

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:13700-DB

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 248 of 2024

Petitioner :- Rakesh Babu

Respondent :- The U.P. Rajkiya Nirman Nigam Ltd. Thru. Its
Managing Director And Another

Counsel for Petitioner :- Shireesh Kumar,Utkarsh Kumar

Counsel for Respondent :- Shishir Jain

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(1) Heard the learned counsel for the petitioner and the learned
A.G.A. appearing for the State.

(2) This writ petition has been filed with the following main
prayers:-

*"(i) issue a writ, order or direction in the nature of Certiorari
quashing the order dated 26.06.2023 as contained in Annexure
No.8 to this writ petition and declare the petitioner entitled to all
consequential service benefits.*

*(ii) issue any other appropriate writ, order or direction which is
deemed just and proper in the nature and circumstances of the
case in favour of the petitioner in the interest of justice along
with the cost of this writ petition."*

(3) Such relief has been sought on the grounds (as mentioned in
the writ petition) that the impugned order dated 26.06.2023 has
been passed in violation of mandatory provisions of Section 19
of the Prevention of Corruption Act and ignoring the fact that the
petitioner has not committed any criminal misconduct within the
meaning of Section 13 (1) (b) and Section 13 (2) of the
Prevention of Corruption Act, 1988 (*hereinafter referred as the
Act of 1988*).

(4) It has also been stated that initially a Departmental Inquiry
was held against the petitioner on the basis of Charge-sheet

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dated 14.09.2021 wherein a similar charge was framed regarding expenditure of 124% more than his actual income, a copy of which has been filed as Annexure no.2 to the petition. The allegation was that during the check period with effect from 01.01.2007 to 31.12.2011, the petitioner's expenditure on himself and his family members and dependents and also acquisition of immovable and Movable property worth more than his known sources of income i.e. his income from all sources was Rs.42,92,116/- whereas he had spent Rs.96,38,455/-.

(5) In pursuance of the Charge-sheet, the petitioner had submitted his reply which was considered by the Inquiry Officer who exonerated him from the said charge. The Enquiry Report dated 11.11.2021 has been filed as Annexure-3 to the writ petition. In the Enquiry Report, the Enquiry Officer had found that during check period (with effect from 01.01.2007 to 31.12.2011) the petitioner earned a total of Rs.35,20,785/- whereas his wife was making Stuffed Toys and Garments and doing Share Trading and had also sold off Gold jewellery and taken a loan of Rs.10 lacs and her income during the check period was Rs.65,69,613/- and therefore his total income was more than what he had spent. The Managing Director had accepted such report on 06.06.2023 and concluded the Disciplinary Proceedings on 16.06.2023. However, on the very next day i.e. on 07.06.2023, the Opposite party no.2 again passed an order instituting a fresh inquiry on the same charge and evidence. The Charge-sheet was issued to him on 16.06.2023 containing only one charge. The petitioner challenged the order dated 07.06.2023 and Charge-sheet dated 16.06.2023 in Writ-A No.6261 of 2023 [*Rakesh Babu Vs. the U.P. Rajkiya Nirman Nigam Ltd. and another*], in which this Court granted interim protection to him on 24.08.2023 and stayed further proceedings in pursuance of impugned orders. Not being satisfied, the respondent No.2 has also passed an order on 26.06.2023 giving Prosecution Sanction under Section

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197 of the Prevention of Corruption Act, in a matter identical to the subject matter of the Charge-sheet dated 14.09.2021 and 16.06.2023.

(6) In the order dated 26.06.2023 a reference has been made to letters of the State Government dated 20.06.2023 and 26.05.2023, on the basis of Investigation Report No.A-143 of 2021 where the Vigilance Department had *prima facie* found evidence of commission of offence under Section 13 (1) (b) read with Section 13 (2) of the Prevention of Corruption Act.

(7) It has been stated in the writ petition that in the case of ***Romesh Lal Jain Vs. Naginder Singh Rana and others reported in 2006 (1) SCC 294***, the Supreme Court has held that Sanctioning Authority has to take a decision as per the opinion of the Law Department but the order dated 26.06.2023 does not show that any legal opinion has been sought in the matter from the Law Department.

