

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.09.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.R.C.No.1138 of 2016

S.Gurusamy

..Petitioner/Accused

Vs.

State Rep. By

Deputy Superintendent of Police,

ACB/CBI/SPE, Chennai

R.C.No.4 (A) / 2012

...Respondent/Complainant

Prayer: Petition filed under Sections 397(1) and 401 Cr.P.C., r/w 27 of P.C.Act 1988 to set aside the order dated 12.09.2016 in Crl.M.P.No.4242 of 2016 in C.C.No.21 of 2012 passed by the Learned Principal Special Judge for CBI cases at Chennai

For Petitioner : Mr.A.V.Somasundaram

For Respondent : Mr.K.Srinivasan
Spl. Public Prosecutor for CBI

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Special Public Prosecutor.

2. The Petitioner / Accused has preferred the present Criminal Revision Petition as against the Order dated 12.09.2016 in Crl.M.P.No.4242 of 2016 in C.C.No.21 of 2012 passed by the Learned Principal Special Judge, for CBI Cases (VIII Additional City Civil Court, Chennai) at Chennai.

3. The Learned Principal Special Judge for CBI Cases while passing the impugned order on 12.09.2016 in Crl.M.P.No.4242 of 2016 in C.C.No.21 of 2012 (filed by the Petitioner / Accused) at Paragraph No.21 had observed the following:-

"22. In my considered opinion, whether PW1 has got power to issue sanction and whether the sanction order is valid in accordance with law. In this regard, I am of the considered view that these are all the matters to be considered by the trial Court only at the time of Judgment and not at this stage. It is highly premature on the part of the petitioner to raise all these

questions at this stage. Considering the above facts and circumstances, I am of the view that this petition deserves dismissal at this stage.”
and resultantly dismissed the Petition.

4. Assailing the Legality, validity and correctness of the dismissal order dated 12.09.2016 passed by the trial court in CrI.M.P.No.4242 in C.C.No.21 of 2012 dated 12.09.2016, the Revision Petitioner / Accused has focused the instant Criminal Revision Petition primarily contending that the trial court had failed to take into account that the Revision Petitioner / Accused was promoted to the post of Head Constable during 1998 by the Chief Security Commissioner, who is superior officer to P.W.1 (S.R.Gandhi - Senior Divisional Security Commissioner) as admitted by P.W.1 himself in his evidence. Therefore, a plea is taken on behalf of the Petitioner that the Sanction Order, Ex.P.2 dated 21.04.2012 issued by P.W.1 to prosecute the Petitioner is ab initio, void, in view of the decision of the Hon'ble Supreme Court.

5. Advancing his arguments, the Learned Counsel for the Petitioner proceeds to take a stand that the trial court had not considered the admission made by P.W.1 (in his cross-examination) relating to the errors, omissions and irregularities found in the Sanction Order Ex.P.2, which clearly established that P.W.1 (S.R.Gandhi) is not the competent authority for according Sanction Order against the Petitioner.

6. Expatiating his submission, the Learned Counsel for the Petitioner urges before this Court that as per dictum laid down in the decision of Hon'ble Supreme Court of India in Nanjappa Vs. State of Karnataka reported in AIR 2015 Supreme Court at Page 3060, at Special Pages 3068 and 3069 wherein it is observed as under:-

“16. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to Section 19, which starts with a non-obstante clause. Also relevant to the same aspect would be Section 465 of the Cr.P.C. which we have extracted earlier. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to Section 4, “error includes competence of the authority to grant sanction”. The argument is on the face of it attractive but does not,

in our opinion, stand closer scrutiny. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section(3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1). Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19

(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision."

The ingredients of Section 19(3) of the Prevention of Corruption Act, 1988 does not prevent a Special Judge from passing an order at whatever stage of the proceedings holding that prosecution is not maintainable for want of valid Sanction Order and furthermore the validity of the Sanction Order can be raised at any stage of the proceedings.

7. The core contention advanced on behalf of the Petitioner is that the Petitioner / Accused need not wait till the completion of trial to question the validity of the Sanction Order, but in Law he is entitled to challenge the validity of the Sanction Order accorded by the concerned authority at any stage.

