

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 157 of 2017**

Mithilesh Kumar Pandey, son of late Keshav Prasad Pandey, aged about 51 years, resident of House No. 266, Sunder Nagar, Raipur (Chhattisgarh), Civil & Revenue District Raipur.

---**Petitioner**

Versus

1. State of Chhattisgarh, through the Secretary, Ministry of Law & Legislative Affairs, Secretariat, Mahanadi Bhawan, Naya Raipur (Chhattisgarh).
2. The Secretary, Ministry of Revenue, Secretariat, Mahanadi Bhawan, Naya Raipur (Chhattisgarh).
3. State Economic Offences Investigation Bureau/Anti-Corruption Bureau, through the Superintendent of Police, Raipur (Chhattisgarh).

--**Respondents**

For petitioner : Mr. B. P. Sharma, Advocate.

For respondents/State : Mr. Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

12/05/2017

1. The petitioner has filed this writ petition challenging the order dated 14.03.2017 (Annexure P-1) passed by Department of Law & Legislative Affairs, Government of Chhattisgarh granting sanction under Section 19(1) of the Prevention of Corruption of Act, 1988 (hereinafter called as 'Act of 1988') to prosecute the petitioner under Section 13(1)(e) read with 13(2) of Act of 1988 in connection with Crime No. 37/2016 registered by Anti-Corruption Bureau, Raipur,

Chhattisgarh.

2. The aforesaid order has been challenged mainly on the ground that the petitioner has not been given/afforded an opportunity to show his known sources of income and for that reasonable and sufficient opportunity is the principle of law *i.e.* principle of natural justice enshrined in the maxim *audi alteram partem* and the said principle of seeking explanation and giving sufficient time for submission of explanation is right of the accused which has been violated in the present case and therefore, impugned order granting sanction for prosecution is liable to be set aside.

3. Mr. B. P. Sharma, learned counsel for the petitioner, would submit that a bare perusal of the impugned order would show the State Authorities while granting sanction has failed to discharge their duty and did not seek any explanation from the petitioner to account for the alleged disproportionate assets. In other words, the respondent authorities have not applied its mind to the documents submitted by the prosecution agency and granted sanction in a cyclo-style manner or in the format prescribed by the prosecution agency themselves and he has not been afforded reasonable opportunity to show his known source of income as it is a case of Section 13(1)(e) of the Act of 1988, therefore, the impugned order deserves to be set aside. He relied upon the decision of the Supreme Court in the matter of Mansukhlal Vithaldas Chauhan v.

State of Gujrat¹.

4. I have heard learned counsel for the petitioner, considered his submission and gone through the documents appended with the writ petition with utmost circumspection.

5. Before proceeding further in the matter, it would be apt to notice the pertinent observation of Their Lordships of the Supreme Court in the matter of **Manzoor Ali Khan v. Union of India and others²** which states that - "A fine balance has to be maintained between need to protect a public servant against mala fide prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other hand."

6. The law with regard to interference in order granting sanction is very well settled. The question of grant of sanction is essentially a question of fact and sanction order should not be interdicted at the threshold and at the best it should be left to be determined in the course of trial. [See **State of Madhya Pradesh v. Dr. Krishna Chandra Saksena³**, **Prakash Singh Badal v. State of Punjab⁴**, **Dinesh Kumar v. Chairman, Airport Authority of India⁵**, and **The Director, Central Bureau of Investigation and others v. Ashok Kumar Aswal and others⁶**].

1 (1997) 7 SCC 622

2 (2015) 2 SCC 33

3 (1996) 11 SCC 439

4 (2007) 1 SCC 1

5 (2012) 1 SCC 532 (Para 10)

6 (2015) 16 SCC 163

7. Now the question would be what is the meaning of "course of trial"? The word "course" denotes movement from one point to another an expression "in course of" not only implies a period of time during which movement is in progress but also postulates a connected relation. In the matter of **State of Travancore-Cochin and others v. Shanmugha Vilas Cashewnut Factory**⁷, Their Lordships of the Supreme Court have defined the meaning of word "course" as under :-

"49. The word "course" conveys the idea of a gradual and continuous flow, an advance, a journey, a passage or progress from one place to another. Etymologically it means and implies motion, a forward movement. The phrase "in the course of" clearly has reference to a period of time during which the movement is in progress".

8. Similarly, in the matter of **Commissioner of Income-tax, New Delhi v. M/s. East West Import and Export Pvt. Ltd.**⁸, Their Lordships of the Supreme Court have defined the meaning of word "course" in the following way :-

"8. 'Course' ordinarily conveys the meaning of a continuous progress from one point to the next in time or space and conveys the idea of a period of time; duration and not a fixed point of time, "In the course of such previous year" would, therefore, refer to the period commencing with the beginning of the previous year and terminating with the end of the previous year....."