(8) It has also been stated in the writ petition that the Supreme Court in the case of ***Central Bureau of Investigation Vs. Ashok Kumar Aggarwal reported in (2013) 15 SCC 222***, laid down the Guidelines that have to be mandatorily followed while considering the sanction for prosecution. In pursuance of such Guidelines, the Central Vigilance Commission has issued a Circular on 25.05.2015 wherein it has been provided that while considering the proposal for sanction of prosecution, the Guidelines as given in the judgment of Ashok Kumar Aggarwal should be followed. A copy of the judgment rendered in the Ashok Kumar Aggarwal has been filed as Annexure No.9 to the petition.

(9) The Guidelines as mentioned in the Ashok Kumar Aggarwal provide that the prosecution must send the entire relevant record to the Sanctioning Authority and the Sanctioning Order must show that the Sanctioning Authority has been made aware on all relevant Facts / Materials and has applied its mind before

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giving such sanction. A copy of the Circular dated 25.05.2015 issued by the Central Vigilance Commission has been filed as Annexure No.10 to the writ petition.

(10) It has been stated in the writ petition that the impugned order dated 26.06.2023 issued by the Opposite party no.2 has been issued on the same set of facts and evidence which was taken into consideration by the Enquiry Officer and the Opposite party no.2 when the Disciplinary Proceedings were concluded against the petitioner without any punishment order.

(11) A preliminary objection has been raised by the learned counsel appearing on behalf of the State-respondents that the writ petition praying for quashing of the prosecution sanction granted under Section 197 of the Cr.P.C. and Section 19 of the Prevention of Corruption Act, is not maintainable and he has referred to judgment rendered by Co-ordinate Benches of this Court in the case of ***Kanhaiya Lal Saraswat Vs. State of U.P. reported in [2021 (116) ACC 815]*** decided on 18.06.2021 and judgment rendered in the case of ***Rajeev Kumar Singh Vs. State of U.P.*** passed in Criminal Misc. Writ Petition No.25382 of 2020 and other connected matters decided on 21.01.2021 and judgment rendered by a Division Bench on 14.07.2023 in the case of ***Yash Kumar Verma Vs. State of U.P. and others.***

(12) Learned counsel for the petitioner during the course of arguments has also referred to the interim order passed by a Co-ordinate Bench of this Court on 23.01.2024, where the Court had noted the arguments made by the learned counsel for the petitioner that the Provisions of Section 17A of the Act of 1988 had not been followed and consequently there was no sanction in the eye of law and the judgment rendered by this Court in ***Rajeev Kumar Singh Vs. State of U.P.*** would not come in the way of maintainability of the writ petition.

(13) Learned counsel for the petitioner has pointed out the order passed by this Court earlier on 23.01.2024 in this petition. The

Division Bench passed the order on 23.01.2024 which is being quoted hereinbelow:-

"Supplementary affidavits filed today are taken on record.

Petitioner is permitted to implead the State authorities as party in the writ petition, during course of the day and provide copy to learned A.G.A.

The question is as to whether the provisions of Section 17A of the Prevention of Corruption Act, 1988 have been adhered or not, as the submission is that there is no adherence to the said provision, consequently, there is no sanction in the eyes of law, and accordingly the Division Bench judgment in Rajeev Kumar Singh Vs. State of U.P. & others, (Misc Bench No.25382 of 2020) AIR Online All 447, does not come in the way of maintainability of the writ petition.

All pleas are open for consideration on the next date. Learned counsel may address the court on the aforesaid issues.

List on 12th February, 2024, as fresh."

(14) Heard the learned counsel for the petitioner at some length and we have also perused the provisions of Section 17A of the Prevention of Corruption Act, 1988, which is being quoted hereinbelow:-

"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.— No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties" (Emphasis supplied by us)

(15) In **Nara Chandrababu Naidu Versus State of Andhra Pradesh and another 2024 SCC online SC 47** A Division

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Bench of the Court was considering the challenge by the appellant to the initiation of criminal proceedings against him and his detention in connection with the same by the respondent State . Allegations were made against him for commission of offences under various Sections of the I.P.C. and Section 12 and Section 13 (2) read with Section 13 (1) (c) (d) of the Prevention of Corruption Act, 1988. The said offences were alleged to have been committed between the years 2015 to 2019 during which period he was Chief Minister of the State of Andhra Pradesh. Initially FIR was lodged on 9th December 2021 against 36 persons in which the appellant was not included. The offences related primarily to siphoning of public funds. The list of accused persons was subsequently expanded and the appellant was also arraigned as an accused before the Special Judge, (SPE and ACB cases). The appellant along with a former minister of Andhra Pradesh cabinet who was also arraigned applied before the High Court for quashing of the FIR implicating them invoking the jurisdiction of the court under Section 482, Cr.P.C. The legality of the remand order was also challenged in the same petition. The petition was rejected. The appeal was filed before the Supreme Court against dismissal of the 482 petition by the High Court.