8. On behalf of the Petitioner, it is represented that the Sanction Authority never applied his mind before according the Sanction Order Ex.P.2 and in fact the pivotal document namely, the Service Register of the Petitioner / Accused was not perused entirely by the Sanction Authority before issuing the Sanction Order against the Petitioner / Accused. Also that, it is the contention of the Petitioner that P.W.1 (the Sanction Authority - S.R.Gandhi) had made various admissions and it is established that the relevant documents including the draft charge sheet and all the 161 statements of the witnesses were not perused entirely, which is against directions and instructions of the Hon'ble Supreme Court between Central Bureau of Investigation Vs. Ashok Kumar Aggarwal reported in AIR 2014 SC 827.

9. While winding up, the Learned Counsel for the Petitioner projects an argument that based on the tacit admissions made by P.W.1 (Sanction Authority) Ex.P.2, Sanction Order is not in accordance with Law and the cognizance taken by the trial court is an illegal one and further in short, the entire trial is void ab-initio entailing the Revision Petitioner to seek discharge on this ground alone.

10. In response, the Learned Counsel for the Respondent / Complainant (CBI) submits that in the present case in C.C.No.21 of 2012 on the file of trial court, the charges were framed under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of

Corruption Act, 1988 and once the charges were framed by the trial court, it is not open to the Petitioner to project the CrI.M.P.No.4242 of 2016 (Discharge Petition).

11. The Learned Counsel for the Respondent / CBI contends that there is no provision in Criminal Procedure Code to seek discharge by the Revision Petitioner after framing of the 'Charge' by the trial court. At this stage, this Court makes a useful reference to Section 19 of Prevention of Corruption Act, 1988 under the Caption of 'Previous Sanction Necessary for Prosecution' which runs as under:-

(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."

12. It is to be borne in mind that an Application to discharge an accused will arise when the competent Magistrate considers the charges levelled against the accused to be a groundless one. At the time of seeking discharge from the concerned Court, it is well settled legal proposition that no detail evaluation of the materials or meticulous consideration of the possible defences need be undertaken at that stage. Whether the 'Charges' are groundless or not, it is always open to the concerned Court to decide after considering the police report, documents transmitted along with it under Section 173 of Cr.P.C., and the examination of the accused if the Court finds it necessary.

13. It cannot be gainsaid that an order relating to discharge the accused shall contain reasons. A reading of Sub-Section (3) and (4) of Section 19 of the Prevention of Corruption Act, 1988 with explanation provided therefor, refers guiding factors to accord sanction, as spelt out under Sub-Section (1) and (2). This means the "Burden of Proof" is on the prosecution to establish that the sanction accorded in a given case is valid in Law and the burden includes proof that the sanctioning authority has been given sanction with reference to the facts which the proposed prosecution was based or it may be established by an independent evidence that the sanction was granted for prosecution. However, it is represented on behalf

of the Petitioner that it is open to the Revision Petitioner / Accused to project the 'Discharge Petition' at any stage of the trial of the main case and completion of examination of witnesses on the side of the prosecution. In fact, there is no fetter for the Petitioner to project the Petition.

14. It is to be point out an accused can question the want of jurisdiction of a Court to entertain a complaint against him at any stage of 'Trial or Appeal'. For raising such a plea at any stage there is no limitation, in the considered opinion of this Court. Also, whether sanction is necessary or not will have to be determined from stage to stage. The necessity, in this regard may arise in the course of progress of the case. It cannot be forgotten that the grant of sanction being an administrative act, the need to provide an opportunity of hearing the accused before according sanction does not arise. The valid sanction by the sanctioning authority can be proved by furnishing the original sanction which itself contains the facts consisting the offence and the grounds of satisfaction etc.,

15. It is to be pointed out that under Section 114(e) of the Indian Evidence Act, 1872 when the government accorded sanction, it raises a presumption that the official acts were regularly performed and onus is heavy on an accused to rebut the statutory presumption. Undoubtedly, a sanction given by an authority not competent to do so is not sanction in the eye of Law.

16. It cannot be ignored that the question whether the documents were material or whether those were not considered can only be gone into trial as per decision of Hon'ble Supreme Court between State of Madhyapradesh V. Dr.Krishna Chandra Saksena reported in (1996) 11 SCC page 439.

17. It is to be remembered that after framing of charge, the accused is to face trial and convicted or acquitted and there is no provision for cancelling for dropping of charge. Whether the accused is guilty / innocence of charge, the evidence adduced is not to be seen meticulously at the time of discharge (under Section 239 of Cr.P.C.,) and the same is to be looked into only at the time of trial, in the considered opinion of this Court.

