

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
Crl.P.No.5068 of 2015

ORDER:

This Petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the sole accused, to quash the C.C.No.20 of 2010, taken cognizance by the Spl.Judge for C.B.I.Cases, Hyderabad, for the offences punishable under Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 from the final report of the respondent-C.B.I., based on the crime registered and investigated and the same is now pending trial on the file of the Ill Addl. Special Judge for C.B.I.Cases, Hyderabad.

2. Heard the learned counsel for the petitioner so also the learned Spl. Standing Counsel for C.B.I.Cases and perused the material on record.

3. The main contention in the quash petition on twofold is that i) there is no valid sanction (for the sanctioning authority is not competent to accord sanction) to prosecute him by taken cognizance of the offences by the Spl.Judge for C.B.I.Cases, Hyderabad in proceeding against him and ii) the person who accorded sanction was the participant in the post-trap proceedings and his according sanction vitiates by violation of principles of natural justice and fair play.

4. The factual background to mention in nutshell to the relevancy is that, crime in R.C.No.21(A)2010,dated 02.08.2010 was registered on the basis of a written complaint of one B.Pitchi Reddy, Managing Director of M/s Sri Pavithra Constructions, 7/624, Surya Nagar, Railway Kodur, Kadapa district, Andhra Pradesh, alleging the demand of Rs.10,000/- as illegal gratification by the petitioner-Accused-C.Rafiq Ahmed, Section Engineer(Drawing), in the office of Senior Divisional Engineer(South) (for short, 'SDE') at DRM Office, Guntakal, followed by trap proceedings and investigated into it.

5. The investigation speaks that the accused while working as

Section Engineer(Drawing) in the Office of SDE at DRM Office, Guntakal in the capacity of Public Servant, was responsible for preparation of estimates and also check the technical aspects of the bills forwarded by concerned sections and to forward the same to Accounts Department for payment through SDE(South), Guntakal Division, that the defacto-complainant B.Pitchi Reddy Managing Director of the entity supra, as a registered railway contractor with name M/s Sri Pavithra Constructions, SC Railway, Guntakal Division, was awarded with the work No.469 of Railway Bridge near Bakarapet station in Kadapa Sub Division for an amount of Rs.123 lakhs and on completion of portion of the work, the measurements of 1st bill was completed and the contractor had received payment in the month of February, 2010 and on completion of further work, another measurement of 2nd bill was taken on 29.03.2010 for Rs.52,14,424/- and technical check of the bill was done by Sri Rafiq Ahmed (SE, Drawing)- accused herein and during that period, on 05.04.2010,Sri Pitchi Reddy-(defacto-complainant) met the accused to know about the position of his bill and at that time, the accused had demanded Rs.10,000/- as bribe for clearing the bill. But he did not insist for payment of bribe at that time and asked the defacto-complainant to pay the bribe before processing the 3rd bill. The measurement for the third bill was taken on 16.07.2010 and the same was forwarded to the office of Senior DEN on 02.08.2010 amounting to Rs.16.52 lakhs. On 02.08.2010, when the defacto-complainant met the accused to know about the position of his bill, the accused reiterated the earlier demand of bribe amount and asked the defacto-complainant to pay bribe before clearing the 3rd bill which was in his possession. Basing on which the crime was registered U/Sec.7 of the P.C.Act of 02.08.2010 against the accused and on that day from the trap laid he was caught red-handed while demanding and accepting the bribe amount of Rs.10,000/- from the complainant that was recovered from the accused during post-trap proceedings, that the accused obtained pecuniary advantage by illegal means to the tune of Rs.10,000/- by misusing or abusing his official position as Section

Engineer, SCR, Guntakal, and thereby committed the offences supra. In the course of investigation, sanction obtained from authority concerned to prosecute him that is enclosed to the charge sheet dated 30.10.2010, that was taken cognizance for the offences by the learned Spl. Judge, to proceed further against him according to law.

