AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 1120 of 2016

- Maxi Kujur S/o Late Ignesh Kujur, Aged About 47 Years, Executive Engineer, Irrigation Department, Chhuikhadan, District Rajnandgaon, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh, Through The Anti Corruption Bureau, Raipur, Chhattisgarh.

---- Respondent

For Applicant : Shri T.K. Tiwari, Advocate
For State : Shri B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Justice Manindra Mohan Shrivastava

C A V Order

12/04/2017

1. By way of present revision petition, filed under Section 397 read with Section 401 of the Code of Criminal Procedure, the applicant seeks to challenge the legality and validity of the order dated 18/10/2016 passed by Special Judge, (Anti Corruption), Durg in Criminal Case No. 03/15, whereby applicant's application under Section 19 (4) of the Prevention of Corruption Act, 1988 (for short, '*PC Act*') for dropping the proceedings by holding the sanction as not valid, has been rejected.
2. The applicant at the relevant time was working as Executive Engineer in the Department of Irrigation, Government of Chhattisgarh. There were leveled allegations of corruption against the applicant while working in official capacity as Executive Engineer in the matter of

construction of Irrigation Project through the Contractor. Special Investigating Agency, the Anti Corruption Bureau of the State of Chhattisgarh registered a criminal case on the allegation of commission of offence under the PC Act and carried out investigation. After completion of investigation, relevant records, documents and the evidence collected during investigation were forwarded to the controlling department i.e. Department of Water Resources. The records were placed before the Department of Law & Legislative Affairs, which granted sanction for prosecution of the applicant on 10/06/2015. The charge-sheet was filed on 02/07/2015 alleging commission of offence under Section 7, 13 (1) (d), 13 (2) of the PC Act that the applicant was caught red handed taking a bribe of Rs. 54,000/-.

3. At this initial stage, upon submission of charge-sheet before the Court, even before charges were framed, the applicant herein, moved an application under Section 19(4) of the PC Act before the trial Court with the prayer that the criminal case against the applicant be dropped as the sanction was granted by the Department of Law & Legislative Affairs, whereas the appointing and controlling authority of the applicant is the Secretary, Department of Water Resources, Government of Chhattisgarh. The applicant herein also sought dropping of the proceeding on the ground that the sanction was not valid as there was no proper application of mind, examination of records, before grant of sanction and even before framing of charges, the prosecution was required under the law to first examine the authority who granted sanction as witness, to prove valid sanction and without proof of valid sanction, criminal case could not proceed further.

4. Learned trial Court, however, held that the Department of Law & Legislative Affairs, State of Chhattisgarh was competent to grant sanction notwithstanding that the applicant's controlling department was the Department of Water Resources, relying upon the provisions of the rules of business and relying on various judicial pronouncement, it was also held that any irregularity or technical of flaw in grant of sanction, by itself, could not be made a basis to throw the prosecution, unless it caused any prejudice which would be a matter for consideration during trial after framing of charge and not at the stage where even charges have not been framed.

5. Assailing the correctness of the aforesaid decision, learned counsel for the applicant contended that the grant of sanction is not a mere formality, but goes to the root of the matter and unless there is valid sanction granted by the competent authority, the applicant could not be subjected to the agony of criminal trial, placing reliance upon the Supreme Court decision in the matter of ***R.S. Nayak vs. A.R. Antulay***, ***(1984) 2 SCC 183***.

Further contention of the learned counsel for the applicant is that the Department of Law and Legislative Affairs is not the controlling department of the applicant. The applicant was appointed by the Secretary, Department of Water Resources and therefore, for the purposes of exercise of power under Section 19 in the matter of grant of sanction for prosecution, it is the controlling department, which is competent and not the Department of Law & Legislative Affairs of the Govt. of Chhattisgarh.

