

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 20.07.2016)

DATED : 05.08.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.12082 of 2016

and

Crl.M.P.Nos.6210 & 6211 of 2016

Dr.M.Manuneethi Cholan ... Petitioner /Accused-1

Vs.

State rep. by_
The Deputy Superintendent of Police,
SPE:CBI:ACB:Chennai,
(Crime No.RC MA1 2014/A 0037) ... Respondent/Complainant

Prayer: Petitions filed under Section 482 of Cr.P.C., praying to call for the records in connection with C.C.No.1 of 2016 on the file of the learned XII Additional Special Judge for CBI Cases, Chennai and to quash the same.

For Petitioners : Mr.R.Shanmugha Sundaram,
Senior Counsel
for Mr.L.Baskaran & A.Gopinath

For Respondent : Mr.K.Srinivasan,
Spl PP for CBI Cases.

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ORDER

The Criminal Original Petition has been filed by the petitioner praying to quash the criminal proceedings in C.C.No.1 of 2016 pending on the file of the learned XII Additional Special Judge for CBI Cases, Chennai, as against the petitioner herein. In the said case, the petitioner herein has been arrayed as the 1st accused.

2.The brief facts of the case of the prosecution are as follows:-

2-1.The petitioner herein/A1 joined Ministry of Corporate Affairs, Government of India in the year 1990. During the period from 01.11.2013 to 26.08.2014 ie., till the date of his suspension, the petitioner/A1 was holding the post of Registrar of Companies, Tamil Nadu and Andaman & Nicobar Islands, at Chennai. The petitioner/A1 is a Public Servant within the meaning of Section 2(c) of Prevention of Corruption Act, 1988.

2-2.The 2nd accused viz., Dr.M.A.M.Ramaswamy was the Director/Chairman of M/s.Chettinad Cement Corporation Limited (M/s.CCCL), Chennai, till 2014. M/s.CCCL, Chennai is a company of the Chettinad Group which has interest in cement, silica, construction, transportation, steel fabrication, coal terminal and power sectors. At about 6.30 hours on 26.08.2014, a source information was received by CBI that the petitioner herein/A1 and the 2nd accused Dr.M.A.M.Ramaswamy and unknown others had conspired together, not to allow rival group of Dr.M.A.M.Ramaswamy to take control of the Chettinad Group of Companies by removing Dr.M.A.M.Ramaswamy from the chairmanship during the Annual General Body meeting which was scheduled to be held on 27.08.2014 at Chennai. In that process, the petitioner herein/A1, in his official capacity as Registrar of Companies, demanded an amount of Rs.10 lakhs as illegal gratification from the 2nd accused, for not approving the rival group's decision of removing the Dr.M.A.M.Ramaswamy from the Chairmanship of M/s.CCCL, which possibly could be taken during the Annual General Body Meeting (AGM) scheduled to be held on 27.08.2014. It was agreed that for doing so, the 2nd accused Dr.M.A.M.Ramaswamy would give Rs.10 lakhs to the petitioner herein/A1 in the morning on 26.08.2014 at the residence of Dr.Ramaswamy.

2-3.As the above said information disclosed offences under Section 120B r/w and Sections 7, 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, the criminal case was registered at 07.45 hours on 26.08.2014 and a CBI team, including independent witnesses, proceeded to the residence of the 2nd accused Dr.M.A.M.Ramaswamy. The team members reached Chettinad Palace (Greenways Road), at 08.45 hours, and strategically positioned themselves nearer to the Chettinad Palace.

2-4.The CBI Team members and independent witnesses kept waiting outside the residence of the 2nd accused and at about 09.25 hours, they noticed a Honda City Car bearing Reg.No.TN 30 A Q 5747, with a red beacon light on its front top, entering the premises. It had red metallic board with inscriptions as "Government of India, Ministry of Corporate Affairs, Registrar

of Companies, TN Chennai" along with National Emblem fitted above the front registration number-plate. It is also stated that the team members noticed that a person was sitting at the back seat of the car, who was later identified as the petitioner herein/A1. At about 11.20 hours, they saw the same car coming out from the residential premises of the 2nd accused Dr.M.A.M.Ramaswamy. After following the car and on receipt of a confirmation from the source information that the petitioner herein/A1 had received the bribe amount, the car was intercepted and searched by the CBI team. One of the independent witnesses viz., Mr.M.K.Subramanian, Chief Vigilance Inspector, Chief Vigilance Office, Southern Railways, Chennai, noticed a packet wrapped in paper on the lap of the petitioner herein. When the said independent witness was about to check the packet, the petitioner/A1 was reluctant to hand over the same and stated that it was a 'gift'. In spite of the petitioner's reluctance, the said independent witness took the packet, opened the wrapper and found currency notes, to the total value of Rs.10 lakhs, in 12 bundles, ie., 4 bundles each containing 100 numbers of currencies of Rs.500/- denomination and 8 bundles each containing 100 numbers of currencies of Rs.1,000/- denomination, totalling Rs.10 lakhs.