6. After appearance, supply of copies and on hearing charges were framed by the learned Spl.Judge for CBI Cases and put him to trial from his plea of not guilty on the charges and therefrom while the trial was at fag end after examination of Investigating Officer as P.W.10, the present quash petition is filed.

7. The Ex.A.13 sanction order dated 29.10.2010, signed and issued by SDE(Co-ord)/SCR, Guntakal by name Dr.D.V.Subramanyam(P.W.7), reads that he accorded the sanction u/sec.19 of the P.C.Act, for prosecution of the accused for the offences supra.

7(a). There is an enclosure, which is an annexure regarding appropriate appointing authorities with reference to imposing of penalties of dismissal, removal or compulsory retirement of Non-Gazetted staff under Railway Services (Discipline and Appeal) Rules,1968 in SC Railway and notified vide note-III of the Annexure regarding nature of powers of appointing authority.

7(b). It is mentioned in the table that for appointment of Grade S-1 to S-13 of the Scale recommended by 5thCPC of group C & D staff appointing authority is PHO/SOD/DRM/ADRM/SAG officers in field Units, for appointment of Group C & D staff of S-1 to S-13 scale (2550 to 11,500) as per V Pay Commission, it is Selection Grade/Junior Administrative Grade Officers, for C & D staff in Scale S-1 to S-9 recommended by V CPC of (2550 to 8000), it is Senior Scale Officers and for all group D and artisans in scale S.4 to S.5 of scale (2550 to 4000) it is Asst. Scale Officers(Junior Scale/Group-B).

7©. There is office note enclosed showing persons promoted as SSE/SE/Drg and retained at their existing places of work which includes

among the 20 Serial Numbers, the S.No.14 is Rafiq Ahmed-(accused) as JE//Drg/GIL in the existing vacancy issued with approval of CE/P&D signed by the accused APO/E&HQ for Deputy Chief Personnel Officer communicated on 19.04.2010 and there is also signature of some person for Chief Personal Officer. The Investigating Officer-P.W.10 K.A.A.Saleem in his cross-examination deposed with reference to Ex.P.13 and Ex.D.1 supra that the accused-Rafeeq Ahmed was promoted to the post of Senior Section Engineer, with the approval of Chief Engineer(Planning and Designs) on 19.04.2010 and Sl.No.14 of Ex.D.1 supra speaks the same and Ex.P.13 sanction dated 29.10.2010 thus was subsequent to Ex.D.1 promotion proceedings of accused dated 19.04.2010. Needless to say even the occurrence was dated 02.08.2010 also subsequent to the Ex.D.1 dated 19.04.2010. The contention of the accused therefrom is that the P.W.7 Dr.D.V.Subramanyam was incompetent to accord sanction to prosecute the accused. The special circular No.106 of 2015, dated 13.10.2015 referring to Railway Board's letter No.E(D & A) 2002 RG6-36 dated 25.11.2002 relating to determination of appointing authority for the purpose of imposition of penalties of dismissal removal or compulsory retirement on a railway servant concerned is clarified saying intention of Rule 2(1)(a) of RS(DA)Rules 1968 is that penalties of dismissal, removal or compulsory retirement from service should be imposed on a railway servant only by the highest of the following authorities viz; the authority which actually appointed the railway servant to the relevant grade of post, or the authority which is empowered to make appointment to that Grade or Post at the time of imposition of penalty and emphasized further of the penalties supra should not be imposed by authority which merely issued offer of appointment of order of promotion, ordered by a competent authority higher to that authority.

