

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 59 OF 2016

Shri Romesh Mirakhur, age 54 years]
Indian Inhabitant of Mumbai having]
Office at Bank of India, Star House -2 C-]
4, G, Block, 6th Floor, Bandra Kurla]
Complex, Bandra (East), Mumbai 400]
051, and residing at C-102, Bank of]
India, Nirman Towers, Rajmata Jijabai]
Road, Andheri (E), Mumbai 400 093.]

.....Petitioner
(Orig.Accused No.21 in
CBI Spl.Case No.117 of
2013)

Versus

1 The State of Maharashtra]
1. Central Bureau of Investigation,]
A Economic Offences Wing, Mumbai,]
having office at Universal Insurance]
Building 4th Floor, Sir P.M.Road, Fort,]
Mumbai.]
2 Shri Tarlochan Singh, age 61 years,]
Indian Inhabitant of Mumbai, General]
Manager and Competent Authority]
(since Retired), Bank of India, Main]
Branch, M. G. Road, Fort, Mumbai –]
400 001.]
3 Bank of India, Main Branch,]
M.G.Road,Fort, Mumbai – 400001.]

.....Respondents

Mr. Manoj S. Mohite i/b. Mr.Shantanu Rajendra Phanse, advocate for the petitioner.
Mrs. P. P. Shinde, APP for the State.
Ms. Rebecca Gonsalvez, advocate for the CBI.
Mrs.Racheeta Dhuru along with Ms.Minal S. Naik i/b. Nahush Shah Legal, advocates for the respondent Nos. 2 and 3.

**CORAM : RANJIT MORE &
SMT.SADHANA JADHAV, JJ.**

DATE OF RESERVING : 13th SEPTEMBER, 2017.

DATE OF PRONOUNCEMENT : 12th OCTOBER, 2017.

JUDGMENT : (Per Ranjit More, J.)

Rule. Rule is made returnable forthwith and by consent of learned counsel for the respective parties, the matter is heard finally.

2. Heard Mr. Mohite, learned counsel for the petitioner, Ms.Gonsalvez, learned counsel for the Central Bureau of Investigation (CBI), Mrs.Dhuru, learned counsel for the respondent Nos. 2 and 3 and Ms.Shinde, learned APP for the State.

3. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973, to challenge the order dated 22nd January, 2015, passed by the respondent No.2- the then General Manager and competent authority of Bank of India according sanction for the petitioner's prosecution under Section 19(1) (c) of the Prevention of Corruption Act, 1988 (for the sake of brevity " the PC Act") and Section 120-B read with Section 420, 467, 468 and 471 of the Indian Penal Code, 1860 (for the sake of brevity "the IPC").

4. On 24th February, 2012, FIR bearing RC NO.5/E/2012 was registered by the CBI-EOW under Sections 120-B, 420, 467, 468 and 471 of the IPC on the written complaint of Shibaram Naskar, Dy.Zonal Manager, Mumbai Zone, Bank of India, Mumbai, against Mr.Rajesh Choradia, Mr. Sachin Shah, Mr.Sajjan Kumar and Mr.Govind Salgaonkar and others. During investigation, the role of the petitioner in the said crime was surfaced and, therefore, the petitioner was arraigned as accused No.21. On 10th September, 2013, the CBI applied to the Bank of India for sanction to prosecute petitioner under Section 19 of the PC Act. On 30th December, 2013, the CBI filed charge-sheet in the Court of the Special Judge against the accused including the present petitioner in the said CR for the offences punishable under Section 120-B read with Sections 420, 467, 468 and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act. The charge-sheet makes a reference that so far as the petitioner is concerned, his sanction order is awaited and the same will be filed in the Special Court immediately on its receipt. The allegation against the petitioner is that, though he was aware about the negotiations of bills under the forged Letters of Credit, he allowed negotiation of the said bills in favour of the 3rd party (non-customer of the Bank) without following Bank's guidelines, KYC norms, verifying genuineness of business and in the absence of important documents such as delivery challan duly signed by the applicant of LC for receipt of

goods and also failed to report the same to higher authorities as attempted fraud.

5. The case of the petitioner is that the competent authority refused sanction to prosecute him in the subject FIR on three occasions viz. 26th October, 2013, 1st March, 2014 and 25th July, 2014. Despite this, on the 4th occasion, the competent authority granted sanction to prosecute him by sanction order dated 22nd January, 2015. It is the petitioner's contention that once a sanction to prosecute is refused by the competent authority by passing an order, the same cannot be reviewed or reconsidered subsequently in the absence of change in circumstances/material.

