



Crl.O.P.No.28172 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2026

PRONOUNCED ON : 23.07.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.28172 of 2024
and Crl.M.P.Nos.15664 & 15659 of 2024

P.Selvaraja
S/o. A.Ponnusamy,
No.213/8, Bhuvaneshwari Nagar,
Dharapuram Road,
Unjavelampatti PO,
Pollachi, Coimbatore.

... Petitioner

Vs.

1. The State
Rep. By the Inspector of Police,
Vigilance and Anti-corruption,
Coimbatore District.
(Crime No.08 of 2021)

2. C.Sivaji
S/o.Chinnasamy,
Thalavapalayam Primary Agriculture
Co-operative Credit Society,
Thondamuthur, Anaimalai Taluk,
Coimbatore District.

... Respondents

Prayer: Criminal Original Petition filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023, to call for records pertaining to the final
report dated 08.03.2024 in Special C.C.3 of 2024 pending on the file fo
the learned Special Judge, Special Court, dated 08.03.2024 for cases



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under the Prevention of Corruption Act and to quash the same by
allowing this Criminal Petition.

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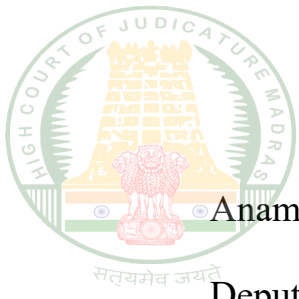
For Petitioner : Mr.Abdukumar Rajarathinam,
Senior Counsel
For Mr.Akhil ahmed Akbar Ali
For Respondents
For R1 : Mr.R.Ganesh Kumar
Counsel for Government of Tamilnadu
(Crl.Side)

ORDER

This petition has been filed to quash proceedings in Spl.C.C.No.3 of 2024 on the file of the learned Special Judge, Special Court for the cases under the Prevention of Corruption Act, Coimbatore, thereby taken cognizance for the offences punishable under Sections 7(a), 7(a) r/w. 12 of Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as “PC Act”), as against the petitioner.

Facts of the case :-

2. The case of the prosecution is that the accused and the defacto complainant have been working in different capacities in the same co-operative society viz., TP SPL, 25 Thalavaipalayam Primary Agricultural Co-operative Credit Society situated in Thondamuthur,



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Anamalai Taluk, Coimbatore District. While the petitioner was the Deputy Registrar and the second accused was the Sub Registrar of the Society, the defacto complainant was the Secretary of the credit society which had been under the supervision of the petitioner.

3. While being so, in the year 2021, the Government of Tamil Nadu by the G.O.Ms.No.15 and 16 Tamil Nadu Cooperative Food and Consumer Department dated 08.02.2021, issued an order to waive off the crop loans availed by the farmers from the co-operative society. Pursuant to the same, 275 beneficiaries were identified by the defacto complainant and in the course of verification, an excess amount of Rs.8,00,000/- was found to be disbursed to 17 farmers without complying with the procedure. When the issue was raised, the complainant approached the Joint Registrar of Cooperative Societies to resolve the issue and the Joint Registrar authorized the sanction of waiver to 17 farmers on 14.02.2021.

4. Thereafter, on 15.02.2021, the petitioner called the defacto complainant and asked him to meet him in the office along with the list of approved loans. When the defacto complainant met the petitioner and appraised him about the issue and informed that the same was resolved



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by the Joint Registrar of cooperative societies, the petitioner threatened the defacto complainant stating that he is the one who is authorized to resolve the discrepancy and also demanded illegal gratification for not preparing adverse report against the defacto complainant to the higher officials.

5. Once again, the petitioner contacted the defacto complainant and directed him to meet him along with the files relating to the 17 farmers. Accordingly, on 16.02.2021, the defacto complainant met the petitioner while he was leaving the office along with the second accused. Therefore, the defacto complainant was directed to meet him the next day at about 10.00 a.m. Accordingly, on 18.02.2021, the defacto complainant went to the office of the petitioner at 11 am., and met the second accused, who told the defacto complainant that the petitioner is the competent person to resolve the issue. Thereafter, the second accused informed the defacto complainant that the petitioner demanded a sum of Rs.1,25,000/- for not taking any action against the defacto complainant. Though the defacto complainant attempted to call the petitioner, he could not make it and on the next day i.e., on 19.02.2021 at about 9.30 p.m., the second accused called the defacto complainant and demanded the bribe and



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directed the defacto complainant to prepare the report and to meet the second accused at Vanjiyapuram Pririvu at 10.00 a.m., on 19.02.2021.

