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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-2441-SB of 2007

Date of decision: July 12, 2017

Kulwant Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Ajay Kalra, Advocate for
Ms. Isha Goyal, Advocate for the appellant.

Ms. Samina Dhir, DAG Punjab.

A.B. CHAUDHARI, J (Oral)

Being aggrieved by judgment and order dated 20.11.2007 passed by the learned Special Judge, Tarn Taran, in S.C. (RBT) Case No.25 of 2007, by which the appellant-Kulwant Singh was convicted for the offence under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'PC Act') and sentenced him to undergo Rigorous Imprisonment for one year and to pay fine in the sum of ₹2,000/- and in default of payment of fine, further undergo Rigorous Imprisonment for 3 months, the present appeal was filed by him in this Court.

FACTS

Briefly stated, the prosecution case was that on 29.12.1999, complainant-Gurdial Singh along with Baljit Singh lodged the complaint in the office of Swinder Singh as DSP Vigilance Bureau, Amritsar that complainant-Gurdial Singh had joint land with his uncle

measuring 48 Kanals 21 Marlas, in village Sarli. He met appellant-patwari on 28.12.1999 to get a copy of jamabandi. The appellant demanded bribe in the sum of ₹500/- and on repeated request, brought it down to ₹400/-. He asked the complainant to bring the bribe money on the next date, i.e. 29.12.1999. Complainant then appeared before the DSP and got his complaint recorded. He then handed over four currency notes of ₹100/- denominations to the DSP who then followed the usual procedure for conducting raid and also got joined Baljit Singh as a shadow witness. Dr. Rajiv Arora from the office of Soil Conservation, Amritsar joined as independent official witness, but was not examined in the trial. After registration of the FIR, the raiding party went for raid at Patwarkhana of the accused in village Sarli. They parked their vehicle at some distance. Complainant-Gurdial Singh and shadow witness Baljit Singh were sent to the office of the accused. After sometimes, shadow witness-Baljit Singh gave a signal and thereafter, raid was conducted and appellant was caught red handed with the sum of ₹400/- currency notes of ₹100/- denomination. Thereafter, usual procedure was followed after taking personal search of the accused. After completion of investigation, challan was filed. Thereafter, the trial commenced. The prosecution examined PW1-Gurdial Singh-complainant, PW2-Umarjit Kaur Bill Clerk, PW3-Constable Gurkamal Singh, PW4-Baljit Singh shadow witness and other official witnesses. Upon closure of the evidence of the prosecution, the appellant examined defence witnesses, DW1-Niranjan

Singh, DW2-Dalip Singh. They proved jamabandi for the year 1995-1996 Exhibit D1, jamabandi for the year 2000-2001 Exhibit D2 and mutation Exhibit D3. Learned trial Court after examining the evidence of the prosecution witnesses as well as defence witnesses found the appellant guilty and recorded the conviction and sentence as stated above. Hence, this appeal.

ARGUMENTS

In support of the appeal, learned counsel for the appellant at the outset raised the point that the police officer who had taken the personal search of the accused was required to offer himself to the accused for his personal search. Thus, search by the police officer would become illegal and acquittal order was bound to follow. He relied on the decision in the case of **Sushil Kumar versus The State of Punjab**, (1974) C.L.R. Vol. II 193 followed in Para 16 in the case of **State of Punjab versus Kushal Singh Pathania**, 2004 (4) R.C.R. (Criminal) 498. Learned counsel for the appellant then contended that the prosecution failed to prove its case beyond reasonable doubt in that the complainant did not disclose the genesis of the prosecution case honestly and correctly leaving various suspicious circumstances against the prosecution case. The case of the complainant-Gurdial Singh-PW1 was that he owned land 48 Kanals 12 Marlas in village Sarli with his uncle for which he wanted the copy of jamabandi. But then he admitted in his cross-examination that he does not own any land and he wanted to have a copy of jamabandi of the land belonging

to his father-Karam Singh. Thus, there was incorrect and false genesis of the prosecution story that was being advanced.

Learned counsel for the appellant then contended that the trial Court has casually ignored the major omissions amounting to contradictions calling them as minor improvements which is wrong and illegal. He, then further submitted that the trial Court ought to have considered the evidence of defence witnesses numbering 3 and the documents proved by them as Exhibit DW1, Exhibit DW2 and Exhibit DW3 in the correct perspective. Learned counsel for the appellant then submitted that the trial Court ignored the significance of the sanction and the proof thereof in a case under P.C. Act. He submitted that sanction was totally illegal and invalid under law and therefore, on all the counts, the appellant is entitled to be acquitted.

Per contra, learned State counsel countered the submissions saying that there is no requirement of law that the police officer should himself offer his personal search to the accused. He then submitted that the prosecution has fully proved its case beyond any reasonable doubt by positive evidence and therefore, no benefit of doubt could be extended to the appellant-accused. The defence evidence could not be relied upon as rightly rejected by the trial Court. In so far as the issue of sanction is concerned, learned State counsel contended that there is bar under Section 19(3) of P.C. Act read with Section 465 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for this Court to entertain any challenge regarding the validity or

otherwise of the sanction and therefore, this Court would not be in a position to touch that aspect of the matter. Learned State counsel, therefore, prayed for dismissal of the appeal.