(16) Primarily the allegation against the appellant was of facilitating diversion of public money of around 370 crores of rupees which was to be used for setting up of six clusters of Skill Development Centres in Andhra Pradesh. During the course of

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investigation in the FIR it was discovered that certain shell companies were made payments on the basis of invoices issued by them without providing any service and that they were used as vehicles for diverting funds. The allegation against the appellant was that he had fast tracked the project and approved the cost estimation with criminal intent and by pursuing the government officers he had ensured release of ₹370, crores to such companies on nomination basis without following any tender process. Misappropriation of government funds through corrupt and illegal methods was alleged and abuse of official position was attributed to the appellant. It was alleged that by abusing his official position, he had fraudulently committed criminal breach of trust with a common intention to cause wrongful loss to the government exchequer by allowing the accused to divert APS SDC funds by using fake invoices as genuine ones, for the purpose of cheating through shell, defunct companies without providing materials/services to the APS SDC – Siemens project.

(17) On behalf of the appellant, the main argument which was made before the High Court was of non-compliance of Section 17A of the Prevention of Corruption Act, 1988 in implicating the appellant under Section 12, 13 (2) read with section 13 (1) (c) and (d) of the Act of 1988. It was argued that absence of prior approval as mandated under Section 17 A of the Act of 1988, vitiated the conduct of enquiry or inquiry or investigation; the initiation and continuation of investigation in the FIR including

various investigative steps of adding the appellant as an accused and arresting him and the remand of the appellant into custody, pursuant to the orders passed by the Special Court. It was argued that Section 17A of the Prevention of Corruption Act which was introduced with effect from 26th July 2018, interdicts

"— any enquiry or inquiry or investigation into an offence to have been committed by public servant — without previous approval of functionaries specified in clauses (a) (b) or (c) as the case maybe, the only exception being where a public servant is apprehended red-handed.

(18) It was argued that Section 17A constitutes a complete legal bar to the very initiation of any enquiry, inquiry or investigation as was noted by the Supreme Court in the case of ***Yeshwanth Sinha Versus Central Bureau of Investigation reported in (2020) 2 SCC 338***; Section 17 A uses the phrase "any offence" hence, the requirement of obtaining prior approval under Section 17A is applicable to all offences, and not just offences under Prevention of Corruption Act and even investigation for offences under the I.P.C. cannot be countenanced as the basic material for constituting both kinds of offences is the same. It was also argued that a legal bar to prosecution is a valid ground for quashing the proceedings as held by the Supreme Court in the case of ***R. P. Kapoor Versus State of Punjab and State of Haryana versus Bhajan Lal***.

(19) Both the judges constituting the Division Bench in **Nara Chandrababu Naidu** (Supra), gave differing opinions but in both such opinions the object of introducing section 17A and the

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consequences of not taking prior approval in conducting any enquiry, inquiry or investigation have been discussed in detail.

(20) After quoting Section 17A which was introduced in the statute book with effect from 26th July 2018, Justice Anirudh Bose has observed in paragraph 12 and 13 that Section 17A postulates prior approval from the appointing authority in relation to any enquiry, inquiry or investigation under the 1988 Act. While the expression Inquiry has been defined in the 1973 Code, there is no specific definition of the word 'Enquiry'. The Concise Oxford English Law Dictionary, (revised 10th edition), defines the said expression as "*an act of asking for an information, it is commencement of an active search to ascertain the truth or veracity of an alleged wrongful act*". In ordinary perception, enquiry by police officer would imply positive exercise for searching certain details or particulars pertaining to allegations of commission of an offence by an accused person or a set of accused persons.

(21) After referring to the counsel for the Appellant's argument regarding Standard Operating Procedure for processing cases under Section 17A of the 1988 Act, Justice Bose referred to a Department of Personnel and Training's Office Memo dated 3.9.2021 which records in detail how the aforesaid provision would apply and it mentions that enquiry for the purposes of this SOP means any action taken, for verifying as to whether the information pertains to the commission of an offence under the Act.