18. During the course of arguments, the Learned Counsel for the Petitioner has referred to the evidence of P.W.1 (S.R.Gandhi) and submits that the P.W.1 had in a crystalline fashion deposed that his immediate superior is Additional Security Commissioner and above him Chief Security Commissioner and that he is two ranks below the Chief Security Commissioner and that he does not remember whether he had seen the appointment order or promotion order of Gurusamy etc.,

19. Continuing further, the Learned Counsel for the Petitioner draws the attention of this Court to the evidence of P.W.1, which runs as under:-

"Ex.P.2 does not contain the authority from whom a letter of request for granting sanction to prosecute Gurusamy was received. Ex.P.2 did not contain the date of receipt of any sanction letter. Accused Gurusamy Head constable must have been given the number. Ex.P.2 does not contain the number assigned to accused Gurusamy. The page no.10 of Ex.P.2 it is not mentioned the names of the statements of witnesses except the names three persons namely Senthil, Thalaiyadian and Mahanarangam, N.Kuppusamy etc., In Ex.P.2, the name of the investigation officer who recorded the 161 statement of witnesses is not mentioned in the Page No.10 of Ex.P.2 (Sanction Order)"

20. In this connection it is not out of place for this Court to make a pertinent mention that P.W.1 (S.R.Gandhi) in his cross-examination had clearly stated as follows:-

"It is not correct to say that I am not the competent authority to grant sanction to prosecute the accused Gurusamy. I am very much competent to sanction permission of prosecution of Gurusamy Head Constable as per the law since I am competent to remove him from service. It is not correct to say that I am not competent authority to remove Gurusamy from service since Chief Security Commissioner appointed him. Schedule 3 of RPF rule clearly empowers a Senior Security Commissioner to remove a head constable from service."

21. Furthermore, a mere glance of the evidence of P.W.1 (S.R.Gandhi) in (Chief Examination) shows that he had clearly mentioned in categorical terms that "The RPF rules schedule 3 disciplinary authorities and their powers is Ex.P.1 (2 sheets). As per Ex.P.1, I am the competent authority to take disciplinary action and to give sanction for prosecution of the accused Head Constable. I issued the sanction order for prosecuting the accused which is Ex.P.2 (11 sheets). I have perused the copies of FIR, entrustment mahazar, recovery mahazar, chemical examination report of FSL documents collected during the investigation and 161 Cr.P.C. statements of the witnesses as mentioned in my sanction order. After going through the documents and fully satisfying myself and after due application of mind. I have accorded the sanction against the accused."

22. It is brought to the notice of this Court that the main case in C.C.No.21 of 2012 on the file of the trial court is

posted for hearing of the arguments on either side on 27.09.2016.

23. On a careful consideration of respective contentions, this Court taking note of the entire conspectus of the attendant facts and circumstances of the present case in an encircling manner, also taking note of the fact that the main case in C.C.No.21 of 2012 is posted for arguments on 27.09.2016 and also keeping in mind a prime fact that P.W.1, the Sanctioning Authority had clearly stated in his evidence in Chief Examination before the trial court that as per Ex.P.1, he is the competent authority to take disciplinary action and to accord sanction for prosecution of accused and also after going through the documents fully satisfied and arrived at a subjective satisfaction and also after due application of mind had issued a Sanctioning Order Ex.P.2 dated 21.04.2012.

24. Considering all the above facts, this Court comes to a resultant conclusion that the Revision Petitioner / Accused is not entitled to file Crl.M.P.No.4242 of 2016 and viewed in that perspective, the view taken by the trial court in dismissing the Crl.M.P.No.4242 of 2016 does not suffer any flaw. Resultantly the Revision Petition fails. In fine the Criminal Revision Petition is dismissed.

Consequently, the order dated 12.09.2016 in Crl.M.P.No.4242 of 2016 in C.C.No.21 of 2012 passed by the Learned Special Judge for CBI Case (VIII Additional City Civil Court, Chennai) is affirmed by the Court for the reasons assigned in this Criminal Revision. Before parting with the case, this Court makes it quite clear that the dismissal of the present Criminal Revision Petition will not preclude the Petitioner / Accused to raise all factual and legal pleas before the trial court at the time of arguments to be projected in C.C.No.21 of 2012, of course in the manner known to law and in accordance with law.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd

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To

1.The Special Judge for
CBI Case VIII Additional city Civil Court
Chennai

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

3.The special Public Prosecutor CBI Cases
High Court, Madras

+1 cc to Mrs.Lakshmi Priya Associates sr 53869

Cr1.R.C.No.1138 of 2016

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