7(d). Before discussing further on the validity on the sanction order, it requires to mention that there two mediators reports with pre-trap and post-trap proceedings and the second mediators' report which is part of

the enclosures from page 22 to 30 which was dated 02.08.2010 referring the persons present as S.Mahesh Kumar, Officer, Canara Bank, Gandhi Chowk, Guntakal and Pran Prabhakar, Officer, State Bank of India, Main Branch, Station Road, Guntakal, in connection with the trap against the accused, saying after completion of first mediators report on 16-35hours at Hotel Ashoka Paradise, Main road, Guntakal the trap team came to the portico of hotel, the defacto-complainant and S.Mahesh Kumar, independent accompanying witness started by motor cycle from the said hotel at 16-40 hours and reached office of the DRM at about 16-50 hours, Sri Mahesh Kumar driven the vehicle and the defacto-complainant was the pillion rider, remaining trap team members viz; mediators Pran Prabhakar, Mohd. Zafar and N.Raghavendra Kumar, two constables and the C.B.I. Inspector U.V.Bhaskara Rao followed them by another vehicle and reached the vicinity of the said office area and get the vehicle parked at nearby. The trap team taken convenient positions nearby and observing Mahesh Kumar and defacto-complainant after parking the vehicle entered into the office and went to the first floor and at about 16-55 hours the trap team found the arrival of Sri Mahesh Kumar and the defacto-complainant and Mahesh Kumar given the pre-arranged signal of wiping his face with handkerchief.

7(e). Second trap proceedings starts from page No.26 speaks that after denomination of Rs.500x20) tainted and seized currency in the presence of Sri U.V.B.Rao and others of what the accused allegedly demanded and accepted as bribe from the defacto-complainant, Sri Dr.D.V. Subramanyam was informed by Sri U.V.Bhasker Rao of the accused caught red-handed when he demanded and accepted said bribe of Rs.10,000/- from B.Pichi Reddy in connection with the second bill matter and to check the 3rd bill, Rafiq Ahmed (accused) was questioned by said Subramanyam as to same is correct and the accused admitted the aforesaid contents mentioned by the C.B.I. Inspector as true.

7(f). **Undisputedly, it is said Dr.D.V.Subramanyam who issued Ex.P.13 sanction order being the Senior Divisional Engineer(Co-Ord)**

SCR, Guntakal. His statement was recorded during the course of investigation on 30.08.2010 which refers his designation supra saying working as Senior Division Engineer in the Co-ordination Department since 09.06.2010 and before joining he was on leave for 5 years on higher studies and as Sr.DEN(Co-ord) he is Coordinator for all works under Guntakal Division and on being asked about accused he stated that the accused was working as Section Engineer(Drawing) and dealing with the Bridges portion of Senior DEN South and Sr.DEN. Central and he was under his control on administration matters and as per the Attendance Register(Ex.P.16), the accused attended office on 02.08.210 and signed in the attendance register and on being asked about the trap on 02.08.2010 he stated that he was in office and that day and he came to know the accused was caught by CBI on that date for demanding and accepting bribe from complainant and he got the information through staff and in the evening Sri U.V.Bhaskara Rao, Inspector of Police, CBI, Hyderabad, informed him about trap laid on accused for demand of Rs.10,000/- from B.Pitchi Reddy(Defacto-complainant) and on request made to him, to come to the spot, he went to the place situated in the same floor of his office and met Bhaskara Rao and other team members and said Bhaskara Rao informed him about the developments and at that point of time, he questioned the accused about the incident and he admitted that he has demanded the bribe amount from defacto-complainant and accepted it and CBI caught him red-handed. On being shown the initial at page No.6 of the second mediator report he identified the same as him and the same was signed on 02.08.2010 after the proceedings. **Thus, he is one of the signatories to the second mediator's report in that way from his statement recorded by CBI.**

8. The contentions therefrom in support of the grounds is that, the sanction authority P.W.7 Dr.D.V. Subramanyam who accorded sanction for prosecution of the accused was of the rank of Junior Administrative Grade and not competent to accord sanction as petitioner was appointed as Senior Section Engineer at the time of promotion by C.E./P.&D, South