6. On the contrary, the stand of the respondent No.2-competent authority, respondent No.3-Bank of India and CBI is that, there is only one sanction order authorizing the petitioner's prosecution which is impugned in the present petition and, earlier orders, which the petitioner has referred as sanctions orders, are not at all sanction orders but they are simply tentative views regarding petitioner's prosecution given by the competent authority for the consideration of the higher authorities of the Bank.

7. Mr. Mohite, learned counsel for the petitioner, took us through the documents at Exhibits "A, B and C", which he obtained under the Right to Information Act, 2005 and submitted that the competent authority in an unequivocal terms rejected the sanction for the petitioner's prosecution. He submitted that there is no change in the circumstances or any additional material against the petitioner so as to warrant sanction for the petitioner's prosecution at the subsequent stage. He relied upon the decision in **State of Himachal Pradesh versus Nishant Sareen (2010) 14 SCC 527** in support of his contention in this regard and submitted that the impugned decision deserves to be quashed and set-aside.

8. Mrs. Dhuru, learned counsel for the respondent Nos.2 and 3 contested the petition. She relied upon the affidavit of the respondent No.2 filed in reply to the petition. She maintained that there is only one order of sanction, which is impugned in the present petition and, the earlier orders, which the petitioner claimed to be orders refusing sanction to prosecute him, are merely tentative views and cannot be termed as sanction orders.

9. Ms. Gonsalvez, learned counsel for the CBI, placed on record confidential correspondence between the Bank of India, CBI and the

Central Vigilance Commission (for the sake of brevity “the CVC”) and pointed out that since there was a difference of opinion, the matter regarding the petitioner's sanction was referred to the CVC, which ultimately advised grant of sanction for the petitioner's prosecution for the said offences. Ms. Gonsalvez also maintained that there is only one sanction, which is impugned in the present petition and, the earlier orders relied upon the petitioner, are only tentative views/internal correspondence. It is reiterated by Ms. Gonsalvez that the earlier communications indicating refusal to grant sanction are only expression of opinion. She submitted that the impugned sanction was received by the CBI on 30th January, 2015 from the Chief Vigilance Officer (for the sake of brevity “the CVO”) -Bank of India. Thereafter, the CBI placed the sanction order on record in CBI Special Case no.117 of 2013 and the Court took cognizance and issued summons to the petitioner on 9th September, 2015. She submitted that since the Court has taken cognizance of the sanction order and issued summons to the petitioner, the sanction order can only be challenged at the stage of trial. She has relied upon Division Bench decision of this Court in **Vivek Batra versus Union of India and ors. 2014 CRI. L.J.450. and** and the decisions of the Apex Court in **Dinesh Kumar versus Chairman, Airport Authority of India and anr. AIR 2012 SCC 858** and **C.B.I. Versus Ashok Kumar Aggarwal AIR 2014 SCC 827**.

10. We have gone through the petition along with the annexures thereto especially "Exhibits A, B and C", under which, the petitioner claimed that sanction to prosecute him had been refused. "Exhibit A" is a tabular chart in respect of the petitioner in the subject FIR registered by the CBI-EOW Mumbai. The first column pertains to allegations levelled by CBI, the 2nd column is about the comments of the competent authority and the 3rd column is about comments of the CVO. The allegations of the CBI in the first column are noted by the competent authority in the second column. So far as the 3rd column is concerned, the same is blank and there are no notings as such. The chart runs into 13 pages viz. page Nos. 48 to 61. At the end of the chart, in the 2nd column, the General Manager, National Banking Group (W), who is the competent authority has signed the same and recorded the comment that he is not inclined to grant sanction for prosecution of the petitioner. The document at "Exhibit B" is also a tabular chart in respect of the observations of the CVC dated 5th February, 2014, pertaining to the petitioner in the matter of fraud in discounting of letters of credit at Chakala Branch. This chart has three columns. The 1st column is about CVC observations, the 2nd column is about factual position and the 3rd column is about comments of the competent authority. The chart runs into 3 pages. At the end of the 3rd column of the said chart, the competent authority opined that the Bank has initiated departmental

action against the petitioner in consultation with CVC for service misconduct reportedly committed by him and that the Bank is free to impose any penalty permissible under the Rules, that too after consulting the CVC, he did not find any ground and justification to accord sanction for prosecution against the petitioner. The 3rd document runs into 13 pages viz. pages 66 to 78. In the first paragraph of this document, it is mentioned that it has been brought to the notice of the competent authority that the bank has been advised by the CVC to accord sanction for prosecution against the petitioner on the grounds mentioned in clause (1) of the chart. In the second paragraph, it is stated that the comments of the competent authority are being given on the basis of the Bank's record. Thus, this document has two columns. The 1st column is about ground for according sanction for prosecution as per advice of Expert Committee of CVC and the 2nd column is about the comments of the competent authority. At paragraph 6 of the said document, the competent authority has opined to decline sanction for petitioner's prosecution.