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6. Thereafter, the second accused contacted the defacto complainant and informed that the petitioner asked the defacto complainant to bring the files of 17 farmers, since the defacto complainant failed to comply with the demand. When the defacto complainant met the petitioner, he was informed that the enquiry will be held against the defacto complainant by appointing the second accused as Enquiry Officer. Even thereafter, the second accused once again compelled the defacto complainant to comply with the demand. However, the defacto complainant was not willing to comply with the demand and lodged the complaint alleging that the accused are demanding illegal gratification for not initiating any enquiry against the defacto complainant under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983.

7. On receipt of the complaint, the first respondent registered the FIR in Crime No.8 of 2021 for the offences punishable under Section 7(a) r/w Section 12 of the PC Act. Thereafter, the trap laying officer had set up a trap and the defacto complainant met the second accused and had



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given the tainted amount to the second accused in the presence of shadow

witnesses at about 7.00 p.m., on 19.02.2021. Thereafter, the accused were

arrested and remanded to judicial custody. After completion of

investigation, the first respondent filed final report and the same has been

taken cognizance by the Trial Court in Spl.C.C.No.03 of 2024.

Challenging the same, the petitioner filed the present petition.

Submissions of the counsel appearing for the petitioner: -

8. The learned Senior Counsel appearing for the petitioner submits that even according to the case of the prosecution, the petitioner did not receive any bribe amount and it was only the second accused who received the bribe amount. The prosecution failed to prove the alleged demand and as such the entire proceedings cannot be sustained and is liable to be quashed. The present complaint is nothing but a counter blast to the enquiry initiated under Section 81 of the Tamil Nadu Co-operative Act, as against the defacto complainant for the illegality committed by him for the sanction of excess loan amount to 17 farmers.

8.1. He further submits that the appointing and removing authority of the petitioner is the government of Tamil Nadu viz., the



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Governor of Tamil Nadu. But, the sanction was not accorded by the

Governor of Tamil Nadu, under Section 19(1)(b) of the PC Act. The order of sanction was signed by the Secretary to the Government. The prosecution recorded the statement of the person who signed the sanction order under Section 161(3) of Cr.P.C. On perusal of the statement, he had stated that he is the competent authority to remove the petitioner and that he had perused all the documents and had applied his mind while according the said sanction. He had further stated that on verification of documents, he was satisfied that the petitioner should be prosecuted in a Court of law for the offence punishable under Section 7(a) of the PC Act. Hence, he himself had accorded sanction to prosecute the petitioner before the Court of Law.

8.2. He also contended that as per the order of sanction dated 18.07.2023, the entire records were perused and it was stated that there are substantial materials very much available to prosecute the petitioner and on satisfaction with the reasons, the Governor of Tamil Nadu had accorded sanction to prosecute the petitioner for the offence punishable under Section 19 of the PC Act. Though it may seem like the Governor of Tamil Nadu himself had accorded sanction, the Secretary to Government



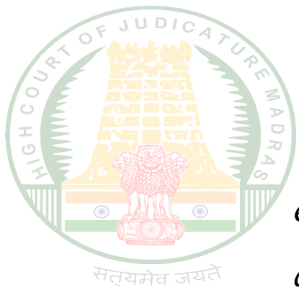
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had signed the said sanction order. In the usual course of business of

Government, all the government orders passed by the Governor of Tamil Nadu is signed by the Secretary to the concerned department on behalf of the Governor of Tamil Nadu. But such a signatory cannot be construed as the competent authority to appoint or remove the petitioner from his post. But the respondent recorded the statement of the Secretary who signed the sanction order and as stated previously, the Secretary had spoken as if he himself had accorded sanction against the accused. Therefore, the order of sanction itself was not accorded in accordance with law as contemplated under Section 19(1)(b) of the PC Act. Once the order of sanction is found not to be accorded in accordance with law, the entire proceedings subsequent to the order of sanction is vitiated and as such the entire proceedings is liable to be quashed.

