

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1935 of 1998**

- Sukhdev S/o. Nageshwar, age 46 years, Occupation Service R/o. Village Shankargarh Police Station Shankargarh. Distt. Surguja (MP) (Now Sate of Chhattisgarh)

---- Appellant

Versus

- The State of Madhya Pradesh through Police Station Shankargarh, distt. Surguja (MP) (Now State of Chhattisgarh)

---- Respondent

For Appellant : Shri Shakti Raj Sinha, Advocate.
For respondent/State : Shri Anil Pandey, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****16.11.2017**

1. This appeal is directed against the judgment of conviction and order of sentence dated 25.8.1998 passed by Special Judge under the Prevention of Corruption Act, 1988 (for short 'the Act') Surguja at Ambikapur in Special Criminal Case No.02/93 wherein the said Court convicted the accused/appellant under Sections 7 & 13(1)(d) read with Section 13(2) of the Act and sentenced him to undergo simple imprisonment for one year and to pay fine of Rs.1000/- with default stipulations.

2. As per the prosecution case, the accused/appellant was posted as teacher at Govt. Primary School, Shankargarh. He was the incharge of the salary centre for distribution of salary to the teachers. It is alleged that the appellant demanded Rs.500/- as illegal gratification other than his legal remuneration from

complainant Olympas Lakda, Asst. Teacher. On the basis of the said complaint, a trap was organised and currency notes two in number in the denomination of Rs.100/- and currency notes six in number in the denomination of Rs.50/- were seized from him. After investigation, charge sheet was filed, charges were denied by the appellant and the trial was conducted and after completion of the trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Core issue raised before this Court in this appeal on behalf of the appellant is that sanction for prosecution of a Government servant is mandatory provision as per Section 19(1) of the Act but no sanction was obtained in the present case hence, no cognizance ought to have taken by the Special Court. In absence of sanction, the said Court took cognizance and conducted the trial contrary to the law and therefore, the accused is liable to be discharged/acquitted.

4. On the other hand, learned counsel for the State submits that though no sanction is obtained for the prosecution, but since the accused demanded money for another public servant, sanction is not necessary for his prosecution.

5. It is admitted by both the sides that sanction under Section 19(1) of the Act is not obtained in the present case for prosecution. Section 19(1) of the Act reads as under:

19. Previous sanction necessary for prosecution (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant,

except with the previous sanction,—(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government; (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office.”

6. A plain reading of Section 19(1) leaves no manner of doubt that the same is couched in mandatory terms and forbids courts from taking cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 against public servants except with the previous sanction of the competent authority enumerated in clauses (a), (b) and (c) to sub-section (1) of Section 19. The provision contained in sub-section (1) would operate in absolute terms. The language employed in sub-section (1) of Section 19 admits of no equivocation and operates as a complete and absolute bar to any court taking cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 of the Act against a public servant except with the previous sanction of the competent authority.

7. Though charge was framed by the trial Court but in absence of sanction under Section 19(1) of the Act, the said Court was not competent to take cognizance of the offence and proceedings between the said Court is in complete disregard and command of Section 19(1) of the Act. When the trial Court was not in a position to take cognizance in absence of any sanction

cognizance taken by the said Court is not valid and the whole trial is invalidated.

8. The evidence adduced before the trial Court could have been appreciated by this Court if it was a valid trial. But when the trial itself is invalid, it is not necessary to go into the merits of the case.

9. Accordingly, the appeal is allowed. Conviction and sentence passed by the Special Court is hereby set aside. The accused/appellant is discharged of the offence under Sections 7 & 13(1)(d) read with Section 13(2) of the Act . The fine amount, if deposited by the appellant, the same be returned to him forthwith. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(Ram Prasanna Sharma)
JUDGE