The court disagreed with the observations made by the High Court citing judgements in the case of ***Shambhu Mishra Versus State of U.P. 1997 (5) SCC 326***; and the ***State of U.P. Versus Parasnath Singh 2009 (6) SCC 372***; that the protection of sanction sought by the accused persons cannot be applied because when a public servant is alleged to have committed the offence of fabrication of records or misappropriation of public funds, it cannot be said that he acted in discharge of his official duty. Obviously, it cannot be said that such a conduct on the part of a public servant can be related to his official duties.

(22) Justice Bose was of the opinion that judgement rendered in *Shambhunath Misra and Paras Nath Singh* (Supra), relate to interpreting the provisions of Section 197 of the 1973 Code. The requirement of previous Sanction contemplated in Section 197 of the 1973 Code comes at the stage of taking cognizance of an offence. Thus, a judicial authority in such a context has the advantage of coming to some form of opinion, as to whether the offending act can be said to have been committed in the discharge of official duty or not by merely looking at the nature of allegations in the complaint. If it was found impossible to conclude that the action has been done by the accused while in discharge of official duty, the judicial authority can proceed at the stage of taking cognizance by holding that requirement for taking sanction is not necessary at all.

(23) Justice Bose relied upon the observations made by the Supreme Court in ***Matajog Dobey versus HC Bhari (AIR,***

1956, Supreme Court Court 44) to say that the need for sanction under Section 197 of the Cr.P.C. must be considered, not as soon as the complaint is lodged and on the allegations contained therein, but at the time of taking cognizance or at any stage of the proceedings where the Court is required to consider the question whether the case against the accused to be proved against him relates to acts done or purportedly done by him in the execution of his duty. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial enquiry, or even in the course of the prosecution or Evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not, may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case. The requirement of taking sanction under section 19 of the 1988 Act also is at the same stage.

(24) However, Justice Anirudh Bose in his judgement has distinguished the question of sanction obtained under section 197 of the Cr.P.C. or Section 19 of the 1988 Act from that of section 17 A of the Act of 1988. He observed thus:-

*"Section 17A of the 1988 Act imposes restriction on police officer at the enquiry stage itself from proceeding against a public servant in relation to any offence, alleged to have been committed by him, **relatable to any recommendation made or decision taken by such public servant** (emphasis added), without previous approval of the authorities, stipulated in the said section. We do not think that cases arising out of Section 197 of the 1973 Code would give proper guidance for*

interpreting the provisions of Section 17A of the 1988 Act because in the cases under section 197, the decision on requirement for sanction is to be taken at the stage of taking cognizance. Thus, there is inbuilt scope of application of judicial mind to assess, at least prima facie, if analysed act falls within the discharge of official duty or not. Under the provisions of Section 17A of the 1988 Act, there is no scope of judicial application of mind in determining if the act of making recommendation or taking decision is intertwined with the discharge of official duty or function or not. Moreover, the qualified embargo therein is on the police officer on the point as to assessing whether offending act is in discharge of official duty or not. Having regard to the nature of duties of a police officer, he is less equipped to assess that factor, which involves some form of judicial application of mind."

Section 19 of the 1988 Act requires the court to satisfy itself whether such sanction stated therein has been taken at the stage of taking cognizance. So far as act of a public servant in making recommendation or taking decision in discharge of official duties are concerned, an entry check, prior in time has been contemplated for the investigating agencies.

The requirement of taking prior approval could arise at that stage, being the beginning or commencing of the enquiry, inquiry or investigation.

(25) Justice Bose while considering the legality of a proceeding which was started without complying with the requirement of the previous approval under Section 17 A of the 1988 Act, referred to the judgement rendered by the Supreme Court in **Yeshwanth Sinha Versus Central Bureau of investigation through its Director reported in 2020 (2) SCC 388**, where in the

concurrent judgement of Justice K. M. Joseph, in paragraph 117 it was observed:—

117. In terms of section 17A no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by public servant where the offence is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, of the authority competent to remove the public servant from his office at the time when the offence was said to have been committed.— —"

(emphasis supplied by us)

(26) The same view has been reiterated by the Supreme Court in the case of ***State of Rajasthan Versus Tejmal Chaudhary reported in 2021 SCC online SC 3477***, Justice Bose in conclusion, observed that if an enquiry, inquiry or investigation is intended in respect of a public servant on the allegation of commission of offence under 1988 Act, after section 17A thereof becomes operational, which is relatable to any recommendation made or decision taken, at least prima facie in discharge of his official duty. previous approval of the authority postulated in Subsection (a) or (b) or (c) of Section 17 A of the 1988 Act shall have to be obtained. In absence of such previous approval, the action initiated under section 1988 Act shall be held illegal.