8.3. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2013) 3 SCC 1** in the case of ***State of Gujarat &anr., Vs. Justice R.A.Mehta (Retired) &ors.***, which held as follows :-

“41. Thus, where the Governor acts as the Head of the State, except in relation to areas which are earmarked under the Constitution as giving discretion to the Governor, the



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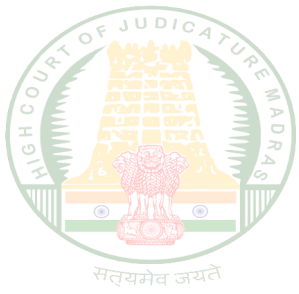
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exercise of power by him must only be upon the aid and advice of the Council of Ministers, for the reason that the Governor being the custodian of all executive and other powers under various provisions of the Constitution is required to exercise his formal constitutional powers only upon and in accordance with the aid and advice of his Council of Ministers. He is, therefore, bound to act under the Rules of Business framed under Article 166(3) of the Constitution. (Vide Pu Myllai Hlychho v. State of Mizoram.)

.....

49. The exceptions carved out in the main clause of Article 163(1), permit the legislature to entrust certain functions to the Governor to be performed by him, either in his discretion, or in consultation with other authorities, independent of the Council of Ministers. The meaning of the words "by or under" is well settled. The expression "by an Act", would mean by virtue of a provision directly enacted in the statute in question and that which is conceivable from its express language or by necessary implication therefrom. The words "under the Act", would in such context, signify that which may not directly be found in the statute itself, but which is conferred by virtue of powers enabling such action(s) e.g. by way of laws framed by a subordinate law-making authority competent to do so under the parent Act. (Vide Indramani Pyarelal Gupta v. W.R. Natu.)”

Hence, he prayed to allow the present Criminal Original Petition.



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Submissions of the Counsel appearing for the respondent:-

9. The first respondent filed a counter and the learned Government Counsel appearing for the first respondent submits that the petitioner is the competent authority to order an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. In order to avoid the said enquiry, the petitioner demanded illegal gratification from the defacto complainant and directed him to bring the loan waiver list to his office. Therefore, the demand was clearly proved by the prosecution. Further, the petitioner directed the defacto complainant to hand over the entire waiver list to the second accused. Pursuant to the said demand, the trap was laid and both the accused were caught red-handed.

9.1. Insofar as the order of sanction is concerned, the Governor of Tamil Nadu, who is the competent authority to accord sanction to prosecute the petitioner, perused all the documents and accorded sanction to prosecute the petitioner for the offence punishable under Section 7(a) of the PC Act. The said sanction order of the Governor was signed by the Secretary to the Government. Therefore, the signing authority's statement was recorded under Section 161(3) of Cr.P.C., in which he had stated that



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he had perused the entire files and that he was satisfied with the materials available on records to prosecute the petitioner and accorded sanction. It is only prudent to assume that he had given the said statement on behalf of the Governor and it doesn't mean that the signing authority himself had accorded the said sanction. That apart, it is only a statement recorded under Section 161(3) of Cr.P.C., and it doesn't vitiate the very sanction order which was accorded by the Governor of Tamil Nadu. Further, the grounds raised by the petitioner can only be dealt with by the Trial Court by letting in evidence during the trial. Hence, he prayed for dismissal of the Writ Petition.

10. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

Issues involved in this case:-

11. At this junction, this Court finds it imperative to frame the following issues pursuant to deciding the case on hand:-

(i) Whether on record, there exist *prima facie* materials to attract the offences under Section 7(a) of the PC Act against the petitioner?

(ii) Whether the sanction order accorded to prosecute the accused is valid in the eye of law?



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Issue No.1 :-

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12. There are totally two accused in which the petitioner is arrayed as the first accused. The petitioner, while he was working as the Deputy Registrar of Co-operative Societies, was the competent officer to initiate the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, against his subordinates, in accordance with G.O. (2D)No.109 Co-operation, Food and Consumer Protection Department dated 31.08.2005. The second accused was working as Co-operative Sub Registrar/Field Officer. Therefore, the first and second accused are the public servants under the definition of Section 2(c) of the PC Act. The defacto complainant was working as Secretary in TP SPL, 25 Thalavaipalayam Primary Agricultural Cooperative Credit Society, under the administrative control of the petitioner.

13. While being so, the government passed an order to waive off the agricultural crop loans of the farmers vide G.O.Ms.15 Co-operation, Food and Consumer Protection Department, dated 08.02.2021. On the strength of the government order, 275 eligible farmers of the defacto complainant's society were enlisted by the defacto complainant to avail the benefit of waiver of agricultural credit loans and the same was also



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approved by the Administrative Committee. Subsequently, the list

prepared by the defacto complainant was verified and it was reported that an excessive loan amount was disbursed to 17 loanees in contrary to the existing procedures to the tune of Rs.8,00,000/-. When the defacto complainant chose to submit his explanation to the Joint Registrar of Cooperative Societies, the petitioner objected the defacto complainant with ulterior motive, to initiate further enquiry. While being so, on 14.02.2021, the issue was settled by the Joint Registrar of Cooperative Societies, as per the circular issued by the Registrar of Cooperative Societies by its proceedings dated 25.10.2017, thereby included 17 farmers in the list of beneficiaries to avail the benefit of waiver of the agricultural credit loans.

