

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 220 of 2017

- Vijay Nirmalkar S/o Shri Khetha Nirmalkar Aged About 30 Years
Patwari Halka No. 9, R/o Village Karmu, Headquarter Hadahuli, R N
M Than Khamhariya , District Bemetara, Chhattisgarh. --- **Petitioner**

Versus

- State of Chhattisgarh through Station House Officer, Police Station E
O W/ S E B, District Bemetara, Chhattisgarh. --- **Respondent**

For the applicant	:	Mr. Vinod Tekam, Advocate
For the Respondent	:	Mr. Aupam Dubey, Dy. Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

28.03.2017

1. This petition is filed against the order dated 22.11.2016 passed by the learned Special Judge (P.C.Act), Bemetara, wherein an application u/s 19(4) of the Prevention of Corruption Act has been dismissed.
2. The petitioner alleged before the Court below that as per the advertisement dated 30.07.2012, the petitioner has appeared for the written examination and after passing such examination, he was selected as Patwari and by the order of Collector dated 03.12.2013 he has undergone training on 03.11.2013 and thereafter he was further appointed by order of the Collector, Bemetara on 18.06.2014 thereby the petitioner was appointed by the Collector Bemetara and according to section 19(c) of the Prevention of Corruption Act, the sanction for prosecution can only be granted by the authority who appoints. Therefore, the sanction which has been granted by another person for prosecution against the applicant is bad in law.

3. A perusal of the order would show that the sanction for prosecution was granted on 16.6.2016 though inadvertently the date was written in the charge sheet as 16.01.2016. The impugned order en-grafts the fact that sanction for prosecution was granted on 02.06.2016 by the department of Law and Legislative Affairs which is in consonance with the earlier notification dated 30.03.1988 whereby the direction was given by the State, therefore, *prima facie*, it was found that the sanction is proper.
4. In the opinion of this Court, if the sanction had not been properly granted against any direction or circular of the State, it can always be confronted during the course of evidence. Further, if the sanctioning authority was not authorized, the same can be substantiated only after the evidence is adduced. The court cannot explore the defence on behalf of applicant accused on an objection raised. Likewise, if the prosecution fails to prove that the sanction was obtained in accordance with the statute and notification, the benefit would go to the accused. On perusal of the order, I do not find that the trial Court has failed to exercise its jurisdiction warranting interference by this Court. Accordingly, this revision is rejected.

**Sd/-
GOUTAM BHADURI
JUDGE**