

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 3 of 2016**

Jagat Raj Patel S/o Late Shri M.P. Patel Aged About 58 Years R/o R -1,
Kanchan Ganga Phase - 2, Near Shabri Asharam, Rohanipuram, Raipur
Chhattisgarh.

---- Petitioner**Versus**

State Of Chhattisgarh Through Anti Corruption Bureau, Jagdalpur, District
Bastar Chhattisgarh.

-----Respondent

For Petitioner:	Dr. NK Shukla, Senior Advocate along with Shri Vikash Dubey, Advocate.
For Respondent/State:	Shri RK. Gupta, Deputy Advocate General.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

2.8.2016

1. The Petitioner through the present Petition under Section 482 Cr.P.C intends to challenge the order dated 22.4.2015 in Special Case No.2/2010 passed by the Special Judge (Prevention of Corruption), Jagdalpur. Vide the said impugned order, the Court below has recalled its earlier order discharging the Petitioner from the case wherein the Petitioner was being prosecuted for the offence punishable under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act').

2. Facts relevant for adjudication of the present Petition are that the Petitioner while he was working as an Executive Engineer under the erstwhile Madhya Pradesh Electricity Board (for short 'the MPEB) was allegedly owning disproportionate income much more than his known sources of income and a raid was also conducted at his premises while he was posted at Jagdalpur. Consequently, FIR was also lodged in Crime No.21/2000 punishable under Sections 13(1)(e) and 13(2) the PC Act. Since prior sanction was required for

prosecution, a sanction order could be obtained for the first time only on 26.3.2010 wherein the sanction was granted by the Executive Director (H.R) of the Chhattisgarh State Power Holding Company Limited (for short 'the CSPHCL'). The said grant of sanction on 26.3.2010 by the Executive Director (H.R), CSPHCL was put to challenge in W.P.(Cr.) No.1791/2010 claiming prima facie for reliefs which are as follows:-

“ii. to kindly quash the sanction granted by the respondent No.1 and communicated/formalized by the Executive Director (H.R) of the respondent Holding company No.01-05/PD-one/302(14)/452 dated 26.3.2010 (Annexure P/1),

iii. To kindly quash the cognizance of the criminal proceedings and submission of charge sheet as sanction granted aforesaid being illegal and non-est with regard to vide Special Case No.2/2010 under Section u/s 13(1)(i) read with 13(2) Prevention of Corruption Act, 1988 which has been initiated as a consequence of the sanction order dated 26.3.2010.”

3. The Court, hearing the said Writ Petition, finally on 24.8.2012 had, partly allowed the Writ Petition holding that the Executive Director (H.R), CSPHCL was not the competent authority to accord sanction and thus had quashed the same. However, the Court below had granted the liberty to the Respondents in the Writ Petition to take appropriate steps within a period of 6 months for obtaining proper sanction by the competent authority for better appreciation and the operative part of the order of the Writ Court dated 24.8.2012 is reproduced as under:-

“Consequently, the writ petition is partly allowed. Sanction order dated 26.3.2010 accorded by GS. Kalsi, Executive Director (H.R) CSPHCL, Raipur authority not competent to accord sanction, is hereby quashed. Respondents No.1 to 5 are at liberty to take appropriate steps in terms of Section 19(1)(c) of the Act within six months from today and till then or till the decision of Respondents No.1 to 5 and its communication/production of

such decision before the Special Judge, trial of Special Case No.02/2010 pending before the Special Judge under PC Act, Bastar at Jagdalpur shall remain stayed. However, the petitioner is at liberty to challenge the subsequent order/action of the respondents according or refusing to accord sanction.”

4. It is pertinent to mention that the order itself very clearly stipulated that till prior sanctions within 6 months were taken by the Respondents, it was ordered that the proceedings before the Trial Court against the Petitioner shall remain stayed. Subsequently, M.C.C was filed seeking for extension of time as the prior sanctions could not be taken within the prescribed period of 6 months, which was registered as M.C.C. No.153/2013. However, the Writ Court, vide its order dated 4.3.2013, dismissed the said M.C.C seeking extension of time. Later on, another M.C.C was filed which was registered as M.C.C No.277/2013 seeking for the recalling or modification of the earlier order dated 4.3.2013 passed in M.C.C No.153/2013. The reason for the second M.C.C was that subsequently on 18.3.2013, competent authorities had in fact granted sanction to prosecute the Petitioner. The finding given by this Court in allowing the second M.C.C i.e. M.C.C No.277/2013, dated 3.5.2015 is as under:-

“Considering the fact shown in the application supported by an affidavit and order granting sanction which has already been passed by the authorities on 18.3.2013, delay in taking such steps is required to be condoned.