2-5. Thereafter, the petitioner/A1 was arrested and searches were conducted at his residence and various other places. At the time of arresting the petitioner/A1, a personal search was conducted on his body also, which led to recovery of another Rs.40,000/- cash. Thereafter, the respondent-CBI proceeded with the investigation. On completion of investigation, the respondent-CBI filed chargesheet and the same was taken on file as C.C.No.1 of 2016 on the file of the learned XII Additional Special Judge for CBI Cases, Chennai.

2-6. Now, the petitioner/A1 has come forward with the present petition before this Court seeking to quash the chargesheet as against him.

3. The learned senior counsel appearing for the petitioner submitted that the case has been registered only on a source information and no one has given any complaint with the respondent-CBI with regard to the alleged illegal gratification of Rs.10 lakhs said to have been received by the petitioner/A1 from the 2nd accused. Absolutely there is no evidence to show that the petitioner herein has made a demand of Rs.10 lakhs from the 2nd accused, as illegal gratification. The learned senior counsel for the petitioner has submitted that the only material available on the side of the prosecution to prove the demand of bribe is the transcription of the recordings of the telephonic conversation that had taken place between the petitioner/A1 and the 2nd accused. In this regard, the learned senior counsel for the petitioner has invited the attention of this Court to

the transcription of the recordings of the telephonic conversation that had taken place between the petitioner/A1 and the 2nd accused, which is extracted hereunder

MNC	:	"Ayya Vanakkam ayya"(Sir Greetings sir)
MAMR	:	"aah.... sollunga, sollunga ayya"(Yes, tell, tell sir")
MNC	:	Sorry sir... I want to talk for just one minute.....
MAMR	:	Thats all right, you can talk even for 10 minutes
MAMR	:	Sir, on other day you told as "five rupees"
MAMR	:	mmm.....
MNC	:	Sir, please don't get angry, it needs minimum "ten rupees" because at the last minute, others should not mistake us (sic) and that is why am requesting you.
MAMR	:	Yes
MNC	:	Reason being, today I have to send it to the Deputy and we all the five have to sign it. How's that sir, can you give it.....
MAMR	:	
MNC	:	What Sir.....
MAMR	:	Done.
MNC	:	Sir, now we are standing in a battle.
MAMR	:	Tomorrow, the other battle should begin.
MNC	:	Sir, you just wait and see that the things would go in the way you thought
MAMR	:	No, in his life.....
MNC	:	Sir...
MAMR	:	Should not become a member even in Madras Municipal Corporation
MNC	:	Sir, you can see within one week, a criminal case will happen, else you ask this Manuneethi Cholan....
MAMR	:	Thanks a lot.
MNC	:	Thanks sir.
MAMR	:	I will keep it in ready.
MNC	:	Sir morning I will come. Sir, I will come 9'0 clock sharp. Sir "Vanakkam" sir.

The learned senior counsel for the petitioner submitted that the prosecution has relied upon the word 'ten rupees' said to have

been uttered by the petitioner to prove the demand. Except this, no other material is available on the side of the prosecution to prove the demand. Further, the conversation does not also reveal what was the purpose behind the said conversation; therefore, the said word 'ten rupees' said to have been uttered by the petitioner/A1 cannot be taken as a material to prove the demand of Rs.10 lakhs as illegal gratification.

4.It is further submitted by the learned senior counsel for the petitioner that even if the entire transcription of the recordings of the telephonic conversation is gone through, it will not make out a case for demand and acceptance. In this regard, the learned senior counsel for the petitioner/A1 has also relied upon the judgment reported in 2015 (10) SCC 152 (P.Satyanarayana Murthy Vs. State of A.P.), wherein it has been held by the Hon'ble Supreme Court that failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

5.The learned senior counsel for the petitioner has also relied upon the judgment reported in (2014) 13 SCC 55 [B.Jayaraj Vs. State of AP), wherein it has been held that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7 of the Act.