9. The word "trial" is not defined in the Code. "Trial" according to Stroud's Judicial Dictionary means "the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or

7 AIR 1953 SC 333

8 (1989) 1 SCC 760

criminal" and according to Wharton's Law Lexicon means "the hearing of a cause, civil or criminal, before a Judge who has jurisdiction over it, according to the laws of the land". The words "tried" and "trial" appear to have no fixed or universal meaning. In the matter of Union of India and others v. Major General Madan Lal Yadav (Retd.)⁹, Their Lordships of the Supreme Court have defined the meaning of word "trial" in following way :-

"19. It would, therefore, be clear that trial means act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary thereto. The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial."

10. In the matter of State of Bihar and others v. Rajmangal Ram¹⁰, Their Lordships of the Supreme Court formulated following question of law for determination :-

"Whether a criminal prosecution ought to be interfered with by the High Court at the instance of an accused who seeks mid-course relief from the criminal charges levelled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant such sanction?"

Their Lordships considered the above-stated question threadbare and finally answered the question in paragraph 10 as under :-

"10. The High Court in both the cases had also come to the conclusion that the sanction orders in question were passed mechanically and without consideration of the relevant facts and records. This was treated as an

9 (1996) 4 SCC 127

10 (2014) 11 SCC 388

additional ground for interference with the criminal proceedings registered against the Respondents. Having perused the relevant part of the orders under challenge we do not think that the high Court was justified in coming to the said findings at the stage when the same were recorded. A more appropriate stage for reaching the said conclusion would have been only after evidence in the cases had been led on the issue in question."

11. Way back, in the year 1958 in the matter of Indu Bhushan Chatterjee v. State of West Bengal¹¹, a submission was raised before the Supreme Court that the sanctioning authority did not apply his mind to the facts of the case but blindly signed readymade sanction order prepared by the police. Their Lordships of the Supreme Court have held that when the sanction order is eloquent enough then the sanction order is valid in law. It has been held as under :-

"9.It is true that he did not himself dictate or draft the sanction, but Mr. Bokil has stated in the clearest terms, in his examination-in-chief, that before he accorded sanction he went through all the relevant papers. There is no reason to distrust this statement of Mr. Bokil, nor has the High Court, while granting the certificate of fitness, done so. He was an officer of high rank in the Railway and must have been fully aware that the responsibility of according the sanction against an official of the Railway subordinate to him lay upon him. It is inconceivable that an officer of the rank of Mr. Bokil would blindly sign a ready-made sanction prepared by the police. Apparently, the sanction already drafted contained all the material facts upon which the prosecution was to be launched, if at all, concerning the acceptance of the bribe by the appellant on May 12, 1952. When Ex. 6 was placed before Mr. Bokil other relevant papers were also placed before him. It is significant that Mr. Bokil was not cross-examined as to what the other relevant papers were and in the absence of any questioning being put to Mr. Bokil we must accept

11 AIR 1958 SC 148

his statement that the papers placed before him were relevant to the only question before him whether he should or should not accord his sanction to the prosecution of the appellant. Mr. Bokil said, and we see no reason to distrust his statement, that before he accorded his sanction he went through all these papers and after being satisfied that sanction should be given he accorded his sanction. It is true that he did not call for any record in connection with the matter from his office nor did he call for the connected claim cases or find out as to how they stood. It was not for Mr. Bokil to judge the truth of the allegations made against the appellant, by calling for the records of the connected claim cases or other records in connection with the matter from his office. The papers which were placed before him apparently gave him the necessary material upon which he decided that it was necessary in the ends of justice to accord his sanction."

12. The statement of law laid down in the matter of Indu Bhushan Chatterjee (supra) has been followed subsequently by the Supreme Court in the matter of C. S. Krishnamurthy v. State of Karnataka¹² and it has been held as under:-

"9. Therefore, the ratio is that sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. In the present case, the sanction order speaks for itself that the incumbent has to account for the assets disproportionate to his known source of income. That is contained in the sanction order itself. Moreso, as pointed out, the sanctioning authority has come in the witness box as witness 40 and has deposed about his application of mind and after going through the report of the Superintendent of Police, CBI and after discussing the matter with his Legal Department, he accorded sanction. It is not a case that the sanction is lacking in the present case. The view taken by the Additional Sessions Judge is not correct and the view taken by learned single Judge of the High Court is justified."