Central Railways, Secunderabad and a Junior Administrative Grade level officer being lower in rank is legally not competent authority to remove the accused from the office and thereby, the sanction is hit by Section 19 of the P.C.Act and sanctioning authority P.W.7 acted as a witness to the proceedings and in token of which he also signed 2nd mediator's report and his statement under Section 161 of Cr.P.C. also recorded in which he stated that he was present during the post-trap proceedings and has signed the post-trap mediator's report and the sanction proceedings issued by him are thereby also null and void in law being a witness to trap proceedings ought not to have issued sanction that obviously accorded with prejudice in violation of principles of natural justice and respondent-CBI by obtaining the sanction order from P.W.7, who is incompetent to sanction and also being a witness to the proceedings filed with the charge sheet and the learned trial judge committed error in taking cognizance of the offences in C.C.No.20 of 2010 and the proceeding with trial on the basis of said sanction order are vitiated, warranting interference against continuation of the proceedings which tantamount to abuse of process, for the reason of order of sanction is incurably defective to quash the case proceedings.

9. Opposing the quash petition, the respondent-CBI represented by the Spl. Standing counsel in support of the counter filed on 01.10.2015 submitted that there is a valid sanction and mere post-trap proceedings presence no way vitiates the sanction that the CBI after completion of thorough investigation sent all documents viz., Copy of complaint, FIR, first and second mediators' reports, CFSL report and other documents and copies of statements of witnesses recorded u/sec. 161 of Cr.P.C. to the General Manager, SC Railway, Rail Nilayam, Secunderabad to accord sanction for prosecution of the accused, who in turn sent the relevant documents to the D.R.M. Guntakal Division for according sanction, since D.V.Subramanyam, being Senior Divisional Engineer - (Co-ord)(P.W.7) S.C.Railway, is competent authority; who by going through the relevant documents and statements of witnesses and after

applying his mind, accorded sanction to prosecute the accused for the offences supra and during the trial D.V.Subramanyam was also examined as P.W.7 on 29.01.2015 and deposed that he is the competent authority to issue sanction for prosecution of the accused and that he had gone through the relevant documents placed before him and applied his mind in issuing the sanction for prosecution of the accused.

10. In the cross-examination by the accused of the P.W.7 Sri Dr.D.V.Subramanyam regarding the sanction, he deposed that the accused was appointed and order issued by the APO and P.W.7 is also, the APO as per the extract of application of powers enclosed with the sanction for prosecution and is competent to issue sanction for the prosecution covered by Ex.P.13. The learned Spl.Standing counsel for the C.B.I. submits that the proceedings in the trial are in the final stage and it is to cause undue delay, the accused filed this petition that deserves to be dismissed. It is the submission that the accused was caught red-handed while demanding and accepting illegal gratification of Rs.10,000/- from the complainant in the presence of independent witnesses who accompanied viz; S.Mahesh Kumar, one Pran Prabhakar, D.V.Subramanyam (P.W.7) were also informed about demands and acceptance of the illegal gratification by accused from the defacto-complainant and hence taken up said proceedings, he is a trap team member and above facts mentioned in Ex.P.8 second mediator's report in one paragraph pages 5 and 6 by trap laying officer that was acknowledged by Subramanyam(P.W.7) accepting that he had not witnessed the proceedings and the reference of the statement of Subramanyam(P.W.7) U/sec.161 of Cr.P.C. is that the investigating officer examined and recorded his statement where he stated that the accused was working under his control of administrative matters which disclose that he is a competent authority to remove the accused, that the SDE(Coordination) himself is the competent authority to accord sanction against the accused and thereby in said circumstances, sanction order cannot be disputed and trial Judge not erred in taking cognizance and P.W.7 is the

competent authority to accord sanction in all respects under Ex.P.13 and hence to dismiss the quash petition.