The next contention of the learned counsel for the applicant is that the legality and validity of the sanction is required to be judged at

the threshold even before framing of charges for which purpose, the prosecution is required to examine the authority who granted sanction and to prove by leading appropriate oral and documentary evidence that the sanction was upon due consideration of entire material on record, not based on extraneous consideration or ignorance of relevant material on record and only after due and proper application of mind. Unless such a satisfaction, upon examination of oral and documentary evidence adduced by the prosecution in that behalf, is arrived at, the trial Court could not even proceed to frame charges. Reliance has been placed on the decision of this Court in the case of '***Jagdish vs. State of Chhattisgarh', (2009) 2 Crimes 634 (Chhatt.)***, order dated 10/03/2004 passed in ***Criminal Revision No. 30/2004 (Binoy Kumar Mishra vs. State of Chhattisgarh)***, and order dated 05/09/2013 passed in ***Criminal Revision No. 149/2013 (Kashi Nath Yadav and another vs. Central Bureau of Investigation)***. Reliance has also been placed on decision of the High Court of Gauhati in the matter of '***State of Assam vs. Anowar Hussain'*** in Appeal No. 152 of 2010 decided on 24th September 2013 and reported in ***2013 (5) Gauhati Law Times 71***.

6. Per contra, learned State counsel would submit that present is not a case where the charge-sheet has been filed without there being any sanction order at all. He submits that once the sanction has been granted, alleged in validity on account of non application of mind is a question which has to be raised during the trial and not before the framing of charge, because mere error, omission or irregularity in sanction is not considered fatal unless it has resulted in failure of

justice or has been occasioned thereby. This could be considered only during trial and not at this stage.

Replying to other contention, learned State counsel argued that under the rules of business, the Department of Law & Legislative Affairs has been delegated the power in the matter of grant of sanction for prosecution under PC Act irrespective of the department in which the Government servant is employed. Lastly, it was submitted that the sanction order, on its fase, reflects minute examination of the entire material collected by the investigating agency and due application of mind to all the relevant circumstances leading to formation of a prima facie, bonafide opinion that the case for grant of sanction for prosecution is made out. According to the learned State counsel, at this stage of grant of sanction, nothing more is contemplated under the law, than what has been considered by the competent sanctioning authority. In support of his contention, learned State counsel places reliance upon ***'State of Kerala vs. P.V. Krishnan & Ors.', 2007 Cr.L.J. 4005***, ***Prakash Singh Badal & Another vs. State of Punjab & Ors***., ***AIR 2007 SC 1274***, ***'Jagdish vs. State of Chhattisgarh'***, ***2009 (2) Crimes 634 (Chhatt.)***, ***'V. Padmanabham vs. Government of Andhra Pradesh and Others', (2009) 15 SCC 537***, ***'Ashok Tshering Bhutia vs. State of Sikkim' (2011) 4 SCC 402***, ***'State of Bihar and Others vs. Rajmangal Ram' 2014 (11) SCC 388*** and ***'State of Madhya Pradesh & Ors. vs. Anand Mohan & Anr.' 2015 AIR SCW 4270***.

7. In the present case it is not dispute that along with the charge-sheet, which has been filed by the investigating agency (Anti Corruption Bureau), sanction order dated 10/06/2015 granted by the Additional

Secretary, Department of Law & Legislative Affairs, Govt. of Chhattisgarh is also submitted before the Special Court on 02/07/2015 alleging commission of offence under Section 7, 13(1)(d), 13(2) of PC Act against the applicant that he was caught red handed taking bribe of Rs.54,000/-. Even before the stage of framing of charge reached, the applicant moved application under Section 19(4) of PC Act for dropping the proceedings on the grounds, referred to hereinabove, which did not find favour with the trial Court.