14. Further on 15.02.2021, the petitioner contacted the defacto complainant over his phone and enquired about the readiness of loan waiver list and directed him to bring the same to his office. The defacto complainant submitted the list of beneficiaries to the petitioner and on verification of loan waiver beneficiaries list, the petitioner enquired about the issue which was already settled by the Joint Registrar of Cooperative Department. Though the defacto complainant explained that the issue was



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already settled by the Joint Registrar of Cooperative Societies, the petitioner proclaimed that the issue was not settled and he is the competent authority to settle the issue. Further the petitioner demanded undue advantage without quoting the quantum for not sending the report to the higher officials.

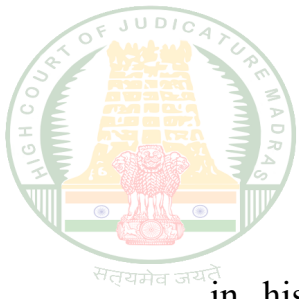
15. Once again, on 16.02.2021, the petitioner called the defacto complainant to bring the loan waiver list to his office. Though the defacto complainant went to his office and waited till evening, he met the petitioner only at 7.30 p.m., that too while he was leaving the office along with the second accused. Thereafter, the second accused informed to the defacto complainant that the matter was entrusted to him by the petitioner and insisted the defacto complainant to handover the file to him. Accordingly, the defacto complainant on 18.02.2021 handed over the entire waiver list file and the second accused demanded undue advantage of Rs.1,25,000/- for non-initiation of any enquiry proceedings as contemplated under Section 81 of the Tamil Nadu Societies Act. On the same day, the second accused contacted the defacto complainant and reiterated the demand of bribe on behalf of the petitioner. As instructed by the petitioner, the second accused received the bribe amount and as such



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the petitioner charged for the offence under Section 7(a) of the PC Act and the second accused charged for the offence under Section 7(a) r/w 12 of the PC Act. Therefore, there are clenching materials and statement to attract the charge under Section 7(a) of the PC Act, as against the petitioner.

16. That apart, even till today, there is no action and enquiry initiated by the Cooperative Department as against the defacto complainant. Therefore, the issue with regard to excessive loan amount to the 17 farmers was completely settled by the Joint Registrar of the Cooperative Societies as early as on 14.02.2021 itself. After knowing the fact very well that the issue was settled by the Joint Registrar of Cooperative Societies, being the Deputy Registrar of the Cooperative Societies, who is the competent to initiate the proceedings/enquiry under Section 18 of the Tamil Nadu Cooperative Societies Act, the petitioner made demand of illegal gratification from the defacto complainant. Therefore, the element of *mensrea* is attracted in the act of the petitioner to charge the offence under Section 7(a) of the PC Act.



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17. Further on 19.02.2021, the second accused met the petitioner

in his office room and received the information from the defacto complainant about the presence of the bribe amount and also received the same in the office premises after returning from the chamber of the first accused. Further the demand and acceptance of illegal gratification can be inferred from the circumstances even in the absence of direct evidences. The chain of circumstances available in the case in connection with the factum of demand and acceptance is coherent and cogent. Therefore, there are ample evidence for proving the dishonest demand and acceptance of undue advantage by the petitioner. Therefore, the essential elements i.e., demand and acceptance of undue advantage is clearly culminated in the case records. The nexus between the first and second accused will prove their involvement in the bribe transaction.

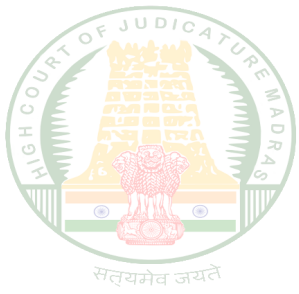
18. The learned Senior counsel appearing for the petitioner vehemently contended that even according to the case of the prosecution, the petitioner did not receive any bribe amount and on his behalf the second accused was the one who received the bribe amount. The recovery was also made only from the second accused. Now the petitioner is charged for offence punishable under Section 7(a) of the PC Act.



