

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 21/07/2017****Judgment Delivered on : 04/08/2017****Writ Appeal No. 242 of 2017**

*(Arising out of the Order dated 12.05.2017 of the Learned Single Judge in
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 and Revenue District Raipur.

---- Appellant**Versus**

- 1.State of Chhattisgarh, through the Secretary, Ministry of Law and 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.

---- Respondents

For Appellant	: Shri B.P.Sharma, Shri M.L.Saket and Shri Hari Agrawal, Advocates.
For Respondent/State	: Shri J.K.Gilda, Advocate General with Shri UNS Deo, Government Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. Judgment**Per Thottathil B. Radhakrishnan, Chief Justice**

1. Is a public servant, who is alleged to have committed criminal misconduct falling under clause (e) of Sub-section (1) of Section 13 of the Prevention of Corruption Act, 1988; for short 'the Act' and therefore punishable

under Section 13(2) of that Act, entitled to an opportunity of hearing before the competent authority gives previous sanction in terms of Section 19 of that Act? This is the question posed for consideration in this appeal against the dismissal of the Appellant's writ petition under Article 226 of the Constitution filed challenging the sanction order issued to prosecute him.

2. Learned counsel for the Appellant argued that the terms of Sub-section (1)(e) of Section 13 of the Act would come into operation only when the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income and therefore, the question whether the public servant is able to satisfactorily account is germane for consideration while the competent authority considers whether the previous sanction is to be given under Section 19 of the Act in a given case. Dilating on this, he argued that such opportunity of pre-decisional hearing should be read into the provisions in Section 19 of the Act when the offence alleged is one which falls exclusively under Section 13(2) read with clause (e) of Section 13(1) of the Act. According to him, such opportunity of pre-decisional hearing would give opportunity to the public servant concerned to demonstrate before the Government that the facts of the case do not warrant grant of sanction. Reference was made by the learned counsel for the Appellant to the decision of the Apex Court in **State of Haryana v. Bhajan Lal**¹; as well as the decision in **P. Sirajuddin v. State of Madras**²; referred to therein, to argue that mere possession of pecuniary resources or property disproportionate; is by itself not an offence and investigation in such a matter ought not to proceed with a pre-conceived idea of guilt of the person indicted with such offence and that the public servant concerned could not be subjected to harassment and victimization. It is pointed out that when ultimately the allegations of illegal accumulation of wealth turned down to be baseless, harm done not only to that

¹ (1992) Supp 1 SCC 335

² (1970) 1 SCC 595

person but also to the office he held will be incalculable and inestimable. The requirement to have a preliminary enquiry into the allegations is also pointed out. Developing this plea further, it is argued that a public servant is entitled to adequate protection from groundless prosecutions and such insulation is necessary to enable a public servant to fearlessly discharge official functions and also to ensure due protection of that person's dignity as part of right to life enshrined in Article 21 of the Constitution.

3. *Per contra*, the learned Advocate General argued that the impugned judgment is issued preserving the right of the Appellant to raise his defence regarding the alleged lack of due sanction during the course of trial and liberty has been preserved to that effect. He also made reference to the different decisions referred to in the impugned judgment and argued that in the case in hand, the order granting sanction is one which is lawfully issued and reflects, even on its face, application of mind to the relevant files.

4. The learned Single Judge has noticed the governing judicial precedents and has rightly held that grant of sanction is essentially a question of fact and the challenge, if any to the grant of sanction, at best, should be left to be determined in the course of the trial. Section 19 of the Act operates notwithstanding anything contained in the Code of Criminal Procedure, 1973. Sub-section (3) of that Section provides, among other things, that no finding, sentence or order passed by a Special Judge under Section 3 of that Act 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) of Section 19 unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. This content of clause (a) of Section 19(3) of the Act statutorily envisages the possibility of cases where there would even be 'absence of sanction' required under Sub-section (1) of Section 19. Yet, the statutory prescription is that there shall be no interference

unless a failure of justice has 'infact' been occasioned thereby. Obviously therefore, the question whether there had been a resultant failure of justice is a question of fact. Sub-section (4) of Section 19 of the Act provides certain yardsticks for the Court to decide whether the absence of, or any error omission or irregularity in, such sanction has occasioned or resulted in a failure of justice. The competency of the authority to grant sanction is an error for the purpose of Section 19, going by explanation occurring at the foot of that sanction. These statutory provisions clearly show that the previous sanction under Section 19 of the Act and the effect of the absence of such sanction or any error, omission or irregularity in, the sanction are matters which ought to be justiciable only at a stage where such absence, error, omission or irregularity can be tested to determine whether it has occasioned or resulted in a failure of justice. These statutory components of Section 19 of the Act are intrinsic materials indicative of the clear legislative intention that the effect of absence of, or any error, omission or irregularity in, the sanction in terms of Section 19 would be a matter in issue only when such a question arises for decision on the basis of the defence of the accused at the trial. This view is fortified by the prescription in Sub-section (4) of Section 19 of the Act that the Court shall have regard to the fact whether objection could and should have been raised at any earlier stage in the proceedings to determine whether the absence of, or any error, omission or irregularity in, sanctioned has occasioned or resulted in a failure of justice.