Consequently, the application is allowed. Time for taking steps is extended till the passing of order dated 18.3.2013, subject to payment of cost of Rs.5000/- to respondent No.1 within fifteen days from today either personally or through counsel.”

5. This order dated 3.5.2013 passed in M.C.C No.277/2013 was also

challenged before the Supreme Court vide Special Leave Petition (Cr.) No.7937/2013, but the Supreme Court, vide order dated 14.8.2014, dismissed the said Special Leave Petition.

6. The Writ Court, after taking into consideration the reasons which were assigned for not initially obtaining sanction within the stipulated period, allowed the M.C.C and granted extension of time for grant of sanction till 18.3.2013 upon imposing cost of Rs.5,000/- on Respondent No.1. Meanwhile, on 22.4.2013, the Trial Court, taking into consideration the fact that the High Court had not granted extension of time for obtaining sanction, discharged the Petitioner on the said technicality from the offence under Sections 13(1)(e) and 13(2) of the PC Act.

7. It is also pertinent that the Petitioner in between had also questioned the order passed by the Writ Court in W.P.(Cr.) No.1791/2010 dated 24.8.2012 by way of Writ Appeal registered as W.A No.1083/2012. The Division Bench of this Court, while finally deciding the Writ Appeal on 28.1.2015, affirming the order of the Single Bench held as under:-

“Since the learned Single Judge quashed the orders dated 26.3.2010/29.06.2010 not on merits but on technicality and granted liberty to the Respondents to act afresh in accordance with law, to that extent we find no infirmity in the present order under appeal.”

The Division Bench also took note of the subsequent sanction being granted by the competent authority and only granted liberty to the Petitioner to challenge the same if he so intends.

8. It has been informed at the bar that the Petitioner has filed a Writ Petition challenging the subsequent sanction dated 18.3.2013 which is registered as W.P.(Cr.) No.85/2015 and the primary relief sought for is for

quashing the order dated 18.3.2013 granting subsequent sanction and also for quashing of the criminal proceedings initiated vide Special Case No.2/2010. It would be relevant to mention at this juncture that Relief No.3 is also one of the same reliefs which has also been claimed in W.P.(Cr.) No.85/15 and no interim protection could be obtained by the Petitioner there.

9. Meanwhile, the State of Chhattisgarh against the order dated 22.4.2013 discharging the Petitioner for want of proper sanction in spite of time granted by the Writ Court, challenged the same in a Criminal Revision i.e. Criminal Revision No.565/2013 and the Court, hearing the said Revision, on 18.2.2015, disposed of the same holding that since the order dated 22.4.2013 granting discharge was for technical reasons and that subsequently, sanction has been granted, the High Court directed the State to move appropriate application before the Court below bringing to its notice the order dated 3.5.2013 granting extension of time till 18.3.2013 on which date, sanction for the second time was obtained.

10. Thus, it was by virtue of the order passed by the High Court in Criminal Revision No.565/2013 dated 18.2.2015 that the Respondent/State had approached the authorities for continuing with the prosecution case against the Petitioner in the light of the subsequent sanction being obtained and an application in this regard was filed before the Court below seeking the entire factual background that transpired right from the stage of the first order passed in Writ Petition (/Cr.) No.1791/2010 decided on 24.8.2012 onwards and prayed for further proceedings to be initiated in Criminal Case No.2/2010 pending before it. After due consideration of the application moved by the Respondent and also upon hearing learned Counsel for the Petitioner, the impugned order dated 22.4.2015 was passed ordering for further proceeding with the case.

11. Learned Senior Counsel for the Petitioner submitted that he assails the impugned order dated 22.4.2015 on the solitary ground whether the Court below could have allowed the application of the State and order for continuing of the proceedings from the stage at which it had discharged the Petitioner i.e. on 22.4.2013. According to the Senior Counsel, this order of the Court below amounts to recalling of its order dated 22.4.2013 for which otherwise, there is no provision of law in the Cr.P.C. He submits that once an order of discharge has been passed, if the High Court had granted permission to obtain proper sanction, the proper recourse for the prosecution would have been to file a fresh charge sheet against the Petitioner and to proceed further. As there is no provision in the criminal law like restoration of the proceedings, once the Court holds the Petitioner to be discharged from the offence. In support of its contention, learned Counsel for the Petitioner relies upon three decisions i.e. **2001 CRI.L.J 2821** (Mohammad Ilyas Ahamed vs. Abdul Subhan, **1965(1) CRI.L.J.144 (Vol.70, C.N.48) (1)** (State vs. Ganga Ram Kalita and others) and **1958 Cri.L.J.1312 (Vol.59, C.N.403)** (Kalipada Jana and others vs. Sarbeshwar Panda and others).