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Therefore, there is no presumption under Section 20 of the PC Act. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India reported in **2025 Live Law (SC) 273** in the case of **Dileepbhai Nanubhai Sanghani Vs. State of Gujarat &anr.**, which held as follows :-

“22. The only charge is with respect to misuse of authority which does not come under the provisions of the Prevention of Corruption Act and none of the ingredients regarding demand or obtaining or acceptance of bribe or any illegal gratification has come out. The accusation was only that the policy of the State required a tender process to be adopted but the Minister had sanctioned the grant of fishing rights on an upset price, which is alleged to be misuse of authority especially since the Policy can be deviated from, only on orders of the Chief Minister or the Cabinet as per the policy document and the Rules of Business framed. The investigation report, as we observed, speaks only of an allegation of misuse of authority, without any allegation of demand and acceptance of bribe as against the appellant. The presumption under Section 20 of the Act is that, if there is a demand and acceptance of bribe, then there is a presumption that it is to dishonestly carry out some activity by a public servant, for which, first, proof will have to be offered of the demand and acceptance. It is not otherwise that, if there is a misuse of authority then there



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*is always a presumption of a demand and acceptance of
bribe, resulting in a valid allegation of corruption.”*

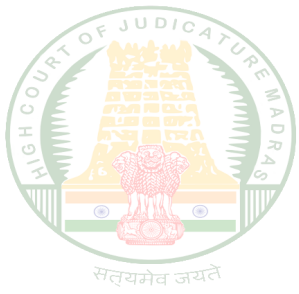
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The above judgment is not applicable to the case on hand for the simple reason that there are clinching evidences very much available to prove that the petitioner demanded illegal gratification for not initiating any enquiry/proceedings under Section 81 of the Tamil Nadu Cooperative Societies Act, as against the defacto complainant. Hence, the first issue is cogently answered in favour of the prosecution.

Issue No.2:-

19. The learned Senior Counsel appearing for the accused contended that, the Courts are forbidden from taking cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 against a public servant except with a previous sanction of the competent authority. In support of the same, he relied upon the judgment of the Hon'ble Supreme Court of India in “*Nanjappa v. State of Karnataka [(2015) 14 SCC 186]*”, the relevant paragraphs of the judgment are extracted hereunder:

“10. A plain reading of Section 19(1) (supra) leaves no manner of doubt that the same is couched in mandatory terms and forbids courts from taking cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 against public servants



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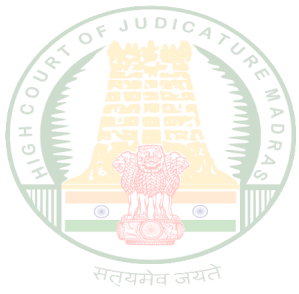


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except with the previous sanction of the competent authority enumerated in clauses (a), (b) and (c) to sub-section (1) of Section 19. The provision contained in sub-section (1) would operate in absolute terms but for the presence of sub-section (3) to Section 19 to which we shall presently turn. But before we do so, we wish to emphasise that the language employed in sub-section (1) of Section 19 admits of no equivocation and operates as a complete and absolute bar to any court taking cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 of the Act against a public servant except with the previous sanction of the competent authority.

.....

18. The above line of reasoning was followed by this Court in State of Goa vs. Babu Thomas (2005) 8 SCC 130, where this Court while dealing with a case under Section 19 of the Prevention of Corruption Act, 1988 held that absence of a valid sanction under Section 19(1) went to the very root of the prosecution case having regard to the fact that the said provision prohibits any Court from taking cognizance of any offence punishable under Sections 7, 10, 13 and 15 against the public servant, except with the previous sanction granted by the competent authority in terms of clauses (a), (b) and (c) to Section 19(1). This Court was in that case dealing with a sanction order issued by an authority who was not competent to do so as is also the position in the case at



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hand.

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20. What is important is that, not only was the grant of a valid sanction held to be essential for taking cognizance by the Court, but the question about the validity of any such order, according to this Court, could be raised at the stage of final arguments after the trial or even at the appellate stage.”

In view of the above, this Court accepts the contention of the petitioner’s counsel that the sanction order accorded by a non-competent authority would result in the nullity of the trial or legal proceedings against the accused and that the validity of a sanction order shall be questioned at the very inception or even at the appellate stage and there is no quarrel over the said argument.

