount.

15.To strengthen the case of the prosecution, the prosecution examined the Handwriting Expert. The Handwriting Expert also has given the opinion that the signature found in the forged bills and NMR list are the signatures of A1 and A5. Further, the prosecution also proved the duty entrusted to the appellants.



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16. The official witnesses examined on the side of the department, stated about the duties of the appellants. As per the official witnesses, A1, namely, the appellant in Crl.A(MD)No.420 of 2017, prepared the muster roll with counter sign and submitted to the remaining accused for the approval and grant of the sanction. On the basis of the sanction only, the bill amount was disbursed to the individuals. The muster roll itself was created with fictitious persons and the bill was forged and the amount was misappropriated. Hence, the prosecution proved the case in all aspects by examining the witnesses and also through expert opinion.

17. Apart from that, none of the accused had denied the documents marked, either by way of explanation under section 313 CrPC or through examining any witness. When the prosecution evidence clearly proved the fabrication of the documents, falsification of the records and misappropriation of the amounts entrusted with the said persons, the accused are duty bound to explain the signature found in the forged documents. They did not furnish any explanation. In the said circumstances, the prosecution clearly proved the case against the appellants.



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18.The learned Senior Counsel for A5 stated that no signature is found in any of the documents. The said submission is not correct. As rightly pointed out by the learned Additional Public Prosecutor, the learned Trial Judge segregated the bills relating to the four villagers and A5's signature is found in the Tabular Column No.4. In the said document, he signed in the forged NMR and also bills. Further, in number of exhibits, his signature is found. The same was disclosed during the examination of 313 Cr.P.C., But A5 did not explain as to how his signature is found in the same and also he has not disputed the signature. In the said circumstances, the learned Senior Counsel's submission that there is no material against A5 in the preparation of the forged document is not accepted.

19.Further, the learned Senior Counsel submitted that there is no evidence to prove the meeting of the minds between the appellants. Conspiracy is made in secrecy. To prove the conspiracy, it is not possible to produce direct evidence, more particularly, in the case of the documentary evidence, when the forged NMR list contains the signature of the appellants. That itself is a strong circumstance to indicate the



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meeting of minds and also the agreement to do an illegal act. Hence, the learned Senior Counsel's submission that to prove the conspiracy, there is no evidence “for meeting of minds” is not correct. The prosecution has proved the same through circumstances and also through documentary evidence.

20.Hence, this Court finds no merits in the contention of the learned Senior Counsel that he has not prepared the NMR list. In the chief examination, the sanctioning authority stated that all the accused prepared the false 148 person in the NMR list and caused loss to the Government to the extent of Rs.70,685/-.

21.Discussion on “Sanction”

The learned Senior Counsel submitted that the sanction granted to prosecute Yesudasan, namely, A1, by the superior authority, namely, the District Collector is without jurisdiction. According to the learned Senior Counsel, as per G.O.Ms.70, A1 is an Assistant, his appointing authority is Block Development Officer and he is the competent authority. Hence, sanction granted by the District Collector is without jurisdiction. This Court is not inclined to accept the same. In the case of



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the two officers being involved in the occurrence, nothing is wrong if the higher officer, accorded sanction to prosecute both the officers. Apart from that, the Block Development Officer of the zone is facing the trial and hence, this Court finds no merit in the contention of the learned Senior Counsel for the appellant that the District Collector has no jurisdiction to grant sanction to both the appellants.

21.1. Both the learned Senior Counsel submitted that the sanctioning authority, without application of mind accorded sanction and hence, the sanction is invalid. Consequently, taking of cognizance on the basis of invalid sanction is illegal and hence, they seek for acquittal.

21.2.Before Further elaboration on the submission of Appellant regarding non application mind while according sanction, this Court has a duty to find out the meaning of “sanction” and precedents relating to the according of sanction. The word ‘sanction’ has not been defined in the Code of Criminal Procedure.

<i>Dictionary</i>	<i>Meaning</i>
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<i>Webster's Third New Internal Dictionary</i>	<i>Explicit permission or recognition by one in authority that gives validity to the act of another person or body; something that authorizes, confirms, or countenances.</i>
<i>The New Lexicon Webster's Dictionary</i>	<i>Explicit permission given by some one in authority.</i>
<i>The Concise Oxford Dictionary.</i>	<i>Encouragement given to an action etc., by custom or tradition; express permission, confirmation or ratification of a law etc; authorize, countenance, or agree to (an action etc.)</i>
<i>Stroud's Judicial Dictionary</i>	<i>Sanction not only means prior approval; generally it also means ratification.</i>
<i>Words and Phrases—</i>	<i>The verb 'sanction' has a distinct shade of meaning from 'authorize' and means to assent, concur, confirm or ratify. The word conveys the idea of sacredness or of authority.</i>
<i>The Law Lexicon by Ramanath Iyer</i>	<i>Prior approval or ratification.</i>
<i>Rameshwar Bhartia Vs. State of Assam reported in 1952 2 SCC 203, the Hon'ble Supreme Court has stated that</i>	<i>Sanction is in the nature of permission.</i>