12 (2005) 4 SCC 81

13. There is an additional reason to uphold the order granting sanction as the petitioner has even not whispered about the failure of justice by such an error, omission/irregularity in the order of sanction as required by Section 19(3)(a) of the PC Act, 1988 in his writ petition. The said provision states as under :-

"19. Previous sanction necessary for prosecution.-

(1) **** *

(2) **** *

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;"

14. The Constitution Bench of the Supreme Court in the matter of **P.V. Narasimha Rao v. State (CBI/SPE)**¹³, has held that requirement of sanction under Section 19(1) of PC Act is a matter relating to procedure and the absence of sanction doesn't go to the root of the jurisdiction of the Court. Their Lordships pertinently observed as under :-

"95. The requirement of sanction under Section 19(1) is intended as a safeguard against criminal prosecution of a public servant on the basis of malicious or frivolous allegations by the interested persons. The object underlying the said requirement is not to condone the commission of an offence by a public servant. The inapplicability of the provisions of Section 19(1) to a public servant would only mean that the intended safeguard was not intended to be made available to him.

13 (1998) 4 SCC 626

The rigour of the prohibition contained in sub-section (1) is now reduced by sub-section (3) of Section 19 because under clause (a) of sub-section (3) it is provided that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. This would show that the requirement of sanction under sub-section (1) of Section 19 is a matter relating to the procedure and the absence of the sanction does not go to the root of the jurisdiction of the court. It must, therefore, be held that merely because there is no authority which is competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) it cannot be said that a Member of Parliament is outside the purview of the 1988 Act."

15. Similarly, in the matter of **Prakash Singh Badal** (supra), Their Lordships of the Supreme Court while considering sub-section (3) of Section 19 of the PC Act have held that the "failure of justice" should be there and that too "in the opinion of the Court". Paragraph 29 of the judgment reports as under :-

"29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on "failure of justice" and that too "in the opinion of the Court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of **Narasimha Rao case**, (AIR 1998 SC 2120). Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6 (2) of the old Act (Section 19(2) of the Act) question relates to doubt about authority to grant sanction and not whether sanction is necessary."

16. In the matter of Rammangal Ram (supra) Their Lordships of the Supreme Court have held in no uncertain terms that any error, omission or irregularity in sanction would include authority to grant sanction doesn't vitiate the eventual conclusion in the trial including the conviction unless failure of justice has occurred and at the intermediary stage a criminal prosecution cannot be nullified on account of any such error or irregularity in sanction order without arriving at satisfaction that failure of justice has been occasioned.

17. The Supreme Court in Central Bureau of Investigation v. Ashok Kumar Agrawal¹⁴ has also considered earlier decision of the Supreme Court in the matter of Ashok Tshering Bhutia v. State of Sikkim¹⁵ and held that mere omission or irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice. Paragraph 25 of the report as under :-

"25. Same remained the position regarding sanction. In the absence of anything to show that any defect or irregularity therein caused a failure of justice the plea is without substance. A failure of justice is relatable to error, omission or irregularity in the sanction. Therefore, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the PC Act, 1988 is a matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the Court under Cr PC, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance....."

18. Learned counsel for the petitioner has placed reliance on the

14 (2014) 14 SCC 295

15 (2011) 4 SCC 402

judgment of the Supreme Court in **Mansukhlal Vithaldas Chauhan** (supra).

19. In the matter of **Balbhadra Parashar Vs. State of Madhya Pradesh**¹⁶ the Supreme Court after noticing **Mansukhlal Vithaldas Chauhan** (supra) while dealing with order of sanction granted in the case under Section 13(1) (e) of the Act of 1988 declined to interference on the ground that no material was placed on record to substantiate that sanction order was granted in an absolutely mechanical manner and held as under:-

“8. In the case at hand, we are only concerned with validity of grant of sanction and nothing else. The only ground of attack is that there has been no application of mind. The High Court, as in demonstrable, has opined that while granting sanction a detailed reasoned judgment is not required to be passed. It has also come to hold that the authority had applied its mind. Nothing has been brought on record to substantiate that the sanction was granted in an absolutely mechanical manner.

10. In view of the aforesaid premised reasons, we are of the considered view that the sanction granted in this case does not suffer from any infirmity so as to declare it as illegal. Therefore, we are not inclined to interfere with the order passed by the High Court.”

20. In the present case, the impugned order granting sanction has been filed as Annexure P-1. It is a speaking and comprehensive order running into five pages and it gives the complete details of the allegation supported by material against the petitioner. At present, the charge-sheet has not been filed against the petitioner and trial

¹⁶ AIR 2016 SC 1554

has not commenced yet. The petitioner is at liberty to raise such a plea during the course of trial. No failure of justice has been demonstrated by the petitioner before this Court. No material has been brought on record to substantiate that order of sanction was granted in an absolutely mechanical manner, as such, the petitioner has failed to make out the ground for interference in order granting sanction.

21. As a fallout and consequence discussion the writ petition being sans merit requires to be dismissed at admission stage and is accordingly dismissed.

Sd/-

Sanjay K. Agrawal
Judge