6.The learned senior counsel has also relied upon the judgment reported in (2010) 1 CTC 492 [D.Dass Vs. State], wherein it has been held as follows_

"It is settled law that the demand of illegal gratification is a sine qua non for constitution of an offence under Prevention of Corruption Act. For arriving at the conclusion as to whether all the ingredients of an offence viz., demand, acceptance and recovery of the amount of bribe have been satisfied or not, the Court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose indisputably, the presumptive evidence as is laid down in Section 20 of the Act must also be taken into consideration, but then in respect thereof, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Even while involving the provision of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not

on the touchstone of proof beyond all reasonable doubt."

7. For the same proposition of law, the learned senior counsel for the petitioner has also relied upon another judgments reported in (2009) 1 MWN (Cr1) 324 [S.P. Paulraj Vs. State] and 2007(1) MLJ (Cr1) 430 [Ramakrishnan Vs. State], wherein it has been held that mere proof of receipt of money in the absence of proof of demand and acceptance will not be sufficient to establish the guilt, once the prosecution fails to prove the same, entire prosecution case falls into the ground. For the same proposition, the learned senior counsel has also relied upon the judgment reported in (2011) 2 MWN (Cri) 90 [T.M. Shanmughavelu Vs. State]. Thus, the learned senior counsel for the petitioner submitted that when there is no evidence to show the demand and acceptance, the chargesheet filed against the petitioner/A1 is liable to be quashed.

8. As the second fold of submission, the learned senior counsel for the petitioner would submit that in view of the provisions under Section 59 and 65-A of the Evidence Act, any documentary evidence by way of an electronic record under the Evidence Act, can be proved only in accordance with the procedure prescribed under Section 65-B of the Evidence Act. Section 65-B of the Act deals with the admissibility of the electronic record. In this regard, the learned senior counsel appearing for the petitioner invited the attention of this Court to Section 65B(4)(c) of the Evidence Act and submitted that as required under Section 65B(4)(c) of the Act, no certificate has been produced on the side of the Prosecution to the effect that the contents of the electronic records are the reproduction of the original to the best knowledge and belief of the concerned signing authority. In this regard, the learned senior counsel for the petitioner has also relied upon the judgment reported in (2014) 10 SCC 473 [Anvar P.V. Versus P.K. Basheer] wherein it has been held as follows

"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to

be a document only if the conditions mentioned under sub-Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

.....

22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case, does not lay down the correct legal position. It requires to be overruled and we do so. An

electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

9. Apart from the above submissions, the learned senior counsel for the petitioner has also submitted that the case has been registered for the alleged offences under Section 120B r/w Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act. The petitioner herein is the Joint Director of Ministry of Corporate Affairs, Government of India and he cannot be removed from office except by His Excellency The President. Therefore, His Excellency The President of India is the only competent authority to accord sanction to prosecute the petitioner. But, in the instant case, an Under Secretary to the Government of India, who is not the competent person, has accorded sanction to prosecute the petitioner. There is no delegation of powers to the Under Secretary to accord sanction. The sanction order dated 10.11.2015 filed in this case is merely signed by the Under Secretary, without any mention in what manner the said Under Secretary had been authorised to even sign the order. Therefore, the sanction order is not in accordance with law. In this regard, the learned senior counsel for the petitioner has also relied upon the unreported decision of this Court in CrI.A.No.1454 of 2003, dated 02.02.2014, in the case of State rep. by Inspector of Police, CBI/SCB/Chennai Vs. M.R.Natarajan & another.

10. So far as the offence under Section 120B IPC is concerned, sanction as per Section 197 of Cr.P.C is required for any Court to take cognizance of such offence. But, in the instant case, the sanction order dated 10.11.2015 has been accorded only under Section 19(1)(a) of the Prevention of Corruption Act, which is also defective in nature. In the absence of sanction under Section 197 of Cr.P.C., the cognizance taken in the present case vitiates the entire proceedings. In this regard, the learned senior counsel for the petitioner has also relied upon the decision reported in (2016) 2 SCC 143 [N.K.Ganguly Vs. CBI], wherein it has been observed as follows—

"In the instant case, it is alleged in the charge-sheet that the appellants entered into an agreement to commit an illegal act, which is an offence punishable under Section 120B IPC. Therefore, the provision of Section 197 of Cr.P.C is squarely applicable to the facts of the case. Prior sanction of the Central Government was

required to be taken by the respondent before the learned Special Judge took cognizance of the offence once the final report was filed under Section 173(2) of Cr.P.C."

