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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1181 of 2014**

- Chandra Shekhar Verma, Chairman, Steel Authority Of India Ltd. Ispat Bhavan, Lodhi Road Police Station Lodhi Road New Delhi -110003.

---- Petitioner**Versus**

1. C.B.I. Chhattisgarh, Through S.P. (C.B.I.), Qr. No. 4, Street 15, Sector - 9, Bhilai, Distt. Durg C.G.
2. Dr. Shashi Kant Saxena S/o Shri R.P. Saxena Aged About 51 Years R/o Q No. 3A, Street 32, Sector 09, Police Station Sector 6, Bhilai, Distt. Durg C.G. 490006.

---- Respondent**And****CRMP No. 685 Of 2015**

- Dr. Shashi Kant Saxena S/o Shri Ravi Prakash Saxena Aged About 51 Years Joint Director (Medical & Health Services) And Cardiologist, R/o Qr. No. 3A, Street No. 31, Sector-09, Bhilai, Police Station Sector-6, District Durg Chhattisgarh Permanent R/o 20 Neemtal Near New Bus Stand, In Front Of Madhav Ganj Middle School, Vidisha, District Vidisha (M.P.).

---- Petitioner**Vs**

- Central Bureau Of Investigation Through S.P. (C.B.I.) Qr. No. 4, Street 15, Sector-9, Bhilai, District Durg Chhattisgarh.

---- Respondent

For Petitioner in CrMP 1181/2014 : Dr. NK Shukla, Sr. Advocate with Shri Shailendra Shukla and Shri PR Patankar, Advocates.

For Petitioner in CrMP 685/2015 : Shri Adil Minhaj, Advocate.

For Respondent/CBI : Shri Kishore Bhaduri, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on :01/12/2015

1. Both these petition under Section 482 CrPC are arising out of order passed by the Special Judge, CBI, Raipur in Special Criminal Case No.7/13, therefore, they are being disposed of by this common order.
2. CrMP No.1181/2014 has been preferred by the petitioner, who is the Chairman of the Steel Authority of India Limited ('SAIL') seeking quashment of the order passed by the Special Judge whereby he has been summoned as a witness to prove the sanction granted by the SAIL for prosecution of the accused i.e. respondent No.2 Dr. Shashi Kant Saxena.
3. CrMP No.685/2015 has been preferred by the accused assailing the Special Court's order dated 8.7.2015 whereby his application under Section 19 of the Prevention of Corruption Act, 1988 (for short 'the Act, 1988') for his discharge on the ground that there is no valid sanction to prosecute him, has been rejected.
4. Facts of the case, briefly stated, are that the accused was a Cardiologist in Jawahar Lal Nehru Hospital and Research Centre, Bhilai Steel Plant (BSP), Bhilai. One Saumen Koley lodged a complaint against him for demand of illegal gratification of Rs.15,000-20,000/-. On 9.4.2013, the accused agreed to accept Rs.10,000/- as part payment of the illegal

gratification for referring the complainant's father, a retired employee of the BSP to Chennai/Delhi based hospital for treatment/operation, as he was under cardiac treatment of respondent No.2. After making necessary arrangements for laying a trap, the accused was caught red-handed while accepting the illegal gratification of Rs.10,000/-. The Central Bureau of Investigation (CBI) thereafter filed a charge sheet against him for offence under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

5. The SAIL/BSP has granted sanction to prosecute the petitioner on 4.10.2013. To prove the said sanction, the CBI has already examined PW-1 Navin Chandra Jain and according to the CBI as well as the petitioner, the sanction stands proved, however, the accused moved an application under Section 311 CrPC for summoning the petitioner as a witness on the ground that since the sanction letter was signed by him, it is only the petitioner who could have answered the questions about compliance of necessary legal requirement before issuing the sanction.
6. It has been argued that the sanction order contains all the necessary facts and record placed before the sanctioning authority and the same has been proved by examining PW-1, therefore, there was no requirement at all to summon the petitioner for his examination.
7. Per contra, learned counsel for the accused would argue that whether or not the entire material was placed and considered by the sanctioning

authority can only be replied by the person who has signed the sanction order, therefore, the petitioner's examination is necessary before the trial Court.

8. The law as to what is the legal requirement to prove the order of sanction has already been settled by the Supreme Court.
9. In **AIR 1973 SUPREME COURT 2131** {The State of Rajasthan Vs. Tarachand Jain} it has been held that for considering whether facts constituting the offence appear on the face of the sanction accorded by the Chief Minister, it is not necessary for the prosecution to lead separate evidence to show that the relevant facts were placed before the Chief Minister. Hence, it cannot be said that the prosecution has failed to prove that the Chief Minister has accorded his sanction after applying his mind to the facts of the case.
10. In **1996 CRI.L.J. 3638** {CBI/SPE Hyderabad Vs. P. Muthuraman}, it has been held that signature on the sanction can be proved either by the sanctioning authority or by his subordinate officer/clerk who has seen the sanctioning authority signing the order. It is also held that if the sanction order is a speaking order, then the matter ends there otherwise evidence should be adduced to prove that sanctioning authority had perused the material before according sanction which may not be in a particular form.
11. In **2006 CRI.L.J. 518 (SC)** {State Vs. K. Narasimhachary}, the order of

