THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION Nos.6861 and 6862 of 2016

COMMON ORDER:

Criminal Petition No.6861 of 2016 is filed under Section 482 Cr.P.C. to quash the order dated 24.2.2016 in Crl.M.P. No.137 of 2016 in C.C. No.1 of 2009 on the file of the Court of First Additional Special Judge for CBI Cases, Visakhapatnam, wherein and whereby the petition under Section 243(2) Cr.P.C., to call for the production of entire material placed by the CBI before P.W.69 at the time of obtaining Ex.P.87 sanction order, was dismissed.

2. Criminal Petition No.6862 of 2016 is filed under Section 482 Cr.P.C. to quash the order dated 24.2.2016 in Crl.M.P. No.136 of 2016 in C.C. No.1 of 2009 on the file of the Court of First Additional Special Judge for CBI Cases, Visakhapatnam, wherein and whereby the petition under Section 311 Cr.P.C., to recall P.W.69 for the purpose of cross-examination was dismissed.

3. Since these two criminal petitions arose out of the same C.C. No.1 of 2001, the status of the parties is same, and the points involved are one and the same, this court is inclined to dispose of these two criminal petitions, by this common order, in order to avoid recapitulation of facts and evidence.

4. The petitioner (A1) was the Regional Manager, The Oriental Insurance Company Limited, Chennai. He is facing

trial in C.C. No.1 of 2009 for the offences punishable under Sections 120B and 471 IPC and Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. After completion of prosecution evidence, he filed petition under Section 243(2) Cr.P.C., to call for the entire material sent by the CBI to the General Manager (Personnel), The Oriental Insurance Company Limited, (who was examined as P.W.69) for obtaining the sanction order to prosecute the petitioner. He also filed the second petition under Section 311 Cr.P.C., to recall P.W.69 for the purpose of cross-examination. The respondent filed counters opposing the petitions. The trial court, after affording reasonable opportunity to both the parties, dismissed the petitions. Aggrieved by the said orders, these criminal petitions are filed.

5. Sri Raja Reddy Koneti, learned counsel for the petitioner submitted that the CBI, without sending any material to P.W.69, obtained the sanction order, which has no legal sanctity, and therefore, it is necessary to call for the '*entire material*' allegedly sent by the CBI to the competent authority. He further submitted that if P.W.69 is not directed to appear before the trial court for cross-examination, certainly it would cause prejudice to the petitioner and therefore, the impugned orders are liable to be set aside. ***Per contra***, Sri K.V.Vidya Sagar, learned Special Standing Counsel for CBI, submitted that P.W.69 was already cross-examined by the defence

counsel and nothing was elicited to establish that he issued the sanction order without considering the relevant records. He further submitted that the trial court has assigned cogent and valid reasons to its findings and therefore, it is not a fit case to allow the petitions.

6. In view of the rival contentions, the point that would arise for consideration is:

Whether the trial court is not justified in dismissing the petitions under Section 243(2) Cr.P.C and under Section 311 Cr.P.C.?

7. Mr.D.Singh, General Manager (Personnel), The Oriental Insurance Company Limited, issued sanction order for prosecution of the petitioner-A1 under Section 19(1)(c) of the Prevention of Corruption Act, 1988 (PC Act). He was examined as P.W.69, on behalf of the prosecution. The sanction order issued by him was marked as Ex.P87. During the course of trial, the learned defence counsel cross-examined P.W.69 at length to establish as if he issued Ex.P87 sanction order basing on the draft sanction order submitted by the CBI, without verifying any material. During the course of cross-examination, P.W.69 specifically denied the suggestion that he simply issued Ex.P87 sanction order basing on the draft sanction order.