For the same proposition, the learned senior counsel for the petitioner has also relied upon the judgment in the case of State of Maharashtra Vs. Budhikota Subbarao (Dr) reported in (1993) 3 SCC 339. He also relied upon the unreported decision of this Court in the case of T.R.Narayanan Vs. State rep. by the Inspector of Police, Central Bureau of Investigation, SBI, Chennai, in CrI.O.P.No.8851 of 2014, dated 23.09.2015.

11.Thus, by relying upon the above decisions, the learned senior counsel for the petitioner sought for quashing the chargesheet as against the petitioner herein.

12.Countering the submissions made by the learned senior counsel for the petitioner, the learned Special Public Prosecutor submitted that there are enough materials for framing charges against the petitioner under Section 120B IPC and Sections 7 & 12, 13(2) & 13(1)(d) of the Prevention of Corruption Act. It is incorrect to state that there is no material to show the demand and acceptance by the petitioner. In this regard, the learned Special Public Prosecutor, by inviting the attention of this Court to 161 statements of the witnesses as well as the statement of one Rajendran recorded under Section 164 of Cr.P.C and submitted that a perusal of the statements of the witnesses would show that there was a demand of bribe of Rs.10 lakhs by the petitioner herein/A1 from A2.

13.The learned Special Public Prosecutor would further contend that the telephonic conversation that took place on 25.08.2014 between the petitioner/A1 and A2, just one day prior to the date of apprehension of A1, would clearly prove that there was a demand of Rs.10 lakhs and acceptance by the petitioner from the 2nd accused. The said telephonic conversation would also prove that there is a consideration by the petitioner/A1 to act in favour of the 2nd accused and to pre-empt the move of the rival group in the ensuing Annual General Body Meeting. Therefore, there is enough material to frame charges against the petitioner/A1.

14.As regard the next submission of the learned senior counsel for the petitioner that the provisions of Sections 59, 65-A, 65-B of the Evidence Act were not complied with by the respondent in the present case, since no certificate as required under Section 65B(4)(c) of the Evidence Act has been produced on the side of the prosecution, it is the reply of the learned Special Public Prosecutor that as required under Section 65B(4)(c) of the Evidence Act, necessary certificate was produced by

the respondents, certifying that the contents in the electronic record are true and reproduction of the original to the best knowledge and belief of the concerned certifying authority. The computer output containing the information was produced by the computer during the period from 26.07.2014 to 26.08.2014, was also produced. Thus, the learned Special Public Prosecutor submitted that the provisions of the Sections 59, 65-A, 65-B Evidence Act are complied with by the prosecution in the present case.

15. With regard to the submission made by the learned senior counsel for the petitioner that no proper sanction was obtained for prosecuting the petitioner for the alleged offences under Section 7 & 12, 13(2) (r/2 13(1)(d) of the Prevention of Corruption Act, as the sanction order was signed only by the Under Secretary to the Government, who is not a competent person to accord sanction, it is the reply of the learned Special Public Prosecutor that the Under Secretary is only a communicating agent of the sanction order. In this regard, the learned Special Public Prosecutor has also invited the attention of this Court to the Sanction Order dated 10.11.2015 and submitted that a perusal of the Sanction Order would show that the sanction order was issued in the name of the President and the same was communicated to the petitioner/A1 through the Under Secretary. Therefore, it is incorrect to state that no proper sanction was obtained for prosecuting the petitioner/A1 for the alleged offence punishable under the provisions of the Prevention of Corruption Act.

16. It is another submission of the learned senior counsel for the petitioner that the petitioner/A1 has been charged for the alleged offence under Section 120B IPC also; when that being so, the prosecution ought to have obtained sanction under Section 197 of Cr.P.C. but, no sanction was obtained from the competent authority to prosecute the petitioner/A1 for the alleged offence under Section 120B IPC, as such the cognizance taken in the present case against the petitioner/A1 vitiates the entire proceedings. For this submission of the learned senior counsel for the petitioner, it is the reply of the learned Special Public Prosecutor that since the receiving of illegal gratification is no way connected with the discharge of the official duty of the petitioner/A1, there is no need to obtain any sanction from the competent authority for prosecuting the petitioner/A1 for the offence under Section 120B IPC. In this regard, the learned Special Public Prosecutor has also relied upon the judgment reported (2016) 2 SCC 143 [N.K.Ganguly Vs. CBI]. Thus, the learned Special Public Prosecutor sought for dismissal of the petition.

17. Heard both sides and perused the materials available on record.

18.The sum and substance of the submissions of the learned senior counsel for the petitioner are as follows_

1)There is no evidence for demand and acceptance.

2)The provisions of Sections 59, 65-A, 65-B of the Evidence Act, have not been complied with by the prosecution.

3)Sanction for prosecuting the petitioner/A1 for the alleged offences under Sections 7 & 12, 13(2) (r/2 13(1)(d) of the Prevention of Corruption Act, is not in accordance with the law.

4)No prior sanction, as required under Section 197 of Cr.P.C, was obtained by the prosecution from the competent authority, for prosecuting the petitioner/A1 for the alleged offence under Section 120B IPC. Hence, the impugned criminal proceedings shall be quashed as against the petitioner/A1.

19.It is the submission of the learned senior counsel for the petitioner that the only material produced by the prosecution to prove the demand and acceptance, is the transcription of the recording of the telephonic conversation that took place between the petitioner/A1 and the 2nd accused on 25.08.2014. If the said telephonic conversation is eschewed, there is no other material to prove the demand and acceptance. Mere recovery of money from the accused will not make out a case and recovery of money should not be clubbed with the demand. In this regard, the learned senior counsel for the petitioner has also invited the attention of this Court to the transcription of the recording of telephonic conversation that took place between the petitioner and the 2nd accused on 25.08.2014, and submitted that even if the entire telephonic conversation is gone through, it will not make out a case for demand. The prosecution has relied upon the word 'ten rupees' uttered by the petitioner, to prove the demand. But, the said telephonic conversation does not reveal as to whether the said word 'ten rupees' refers to 'Rs.10 lakhs' or whether it is in respect of the alleged illegal gratification. When that being so, according to the petitioner, this Court can simply come to the conclusion that there is no evidence for demand.

20.But, the above said submission of the learned senior counsel for the petitioner cannot be countenanced, because on going through the 161 statements of the witnesses as well as the telephonic conversation, it could be seen that there is a move by the rival group to remove the 2nd respondent from the Chairmanship of the Chettinad Group of Companies, in the Annual General Body meeting scheduled to be held on 27.08.2014. The

said telephonic conversation would prove that for a consideration, the petitioner, who is working as Registrar of Companies, would act in favour of the 2nd accused to pre-empt the move of the rival group of the 2nd accused in the ensuing Annual General Meeting of the Company. In this context, I am of the opinion that the question as to whether the word '10 rupees' referred by the petitioner during the telephonic conversation is in respect of the illegal gratification or not, could be decided only after recording the evidence during the course of Trial. As on date, prima facie some materials are available to frame charges against the petitioner under the Prevention of Corruption Act. From a perusal of all the judgment relied upon by the learned senior counsel for the petitioner with regard to the demand aspect, I find that all those judgments were delivered in the appeal and not in the quash petition. Therefore, the said judgment cannot be made applicable to the present facts of the case for quashing the chargesheet.

21. It is the next fold of submission of the learned senior counsel of the petitioner that as per Section 65B(4)(c) of the Evidence Act, a certificate should be obtained from the competent certifying authority to the effect that the contents of the electronic records are the reproduction of the original to the best knowledge and belief of the concerned certifying authority; but, in the instant case, no such certificate was produced on the side of the prosecution. But, this contention of the learned senior counsel for the petitioner also falls to the ground, because the learned Special Public Prosecutor has produced a copy of the certificate, which was signed by the concerned certifying authorities viz., (i) Head of Branch, and (2) Inspector of Police, CBI, Special Unit, Chennai, to show that the provisions under Section 65B(4)(c) of the Evidence Act have been complied with.

22. It is another submission of the learned senior counsel for the petitioner that sanction order for prosecuting the petitioner/A2 for the alleged offence under the provisions of the Prevention of Corruption Act was signed by the Under Secretary to the Government of India, who is not a competent authority. The petitioner/A1 is the Joint Director, Ministry of Corporate Affairs, Government of India and he cannot be removed from office except by His Excellency The President. Therefore, His Excellency The President of India is the only competent authority to accord sanction to prosecute the petitioner. But, in the instant case, an Under Secretary to the Government of India, who is not the competent person, has accorded sanction to prosecute the petitioner. There is no delegation of powers to the Under Secretary to accord sanction.