11. The S.C.Railway Schedule of Powers(SOP), notified by the South Central Railway Zonal Head Quarters during December,2009, Embodying Correction Slips up to 147 dated 11.11.2009 in paras 1 and 2 of which part-2 is Non-Gazetted, there in part-F out of part-II Non-Gazetted at the delegation of powers in the establishment matters from para-6 speaks promotions: a) regular by PHOD/HOD Full Powers and DRM/ADRM, SAG officers in Field Units Full Powers that the Divisional Officers, Extra Divisional Officers, Extra-Divisional Officers and Officers in Head Quarters, except those posts which are controlled by Head quarters. It is the submission therefrom that the post of the petitioner is controlled by headquarters and the P.W.7 is not competent authority. Accused placed reliance on the expression of the Division Bench of Calcutta High Court in **Union of India (UOI) Vs. P.C.Choudhary**^[1] which reads “A case has come to the notice of the Board which reveals that the definition of the term ‘Appointing authority’ was not correctly understood by the concerned Railway Administration in spite of the clear definition given in Rule 1702(i)-RI read with Rule 1705-RI. In this case, a Railway servant was initially appointed by a Senior Scale Officer. Subsequently, he was promoted to a higher post by a Head of Department. While working in the higher post, the Railway servant was dismissed from service for serious misconduct by a Senior Scale Officer. The dismissed Railway servant filed a writ petition in High Court and the High court quashed the order of dismissal on the ground that it had been made by an authority subordinate to the authority who had appointed the Petitioner to the post from which he was dismissed and thus contravened the provision of Article 311(1) of the Constitution of India.

With a view to avoiding a recurrence of such cases, the Board desired that it should be impressed upon all concerned officers that the ‘Appointing Authority’ should be determined under Rules 1702(i) and 1705-RI whichever is the highest authority.” It is needless to repeat for the

same is discussed supra in paras 7© & (d).

12. No doubt, besides PW.7-Dr.D.V.Subrahmanyam present at the post-trap proceedings, as required by the CBI Inspector and undisputedly at his instance Sri D.V.Subramanyam asked the accused about correctness and the accused said to have been admitted about his demand and acceptance of the illegal gratification of Rs.10,000/- from B.Pitchi Reddy covered by the trap proceedings. P.W.7 Dr.D.V.Subrahmanyam therefrom signed the second mediator's report (the post-trap proceedings). However, by that alone, it is difficult to say there is an element of prejudice likely form in the mind of PW.7-Dr.D.V.Subrahmanyam, to accept any such contention of same tantamounts to standing as a witness by participation in the trap proceedings of receiving or accepting if any bribe or by his according any sanction to prosecute the accused later, there is a failure of a natural justice and fair play. It is not the case of accused that the sanction order is by non-application of mind to any material of the material supplied to verify for sanction is hardly sufficient to accord sanction, but for to consider the other contention of competency to sanction.

13. The Ex.P.13 sanction order dated 29.10.2010, was undisputedly signed and issued by the SDE-(Co-ord)/SCR, Guntakal by name Dr.D.V.Subramanyam-PW.7. Who is whether or not the competent authority concerned, from the enclosure regarding appropriate appointing authorities with reference to imposition of penalties of dismissal, removal or compulsory retirement of Non-Gazetted staff under Railway Services (Discipline and Appeal) Rules,1968 in SC Railway and notified regarding nature of powers of appointing authority as referred in the previous paras- 7© & (d), it is not the person who can in the cadre appoint or promote that is criteria but where approval given by a superior, it is that superior cadre officer alone can impose penalties and punishment and thereby to accord sanction. The evidence in the cross-examination of P.W.7 Dr.D.V.Subramanyam and P.W.10 also clear in this regard as discussed in the previous paras. Thus, the sanction order given by P.W.7 is not with

competency from his cadre as SDE(Co-ord), for the reason the accused was by date of trap on 02.08.2010 working in the promoted post as Senior Section Officer since 19.04.2010 and the promotion given is from approval by Chief Engineer(P&D) and said approved Officer is superior in cadre to P.W.7 SDE(Co-ord) and the Ex.D.1 proves therefrom the incompetency of P.W.7 to accord sanction to prosecute the accused.