11. The confidential correspondence placed on record by Ms. Gonsalvez revealed that Bank of India, vide their letter dated 19th November, 2013, informed the CBI that the matter has been referred to CVC for their advise regarding sanction for prosecution

against the petitioner. The CVC, thereafter, by its letter dated 9th January, 2014, informed the CBI that a joint meeting had been convened on 22nd January, 2014 with the Joint Director, CBI, EO-Zone II, Mumbai and the CVO, Bank of India. Accordingly, the joint meeting was held on 22nd January, 2014, in the office of the CVC, New Delhi, which was attended by the Joint Director, CBI, EO-Zone II, Mumbai, I.O. and concerned officials from the Bank of India. After analyzing the arguments of the respective parties in the joint meeting and after examining the case in its entirety, the CVC observed that there appears to be a case for prosecution against the petitioner and advised sanction for the petitioner's prosecution and, accordingly, the CVC vide their letter dated 5th February, 2014 informed the CBI and Bank of India about the same. The CVC, thereafter, by its letter dated 7th May, 2014, informed the CBI that a meeting of a Committee of Experts proposed to be chaired by the Vigilance Commissioner, CVC, has been proposed on 20th May, 2014. Accordingly, the meeting of Committee of Experts was held in the office of the CVC, New Delhi on 20th May, 2014, which was attended by the Joint Director, CBI, EO-Zone II, Mumbai, I.O. and concerned officials from the Bank of India. In pursuance of the decision taken in this meeting, the CVC vide its letter dated 16th June, 2014, informed the CBI and Bank of India that it had accepted the recommendations of the Expert Committee and advised grant of sanction for prosecution against

the petitioner. The respondent No.2 thereafter passed a detailed order granting sanction for the petitioner's prosecution on 22nd January, 2015, which was forwarded to the CBI on 30th January, 2015 and the CBI placed the same on record in CBI Special Case No.117 of 2013 on 11th March, 2015. The Court, thereafter, took cognizance of the same and issued summons to the petitioner on 9th September, 2015.

12. In the light of the above correspondence between the CVC, Bank of India and CBI, let us consider the rival contentions of the parties.

The petitioner claimed that earlier on three occasions, sanction to prosecute him was refused and by the impugned order, sanction for his prosecution was granted without there being any change in circumstances/any additional material. On the contrary, it is the stand of respondents that there is only one sanction order and, the documents, on which, the petitioner has relied are only internal correspondence.

The question similar to the one involved in the present petition fell for consideration before a Division Bench of this Court in **Vivek Batra (supra)**. In this case, the petitioner argued that by an order dated 27th April, 2012, the competent authority refused sanction to prosecute him. However, subsequently a new incumbent acting as a competent authority issued order dated 9th October, 2012, thereby

granting sanction for petitioner's prosecution and that order is impugned in the petition. The argument of the petitioner was that the second decision dated 9th October, 2012 is vitiated in law as the said decision amounts to review of the order dated 27th April, 2012, refusing sanction to prosecute the petitioner. It was also further argued that the new incumbent acting as competent authority could not have reviewed or reconsidered the earlier decision to refuse sanction save and except in exceptional circumstances.

Per contra, the learned counsel for the respondent-Union of India submitted that there is no merit in the petitioner's argument that on 27th April, 2012, the sanctioning authority passed an order refusing the sanction for his prosecution. It was submitted that there was no such order or decision and, therefore, there was no question of it being reviewed by the sanctioning authority. It was further submitted that there was only one order on the point of sanction and that is the impugned order dated 9th October, 2012, granting sanction to prosecute the petitioner. Prior to this, there has been no order or decision, but the file noting would indicate that it was a continuing process of deliberations and discussions. Such deliberations and discussions at a departmental level is a usual and normal thing. It was further submitted that the notings in the file during the course of department discussions and deliberations do not constitute an order or decision of the

Government or the competent authority. At the best, these notings are opinions of several officers in the concerned Department.