23. But, a perusal of the Sanction Order dated 10.11.2015, I find that the Under Secretary has signed the Sanction Order only as a communicating authority. The sanction was accorded only by the President, which is evident from the last portion of the Sanction Order, which reads as follows_

"NOW THEREFORE, President being the Competent Authority, in exercise of the powers conferred u/s 19(1)(a) of the Prevention of Corruption Act, 1988, hereby accords sanction for prosecution of the said Dr.M.Manuneethi Cholan for the said offences and any other offences punishable under the provisions of Law in respect of the acts aforesaid and for taking cognizance of the said offences by a Court of Competent Jurisdiction.

By Order and in the name of the President of India."

Therefore, I am of the opinion, there is no defect in the Sanction Order.

24. It is yet another submission of the learned senior counsel for the petitioner that no prior sanction was obtained under Section 197 of Cr.PC., to prosecute the petitioner for the alleged offence under Section 120B IPC. In this regard, the learned senior counsel for the petitioner has also relied upon the judgments in (2016) 2 SCC 143 [N.K.Ganguly Vs. CBI], (1993) 3 SCC 339 [State of Maharashtra Vs. Budhikota Subbarao (Dr)] and unreported judgment of this Court in CrI.O.P.No.8851 of 2014, dated 23.09.2015 in the case of T.R.Narayanan Vs. State rep. by the Inspector of Police, Central Bureau of Investigation, SBI, Chennai, in support of his contention that no Court shall take cognizance of the offence without the prior sanction for prosecuting the public servant.

25. But, in judgment relied upon by the learned counsel for the petitioner reported in (2016)2 SCC 143 [N.K.Ganguly Vs. CBI], in para 22, there is a fitting answer to this issue. In the said decision it has been observed as follows_

"22. While considering the facts of the case, Bose J. observed that the offence in question, could not have been committed any other way, and held as under: (Shreekantiah case, AIR p.293, para 19)

"19. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act,

namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately; there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the order, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it." (emphasis laid by this Court).

23.Mr. Gopal Subramaniam, the learned senior counsel on behalf of some of the appellants has further rightly placed reliance upon the judgement of a three judge bench of this Court in the case of Amrik Singh v. State of Pepsu to buttress the contention that the issue of requirement of prior sanction under Section 197 of Cr.PC can be raised at any stage of the proceedings, and not just at stage of framing of charges. The decision in the case of Hori Ram Singh (supra) was also quoted with approval, especially the categorisation of situations in three scenarios, as under: (Amrik Singh Case, AIR p.311, para 6)

"a) Decision which held that sanction was necessary when the act complained of attached to the official character of the person doing it;

b) Judgments which held that sanction was necessary in all cases in which the official character of the person gave him an opportunity for the commission of the crime; and

(c) Those which held it was necessary when the offence was committed while the accused was actually engaged in the performance of official duties."

It was further held in the Amrik Singh case that:
(AIR p.312, para 8)

"8.... The result of the authorities may thus be summed up: it is not every offence committed by a public servant that requires sanction for prosecution u/s 197 of the Cr.PC; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be invested at the trial and could not arise at the stage of grant of sanction, which must precede the institution of the prosecution." (emphasis laid by this Court).

24.The position of law, as laid down in the case of Hori Ram Singh was also approved by the Privy Council in the case of H.H.B. Gill v. The King, wherein it was observed as under:

"....A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty."

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A reading of the dictum laid down in the above cited decision would show that it is not every offence committed by a public servant that requires sanction for prosecution under Section 197 of Cr.P.C. The sanction is required only if the offence is committed by the accused while he is engaged in his official duty. If the offence is committed by the accused, while he is not engaged in his official duty, the sanction is not mandatory.

In the instant case, the allegation against the petitioner is that he received illegal gratification from the 2nd accused. Receiving illegal gratification is no way connected with the discharging of official duties by the petitioner; therefore, the sanction is not mandatory to prosecute the petitioner for the alleged offence under Section 120B IPC. Therefore, the submission made by the learned senior counsel for the petitioner cannot be accepted.

26. For the foregoing reasons, I am of the opinion that no case has been made out by the learned counsel for the petitioner to quash the impugned criminal proceedings against the petitioner. The criminal original petition is liable to be dismissed.

In fine, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ssv

To,

1. The XII Additional Special Judge for CBI Cases,
Chennai.

2. The Deputy Superintendent of Police,
SPE:CBI:ACB:Chennai.

2. The Public Prosecutor,
Madras High Court, Madras.

+1 cc to Mr.K.Srinivasan Advocate sr.44601

+1 cc to M/s.S.Suganya Advocate sr.44716

Crl.O.P.No.12082 of 2016

and

Crl.M.P.Nos.6210 & 6211 of 2016

aa12/08/2016