20. However, it was vehemently contended by the learned Senior Counsel for the petitioner that in the case on hand, the sanctioning authority had no competence to accord sanction to prosecute the accused. He stated that the Secretary to the Government had signed the sanction order on behalf of the Governor which is an order executed by the State Government. It was further stated that where the Governor acts as the Head of the State, except in relation to areas which are earmarked under the Constitution as giving discretion to the Governor, the exercise of

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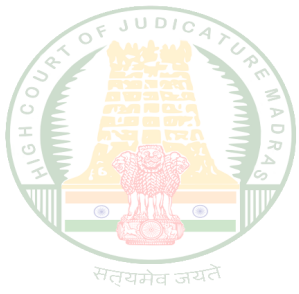
power by him, must only be upon the aid and advice of the Council of Ministers, for the reason that the Governor, being the custodian of all executive and other powers under various provisions of the Constitution, is required to exercise his formal Constitutional powers, only upon, and in accordance with, the aid and advice of his Council of Ministers. He is, therefore, bound to act under the Rules of Business framed under Art. 166 (3) of the Constitution. In support of the said contention, the learned senior counsel relied upon the judgment of the Hon'ble Supreme Court of India in the case of *State of Gujarat v. R.A. Mehta* reported in (2013) 3 SCC 1.

21. At this juncture, it is relevant to refer to *the Tamil Nadu Government Business Rules and Secretariat Instructions, 1978*, wherein, Rules 7, 11 and 12(1) are relevant and are extracted hereunder:

“7. the Council shall be collectively responsible for all executive orders issued in the name of the Governor in accordance with these rules, whether such orders are authorized by an individual minister on a matter appertaining to his portfolio or as the result of discussion at a meeting of the council or otherwise.

....

11. All orders or instruments made or executed by or on behalf of the Government of the State shall be



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expressed to be made or executed in the name of the Governor.

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12.(1). Every order or instrument of the Government of the State shall be signed either by the Chief Secretary, a Secretary, a Special Secretary and Additional Secretary, a Joint Secretary, a Deputy Secretary or an Under Secretary to the Government of the State or such other officer as may be specially empowered in that behalf in the manner specified below and such signature shall be deemed to be the proper authentication of such order or instrument.

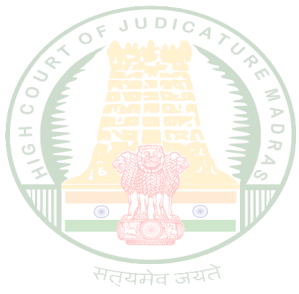
“By order and in the name of the Governor of Tamil

Nadu

(signature)

Name and designation of the officer authorized to sign”.

22. It was his contention that, the Secretary to the Government, who had signed the sanction order, in his 161(3) statement, had stated that he had perused all the documents and that he had gotten necessary clarification and had accorded sanction to prosecute the accused under Section 19(1)(b) of the PC Act and the same is invalid as these statements would mean that he had not acted on behalf of the Governor rather it would mean that he had acted in his personal capacity.



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23. Proceeding on the said statement, it was further contended that the Governor neither has discretionary power nor can he delegate such powers to a subordinate authority in the matter of granting sanction and is constitutionally bound to act only on the aid and advice of the Council of Ministers under Article 163 of the Constitution. Therefore, according to the appellant, the sanction order is rendered non est in law. The above stated contention advanced by the Learned Senior Counsel does not merit acceptance.

24. It is an admitted fact that the accused herein was an employee of the State and comes under Section 19(1)(b) of the PC Act. As per Section 19(1)(b) of the PC Act, a person who is or was an employee of the State at the time of commission of the alleged offence shall not be removed from his office without the sanction of the Government of the concerned State. According to Article 166 of the Indian Constitution and the Corresponding Tamil Nadu Business Rules, all executive actions of the Government of a State shall be expressed to be taken in the name of the Governor. On a keen perusal of both the provisions, i.e, Article 166 of the Indian Constitution and Section 19(1) (b) of the PC Act, it can be seen that there is no explicit mention that the



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Governor himself has to accord a sanction or that the Secretary to the

Government is not a competent authority to accord such a sanction. What

is mandatory is that all the executive actions shall be expressed to be

taken in the name of Governor.

25. Article 166(2) of the Constitution of India states that Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

26. On perusal of the sanction order, it can be clearly seen that the order was accorded only in the name of or by the Governor and it was duly authenticated as provided under the Tamil Nadu Business Rules wherein the Secretary to the Government had signed the same. It is well settled that under Articles 154, 163 and 166 of the Constitution of India, executive actions of the State are taken in the name of the Governor, while the actual exercise of executive functions is carried out through officers duly authorized under the Rules of Business framed under Article 166(3) of the Constitution of India.

