

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.786 of 2012

Date of decision: 17th July, 2015

Dr. Subhash Chander and another

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Mandeep Kaushik, Advocate
for the petitioners.

Mr. J.S. Brar, Asstt. Advocate General, Punjab with
Inspector Balbir Singh
for respondent No.1.

Mr. Amandeep S. Manaise, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

A case by way of FIR No.78 dated 13.12.2005 under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (in short, 'the Act') was registered at Police Station Vigilance Bureau, District Amritsar against Dr. Subhash Chander and Hans Raj, present petitioners. On presentation of the challan, an application for dropping proceedings against the accused for want of sanction under Section 19 of the Act was moved on the grounds that since no legal and valid

sanction has been accorded to prosecute the accused as such they were entitled to discharge.

It is through the impugned orders dated 09.02.2012 (Annexure P1), learned Additional Sessions Judge-cum-Judge, Special Court, Gurdaspur dismissed the application and ordered framing of the charges under Section 17 and 13(2) of the Act and which is subject matter of assail in the instant revision petition before this Court.

Heard Mr. Bipan Ghai, Senior Advocate assisted by Mr.Mandeep Kaushik, Advocate for the petitioners; Mr. J.S. Brar, Asstt. Advocate General, Punjab along with Inspector Balbir Singh on behalf of respondent No.1 and Mr. Amandeep Singh Manaise, Advocate representing respondent No.2.

Learned counsel for the State could not convince this Court how in the absence of a legal and valid sanction, the Special Court could take cognizance of the offences and frame charges against the accused. Section 19 of the Act, which is reproduced below to lay emphasis, specifically bars taking of cognizance by a Special Court for offences punishable under the Prevention of Corruption Act:

*“19. Previous sanction necessary for prosecution
— (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, —*

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with

the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) —

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error,

omission or irregularity has resulted in a failure of justice;

- (c) *no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any inter-locutory order passed in inquiry, trial, appeal or other proceedings.*

(4) *In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.*

Explanation. — For the purposes of this section, —

- (a) *error includes competency of the authority to grant sanction;*
- (b) *a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”*

and which is the established position of law as has been enunciated by the Hon'ble Supreme Court of India in the case of **‘Kalicharan Mahapatra v. State of Orissa’ 1998(3) RCR (Criminal) 771 (SC).**

Learned State counsel with all fairness has conceded that even till date no legal and valid sanction has been accorded for prosecution of both the petitioners who are public servants at the time

of taking cognizance of the offence within the domain of Section 21 of the IPC.

In the light of this specific bar ordained in the provisions of law, the learned Special Judge has certainly fell into an error by taking cognizance of the offences as well as framing of chargesheet, in view of which the impugned order certainly is not sustainable and is thus, set aside by way of allowing the present revision petition.

(FATEH DEEP SINGH)
JUDGE

July 17, 2015
rps