21.3.In ***Om Prakash v. State of U.P., 2001 SCC OnLine All 818***

at page 1248. Hon'ble Mr.Justice G.P.Mathur (as he then was) made a



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detailed discussion on this aspect and finally has held that

6..... The word ‘sanction’ has been used as a “verb” and therefore it will mean to assent, to concur or approval.

21.4. Therefore, in the considerable opinion of this Court, sanction is the independent act of sanctioning authority with due application of mind over the material forwarded by the investigating agency to prosecute the accused before the Court of law under the penal provision constituting the offence.

21.5. The Hon'ble Supreme Court in ***State of Maharashtra v. Mahesh G. Jain***, (2013) 8 SCC 119 after considering the earlier various decisions of the Hon'ble Supreme Court reported in ***AIR 1958 SC 124***, ***AIR 1979 SC 677***, ***1995 6 SCC 225***, ***2005 4 SCC 81***, ***2006 12 SCC 749***, ***2007 11 SCC 273***, ***2011 1 SCC 491***, has expounded the following detailed principles of law governing the validity of sanction:

“14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after



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being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.



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14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity.”

21.6.The sanctioning authority has perused the documents produced by the Investigation Authority. The sanctioning authority applying his mind granted sanction and also deposed before the Court as follows:

“மேற்கண்ட அனைத்து ஆவணங்கள்
சாட்சியின் வாக்கு மூலங்கள் ஆகியவற்றை
கவனமுடன் தீர்ப்பரிசீலித்து மேற்குறிப்பிட்ட
5 நபர்மீதும் குற்றவியல் நடவடிக்கை
தொடர அனுமதி அளித்தேன்.

21.7.In this case the investigating officer, after collecting the material documents and recording the statements of the witnesses recorded under Section 161 of Cr.P.C, produced the same before P.W.1 to accord sanction. P.W.1 after considering and applying his mind granted



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sanction under Ex.P1 to Ex.P4. The material portions of the sanction order/Ex.P1, Ex.P4 are as follows:

<i>Ex.P1</i>	<i>Ex.P4</i>
And whereas I A.Mohamed Aslam, I.A.S, Collector, Virudhunagar District, Virudhunagar, being the authority competent to remove the said Thiru I.Yesudasan from the office, after carefully and thoroughly examining the relevant materials placed before me with regard to the said allegations such as FIR statement of witnesses of Thiru.I.Yesudasan, document expert's report and the report of Director, Vigilance and Anti Corruption and the connected documents placed before me with regard to the said allegation, am satisfied that it is necessary in the interest of justice Thiru.I.Yesudasan Panchayat Assistant, Rajapalayam Panchayat Union should be prosecuted before the Court of Law for the above said offences.	And whereas, I A.Mohamed Aslan, I.A.S, Collector, Virudhunagar District being the authority competent to remove the said accused Thiru.K.Muthumuniyandi (Accused) from the office, after carefully and thoroughly examining the relevant materials, palced before me in regard to the said allegations such as FIR statement of witnesses and statement of accused Thiru.K.Muthumuniyandi, expert opinion and connected documents and report of Director, Vigilance and Anti Corruption relating to the allegation and in the facts and circumstances of the case, am satisfied that it is necessary in the interest of justice that the above accused Thiru.K.Muthumuniyandi (Accused), fly. Union Overseer, Rajapalayam Panchayat Union should be prosecuted before the Court of Law for the said offences.



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The sanctioning authority was examined as P.W.1 and he also deposed before the Court that he accorded sanction under Ex.P1 after applying his mind in the following words:

நான் தற்சமயம் சென்னையில்
போக்குவரத்து துறையில் இணைச்
செயலாளராக பணிபுரிந்து வருகிறேன்.
22.07.2003 முதல் 25.05.2006 வரை
விருதுநகர் மாவட்டத்தில் மாவட்ட
ஆட்சியத் தலைவராக பணிபுரிந்து
வந்தேன். அப்போது ஊழல் மற்றும்
கண்காணிப்புத்தறையில் இருந்து பெறப்பட்ட
அறிக்கையின் அடிப்படையில் கிருஷ்ணாபுரம்
மற்றும் மேலப்பாட்டம் கரிசல்குளம் ஆகிய
ஊராட்சிகளில் பஞ்சாயத்து உதவியாளராக
பணிபுரிந்த ஜேகதாசன் என்பவர், திரு.
முத்துமுனியாண்டி திரு.பாலசுப்பிரமணியன்
ஆகிய இரண்டு ஊராட்சி ஒன்றிய
ஓவர்சீயர்ஸ்கள் மற்றும் ராஜ்குமார்,
அய்யன்பிள்ளை என்கிற இரண்டு பிடிஓக்கள்
இவர்களுடன் கூட்டு இணைந்து பொய்யான
முறையில் 148 என் எம் ஆர் பில்களை
தயாரித்து இதன் மூலமாக அரசுக்கு
70,685 ரூபாய் இழப்பீடு ஏற்பட காரணமாக
இருந்தார் என்று குறிப்பிடப்பட்டு



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மேற்குறிப்பிட்ட 5 நபர் மீதும் குற்றவியல் நடவடிக்கை தொடர அனுமதி வேண்டும் என்று கோரியிருந்ததன் பேரில் அந்த வழக்கு சம்மந்தப்பட்ட அனைத்து ஆவணங்கள் சாட்சியின் வாக்குமூலங்கள் ஆகியவற்றை கவனமுடன் தீர்ப்பளித்து மேற்குறிப்பிட்ட 5 நபர் மீதும் குற்றவியல் நடவடிக்கை தொடர அனுமதி அளித்தேன்.

21.8.From the above, this Court finds that the sanction order itself is eloquent about the fact that the accused had prepared forged NMR list and misappropriated the amount. The sanctioning authority also came into the witness box and he deposed that he accorded sanction for prosecution after due application of mind. Therefore, this Court finds that the sanctioning authority has applied his mind to the fact that the appellants forged the Nominal Muster Roll and bills and misappropriated the funds.

22. Further, Section 19 of the Prevention of Corruption Act 1988 and Section 465 of Cr.P.C., specifically state that the conviction cannot be set aside on the ground that there was an error in granting sanction



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unless accused established failure of justice. For better appreciation, the relevant portions of the Sections are extracted as follows:

Section 19 of the Prevention of Corruption act 1988	Under Section 465 of Cr.P.C.
19.3...(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;	465. <i>Finding or sentence when reversible by reason of error, omission or irregularity.</i> —(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.

22.1. The Hon'ble Supreme Court has held as follows in ***State v. T.***

Venkatesh Murthy, (2004) 7 SCC 763 at page 765,

14. In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding “failure of



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justice". 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.

22.2. In State of M.P. v. Virender Kumar Tripathi, (2009) 15 SCC

533 at page 536

9. Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of/ or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the court a failure of justice has in fact been occasioned thereby.

29.3. The Hon'ble Supreme Court in Tshering Bhutia v. State of Sikkim [Ashok Tshering Bhutia v. State of Sikkim, (2011) 4 SCC 402 referring to the earlier precedents has



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observed that

...A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby...

22.3. These two foundational facts to prosecute the appellants under Section 7 and 13(1)(d) r/w 13(2) and 12 of the Prevention of Corruption Act 1988 are found in the sanctioning order/Ex.P1 and in P.W.1's deposition. Further, in the case of ***State of Bihar v. P.P. Sharma***, reported in ***AIR 1991 SC 1260***, the Hon'ble Supreme Court has held as follows:

When the Government accorded sanction, Section 114(e) of the Evidence Act raises presumption that the official acts have been regularly performed. The burden is heavier on the accused to establish the contra to rebut that statutory presumption.

23. In this case also as discussed above, the sanctioning authority accorded sanction by applying his mind and hence, the presumption under Section 114(e) of the Indian Evidence Act comes into play that the sanctioning authority properly discharged his duty. The accused is duty bound to rebut that statutory presumption by preponderance of



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probability and also to establish the failure of justice. In this case, the accused never established both these requirements.

24. According to the above judgment of the Hon'ble Supreme Court if the sanctioning authority deposed before the Court that he granted sanction after applying his mind, the same is sufficient compliance of the Section 19 of the Prevention of Corruption Act and hence, this Court does not accept the contention of the learned counsel for the appellant.

25. Hence, this Court finds no merits in the contention of the learned Counsel for the appellants. Accordingly, these Criminal Appeals are dismissed. The learned trial Judge is directed to secure the appellant to undergo the remaining part of the sentence of imprisonment as per law.

12.03.2024

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Internet : Yes / No
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To

- 1.The learned Chief Judicial Magistrate cum Special Judge
for Vigilance and Anti-Corruption Cases,
Srivilliputhur,
Virudhunagar District.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Virudhunagar.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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Pre-delivery Judgment made in
CRL.A.(MD)Nos.419 and 420 of 2017

12.03.2024