sanction for prosecution of public servant was issued under Section 19 of Prevention of Corruption Act, 1988. The Secretary to State Govt. merely authenticated the said order of sanction which was issued in the name of the Governor of State. The order of sanction was, thus, issued by the State in discharge of its statutory functions in terms of S.19 of the Act. The order of sanction was authenticated. The said order of sanction was an executive action of a State having been issued in the name of the Governor. It was authenticated in the manner specified in the Rules of Executive Business. The authenticity of the said order has not been questioned. It was, therefore, a public document within the meaning of S.74 of the Evidence Act. A public document can be proved in terms of Ss.76 to 78 of the Evidence Act. A public document can be proved otherwise also. The High Court, therefore, was not correct in invoking the provisions of S.47 of the Evidence Act in the instant case, as it was not called upon to form an opinion as to by whom the said order of sanction was written and signed.

12. In the case at hand, the sanction order has been filed as Annexure-P/2. It is a speaking order wherein the entire facts have been set out and the sanctioning authority has accorded sanction after carefully examining the copies of relevant documents including the FIR and statements of witnesses, therefore, it cannot be said that the sanctioning authority had not applied its mind. Once PW-1 has proved the sanction by stating that he being an Assistant General Manager (Vigilance), SAIL, is conversant

with the signatures of the sanctioning authority, there is no requirement of examining the person who has signed the sanction.

13.The Special Court has committed serious error which runs contrary to the law laid down by the Supreme Court in respect of proof of sanction and examination of the person to prove the said sanction. Therefore, the impugned order in CrMP No.1181/2014 deserves to be and is hereby set aside.

14.In CrMP No. 685 of 2015, the applicant/accused has challenged the order passed by the Special Judge, on 8.7.2015 rejecting his prayer under Section 19 of the Act, 1988 by which the applicant had called in question the legality and validity of the sanction and consequently prayed for his discharge in the criminal case.

15.Shri Adil Minhaj, learned counsel for the applicant would submit that the petitioner being the Joint Director (Medical and Health Services) and Cardiologist in the JLN Medical and Research Centre, Bhilai, a unit of BSP/SAIL, the competent authority to remove him from service is the CEO of the Company and not the Chairman. Therefore, sanction to prosecute granted under the signatures of the Chairman, SAIL, is not valid and further that sanction to prosecute the petitioner has been granted in a mechanical manner, without application of mind, therefore, the applicant deserves to be discharged.

16.Per contra, Shri Kishore Bhaduri, learned counsel appearing for the

CBI, would submit that the Steel Authority of India Limited, Conduct, Discipline and Appeal, Rules, 1997 read with the Schedule appended thereto particularly note at the bottom of the Schedule provides that all employees in the grades up to E-7 level and below can be removed from service by the Chairman, respective Directors/CEOs and the next Higher Authority shall be the appellate Authority in all such cases. Therefore, there is no quarrel about the applicable rules that the Chairman is competent to remove the applicant. Hence there is no substance in the petition.

17. In the document filed by the applicant himself as Annexure-A/9, it is mentioned that the petitioner is drawing the scale of pay applicable to the E-7 Grade employees, therefore, Schedule to the rules along with note will clearly apply and the Chairman is also empowered to remove the petitioner. Thus, the first limb of argument that only the CEO is competent to remove the petitioner from service is not supported with relevant provisions of the Rules, 1997. Therefore, this argument deserves to be and is hereby rejected.

18. The second limb of argument is in respect of sanction order being mechanical or without application of mind.

19. To consider this argument, it would be apt to refer to the law settled by the Supreme Court as to the requirement of valid sanction and the scope of interference in such matters.

20. In (2005) 4 SCC 81 {**C.S. Krishnamurthy Vs. State of Karnataka**}, it has been held that the sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. But when the sanction order itself is eloquent enough, then in that case only formal evidence has to be produced by the sanctioning authority or by any other evidence that the sanction was accorded by a competent person with due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. When the sanction itself is very expressive, then in that case, the argument that particular material was not properly placed before the sanctioning authority for according sanction and the sanctioning authority has not applied its mind become unsustainable.

21. In (2007) 14 SCC 783 {**Paul Varghese Vs. State of Kerala and another**} and AIR 2014 SC 1674 {**State of Bihar and others Vs. Rajmangal Ram**}, it has been held that any error, omission or irregularity in sanction is not fatal unless it has occasioned or resulted in failure of justice. It is further held that requirement of sanction under Section 19(1) is a matter of procedure and does not go to the root of the jurisdiction, therefore, criminal proceeding cannot be interdicted mid course by the High Court invoking Section 482 of the CrPC.

22. In view of the above settled legal position and having found that

sanction to prosecute the petitioner has been granted by the competent authority and the sanction order itself is elaborate and expressive, no case for exercise of jurisdiction under Section 482 CrPC is made out to quash the sanction and discharge the accused.

23. Accordingly, CrMP No. 685 of 2015 is dismissed.

24. *Exconsequenti*, CrMP No.1181/2014 is allowed and CrMP No. 685 of 2015 is dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

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