(27) Justice Bela M. Trivedi gave a separate judgement relating to the interpretation of Section 17 A of the 1988 Act. She noted the Object and Reason of promulgation of the Prevention of Corruption Act, 1988. It was observed that the 1988 Act sets the framework for prosecuting individuals involved in corrupt

activities and provides measures to prevent corruption in various spheres of the society. The very objectives of the Act are to prevent Corruption, to promote transparency and accountability in public administration, to deter individuals from engaging in corrupt practices by imposing strict penalties, and it protects whistle blowers et cetera. It also provides for investigation and prosecution of corruption cases, outlining the procedure for gathering evidence, conducting trials and ensuring a fair and expeditious legal process. By the amendment Act of 2018, the gaps in the 1988 Act were filled in with respect to description and coverage of offences of bribery so as to bring it in line with the current international practices and also to meet more effectively, the country's obligations under the United Nations Convention against Corruption. By the Amendment Act of 2018 several provisions, more particularly offences described under Section 7, 8, 9, 10 and 13 in Prevention of Corruption Act, 1988 were substituted with new provisions; and several new provisions like Section 7 A, 17 A, 18 A and 209A etc. inserted. Certain provisions pertaining to the punishment of the offences under the Act were also amended. A positive approach for interpreting the Act was necessary. The aim and object of the Act must be given its full effect. The text and context of the entire Act must be looked into while interpreting any of the expressions used in the statute. If two views were possible, the view, which most advances the object of the Act, and which makes the Act workable, must necessarily be the controlling

view . Even penal statutes are governed, not only by the literal language, but also by the object sought to be achieved by Parliament. Even if the words occurring in the statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about real intention of the legislature.

(28) Justice Trivedi thereafter observed in Paragraph 55 as follows: –

"55. Although not specifically mentioned in the Statement of Object and Reasons of the Amendment Act, 2018, the object of inserting section 17A in the Prevention of Corruption Act, which is in Pari materia with the provisions contained in Section 6A of the Delhi Special Police Establishment Act, 1946, is to protect honest public servants from harassment by way of enquiry or investigation in respect of decisions taken or acts done in bona fide performance of their official functions or duties. Whereas Section 19 bars the courts from taking cognizance of an offence punishable under the 1988 Act to have been committed by public servants, except with the prior sanction of the concerned authorities mentioned therein, Section 17A bars the police officer from conducting any enquiry or enquiry or investigation of offences relatable to recommendations made or decision taken by the public servant in the discharge of official functions or duties, without approval of the concerned authorities mentioned therein. From the bear reading, it is discernible that section 17 A has the following four main facets: –

(i) enquiry or enquiry or investigation of offences under prevention of corruption act. (ii) alleged offences should be relatable to the recommendation made or decision taken by a public servant. (iii) Such recommendations made or decisions taken by public servant should be in discharge of official functions and duties and (iv) previous approval of the authorities mentioned therein.

(29) Justice Trivedi relied upon the object of the Prevention of Corruption Act and also referred to judgement of the Supreme Court in *State of Rajasthan Versus Tejmal Chaudhary* where the Supreme Court set aside the interim order passed by the High Court which had stayed the proceedings only on the ground that approval was not obtained under section 17A of the Prevention of Corruption Act by observing *interalia*, that the legislative intent in the enactment of a statute is to be gathered from the express words used in the statute, unless the plain words literally construed give rise to absurd results. The court had observed that it has to go by the plain words of the statute to construe the legislative intent and that it could not possibly have been the intent of the legislature that all pending investigations up to July 2018 should be rendered infructuous. Justice Trivedi also observed on the basis of judgement rendered in ***Subramanyam Swami Versus Manmohan Singh reported in (2012) 3 SCC 64***, that in case of two possible constructions of a provision in the 1988 Act, it would be the duty of the court to accept the one that seeks to eradicate corruption, to the one which seeks to perpetuate it. In ***Subramanyam Swamy Versus Director, CBI reported in (2014) 8 SCC 682***; the Constitution Bench had observed while dealing with Section 19 of the 1988 Act that the protection against malicious prosecution which is extended in public interest, cannot become a shield to protect corrupt officers.