8. To substantiate his argument that sanction order issued by P.W.69, without considering the relevant material, is not legally valid, learned counsel for the petitioner has drawn the

attention of this Court to Paras 26 and 27 of the decision in **CBI v. Ashok Kumar Aggarwal**[1]. They read as follows:

> **26.** Before proceeding further, it may be pertinent to note that the sanction order speaks of consideration of the entire material including the case diaries and documents collected during the course of investigation and statements recorded under Section 161 CrPC and statements recorded by the Magistrate under Section 164 CrPC. The learned Special Judge dealt with the issue in its order and brushed aside the same observing that the same *may be factually incorrect*, and there was a letter on record showing the true picture that the relevant documents had not been sent to the sanctioning authority. However, it is open to the prosecution during the course of trial to examine the sanctioning authority where such a *discrepancy* can be explained. The learned Special Judge has wrongly labelled such a fact which goes to the root of jurisdiction and clearly shows that the extent to which there could be application of mind was a mere discrepancy.
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> **27.** The relevant part of the order of the Special Judge reads:
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> "The contents of Para 27 of the sanction order dated 26.11.2002 stating that the case diaries, documents collected by the investigating officer during the course of investigation, statements of witnesses under Section 161 CrPC and under Section 164 CrPC were considered by the sanctioning authority *may be factually incorrect* in view of the letter dated 24.5.2002, written by the DIG of CBI, which shows that this document had not been sent. However, this statement by itself at this stage cannot be construed as non-application of mind by the sanctioning authority. If the charges are framed against the accused and the case goes for trial the sanctioning authority shall get an opportunity to explain the discrepancy."
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> (emphasis supplied)

A perusal of the above paragraphs reveals that the sanction order therein was obtained without placing relevant documents before the competent authority; therefore, it was held therein that the sanction order was obtained from the competent authority, without placing all the relevant material for his consideration, will go to the root of the jurisdiction.

9. The learned Special Standing Counsel for CBI has drawn the attention of this court to **Mohd. Iqbal Ahmad v**

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[1] (2014) 14 SCC 295

State of Andhra Pradesh[2]. The relevant portion reads as under:

> "It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways: either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio."

The learned Special Standing Counsel also relied upon Para No.7 of the decision in **Ashok Kumar Aggarwal**, which reads as follows:

> The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

As per the principle enunciated in the cases cited supra, the prosecution has to establish the issuance of valid sanction order.

10. The learned counsel for the petitioner strenuously contended that in Ex.P87, it is mentioned that P.W.69 has considered '*other relevant documents*' and in order to

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[2] AIR 1979 SC 677

determine whether P.W.69 has considered those documents and validly issued the sanction order, it is just and necessary to cross-examine P.W.69 and call for those '*other relevant documents*'.

11. I have carefully scanned the contents of the petition filed under Section 243(2) Cr.P.C., to know which are the documents the petitioner wants to call for, in order to nullify the sanction order. In Ex.P87 sanction order, it is categorically mentioned by P.W.69 that he has carefully examined the material, "*such as copy of FIR, Statements of Witnesses and other relevant documents*" placed before him. Therefore, the petition is filed to call for those "*other relevant documents*". Even in **Ashok Kumar Aggarwal**, the Hon'ble apex Court set aside the sanction order on the sole ground that the letter produced by CBI negates the prosecution version that the Sanctioning Authority has considered the documents placed before him. A perusal of the record clearly reveals that P.W.69 has considered the FIR, statements of witnesses and other relevant documents. In this case, the prosecution version is in support of the sanctioning order issued by P.W.69. In order to grant sanction under Section 19 of P.C. Act, the Sanctioning Authority has to satisfy himself with the material placed before him. P.W.69 has followed the procedure and validly issued the sanction order. In view of the above factual scenario, there is no necessity to

call for the '*other relevant documents*' as prayed for in the petition or to recall P.W.69 for the purpose of further cross-examination.

12. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the considered view that the trial court is justified in dismissing the petitions under Section 243(2) Cr.P.C. and under Section 311 Cr.P.C.

13. Accordingly, these criminal petitions are dismissed. However, it is made clear that any of the observations made hereinabove are for the purpose of disposal of this petition only and the trial court shall proceed with C.C. No.1 of 2009 without being influenced by any of the observations made hereinabove. Miscellaneous petitions, if any pending in these criminal petitions, shall stand closed.

T.SUNIL CHOWDARY, J

December 02, 2016

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