The Division Bench relied upon the decision of a Five Judge Constitutional Bench of the Apex Court in **Bachhittar Singh v. State of Punjab reported in AIR 1963 SC 395** and especially paragraphs 9 and 10 therein, which reads as follows :

“9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by cl.(1) of Art.166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a larger number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of Pepsu provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the

Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the 'order' of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the State of Punjab v. Sodhi Sukhdev Singh, AIR 1961 SC 493 at P.512:

"Mr.Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent."

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over against and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

The Division Bench thereafter made following observations in paragraph 41 of its judgment which reads as under :

“41. We have seen this note and very carefully. What we find from perusal thereof is that the DOP&T has not agreed with the views of the Department of Finance. Rather it cautions and once again reiterates the position that insufficiency of evidence collected by the CBI is a matter which can be tested in a Court of law. That is not within the province of the Sanctioning Authority. The views of the DOP&T are conveyed to the Department of Finance and the Department of Revenue in order to enable the Disciplinary Authority i.e. Minister of Finance to take a final decision in the matter and pass a final speaking order. This communication far from directing any review or seeking to review a decision or order earlier made, reiterates the legal position. It outlines the procedure for passing an order or taking a decision in the matter. It is nothing but a view of the DOP&T expressed in writing and communicated to the Department of Finance. Thus, from the available record one cannot find any order refusing the sanction, but only issuing an administrative warning or imposing minor penalty on the Petitioner. There is no such order as is claimed. Therefore, it is not as if the circular dated 03.05.2012 being issued by the DOP&T that an exercise in reviewing the earlier decision or order particularly refusing the sanction commenced. There was no order and hence, no question arises of its review. The only order that we find is the order granting the sanction and that is made on 09.10.2012. It is duly communicated. Once this is the only order, then, there is no question of reviewing any earlier order or decision. If the order dated 09.10.2012 is the original order and not an order in review as claimed, then, the whole foundation for the argument of absence of sanction must fail. This edifice is built upon only the file notings and which according to Mr. Desai culminate in a final order refusing

the sanction. Once we have found on perusal of all files that there are several notings, views and opinions and there is no order as claimed and particularly dated 27.04.2012, then, the order of sanction dated 09.10.2012 is the only order. It is not an order made in review. In our view, it is an order made after considering all views and opinions and carefully and fully examining the materials.”

Thus the Division Bench came to the conclusion that the order dated 9th October, 2012 is the only order of sanction for prosecution and there is no other order as claimed by the petitioner particularly order dated 27th April, 2012.

13. Reverting to the present case, in order to see whether the documents at Exhibits A, B and C are the orders refusing sanction to prosecute petitioner or there is only one order according sanction to prosecute the petitioner, which is impugned in the petition, a reference must be made to the document at “Exhibit E” annexed by the petitioner to the petition. This document is a letter dated 5th February, 2015, written by the petitioner to the Public Information Officer, Bank of India, Head Office, under the Right to Information Act, 2005. By this letter, the petitioner sought information of several queries. For our purpose, queries at serial Nos. 2, 3 and 7.a. are relevant which are reproduced herein below :

“1....

2. Whether at any point of time the sanction for prosecution of the

applicant was declined by the competent authority of the Bank? If yes please advise the number of times it was declined and provide copy of the findings/comments, letter/communication etc. declining the sanction for prosecution by the competent Authority of the Bank.

3. After declining the sanction for prosecution of the Applicant, whether the competent/sanctioning/disciplinary authority has reviewed their earlier decision of declining the sanction for prosecution of the applicant? If yes, please provide copy of communication issued by such authority giving sanction for prosecution of the applicant.

4....

7....

a. Dates on which the request for sanction of prosecution in the above cases of Chakala Branch was declined by the General Manager (NBG West) sometime during the period from 01.9.2013 to till date."

At "Exhibit F" is a letter dated 26th February, 2015, by which, the Central Public Information Officer-Bank of India replied to the above letter of the petitioner dated 5th February, 2015. The reply to query Nos.1 to 3 is as follows:

*"Reply to points nos 1 to 3 : The Competent Authority had offered his tentative views on sanction for prosecution which were reviewed on 3 occasions in consultation with CBI/CVC/Ministry of Finance (DFS). As regards the copies of the statements of witnesses and other papers which you have sought for, **please note that the same cannot be parted with, as the papers sought for are related to the report of Central Bureau of Investigation (CBI), an institution exempted from the purview of RTI Act as per second schedule of the Act. For the aforesaid reasons we are***

unable to provide the information sought for in these points."

Reply to query No.7.a. is as under :

"Reply to point No.7(b) : The tentative views regarding prosecution was given by the Controlling Authority, General Manager (NBG West) on 26.10.2013, 01.03.2014 and 25.07.2014."