8. Chapter V of PC Act deals with sanction for prosecution and amongst other provisions, Section 19 stipulates that no Court shall take cognizance of an offence punishable under Section 7, 10, 11, 13 and 15 alleging to have been committed by a public servant, except with the previous sanction of the Central Government, State Government or authority competent to remove him from his office. While sub-section (3) of Section 19 contemplates that no finding 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 sub-section (1), unless failure of justice has in fact has been occasioned thereby, the other provision of sub-section (4) requires raising of such a plea at the appropriate time. It would be relevant to extract the relevant provisions in sub-section (3) and sub-section (4) of Section 19 of the Act for ready reference :-

> *"(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;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

9. The Prevention of Corruption Act, 1988 repealed the earlier Act of PC Act, 1947, wherein provisions contained in Section 5 of the said Act, engrafting statutory scheme of grant of sanction for prosecution came up for consideration of the Supreme Court in the case of *R.S. Nayak* (supra) and it was held that grant of sanction is not an idle formality

but protest against frivolous prosecution, therefore, the authority entitled to grant sanction must apply its mind to the facts and circumstance, evidence collected and other incidental facts. The removal authority alone would be in a position to say whether in the facts and circumstances serious offence is committed or the prosecution is frivolous. In a subsequent decision in the case of *Prakash Singh Badal and another* (supra), the statutory scheme of sanction contained in Section 19 of the new Act i.e. PC Act, 1988 was examined by the Supreme Court and the Hon'ble Supreme Court held thus :-

> "52. *The sanctioning authority is not required to separately specify each of the offence against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalized guidelines in that regard."*

10. Importantly, the stage when alleged illegality on account of non application of mind, as distinguished from the allegation of absence of sanction itself, is to be considered, was specifically dealt with and opined as below :-

> " 53. *The sanction in the instant case related to offences relatable to Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."*

Therefore, when the prosecution comes out with the charge-sheet by filing the same before the Court of competent jurisdiction supported with an order of sanction or prosecution, the question whether the grant of sanction is invalidated on account of alleged non-application of mind would be a question to be raised and considered during trial.

11. In a later decision in the case of ***State of Madhya Pradesh vs. Virender Kumar Tripathi, (2009) 15 SCC 533*** it was held that the Section 19(3) of the PC Act, makes it clear that no finding, sentence or order passed by Special Judge shall be reversed or altered by a court of appeal on the ground of absence/or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the Court, a failure of justice has in fact been occasioned thereby. It was further observed that the stage when the prejudice is to be established is yet to be reached since the case was at the stage of framing of charge and whether or not failure has, in fact, been occasioned, was to be determined only when the trial commenced and the evidence was led, relying upon the decision in the case of *Prakash Singh Badal* (supra) and another decision in the case of ***State v. T. Venkatesh Murthy, (2004) 7 SCC 763.*** Thus, it was again emphasised that mere error or omission or irregularity in sanction would not invalidate trial unless in the opinion of the Court, failure of justice has, in fact, been occassioned which could only be established after the trial commenced and evidence is led during trial and not at the stage of framing of charge, much less, at the stage prior to framing of charge. In a later decision in *Ashok Tshering Bhutia (supra),(2011) 4 SCC 402* the view taken in earlier cases, referred to hereinabove, was reiterated by the Supreme Court in following

words :-

> "25. .....*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.P.C., it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance. (Vide Kalpnath Rai, (1997) 8 SCC 732; State of Orissa v. Mrutunjaya Panda, AIR 1998 SC 715; State v. T. Venkatesh Murthy, (2004) 7 SCC 763; Shankerbhai Laljibai Rot v. State of Gujrat (2004)13 SCC 487, Prakash Singh Badal v. State of Punjab (2007) 1 SCC 1 and M.C. Mehta (taj Corridor Scam) v. Union of India, (2007) 1 SCC 110."*

12.The settled legal position, as discussed hereinabove and impermissibility to interdict the criminal proceedings on the ground of error, omission or irregularity in sanction order, including error of jurisdiction in grant of sanction was authoritatively held in the case of *State of Bihar and others vs. Rajmangal Ram* (2014) 11 SCC 388 as below :-

> *"4. The object behind the requirement of grant of sanction to prosecute a public servant need not detain the court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute a honest public servant for acts arising out of due*

discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test, therefore, always is—whether the act complained of has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bonafide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. However, realising that the dividing line between an act in the discharge of official duty and an act that is not, may, at times, get blurred thereby enabling certain unjustified claims to be raised also on behalf of the public servant so as to derive undue advantage of the requirement of sanction, specific provisions have been incorporated in Section 19(3) of the Prevention of Corruption Act as well as in Section 465 of the Code of Criminal Procedure which, inter alia, make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent court unless in the opinion of the court a failure of justice has been occasioned. This is how the balance is sought to be struck.

6. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of

any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in State by Police Inspector vs. T. Venkatesh Murthy [1] wherein it has been inter alia observed that,

"14. ……Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice."

(emphasis supplied)

7. The above view also found reiteration in Prakash Singh Badal and Another vs. State of Punjab and Others (2007) 1 SCC 1 wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Prakash Singh Badal (supra) it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in R. Venkatkrishnan vs. Central Bureau of Investigation (2009) 11 SCC 737. In fact, a three Judge Bench in State of Madhya Pradesh vs. Virender Kumar Tripathi (2009) 15 SCC 533, while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19 (3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been

occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report).

8. There is a contrary view of this Court in State of Goa vs. Babu Thomas (2005) 8 SCC 130 holding that an error in grant of sanction goes to the root of the prosecution. But the decision in Babu Thomas (supra) has to be necessarily understood in the facts thereof, namely, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect to validate the cognizance already taken on the basis of the initial sanction order. Even otherwise, the position has been clarified by the larger Bench in State of Madhya Pradesh vs. Virender Kumar Tripathi (supra).

9. In the instant cases the High Court had interdicted the criminal proceedings on the ground that the Law Department was not the competent authority to accord sanction for the prosecution of the respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High Court.

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 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."

13. The judicially evolved principles stated and restated repeatedly by the Supreme Court make it impermissible to thottle the prosecution at the very threshold only on the allegations of omission, error or irregularity including alleged invalidity of order of sanction. It would be relevant to mention here that in the case of *Rajmangal Ram* (supra), the criminal proceedings were interdicted on the ground that the Law Department was not a competent authority to accord sanction for prosecution. Even that was not held to be permissible ground to interdict the proceeding by clearly observing as below in para 9 :-

> *"9. ..... Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High Court."*

Therefore, what follows from the aforesaid judicial pronouncement of Apex Court is that all the questions relating to irregularity, invalidity and even absence of jurisdiction or alleged incompetency of the sanctioning authority would not be a matter for consideration nor would not constitute ground to interdict criminal proceeding because unless failure of justice has been occasioned, the trial may not be held to be vitiated.

14. Even otherwise, in so far as the ground of incompetency of the Law & Legislative Affairs Department to grant sanction is concerned, the controversy stands resolved and no longer res integra in view of the decision of the Apex Court in *State of Madhya Pradesh & Ors. vs. Anand Mohan & Anr., 2015 AIR SCW 4270*. That was a case involving an issue relating to competency of the Depart of Law and Justice of the State of Madhya Pradesh in the factual background that the accused were employees of Department of Housing and Environment, Govt. of Madhya Pradesh. The contention advanced was that as the competent authority to grant sanction was the Secretary of Housing and Environment of the Government, which had declined to grant sanction, grant of sanction by the Legislative Department was illegal. The issue of competency of Law & Legislative Affairs Department was examined with reference to provision contained in Section 19(1)(b) and delegation of power under the Rules of business under various statutory notification issued by the Governor in exercise of power conferred by clauses 2 & 3 of Article 166 of the Constitution of India, on 03/02/1988, 10/07/1997 and 28/02/1988.

At this stage, it would be relevant to mention here that the prior to reorganization of State of Madhya Pradesh under the Madhya Pradesh Re-organization Act, 2000, by which, with effect from 01/11/2000, the successor States of Madhya Pradesh and Chhattisgarh came into existence, the orders, notifications issued in the State of Madhya Pradesh prior to 01/11/2000 became applicable in the State of Chhattisgarh also, though the successor State of Chhattisgarh was empowered under the provisions of the Re-organization Act to adapt the laws. Therefore, the legal position that

existed prior to 01/11/2000, would equally apply in the State of Chhattisgarh unless it is established that the legal position has changed after appointed date i.e. 01/11/2000 in the State of Chhattisgarh by subsequent enactment or amendment, modification in the laws applicable on the appointed day.