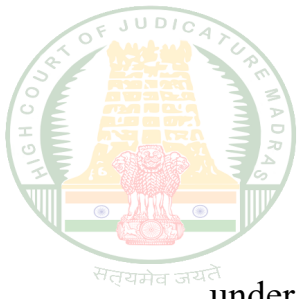


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27. The Governor is the constitutional head of the State and ordinarily acts on the aid and advice of the Council of Ministers.

Consequently, an order authenticated and issued by the Secretary to Government in accordance with the above stated constitutional scheme is, in the eye of law, an act of the State Government. The Secretary only acts as an authorized functionary of the Government and such an action as indicated by the Constitution of India under Article 166(2) shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

28. Even if such a constitutional or statutory interpretation is false, the validity of a sanction cannot be determined merely by an isolated statement made during the course of investigation by the signing authority i.e., the Secretary to the Government herein, particularly when the sanction order itself unequivocally discloses that it was issued by the Governor in exercise of the powers vested under Article 166(1) and Section 19(1)(b) of the PC Act. The statement of the Secretary under Section 161 Cr.P.C. cannot override, alter or diminish the legal effect of an official order issued in accordance with law.

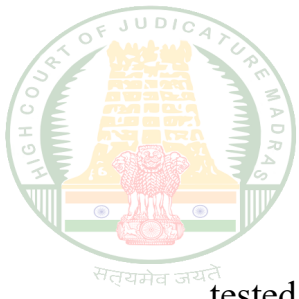


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29. Even assuming that the Secretary, while giving his statement

under Section 161 Cr.P.C., loosely described the grant of sanction as one accorded by him personally, such an expression cannot be read divorced from the constitutional and statutory framework governing governmental action. A witness's understanding or description of the legal character of an official act cannot determine its validity. What is of relevance is whether the sanction emanated from the competent authority through the prescribed legal procedure and whether the order bears the necessary authentication as required under Article 166 of the Constitution and the applicable Rules of Business.

30. The argument that the Governor himself could not have exercised discretion in granting sanction also does not advance the appellant's case. The sanction order nowhere suggests that it was the Governor acting in his individual discretion. On the contrary, the order is an executive action of the State Government issued in the name of the Governor and authenticated by the Secretary in accordance with the constitutional mandate. Such executive action carries the presumption of regularity, and in the absence of cogent evidence demonstrating any constitutional or statutory infraction in the decision-making process, the Court cannot invalidate the sanction on speculative assumptions.



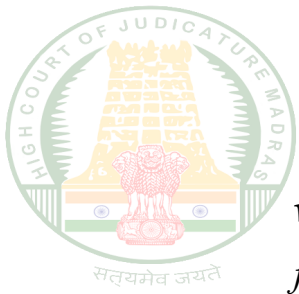
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31. It is equally settled that the validity of a sanction is to be

tested on the touchstone of competence of the authority and due application of mind to the materials placed before it. The appellant has not demonstrated that the Secretary to the Government lacks competence or that the sanction was granted mechanically without consideration of the relevant records. The entire challenge rests solely upon an isolated statement of the Secretary made during investigation, which is wholly insufficient to invalidate an otherwise valid sanction order. This Court finds no infirmity in the sanction order and the contention that the sanction is null and void on the ground that it was allegedly accorded by the Secretary not on behalf of the Governor, or that it offends the constitutional scheme governing the exercise of executive power by the Governor, is devoid of merit and is, therefore, rejected.

32. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***“Shivendar kumar v. State of Maharashtra [(2001) 9 SCC 303]”*** wherein it was held as follows:

“As noted earlier, Section 6(1)(b) is applicable in the present case. The said provision does not specify any particular officer as the competent authority to grant sanction. It only states that the State Government, without

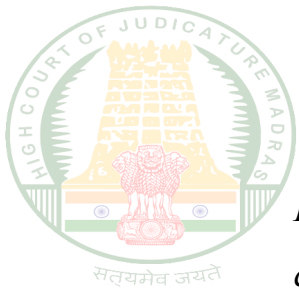


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whose sanction the delinquent officer cannot be removed from office/post, is the competent authority to pass the order of sanction. From the Sanction Order, which is available on the record, it is clear that the Secretary, Medical Education Department passed/signed the order of sanction of prosecution against the appellant on behalf of the Governor. It is not the case of the appellant that the Secretary had no authority to act on behalf of the State Government. It follows that the order of sanction in the present case was passed by the Secretary of the Medical Education Department with the authority of the Governor of the State Government. No material on record has been brought to our notice to show that the Governor had issued any order authorising an officer other than the Secretary of the Department to pass order of sanction in the case. If that was the case, then the appellant should have produced the order or at least raised the contention that an Officer other than the Secretary had been authorised for that purpose. No such material appears to have been produced. When the Secretary was being examined in support of the Sanction Order passed by him such question was also put to him. Reliance is placed on a sentence in his deposition that he is not the authority to remove the appellant. This statement, without further material, cannot form the basis of the contention that the Secretary, Medical Education Department was not competent to pass the order of sanction on behalf of the State Government. The Government functions through its officers.