Justice Trivedi thereafter observed in paragraph 67 as follows: –

"67. Even otherwise, absence of approval before conducting any enquiry or inquiry or investigation into an offence, alleged to have been committed by public servant, as contemplated in Section 17A could never be a ground for quashing the FIR registered against the public servant or the proceedings conducted against him, more particularly, when he is also charged for other offences under the I.P.C. in respect of the same set of allegations. As stated earlier, there are other important facets contained in Section 17A, like whether the offence is relatable to the recommendation made or the decision taken by the public servant or not, and whether such recommendation or decision was made or taken in the discharge of his official functions or duties or not etcetera. Such facets would be examined only when evidence is lead during the course of trial. The acts which prima facie constitute offences, though done under the purported exercise of official function or duty, could not fall within the purview of section 17A. The protection sought to be granted to public servant under section 17A could not be extended to his acts which prima facie were not in the discharge of his official functions or duties. Any other interpretation would certainly tantamount to scuttling the investigation at a very nascent stage. Such could neither be the intention of the Legislature nor could such provision be interpreted in the manner which would be counter-productive or frustrating the very object of the Prevention of Corruption Act."
(emphasis supplied by us)

(30) In the instant petition the counsel for the petitioner says that even the amassing of alleged disproportionate assets more than the known sources of income can be said to be a consequence of a recommendation made or a decision taken by him as a Resident Engineer of U.P.R.N.N.L. He has also argued that Section 13 (1) (b) added by way of the same Amending Act No.16/2018 with effect from 26.07.2018 and therefore, Section 17A should be read conjointly with Section 13 (1) (b).

(31) We do not find the argument raised by the learned counsel for the petitioner convincing as these are two different provisions

operating in two different spheres. Section 13 in its entirety is being quoted hereinbelow:-

"13. Criminal Misconduct by a public servant-- [(1)] A public servant is said to commit the offence of criminal misconduct-

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office."

(32) We have gone through the Annexure No.8 to the writ petition which is an order dated 26.06.2023 which has been passed by Managing Director of the U.P. Rajkiya Nirman Nigam Limited while placing reliance upon the State Government's letter dated 20.06.2023 which enclosed with it, the letter of the Vigilance Establishment dated 26.05.2023 and the Report dated 21.03.2023 relating to amassing of disproportionate assets allegedly by the petitioner in discharge of his official duties. This Court, therefore, finds that after investigation sanction has been given by the Government / Competent Authority and such sanction cannot be said to be no sanction at all as was argued by the learned counsel for the petitioner before the Co-ordinate Bench which lead to the passing of the interim order dated 23.01.2024.

(33) At this stage it has also been submitted by the learned counsel for the petitioner that he has also challenged the prosecution Sanction order on the ground that for the offence committed by the petitioner for amassing disproportionate assets during his tenure of service, the respondents-U.P.R.N.N. Ltd. had initiated a Disciplinary proceeding against him, a copy of the Charge-sheet has been filed as Annexure No.2 to the petition. After regular Enquiry, the Enquiry report was submitted by the Enquiry Officer, a copy of which has been filed as Annexure No.3 to the petition. The Enquiry Officer had not found him guilty of amassing disproportionate assets. The Enquiry

Officer's report was accepted by the Managing Director of U.P.R.N.N. Ltd. by his order dated 06.06.2023, a copy of which has been filed as Anneuxre No.4 to the petition.

(34) It has been submitted by the learned counsel for the petitioner that the Hon'ble Supreme Court in the case of ***Ashoo Surendranath Tewari Vs. The Deputy Superintendent of Police, EOW, CBI & Anr. in Criminal Appeal No.575 of 2020***, in its judgment and order dated 08.09.2020 has held that where the Disciplinary proceedings are initiated against a delinquent employee and on merits, the said Disciplinary proceedings are concluded and the report by the Enquiry Officer has been accepted exonerating the delinquent employee, then on the very same charge the prosecution sanction should not be given and no criminal prosecution should be allowed to continue.

(35) Learned counsel for the petitioner has placed reliance upon a copy of the judgment rendered by the Hon'ble Supreme Court filed as S.A.-2 of his affidavit filed on 19.01.2024.