The aforesaid decision of the Supreme Court which resolved the issue with regard to competency of the Department of Law & Legislative Affairs to grant sanction in the matter of prosecution of government officers, irrespective of the department to which they belong, would be equally applicable, even on facts, in the present case also. The notification which has been referred to in the order of learned trial Court in the present case, fell for consideration of the Supreme Court in the case of Anand Mohan (supra) also. The learned trial Court relied on the decision of the Supreme Court in the case of Anand Mohan (supra). In the aforesaid decision relying upon various notifications, rules of business and legal position the Supreme Court held thus :-

> *"10. By the Order dated 28.02.1998, the State Government further clarified that in the matters of sanction for prosecution, the papers shall be sent by the Department of Law and Legislative Affairs along the record to the Administrative Department for its opinion and the Administrative Department shall give the same within a period of one month, whereafter Department of Law and Legislative Affairs shall take a decision.*
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> *11.It is not disputed that State of Madhya Pradesh Economic Offence Wing registered Crime No. 28 of 2004 in respect of offences under Sections 420, 467, 468, 471 and 120B IPC and under Section 13(1) (d)*

read with Section 13 (2) Prevention of Corruption Act, 1988 against the respondents on the allegation that the respondents in connivance with others prepared forged note sheet, and made payment of Rs. 9,51,657/- to a contractor abusing their position. It is also not disputed that when the EOW sought sanction for prosecution from Department of Housing and Environment, it declined the sanction vide order dated 08.03.2011 (Annexure P-6). Question before us is that whether the Department of Law and Legislative Affairs which granted the sanction vide its order dated 20.11.2012 (Annexure P-8) was competent to do so or not.

12. The High Court in the impugned order observed that the (EOW) did not challenge legality and validity of order dated 08.03.2011, and submitted the charge sheet. It further held that since the appellant No. 2 was conferred power to grant the sanction only vide circular dated 28.02.1998, as such it was not competent to grant the sanction relating offences alleged to have been committed in the year 1997.

13. We are unable to accept the view taken by the High Court for the reason that from annexure P-1 and annexure P-2, it is evident that the power to grant the sanction for prosecution, already existed with the Department of Law and Legislative Affairs, since February, 1988. The circular letter dated 28.02.1998 (Annexure P-5) does not confer any new power and it only clarifies that Department of Law and Justice is a competent authority not only in respect of investigations made by Lokayukta Organization, but also the State Economic Offences Investigation Wing. The power with the appellant No.2 to grant the sanction is, in fact, conferred by the rule as amended

vide notification dated 03.02.1988 published in the Official Gazette. After such amendment in the rule whereby power to grant sanction was delegated to Department of Law and Justice, it cannot said that Administrative Department had power to decline sanction as it has done vide its order dated 10.07.1997."

It has to be noted that aforesaid was a case where the administrative department had declined to sanction but the sanction granted by the Department of Law & Legislative Affairs was held to be valid.

15. In view of the above consideration inevitable conclusion is that the Department of Law & Legislative Affairs, State of Chhattisgarh is legally competent to grant sanction for prosecution irrespective of Department to which the accused officer belongs. Not only that, the opinion of the administrative department is not binding upon the Law & Legislative Affairs Department and once the Law & Legislative Affairs Department has consulted the Administrative Department, it can reach its own conclusion. Whether the alleged irregularity in sanction has resulted in failure of justice would be a matter for consideration during the trial and not at any prior stage much less a stage prior to framing of charge. Such applications for dropping the criminal proceedings upon filing of charge-sheet are held to be not maintainable. Learned trial Court has not committed any illegality in rejecting the application. Petition has no merit and therefore liable to be dismissed and accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Kamde