The Secretary is the Head of the Department and the

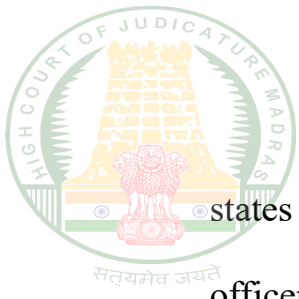


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Principal Officer representing the State Government in the concerned Department. Unless specific material is produced to show that some other officer was competent to deal with the matter of sanction of prosecution against the appellant it can be reasonably assumed that the Secretary of the Department is the competent authority to pass the order of sanction. The object of Section 6 or for that matter Section 197 of the Criminal Procedure Code, which is a pari materia provision, is that there should be no unnecessary harassment of a public servant; the idea is to save the public servant from the harassment which may be caused to him if each and every aggrieved or disgruntled person is allowed to institute a criminal complaint against him. The protection is not intended to be an absolute and unqualified Immunity against criminal prosecution. In a case where it is seen that a Sanction Order has been passed by an authority who is competent under the law to represent the State Government, the burden is heavy on the party who challenges the authority of such order to show that the authority competent to pass the order of sanction is somebody else and not the officer who has passed the Sanction Order in question.”

33. Section 6 of the old Act corresponds to Section 19 of the new Act, and even in Section 19, the provision does not specify any particular officer as the competent authority to grant sanction. It only



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states that the State Government, without whose sanction the delinquent

officer cannot be removed from office. Therefore, in this case, the

Secretary of the government had accorded the sanction order on behalf of

the Governor. Further, as stated above, the intention of the provision is to

save innocent public servant from unwanted legal proceeding and the

same shall not be misunderstood as an absolute and unqualified immunity

against criminal prosecution. However, on perusal of the materials

available on record, this court finds a *prima facie* case against the accused

and the Secretary to the Government, being a competent authority, had

gone into the same and had signed the sanctioning order on behalf of the

Governor and this Court finds no infirmity in the sanction order and

deems the action of the sanctioning authority competent and fit.

Accordingly, the second issue is also answered in favour of the

prosecution.

34. Further, it is relevant to rely upon the judgments of the Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of ***Devendra Prasad Singh Vs. State of Bihar &Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)*** while dealing with the petition to quash the entire criminal proceedings held that the High



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Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no prima facie case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

35. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of ***Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019 dated 17.10.2019)*** held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

36. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi&anr,*** held that while considering the

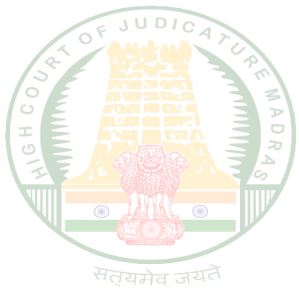


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petition for quashment of complaint or charge sheet, the Court should not

embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

37. Further this Court cannot observe at this stage as to whether the initiation of criminal proceeding itself is malicious or not. The same is required to be considered at the conclusion of the trial. Therefore, the grounds raised by the petitioner to quash the final report/charge sheet cannot be entertained. Therefore, this Court is not inclined to quash the proceedings in Spl.C.C.No.3 of 2024 on the file of the learned Special Judge, Special Court for the cases under the Prevention of Corruption Act, Coimbatore.



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38. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

23.07.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

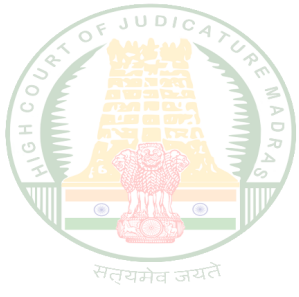
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To

1. The Special Judge,
Special Court for the cases under
the Prevention of Corruption Act,
Coimbatore.

2. The Inspector of Police,
Vigilance and Anti-corruption,
Coimbatore District.

3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J,

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Order in
Crl.O.P.No.28172 of 2024
and Crl.M.P.Nos.15664 & 15659 of 2024

23.07.2026