12. Learned Deputy Advocate General representing the State submits that the perusal of the order dated 24.8.2012 in W.P.(Cr.) No.1791/2010 and subsequently the order dated 5.3.2013 in M.C.C. No.277/2013 clearly shows that firstly the Court had granted the liberty to the State for obtaining their sanctions and secondly, the Court had extended the time for obtaining the sanction. Thereby this Court had ratified the delay caused in obtaining sanction and once sanction has been obtained, the natural consequence would be that of restarting of the criminal proceeding from the stage at which the Petitioner got discharged which was only on the technicality of not having proper sanction. He further submits that the impugned order challenged in

the present Petition also was on an application moved by the State that too on the basis of again an order passed by the High Court dated 18.2.2015 in Criminal Revision No.565/2013 which had specifically permitted the State to move an application and bring the subsequent events/developments to the notice of the Court below and which on being brought, the Court below has allowed the application and had ordered for proceeding further. Thus, the State Counsel prayed for rejection of the Petition being devoid of merits.

13. Having considered the submissions put forth by Learned Counsel for the parties, what is an admitted position is that while initiating the prosecution, a sanction had been taken by the Respondents i.e. on 26.3.2010 which was quashed by High Court vide this order dated 24.8.2012. However, while quashing the earlier sanction granted on 26.3.2010, the High Court had reserved the liberty of the Respondents to obtain proper sanction and to proceed further which the Respondents did obtain on 18.3.2013 though beyond prescribed period of time but subsequently, the High Court, vide its order dated 3.5.2013 in M.C.C No.277/2013 condoned the delay and granted extension of time till the date sanction was obtained i.e. 18.3.2013.

14. The subsequent sanction whether it is proper or illegal is already a subject matter of another Writ Petition i.e. W.P.(Cr.) No.85/15 and whether the Petitioner has not been able to get an interim protection. It is also an admitted position that after the order of discharge being put to challenge in a Criminal Revision by the State i.e. Criminal Revision No.565/2013, the High Court hearing the Criminal Revision on 18.2.2015, had disposed of the said representation directing the State to move an appropriate application in this regard to the trial Court for the reason that on the date of discharge, the sanction was not there and on the date of discharge, the period provided by the High Court at the first instance also is lapsed. However, subsequently,

both the period of obtaining sanction also was extended and the Respondents had also been able to obtain proper sanction by that time. Later on, based on the observations of the High Court hearing Criminal Revision No.18.2.2015, the State had moved an application which stood allowed vide the impugned order.

15. In the opinion of this Court, the Court below has not committed any error of law or for that matter, there is no infirmity while deciding the said application of the State and for ordering for proceeding further for the trial from the stage what it was otherwise fixed on 22.4.2013. The fact that the order of discharge on 22.4.2013 was based on the technical ground of there not being proper sanction and the High Court already having granted the liberty to the State to prosecute the Petitioner subject to obtaining proper sanction and the State subsequently, obtaining the same for all practical purpose, the case has to be begun from the stage that it was otherwise fixed on 22.4.2013.

16. Thus, the Court below was justified while allowing the case of the State for proceeding further for the trial against the Petitioner for the offence. So far as the judgment relied upon by the Counsel for the Petitioner is concerned, with all due respect, all three judgments are under entirely different factual background as compared to the present case and are therefore distinguishable and would not come to the aid of the Petitioner in any manner.

17. The Supreme Court in the case of **AIR 2015 Supreme Court 2022** (*D.T. Virupakshappa vs. C. Subash*) held as under:-

“10.Going by the factual matrix, it is evident that the whole allegation is on police excess in connection with the investigation of a criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the

appellant. Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government.....

11.It is made clear that our judgment is only on the issue of sanction and we have not considered the matter on merits and that this judgment shall not stand in the way of respondent approaching the State Government for sanction under Section 197 of Cr.P.C. In case such sanction is obtained and the same is produced before the learned Magistrate, the Magistrate may proceed further in the case in accordance with the law.”

18. For the foregoing reasons and also in the light of the judgment of the Supreme Court in the case of *D.T. Virupakshappa vs. C. Subash* (supra), this Court is of the opinion that the Writ Petition is totally devoid of merits, the same deserves to be and is accordingly dismissed. Sd/-

(P. Sam Koshy)

JUDGE