Thus the above reply makes it clear that the documents at Exhibits A, B and C, on which the petitioner has heavily relied upon in order to contend that earlier sanction for his prosecution was rejected, are only tentative views of the competent authority and they are not final orders refusing sanction for his prosecution.

14. Be that as it may, as referred above the "Exhibits A, B and C" are in tabular chart, in which, allegations of the CBI against the petitioner are mentioned and the same are commented upon by the competent authority. However, in pursuant of this tabular chart, neither separate orders were passed by the competent authority nor the same was communicated to the CBI, therefore, we are of the considered opinion that documents at "Exhibits A, B and C" are merely tentative views of the competent authority or departmental notings and, by no stretch of imagination, they can be construed as orders refusing sanction for the petitioner's prosecution.

15. The record revealed that the respondent No.2-competent authority passed the sanction order against the petitioner and communicated the same to the CVO, Head Office, Vigilance Department by his letter dated 22nd January, 2015. The CVO, in turn, by his letter dated 30th January, 2015 forwarded the sanction order to the CBI. Thereafter, the CBI filed the same on record in CBI Special Case No.117 of 2013. Thus, this order is the only order which is communicated to the CBI on the basis of which cognizance is taken by the Special Court and process is issued against the petitioner.

16. This takes us to consider the decision of the Apex Court in **Nishant Sareen (supra)** cited by Mr. Mohite, learned counsel for the petitioner. The Apex Court has made the following observations in paragraphs 12 and 13 which are reproduced hereinbelow:

"12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of

the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course."

Perusal of the above observations, makes it clear that mere change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, it is permissible in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority. It is clear from the ratio of this decision that once the sanction order is refused, in the absence of fresh materials, it cannot be reviewed or reconsidered. In our considered opinion, this decision does not come to the rescue of the petition inasmuch as we have held that there is only one sanction order and the earlier documents, on which, the petitioner has heavily relied upon are merely tentative views or department notings.

17. In **Dinesh Kumar (supra)**, the appellant therein was being prosecuted for the offences punishable under the PC Act. On 4th November, 2009, the sanctioning authority granted sanction to prosecute the appellant. After the sanction order was challenged by the appellant in the High Court on 26th November, 2009, the charge-sheet was filed by the CBI against the appellant on 30th November, 2009 in the Court of Special Judge, Ernakulam. Following that, summons came to be issued to the appellant on 18th December, 2009. The learned Single Judge of the High Court dismissed the writ petition. The appellant preferred an intra-court appeal before the Division Bench of the High Court. The Division Bench dismissed the appeal on 29th September, 2010 and observed that it was open to the appellant to question the validity of the sanction order during trial on all possible grounds and the CBI could also justify the order of granting sanction before the Trial Judge. The argument of the appellant before the Apex Court was that he had challenged the legality and validity of the sanction order at the first available opportunity, even before the charge-sheet was filed and, therefore, the Division Bench was not justified in relegating the appellant to agitate the question of validity of sanction order in the course of trial. The appeal was opposed by the respondent by contending that where validity of the sanction order is sought to be challenged on the ground of non-application of mind, such challenge can only be made in the course

of trial. The Division Bench of the Apex Court relied upon the decision of the Apex Court in **Parkash Singh Badal and anr. versus State of Punjab and ors. AIR 2007 SC 1274** and held that the issue of absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. This decision is squarely applicable to present case as we have already held that there is only one sanction order, and the legality and validity of the same can be challenged in the course of trial.

Mr. Mohite, learned counsel for the petitioner, distinguished this decision by submitting that he has not challenged the sanction on the ground of validity on account of non-application of mind but, he has challenged the impugned order as the same is passed in the absence of any fresh material. We are not inclined to accept this submission as we have already held that there is only one sanction order.

18. The issue as to at which stage the validity of sanction order can be raised fell for consideration before the Apex Court in **Ashok Kumar Aggarwal (Supra)**. The Apex Court followed the earlier decision of the Division Bench in **Dinesh Kumar (supra)** and in paragraph 47 held that undoubtedly, the stage of examining the validity of sanction is during the trial.

19. Taking totality of the facts and circumstances into consideration, we find that there is only one sanction order which is impugned in this petition. The contention of the petitioner that earlier thrice sanction was refused cannot be accepted and, therefore, the validity of the impugned sanction order cannot be questioned during the course of trial. The petition is devoid of any merit and the same is, accordingly, dismissed. Rule is discharged.

[SMT. SADHANA JADHAV, J.]

[RANJIT MORE, J.]