5. As is discernible from Sub-section (1) of Section 19 of the Act, the act of giving sanction is only an administrative act. It is not a quasi-judicial act. Nor is there a *lis* involved. There is no adjudication of any issue by the competent authority while granting sanction. The order of sanction need not contain the detailed reasons in support thereof. The question of giving an opportunity to public servant at that stage does not arise. The rigor of the prohibition contained in Sub-section (1) is reduced by Sub-section (3) of Section 19 of the Act in view

of clause (3) of that Section. This would show that requirement of sanction under Section 19(1) is a matter relating to the procedure and absence of sanction does not go to the root of the jurisdiction of the Court. The grant of sanction being an administrative act, there is no need to provide an opportunity of hearing to the officer concerned before according sanction. Regard being had to the public business in relation to exercise of authority under Section 19 of the Act, such official act may be presumed to have been regularly performed. This permissive statutory presumption under Section 114 of the Evidence Act, 1872, pointedly falling under the illustrations (e) of that Section, is one that could be rebutted by establishing the contrary. Such an exercise can be carried out only through a process of adjudication; that is to say, during trial. See for support: ***State of Bihar v. P.P. Sharma***³; ***Superintendent of Police (CBI) v. Deepak Choudhary***⁴; , ***State of Madhya Pradesh v. Dr. Krishna Chandra Saxena***⁵; ***P.V.Narsimha Rao v. State (CBI/SPE)***⁶; , ***Prakash Singh Badal vs. State of Punjab***⁷ , ***Ashok Tshering Bhutia v. State Of Sikkim***⁸ and ***Subramanian Swamy v. Manmohan Singh***⁹.

6. The argument advanced on behalf of the Appellant that the cases falling under clause (e) of Section 13(1) of the Act have to be considered as a class by themselves and in such a case, the public servant concerned is entitled to an opportunity of hearing before a sanction order is issued under Section 19 of the Act does not stand. In ***K. Veeraswami vs Union of India***¹⁰; the Apex Court dealt with a case of disproportionate assets. It was held that clause (e) of Section 13(1) of the Act creates a statutory offence which must be proved by the prosecution. When the onus to prove that the accused or any person on his behalf has been in possession of pecuniary resources or property

3 (1992) Supp (1) SCC 222

4 (1995) 6 SCC 225

5 (1996) 11 SCC 439

6 (1998) 4 SCC 626

7 (2007) 1 SCC 1

8 (2011) 4 SCC 402

9 (2012) 3 SCC 64

10 (1991) 3 SCC 655

disproportionate to known sources of his income is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties so possessed. It was held that the said section makes available a statutory defence which must be proved by the accused. Though, what is accorded to the accused is a restricted defence to account for the disproportionality of the assets over the income, the legal burden of such proof is not so onerous as that of the prosecution. It was specifically held that the Legislature has advisedly used the expression 'satisfactorily account'. It was further laid that the emphasis must be on the word 'satisfactorily' and that means the accused has to satisfy the Court that his explanation is worthy of acceptance and the burden of proof placed on the accused is evidential burden, though that could be discharged on the 'balance of probabilities'. The decision in **K. Veeraswami (supra)** came to be specifically considered in **State of Maharashtra v. Ishwar Piraji Kalpatril¹¹**; again a case of alleged disproportionate assets. Quoting from **K. Veeraswami's** case, it was held in **Ishwar Piraji Kalpatril (supra)**, that opportunity which has to be afforded to the public servant of satisfactorily explaining about his assets and resources is before the Court when the trial commences and not at an earlier stage. The conclusion arrived at in that case by the High Court, that the principles of natural justice have been violated as no opportunity was given before registration of the case, was held to be unwarranted and contrary to the law laid in **K. Veeraswami's** case. Thus, even by applying the relevant judicial precedents governing the field of sanction orders for prosecution of criminal misconduct falling under clause (e) of Section 13(1) of the Act, the argument on behalf of the Appellant that cases falling under that clause calls for a differential treatment at the consideration of the issuance of sanction by the competent authority, has to, necessarily fail. Hence, we repel that contention.

11 (1996) 1 SCC 542

7. Proceeding to the argument that an opportunity of pre-decisional hearing in relation to grant of sanction under Section 19 of the Act should be read into cases referable to clause (e) of Section 13(1) of that Act in view of the fundamental right to life guaranteed under Article 21 of the Constitution, we cannot but say that even the soaring horizons sought to be developed to the concept of right to life and the doctrine of dignity of individual do not prompt us to hold that such right as attempted to be projected on behalf of the Appellant inheres, either as a fundamental right or as a legal right. As to whether there is a statutory right and a legal right, even otherwise; we have already answered in the negative. The vires of Section 19 of the Act is not under challenge. That notwithstanding, we are unable to see that any lawful enquiry, investigation or prosecution or grant of sanction to carry forward such a prosecution would impair the dignity of an individual or the fundamental right to life as enshrined in Article 21 of the Constitution merely because the administrative function of the competent authority to grant sanction is not made dependent on any opportunity of hearing being extended to the public servant concerned. Prudent balancing of the entitlements of all stakeholders in such matters advise us not to ignore the fact that the private interest of the public servant concerned cannot be pushed forward at the cost of the requirement to proceed against erring public servants, in accordance with law. We therefore negative the plea raised in this regard on behalf of the Appellant by reiterating the reference made by the learned Single Judge to the judgment of the Apex Court in **Manzoor Ali Khan v. Union of India**¹²; to the following effect:

"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."

12 (2015) 2 SCC 33

8. For the aforesaid reasons, we do not find any reason to interfere with the impugned judgment.

9. In the result, this writ appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE