THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL Petition No.5167 of 2016

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, ('the Code', for short) is filed by the petitioner-A8 requesting to quash the charge sheet against him in C.C.No.28 of 2013 [in RC.No.19(A)/2011-CBI] on the file of the learned Principal Special Judge for Trial of CBI cases, Nampally, Hyderabad.

2. I have heard the submissions of *Sri Sivaraju Srinivas*, learned counsel for the petitioner-A8, and of *Sri K. Surender*, learned Special Public Prosecutor for CBI representing the respondents. I have perused the material record.

3. Before proceeding further, it is necessary to state the essential facts in a nutshell, which are as follows:

3.1 The afore-stated crime was registered pursuant to the orders, dated 10.08.2011, of this Court in W.P.Nos.794 and 6604 of 2010 filed by one P.Shankar Rao, MLA, Secunderabad Cantonment, and late Yerran naidu, former MP. After investigation, charge sheet was filed for the offences under Sections 120-B read with 420, 409, 420, 468, 471, 477-A of IPC and Sections 9, 11, 12, 13(2) read with 13(1)(c)&(d) of Prevention of Corruption Act, 1988. Amongst the 14 accused, the petitioner herein is the 8th accused. At the relevant time, he worked as the Principal Secretary, Industries & Commerce Department, Government of Andhra Pradesh. He is a public servant as per the provisions of the PC Act.

3.2 The brief facts of the case of the prosecution are as under:

Late Y.S.Rajasekhar Reddy, who is the father of Y.S.Jaganmohan reddy/A1 (hereinafter, 'A1') was formerly the Chief Minister of erstwhile State of Andhra Pradesh. A1 and his father, who was holding high constitutional position, have adopted several ingenious ways to amass illegal wealth which resulted in great public injury. Y.S.Rajasekhar Reddy, during his stint as Chief Minister from May, 2004 to August, 2009, abused his public office to favour his son, A1. In that direction, the modus operandi that was followed was to dole out public properties, allot/grant licences, projects, SEZs, mining leases, ports, real estate permissions and other benefits to the persons of their choice in violation of the established norms and procedures, for *quid-pro-quo*. Such beneficiaries in turn gave bribes to A1 under the guise of purchasing shares at huge and unsubstantiated premium of M/s. Jagati Publications Limited and other Companies floated by him. The role of A1 in the process was to exercise influence with his father and other public servants and to see that the benefits were conferred on the chosen persons and in the process receive illegal gratifications amounting to thousands of Crores of rupees. Since May, 2004, A1 started floating number of Companies. Such Companies were floated by A1 with the sole objective of laundering the ill-gotten wealth obtained by misusing the office of his father. He floated Jagati Publications Private Limited, on 14.06.2006, with an objective of conducting media business with the ill gotten wealth. As on 31.03.2010, it had a paid up capital and share premium of Rs.844.129 Crores. While the promoters and their group companies have subscribed to share capital at par, all other shareholders alleged to have subscribed to the shares at a uniform premium of Rs.350/- per share even before the Company commenced its commercial operations. The shareholders included several small Companies who were not having any profits to their credits. M/s. Jagati Publications Ltd., during the last two years, continued to receive investments from the same Companies at the same premium making the total investment as Rs.1,246/- Crores though this Company alleged to have accumulated losses of Rs.349/- Crores. The Government of Andhra Pradesh awarded VANPIC project and allotted more than 15,000 acres of land in Prakasam and Guntur Districts to the Companies promoted by Nimmagadda

Prasad, by violating all the norms and further gave several concessions under Stamp & Registration Acts. Several G.Os by I & I Department and Revenue Department were issued for alienation of land in favour M/s. VANPIC projects pvt. Ltd. As a *quid-pro-quo* Nimmagadda Prasad invested at a very high premium in M/s. Carmel Asia Holdings Pvt. Ltd., M/s.Bharathi Cement Corporation Pvt. Ltd., M/s.Jagati Publications Pvt., Ltd./A14 etcetera through his group Companies. During investigation, it came to light that Nimmagadda Prasad-A3 in C.C.No.14 of 2012 of VANPIC project joined M/s. Indu Projects Ltd., in the year 2006 as a Director by investing about Rs.33.00 Crores initially and I. Syam Prasad Reddy and M/s.Indu Projects Ltd., paid Rs.20.00 Crores to M/s. Carmel Asia Holdings Pvt. Ltd., and Rs.50.00 Crores to M/s.Jagati Publications Ltd., of A1, in the year 2007 indirectly, routed in different layers. The above said Rs.70 Crores forms part of Rs.180.50 Crores paid by Nimmagadda Prasad to A1 and his group Companies in the guise of investments during the years 2006-07. M/s.Indu Projects Ltd., received many undue favours from the Government of Andhra Pradesh namely 250 acres of land at Shamshabad for M/s.Indu Techzone Pvt., Ltd., and 8,841 acres of land in Ananthapur District for their M/s.Lepakshi Knowledge Hub Pvt., Ltd., etcetera. These investments from various persons and Companies including Nimmagadda Prasad and I. Syam Prasad Reddy (A3) and group of companies are nothing but bribe money paid by beneficiary companies and individuals who got allotment of lands for Special Economic Zones (SEZs), contracts for irrigation projects, special relaxation/permissions for real estate ventures, mines etcetera. This is kick back money paid to A1 who has exercised his personal influence over his father and benefited them at the cost of public exchequer. Except the beneficiaries, no other person allegedly bought shares in M/s.Jagati Publications Ltd/A14 at premium rate. Thus, it is alleged that they are the consequential result of illegal gains from the office of the Chief Minister and other persons, who are holding important positions in the Government. The

Company, which was incorporated, on 14.06.2006, and accumulated a business loss of Rs.350 Crores in four years could get a total investment of Rs.1,246.00 Crores.

3.3 It is apt to now refer to the role of the present petitioner-A8 as Principal Secretary of Industries and Commerce Department in processing of the file relating to signing of MOA with Lepakshi Knowledge Hub ('hereinafter 'LKH' for brevity), which was selected as developer by APIIC and allotment of part of the land to them, as stated in the charge sheet. The allegations in the charge sheet referring to the role and complicity of the petitioner-A8 verbatim are as under:

> *"Investigation revealed that, on 09.06.2008, in furtherance of criminal conspiracy, A7 has forwarded a draft record of discussions on 07.06.2008 to A8, who got them approved by the Chief Minister and circulated them for Revenue Department; Revenue officials of Ananthapur District etc., to acquire and alienate Ac.11,352.67 of Government/assigned land to M/s.LKH/A5, through APIIC knowing fully well that the decisions therein are in gross violation of A.P. Government Business Rules.*
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> *It is further revealed that A8 in furtherance of criminal conspiracy dishonestly approved the Note on the same day and circulated the file along with the draft MOA within built contradictions to other departments including APIIC Revenue, Energy, MA & UD, IT & C, TR & B, I&I etc. seeking their remarks/opinion on the incentives/concessions proposed to LKH/A5.*
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> *It is further revealed that with regard to the suggestions of Law Department, A8 has intentionally noted that the land issue was discussed in the review meeting in the CM's camp office meeting on 07.06.2008 wherein it was decided to acquire lands and the Revenue Department was taking action to place the proposals before the Empowered Committee to take a decision in respect of market value etc. and therefore, it may not be possible to incorporate Sy.No., extent and area of the lands in the draft MOA.*
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> *It is further revealed that A8 has also added that in view of the absence of details of lads, a new clause which states that government will take speedy steps for allotment of required land to the project through APIIC was incorporated. ….A8 who attended the meeting and also circulated the Minutes was obviously aware of the fact had the option of seeking the required details either from APIIC or the Revenue Department but wilfully chose not to act upon the suggestions of Law Department.*

Investigation revealed that A8 with dishonest intentions did not exercise any sort of due diligence to protect the interest of the Government of Andhra Pradesh and intentionally did not bring out clarity on the issue of total extent of lands proposed to be allotted to LKH through the MOA and thereby extended undue pecuniary advantage to the accused persons/private companies, by gross abuse of his official position as Principal Secretary, Industries & Commerce Department.

A8 in his notings further noted that Law Department has suggested to incorporate arbitration clause in the draft MOA and a fresh draft MOA was prepared. Investigation revealed that the said clause states that any disputes regarding any of the clauses in the agreement shall be subject to review initially by Government of Andhra Pradesh followed by conciliation among the parties and thereafter through a reference to an umpire to be appointed by the arbitrators. It is revealed that the arbitration clause does not form part of the Law Department remarks, dated 21.11.2008.

With the above notings, A8 has circulated the file to the Finance Department.

It is revealed that A8 has not exercised any due diligence to independently verify the claims of A6 or his credentials to invest about Rs.10,000 Crore, the key issue raised by the Finance Department. It is revealed that A7 also addressed a letter on 04.12.2008 which was received by A8 on 05.12.2008.

It is pertinent to note that the assertion of A8 is false in view of the fact that MOA says that the concessions and terms of the MOA and Annexure are specially enforceable by the Company against the Government of Andhra Pradesh.

On 08.12.2008, A8 approved the Note and circulated the file to the Finance Department. It is revealed that the Finance Department has agreed to the proposals on the condition that as per the obligations indicated and agreed to by the State Government in the case of M/s.Caparo Engg. India Pvt. Ltd.

A8 wilfully ignored the differences and tried to compare the two cases and wilfully suppressed the fact that vide their letter dated 15.11.2008, APIIC had sought permission to cancel the agreement with M/s.Caparo Engg.India Pvt.Ltd., on the ground that the company was furnishing the requisite information.

The Principal Secretary, Finance Department has stated that the Industries & Commerce Department, being the administrative department for the project have to apply their mind and judgment regarding any investment proposals and A8 apparently conveyed the satisfaction with the proposals. Under the circumstances, the Finance Department did not have any further say in this regard.

Accordingly, on 22.12.2008 MOA was signed between Government of Andhra Pradesh represented by A8 and LKH/A5 represented by its Managing Director/A6.

Investigation revealed that the MOA dated 22.12.2008 signed by A8 contained the provisions to provide training support incentive to LKH @ Rs.10,000/- per person up to 50,000 persons, against the opinion of LET & F Department.

Investigation revealed that that views of LET & F Departments view on labour laws have not been clearly brought out in the MOA, signed by A8.

These facts clearly establish that A8 was acting in furtherance of criminal conspiracy with other accused persons and by abusing his official position as Principal Secretary, Industries & Commerce Department facilitated private persons/companies obtain pecuniary advantage and wilfully incorporated clauses to cause prospective wrongful loss to the Government to several hundred Crore of rupees.

The MOA contains many clauses including provisions for allotment of vast extents of lands for which the competent decision making authority is the Council of Ministers. However, A8 has signed the MOA without obtaining prior approval from the Council of Ministers.

At this juncture, A8 directed to initiate action to circulate the file to the Chief Minister seeking orders to place the matter before the Council of Ministers and to seek ratification for the MOA dated 22.12.2008.

On 22.01.2009, A8 circulated the file to the Finance Department. It is revealed that the Principal Secretary, Finance (R & E) has advised that the vesting of benefits including land is advised to be made conditional subject to the fulfilment and enforceability of counterpart obligations by the developers and is to be built into the agreement and returned the file on the same day.

A8 noted that the agreement was already signed. However, the observations of Finance Department would be taken into account and specific orders would be issued to the developer with regard to the obligations to be fulfilled for implementation of the project in consultation with the Finance Department and circulated the file to the Minister Dr SMT J. Geetha Reddy/A9 who approved the note on 24.01.2009 and forwarded to the Chief Minister Dr. Y.S. Rajasekhara reddy, the then Chief Minister approved the file on 25.01.2009 according permission to bring the matter before the Council of Ministers.

The remarks have given the Industries Department one more opportunity to exercise due diligence before going further. However, wilfully ignoring the above duty, A8, preferred to brush aside the expert opinion of Finance Department on the strength of a few documents submitted by A6, LKH/A5 with mutual inconsistencies.

In the case of LKH, A8 wilfully chose to disregard the suggestions of Finance Department stating that "it is desirable to have financial implication of the concessions proposed".

On 27.01.2009, A8 prepared a draft memorandum to the Council of Ministers and circulated the file to the Minister for approval before placing the same before the Council of Ministers.

A8 signed check list as required under Business Rules and forwarded three sets of the Memorandum for placing the matter before the Council of Ministers in their next meeting.

At Column 2 of the check list, A8 certified that the opinion of Finance Department has been specifically incorporated in the Cabinet Memorandum.

On 21.02.2009 A8 issued G.O.Rt.no.112 Industries & Commerce (Inf) Department, dated 21.02.2009, in this regard.

Investigation revealed that the Council Resolution speaks about establishment of integrated global knowledge hub on an area of 10,000 acres of land. However, the GO issued by A8 is silent on the extent of lands.

This fact should be juxtaposed with the fact that MOA is also silent on the total extent of lands proposed to be allotted to the Company.

In the file notings, A8 himself referred to the CM's meeting held on 07.06.2008 in which the Chief Minister has issued directions to the District Collector, Ananthapur to process the proposals of APIIC for alienation of Ac.11.352.67 of government/assigned lands in a fixed time line. Admittedly, these details can be easily procured from APIIC and got them incorporated in the MOA.

However, A8 wilfully chose not to comply with the expert opinion of the Law Department and surprisingly incorporated another clause 'Government of AP will take speedy steps for allotment of required lands to the project through the APIIC at the rate per acre fixed by the Government.'

Investigation revealed that the MOA dated 22.12.2008 signed by A8 contains clauses at 3.6 – water; Cl.2.5 – training support; Cl.3.7 power at subsidized rates in variance the opinions of/agreed to by the respective departments which have far reaching consequences on the State exchequer with potential wrongful loss to the tune of hundreds of Crore of rupees.

Former Chief Secretary has categorically sated that the Industries Department headed by Dr (SMt) . Geetha Reddy/A9, Minister for Major Industries and A8, Principal Secretary should have verified he authenticity and ability of A6 and Kalyan Chakravarthy in implementing the project. .....

The above acts of omissions and commissions forming a series of occurrences clearly establish that A8 and A9 have committed the offences of criminal conspiracy; have obtained the Cabinet approval under deception amounting to cheating and in the process have dishonestly facilitated wrongful disposal of government lands/concessions/exemptions etc. ny abusing their official positions and thereby committed the offences of criminal misconduct as defined in the PC Act, 1988."

4. In the backdrop of the case of the prosecution, it is necessary to refer to the cases of the parties in this criminal petition filed for quashing the charge sheet against the petitioner-A8.

5. The case of the petitioner-A8 and the submissions made on his behalf, in brief, are as follows:

The petitioner is a senior citizen and a senior IAS officer at the relevant time. He is due to retire at the time of filing of the petition. The case on hand is a high profile case. The petitioner's name does not find a place in the FIR. The claim of the CBI is that the petitioner-A8 is found to have been involved in the alleged illegal transactions of A1 on account of the petitioner holding the Office of the Principal Secretary, Industry & Commerce Department at the relevant point of time. Even the allegations in the charge sheet filed in the Calendar Case reflect that the acts of the petitioner-A8 are official acts performed in due discharge of his duties and all such acts have been subsequently ratified by the Council of Ministers. Though the charge sheet runs into 134 pages, the name of the petitioner figures at about 35 places and a bare reading of the charge sheet makes it clear that there are no allegations attributing overt acts or covert acts to the petitioner to justify his prosecution under the afore-sated provisions of the IPC. The only allegations are that he participated in the meetings and circulated files to various departments of the Government and has entered into an MOU on behalf of the Government of the erstwhile State of Andhra Pradesh in his official capacity. Admittedly, the acts have been done in discharge of his official duties alone and all his acts have been subsequently ratified by the Council of Ministers. Therefore, there cannot be a question of prosecuting the petitioner. There is justification for every act of the petitioner done in due discharge of his official duties and there are no allegations indicating that the offences alleged have been committed with *mens rea,* which is a necessary element; and, *mens rea* is conspicuously absent. Further, there are no allegations that the petitioner-A8 obtained any advantage, pecuniary or otherwise, on account of participation in so called and alleged conspiracy. The material brought on record by the investigating agency even if it is considered on its face value is not sufficient to show a *prima facie* case against the petitioner-A8 to proceed against him under any particular provision of law. The charges are groundless. There is not even a semblance of case to draw a presumption that the petitioner-A8 committed the alleged offences. The Special Judge has taken cognizance of the offences punishable under the provisions of IPC which are alleged in the charge sheet and has not taken cognizance of the offences punishable under the PC Act as sanction has not yet been accorded. The Government of India, Department of Personnel & Training, passed final orders *vide* proceedings, dated 23.03.2016, refusing sanction to prosecute the petitioner under the provisions of the PC Act. The Government of Andhra Pradesh, in exercise of powers under Section 197 of the Code, issued orders in G.O.Rt.No.604, dated 13.02.2014, expressly refusing sanction for prosecution of the petitioner-A8 for the alleged offences punishable under Section 120-B read with Sections 409 and 420 IPC and also recommended to the Government of India for rejection of sanction for prosecution of the petitioner for the offences punishable under the provisions of the PC Act. According of sanction is mandatory for prosecuting a public servant if the offences alleged are said to have been committed while acting or purporting to act in due discharge of official duties. The sanction of the State Government is essential for prosecuting a public servant. In view of the orders in GORt.no.604, dated 13.02.2014, the petitioner-A8 moved the special court in

July, 2014, by filing CrlMP.No.1000 of 2014 under Section 239 of the Code seeking his discharge. However, no orders are passed in the said application. Permitting the prosecution of the petitioner before the Special Court would amount to gross abuse of the process of the Court.

6. Per contra, learned Special Public Prosecutor contended that a charge can be framed against an accused in case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him under the relevant provisions of law and that in this case the investigating agency succeeded in placing on record sufficient material to show a *prima facie* case and even a strong case to proceed against the petitioner herein and, therefore, there is no truth in the contentions that the charges are groundless. He has drawn the attention of this Court to specific statements of senior and retired officers like K. Pradeep Chandra, P. Rama Kanth Reddy and others who spoke during the course of investigation about the procedures to be followed and the procedures which are intentionally and deliberately violated in the matter by the petitioner-A8. He had also pointed out from the record as to how the circulation of the files was made dishonestly and fraudulently ignoring the suggestions and notings of the officers of the other departments concerned of the Government. He also pointed out as to how the matter was dealt with in post-haste contrary to the public interest and laid emphasis on the fact that the present petitioner in his capacity as Principal Secretary signed the MOA without even obtaining the prior approval from the Council of Ministers and got it ratified subsequently. He further submitted that the request of the petitioner to now conduct a roving enquiry even before the stage of framing of charges on his mere bald submissions that he has not committed any offences and that he only discharged his official duties need not be countenanced. At the end, he submitted that after thorough investigation, the charge sheet has been filed in accordance with procedures and guidelines and that no grounds

much less valid grounds are made out for quashing the charge sheet against the petitioner-A8.

7. I have given detailed and thoughtful consideration to the facts and submissions.

8. It is profitable to refer to the undisputed obtaining legal position. A charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him under a particular penal provision of law. In case the prosecution fails in its primary duty to show a *prima facie* case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith under Section 227 Cr.P.C. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge or at the time of considering the request made by the accused for quashing the proceedings, the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to

common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

9. I have perused the entire material record including the charge sheet. The case of the prosecution and the averments in the charge sheet referring to the acts, overt acts, & omissions of the petitioner-A8 are already extracted supra. It is not in dispute that the investigating agency examined the witnesses and collected & produced documents, which formed the basis for the investigating officer to formulate an opinion against the petitioner-A8 which was expressed in the charge sheet/final report. The learned Special Public Prosecutor forcefully contended that when the material brought on record is

examined for the limited purpose of finding out whether or not a *prima facie* case against the petitioner herein has been made out, this Court would certainly agree that there is undoubtedly material which justifies framing of a charge/s and proceeding with the trial insofar as the present petitioner-A8 is concerned. He would also submit that a careful examination of the entire material, with a view to finding out whether or not the facts emerging there from taken on the face value would disclose the existence of all the ingredients constituting the offences alleged against the petitioner-A8, would lead to a positive conclusion that a *prima facie* case exists against the petitioner-A8. He would finally submit that on the limited evaluation of the said material on record to the extent permissible, it is obvious that there is not only a *prima facie* case but also a strong suspicion and that the investigating agency succeeded in its primary duty in showing a *prima facie* case to proceed against the petitioner-A8. Keeping in view the scope of interference and the ambit of jurisdiction, this Court has to focus on the material to form an opinion whether there is a strong suspicion that the petitioner herein has committed an offence which if put to trial could prove his guilt. Such examination has to be done keeping in view the precedential guidance in the decision in State of Rajasthan v. Fatehkaran Mehdu [2017 (1) ALD (Crl) 842 (SC)]. On such a careful consideration to the extent permissible of the entire material on record, this Court finds some considerable merit in the submissions of the learned Special Public Prosecutor.

10. Dealing now with the next contention it is to be noted that the petitioner is requesting to quash the charge sheet against him on the ground that no sanction was admittedly accorded. It is undisputed that by G.O.Rt.No.604, dated 13.02.2014, the State Government has refused to grant sanction for the prosecution of the petitioner-A8 for the offences punishable under the provisions of the IPC and further recommended to the Government of India for rejection of sanction for the prosecution of the petitioner-A8 for the

offences punishable under the provisions of the P.C. Act. It is also admitted that the Government of India by final orders, dated 23.03.2016, refused to accord sanction for prosecution of the petitioner-A8 even under the provisions of the P.C. Act. In that view of the matter, the present issue need not detain this Court for long as it is admitted and is undisputed that neither the State Government nor the Government of India accorded sanction to prosecute the petitioner-A8 who is admittedly a public servant as on the date the alleged acts and omissions constituting the offences are alleged to have been committed and also as on the dates the sanctions were rejected by the State and Central Governments. A plain perusal of the proceedings, dated 23.03.2016, bearing No.107/16/2013-AVD.I, would reflect that the Under Secretary to the Government of India, for the reasons mentioned in the said proceedings, endorsed his agreement with the view that *prima facie no* case is made out against the present petitioner-A8 and accordingly denied sanction for his prosecution under Section 19 of the PC Act for the alleged offence under Section 13(1)(d) of the said Act. A further perusal of the said proceedings would show that on the basis of records, viz., the investigation report & the other supporting documents, the comments of the State Government, the advise of the Central Vigilance Commission and the analysis of the proposal by the Department of Personnel & Training, it was opined that the acts of omission or commission on the part of the petitioner-A8 did not appear to be *mala fide* in nature and did not constitute misusing his official position to cause benefit to private firms or persons and, therefore, his acts and omissions do not seem to satisfy the ingredients of Section 13(1)(d) to constitute the offence of criminal misconduct under the P.C. Act. The said order whereby sanction was refused further reflects that the competent authority after carefully considering the facts and circumstances of the case and also relevant material/documents (both oral and documentary) submitted by the investigating agency accepted the advice of Central Vigilance Commission that *prima facie* no case is made out against the present petitioner-A8. The law is well settled that when the public servant is in service and when sanction is refused for his prosecution and when such order of refusal of sanction is not challenged and has become final, the public servant cannot be prosecuted. It is profitable to refer to the decision in Amal Kumar Jha v. State of Chathisgarh and another [AIR 2016 SC 2082]. The facts of the cited case and ratio are as under:

> "The Appellant was in-charge of a Government Hospital, where L.T.D. operation of a patient was conducted by Dr. A.M. Gupta. Thereafter the patient was sent home. As she vomited, she has consulted the doctor and he sent someone to administer some treatment. However she was admitted into the Primary Health Centre on being brought to the said Centre, but died. Charges under Section 304A were framed against the doctor and the Appellant. Both of them filed an application for discharge under Section 197 Code of Criminal Procedure on the ground that sanction to prosecute was required and they could not be prosecuted without previous sanction. The application filed by the Appellant was rejected, attributing negligence for not providing the official vehicle for shifting the patient to District Hospital. A revision was preferred against the rejection of prayer and thereafter a petition was filed under Section 482 Code of Criminal Procedure before the High Court. When the same was dismissed, the Appellant approached the Supreme Court. In the stated factual background, while allowing the Appeal it was held as follows: -
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>> 'It is apparent from the facts of the instant case that the allegation against the Appellant is of omission in discharge of official duty in not providing Government vehicle for shifting the patient from Primary Health Centre to District Hospital, Raigad; whereas he himself travelled in the vehicle in question for attending the monthly official meeting at the District Headquarters. In our considered opinion, it was an act or omission in discharge of the official duty. The sanction to prosecute was necessary. In this case, the accused was acting in discharge of his official duty when he refused to provide the official vehicle. The refusal is directly and reasonably connected with his official duty, thus sanction is required for prosecution as provided Under Section 197(1) Code of

> Criminal Procedure. It is not disputed that no ambulance was provided to the Primary Health Centre.
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> In view of the aforesaid discussion, it is clear that the omission complained of due to which offence is stated to have been committed, was intrinsically connected with discharge of official duty of the Appellant, as such the protection Under Section 197 Code of Criminal Procedure from prosecution without sanction of the competent authority, is available to the Appellant. Thus, he could not have been prosecuted without sanction. It would be for the competent authority to consider the question of grant of sanction in accordance with law. In case sanction is granted only then the Appellant can be prosecuted and not otherwise. Resultantly, the impugned orders are set aside, the appeal is allowed.'

11. In the case on hand, it is admitted that the petitioner retired from service, during the pendency of this criminal petition,. Thus, the petitioner-A8 was in service when sanctions were refused by the State Government and Government of India. However, subsequent thereto, he has retired from service and as on today he is not in service. Since he is a retired public servant, though sanctions were refused by the Governments earlier, the question is as to whether he can be prosecuted even in the absence of required sanctions from the Governments.

11.1. The learned Special Public Prosecutor contended that the petitioner cannot challenge his prosecution as he ceased to be a public servant on his retirement after the refusals of sanctions by the Government and during the pendency of this criminal petition.

11.2 There is also no dispute with the settled legal position that insofar as a retired public servant sanction need not be obtained and cognizance of the offences can be taken and he can be prosecuted without the necessity of obtaining necessary sanction. This view finds support from the decision relied upon by the learned Special Public Prosecutor viz., Kalicharan Mahapatra v.

State of Orissa[1]. In this cited case, the facts disclose that against the public servant therein, a charge sheet was filed for the offences punishable under Section 13(2) read with 13(1) of the Act and while challenging the constitution of the special Court he contended that the legislature did not include a retired public servant within the purview of the Act and that there is no mention about the person who ceases to be a public servant and that Section 197 of the Code which envisages sanction for prosecution of public servants is applicable to former public servants also by virtue of the specific words in the section in "any person who is or was...... a public servant". The Supreme Court considered the provision of Section 19 of the PC Act and 197 of the Code and other relevant provisions and held as follows: 'The result of the above discussion is this: A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in S.19 of the Act if he continues to be a public servant when the Court takes cognizance of the offence. But if he ceased to be a public servant by that time the court can take cognizance of offence without any such sanction. In other words, the public servant who committed the offence while he was a public servant is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution.' Thus, as already noted, there is no dispute with the proposition that insofar as a retired public servant sanction need not be obtained and the case against him can be taken cognizance of without any sanction if he ceased to be a public servant by the time of taking cognizance of the offence and he can be prosecuted without the necessity of obtaining necessary sanction.

11.3 However, learned counsel for the petitioner submits that in the facts and circumstances of the instant case, the retirement of the petitioner-A8 after the refusal of the sanctions is not going to make a difference to his case

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[1] AIR 1998 SC 2595

on merits as the sanctions were refused while the petitioner-A8 was in service and while he was a public servant.

11.4 In this context, it is necessary to refer to the decision of the Supreme Court in Chittaranjan Das v. State of Orissa[2]. The facts of this cited case are as follows: - 'While the appellant, a public servant, was in service, sanction for his prosecution was declined by the State Government. The Vigilance Department did not challenge the same and allowed the appellant to retire from service. After his retirement, the Vigilance Department requested the State Government to reconsider its decision which was not only refused but the State Government while doing so clearly observed that no *prima facie* case of disproportionate assets against the appellant is made out. Notwithstanding the same the Vigilance Department chose to file a charge sheet after the retirement of the appellant. The special Judge has taken cognizance and issued process. In the above-stated factual background, the Supreme Court held as follows:

> 12. Sanction is a device provided by law to safeguard public servants from vexatious and frivolous prosecution. It is to give them freedom and liberty to perform their duty without fear or favour and not succumb to the pressure of unscrupulous elements. It is a weapon at the hands of the sanctioning authority to protect the innocent public servants from uncalled for prosecution but not intended to shield the guilty.
>
> 14. We are of the opinion that in a case in which sanction sought for is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of the public servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility.'

In view of the legal position succinctly laid down which, in the considered view of this Court, applies on all fours to the present case of the petitioner-A8, this

[2] (2011) 7 SCC 167

Court is of the considered view that the retirement of the petitioner herein after refusal of the sanctions by the Governments to prosecute him while he was in service does not make a difference to the merits of his case. Admittedly sanctions sought for were refused by the competent authorities of the Governments while he was in service. In the light of the said fact and the legal position tersely stated in the afore-stated decision, this Court finds that the petitioner-A8 cannot be prosecuted notwithstanding the fact that he retired from service subsequent to the refusals of sanctions by the Governments and that it is not open for the prosecution to contend that no sanction for prosecution of the petitioner-A8 is necessary after his retirement from service.

12. On the above analysis, this Court holds that the request of the petitioner for quashing the charge sheet against him deserves consideration as sanctions for prosecution were refused by both the Governments while the petitioner-A8 was in service and as he cannot now be prosecuted after retirement, notwithstanding the fact that no sanction for prosecution is necessary after the retirement of the public servant.

13. In the result, the Criminal Petition is allowed and the charge sheet in C.C.No.28 of 2013 [in RC.No.19(A)/2011-CBI] on the file of the learned Principal Special Judge for Trial of CBI cases, Nampally, Hyderabad, is accordingly quashed against the petitioner-A8. The bail bonds, if any, of the petitioner-A8 shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

11.08.2017
Note: Issue CC by 29.08.2017.
[B/o]
Vjl