Even the Investigating Officer-P.W.10 K.A.A.Salam, referring to Ex.P.13 sanction order appended to the charge sheet issued by PW.7 Supra, deposed that the Ex.P.13 annexure showing appropriate appointing authorities for imposing penalty and it is mentioned in the annexure at note 3 that 'if an employee is appointed by or on behalf of an authority higher than the authority specified above, that authority only should impose the penalties of dismissal, removal or compulsory retirement and the accused was promoted to the post of Senior Section Engineer with the approval of Chief Engineer, Planning and Designs on 19-4-2010 vide office order No.P/E/22/2010 and as per serial No.14 of Ex.D.1, accused was promoted to the post of Senior Section Engineer with the approval of Chief Engineer, Planning and Designs. No doubt, he denied the suggestion of sanction order issued is from incompetent authority. The Ex.D.1 Circular No.106/2015, dt.13-10-2015 referring to the Board's letter dt.25.11.2002 quoted therein regarding determination of appointing authority and for imposing penalties on dismissal or removal or compulsory retirements. It is clarified in the above Railway Board's letter dt.25.11.2002 that, intention of Rule.2(1)(a) of RS(D & A) Rules, 1968 appears a removal or compulsory retirement from service should be imposed on a railway servant only by the higher authorities that the authority which actually appointed the railway servant to the relevant grade or post, or the authority which is empowered to make appointment to that grade or post at the time of imposition of penalty. It was further emphasized that the penalty of dismissal, removal or compulsory retirement from service, should not be imposed by an authority which has merely issued the order of appointment or order of promotion with regard to the appointment or promotion ordered by a competent authority higher

to that authority.

14. Undisputedly, the petitioner-accused has been promoted to the post of Senior Section Engineer/Section Engineer(Drawing) in pay band Rs.9,300-34,800, with Grade Pay of Rs.4,600/- as per office order dated 19.04.2010 issued by Zonal Head Quarters personnel branch Deputy Chief Personal Officer, with approval of Chief Engineer P & D, (Officer in the rank of Senior Administrative Grade) as the post to which the accused was promoted shown controlling by the Zonal Head Quarters, though he was given posting to work in Guntakal Division and the sanction order issued on 29.10.2010 was by the P.W.7 Subramanyam, a Junior Administrative Officer, for his grade pay is less than Rs.10,000/- though by virtue of posting of accused, in Guntakal Division he comes under the control of said Senior Divisional Engineer(Co-ord) P.W.7, it can be suffice to say there is no valid sanction and consequently the cognizance taken and the continuation of trial proceedings are unsustainable as requirement of sanction is a valid sanction and not otherwise.

15. In this regard, three judge Bench expression of the Apex Court in **P.K.Pradhan Vs. State of Sikkam rep. by the CBI**^[2] held at paras-5 to 16, referring to the earlier expressions right from **Hori Ramsingh Vs. Emperor**^[3], **HHB Gill Vs. the King**^[4], **Amrik Singh Vs. State of Pepsu**^[5], **Sreekantiah Ramayya Munipalli Vs. State of Bombay**^[6], **Matajog Dobey Vs. H.C.Bhari**^[7], **Omprakash Gupta Vs. State of U.P.**^[8], **B.Saha Vs. M.S. Kochar**^[9], **Baijnath Gupta Vs. State of Madhya Pradesh**^[10], **Abdul Vahab Ansari Vs. State of Bihar**^[11] & **K.Satwant Singh Vs. State of Punjab**^[12] observed in para-5 as “the legislative mandate engrafted is debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the

Government touches the jurisdiction of the court itself. It is a prohibition imposed by the Statute from taking cognizance.

16. In **N.K.Ganguly Vs. CBI, New Delhi**^[13] a case under Section 19 of the P.C.Act also by referring to Section 197 of Cr.P.C. and referring to the earlier three judge Bench expression of **R.R. Chary Vs. State of U.P.**^[14] on the scope of Section 197 of Cr.P.C. The word cognizance indicates very initiation of proceedings against the public servant from taking cognizance of the offence by Court by application of judicial mind. The three judge Bench expression in **Amrik singh** supra speaks that the requirement of sanction can be raised at any stage. In **Matajog Dubey** supra it was held that Section 197 of Cr.P.C. where reference also made to Section 19 of the P.C.Act, is not ultra vires to Article 14 of the Constitution of India, and it is imperative to obtain sanction of the alleged offence is committed in discharge of official duty by the accused in saying without sanction the proceedings are unsustainable and for that conclusion referred several expressions including **Srikanthaiah** and **Hori Ramsingh, Satwanth Singh** of the Constitution Bench and of **Baidyanath Gupta** supra and another Constitutional Bench expression in **B.Saha** supra and also another recent expression of the Apex Court in **Nanjappa Vs. State of Karnataka**^[15], a case under Section 19 of P.C. Act by also referring to several expressions including u/sec.197 of Cr.P.C. including the Constitutional Bench expressions of **B.Saha, Badrinath Tripathi** supra and **State of Karnataka Vs. C.Nagarajaswamy**^[16] among the others to the conclusion and in ordering acquittal on the ground of sanction required.

17. In **Nagarajaswamy** supra it was held further that when prior sanction by competent authority is provided by statutory provision which is a sine-qua-non for taking cognizance, ordinarily the question to be dealt with is at the stage of taking cognizance. Even cognizance taken erroneously, once the same comes to the notice of the Court at a later stage, a finding to that effect is to be given by the Court. The accused is

entitled to take such plea of sanction is required at any point of time, including even in hearing the appeal before the appellate Court. It was held ultimately in the expression in N.K.Ganguley supra that when all the mandatory requirements of the statutory formalities not complied with, practically cognizance cannot be taken by the Court and any cognizance taken is therefrom unsustainable. In further saying as held in *Nagarajaswamy* supra and *State of Goa Vs. Babu Thomas* ^[17] for want of valid sanction, the Court taking of cognizance is incompetent and that error was so fundamental that invalidates the proceedings conducted by trial Court by relegating the parties to a position where the competent authorities could issue an appropriate order sanctioning the prosecution.

18. Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.20 of 2010 (F.I.R.No. Rc.No.21(A)/2010, dt.02.08.2010 registered by the C.B.I.) on the file of the III Additional Special Judge for CBI Cases, Hyderabad against the petitioner. No doubt at the fag end of trial, for the reason that, though P.W.7 Dr.D.V.Subramanyam from his presence at the post-trap panchanama and signed therein after the proceedings no way incompetent therefrom to accord sanction under the principles of natural justice for nothing to attribute any impartial decision from the perusal of material to accord sanction, since not the competent officer to accord sanction, same is vitiated and consequently the cognizance taken based on incompetent sanction order equally vitiated in holding as unsustainable and by relegating the parties to the pre-cognizance stage by enabling the prosecution agency i.e. the C.B.I., Hyderabad to apply for sanction before the competent authority and on obtaining fresh sanction, if any, to submit before the Spl.Judge for taking cognizance, if any, and to proceed therefrom afresh if at all. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:11.03.2016

Vvr

[\[1\]](#) (1976)ILR 2 Cal 316

[\[2\]](#) AIR 2001 SC 2547

[\[3\]](#) AIR 1939 FC 43

[\[4\]](#) AIR 1948 PC 128

[\[5\]](#) AIR 1955SC 309

[\[6\]](#) AIR 1955 SC 287

[\[7\]](#) AIR 1956 SC 44

[\[8\]](#) AIR 1957 SC 458

[\[9\]](#) AIR 1979 (0) 1841

[\[10\]](#) AIR 1966 SC 220

[\[11\]](#) AIR 2000 SC 3187

[\[12\]](#) AIR 1955 SC 287

[\[13\]](#) 2015 12 scale 500

[\[14\]](#) AIR 1951 SC 207

[\[15\]](#) 2015 (2) ALD (CrI) 627(SC)

[\[16\]](#) AIR 2005 SC 4305

[\[17\]](#) (2005) 8 SCC 130