(36) We have gone through the judgment rendered by the Hon'ble Supreme Court. The facts in the said case were arising out of an F.I.R. that was registered on 09.12.2009 with regard to a MSME Receivable Finance Scheme operated by the Small Industries Development Bank of India (SIDBI). Some vendors were complaining of delay in getting their payments. SIDBI in consultation with Tata Motors Limited, directed the vendors of Tata Motors Limited to furnish RTGS details for remittance of funds. The vendors' account was shown to be in Federal Bank, Thriupporur. Tata Motors Limited made payment through RTGS for various purchases done by it, to the tune of Rs.1,64,17,551/-. Subsequently, the vendors informed the SIDBI that they had an account in Central Bank Bangalore, and not with Federal Bank, Thriupporur. On account of diversion of funds in a different bank account, the F.I.R. was lodged in which a number of accused persons were arrested. The Charge sheet was filed before the Court of Special Judge, CBI. The Special Judge, CBI, found that

since no sanction was taken under the Prevention of Corruption Act, the trial under the Act, cannot be proceeded with. The Special Judge also found that there was no need to get sanction under Section 197 Cr.P.C. as no offence under the Indian Penal Code was made out.

(37) The order passed by the Special Judge, CBI, was challenged before the High Court. The High Court by its judgment and order dated 11.07.2014 had agreed with the Special Judge, CBI, observations regarding no need for sanction under Section 197 Cr.P.C. being necessary. However, the High Court had failed to consider order of the Central Vigilance Commission dated 22.12.2011 which had gone into the facts of the case in great detail. The Court observed that the Central Vigilance Commission in its order had rightly observed that the petitioner Ashoo Surendranath Tewari, was only negligent and there may be no criminal culpability. In fact, there was a positive finding of the CVC that the appellant- petitioner appeared to be a victim of the Master mind's plot to defraud the purchasers and the vendors and also SIDBI.

(38) It is in such a context that the Supreme Court had made observations in Paragraph-7 which have been emphasized by the learned counsel for the petitioner during the course of his arguments referring to a number of judgments regarding standard of proof in a departmental proceeding being based on preponderance of probability, as somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt.

(39) This Court is convinced that the Supreme Court in the facts of the case has made observation that it was clear from the detailed CVC order which had held the petitioner only to be guilty of negligence, that there were very bleak chances of conviction in a criminal trial involving the same facts.

(40) The Supreme Court did not hold that even F.I.R. should not be lodged and investigation should not be conducted in a case where an employee has been exonerated in a disciplinary proceeding. In the case of the petitioner fresh disciplinary proceedings were initiated but have been stayed by the writ Court till further orders in the pending writ petition.

(41) This Court is of the considered opinion that the judgment that has been cited by the learned counsel for the petitioner to substantiate his arguments that once he is exonerated in the Disciplinary proceedings by the Competent Authority, the same Competent Authority cannot give sanction for criminal prosecution under the Prevention of Corruption Act, is not applicable in the facts of the instant case.

(42) In so far as the relief clause as framed in the writ petition is concerned, regarding challenge to Sanction Order and grounds taken for such challenge in the pleadings on record, a Co-ordinate Division Bench of this Court in **Yash Kumar Verma Vs. State of U.P.** C.R.L.P. 2372 of 2023 decided on 14.07.2023 after considering the law as settled by the Supreme Court and considering the Division Bench judgment of this Court in the case of **Rajeev Kumar Singh Vs. State of U.P.** reported in 2020 AIR Online 447 has observed in Para-32 as follows:-

"This Court is of the considered opinion that in view of the law settled by the Supreme Court in the aforecited cases of Dinesh Kumar versus Chairman, Airports Authority of India and another, C.B.I. versus Ashok Kumar Agarwal, C.B.I. versus Pramila Virendra Kumar Agarwal, and Sukh Lal Yadav versus State of U.P. and others, till evidence is led by the prosecution before the Trial Court, the facts and circumstances leading to the competent authority granting sanction for prosecution cannot be appreciated to the fullest. Even if for the sake of argument, it is to be believed that necessary material was not kept before the sanctioning authority for it to apply its mind, then also the prosecution would have to be

(22)

given a chance to first lead evidence to the effect that all relevant material including material which may favour the accused, was laid before the sanctioning authority. To Appreciate such evidence, the trial court is competent."

(43) We do not find any merit in this challenge and consequently the writ petition stands ***dismissed***.

Order Date :- 15.2.2024

N.PAL