CONSIDERATION

I have gone through the entire record so also the evidence. I have gone through the entire judgment and reasons recorded by the learned trial Judge. Perusal of the points for determination framed by the learned trial Judge shows that there is no point framed for determination regarding sanction for prosecution which is *sine qua non* for taking cognizance under Section 19(1) of the P.C. Act. Even other points for determination framed by the trial Court do not meet the requirement of proper framing of points for determination.

Section 354 Cr. P.C.-Language and contents of judgment

Section 354 Sub Section 1(b) of Cr. P.C. provides for framing of the points for determination by the trial Court in the trial. Sub Section 1(b) of Section 354 Cr. P.C. reads thus:-

“354. Language and contents of judgment.

(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,-

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(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;”

This Court has taken a view in the case of **Jagdish Singh versus CBI** bearing case No. CRA-S-2099-SB of 2003, on 08.12.2016 (A.B. Chaudhari, J) and held that point/points for determination must be framed by the trial Court in a trial. The said provision has been held to be mandatory. The object of framing the point/points for

determination obviously is to discuss and decide each point for determination with reference to the evidence adduced before the Court and arguments made before it. The word “shall” occurring in Section 354(b) Cr. P.C. must be held to be mean that the provision is mandatory. Since Section 19(1) of the P.C. Act provides for grant of sanction as a *sine qua non* taking cognizance of the offence under the P.C. Act, framing of point for determination regarding sanction would be the heart and soul of trial under the P.C. Act in relation to the offences for which sanction is contemplated. In my opinion, such a point for determination could be framed in the following form:-

“Whether the prosecution has proved that the sanction for prosecution is legal, correct and proper?”

This Court has found that the Special Court trying the offence under P.C. Act have been sometimes framing the points for determination and sometimes framing no point for determination at all. It has also been seen that the point for determination regarding sanction is not being framed at all by the Special Courts. The following data would substantiate the above statement:-

No point for determination at all framed

SR. NO.	APPEAL NO.	SANCTION OBTAINED FOR RAIDING AND TO PROSECUTE ACCUSED	POINTES OF DETERMINTION	AUTHORISED OFFICER TO RAIDE	DEFENCE TAKEN BY DEFENCE COUNSEL
1	CRA-S-2403-SB-2017	<u>Ex. PW 17/A</u> - Sh. Balbir Singh Sidhu, Deputy Chief Engineer, PSPCL Senior Superintendent of Police Vigilance Bureau	Not framed	Inspector Ravinder Singh PW-14	
2	CRA-S-4675-SB-2016	<u>Ex. PG-</u> Deputy Commissioner, Panipat, Naib Tehsildr as Duty Magistrate his Reader Vijender as Shadow Witness	-do-	Inspector Narender Kumar	Challenging capacity to perform the act.
3	CRA-S-1182-SB-2017	<u>Ex. PW 11/A</u> - Ms. Priyanka Bharti, IAS, Director Local Bodies, Punjab, Chandigarh	-do-	Sh. Gurcharan Singh, Retd. DSP, Vigilance Bureau, Bathinda Range, Bathinda,	Challenging sanction
4	CRA-S-4940-SB-2015	<u>Ex. PA-</u> Sh. Khushi Ram, IAS, Collector, Tam Taran	-do-	Sh. Onkar Singh, SP	Challenging sanction
5	CRA-S-417-SB-2017	<u>Ex. PW 10/A & PW 10/B-</u> Deputy Commissioner	-do-	Sh. Ravinder Malik, Naib Tehsildar Sonapat as Duty	

SR. NO.	APPEAL NO.	SANCTION OBTAINED FOR RAIDING AND TO PROSECUTE ACCUSED	POINTES OF DETERMINTION	AUTHORISED OFFICER TO RAIDE	DEFENCE TAKEN BY DEFENCE COUNSEL
				Magistrate Sh. Umed Singh, Clerk as Shadow Witness	
6	CRA-S-4371-SB-2016	<u>Ex. PW 5/A-</u> ADC, Sonapat for raiding <u>Ex. PW 14/A-</u> Deputy Commissioner, Sonapat	-do-	Sh. Ravinder Malik, Naib Tehsildar Sonapat as Duty Magistrate Sh. Vinod Kumar, Reader as Shadow Witness	
7	CRA-S-81-SB-2017	--DO--		--DO--	
8	CRA-S-1600-SB-2017	<u>Ex. P 5-</u> Sh. Shekhar Vidyarthi, Deputy Commissioner, Rohtak for raiding <u>Ex. P 10-</u> Sh. Shishank Anand, SP, Rohtak to prosecute	-do-	Sh. Subhash Chander, Naib Tehsildar as Duty Magistrate Sh. Shashi Kumar, Reader as Shadow Witness	No Sanction Order was presented at the time of filling of Challan. Taken on record fter moving application u/s 311 CrPC.
9	CRA-S-2319-SB-2017	<u>Ex. PW 25/B -</u>	-do-	Sh. Gurcharan Singh, DSP, IO	
10	CRA-S-166-SB-2017	Deputy Commissioner <u>Ex. PU/I-</u> PW-13 Sh. Pawan Kumar, Director (Retd.) DHBVN Hisar accorded prosecution sanction of accused Surender Ahuja as <u>Ex. PAA</u> PW-14 Sh. Sanjeev Chopra, Chief Engineer accorded prosecution sanction of accused Virender Kumar Pahuja as <u>Ex. PBB</u>	-do-	Sh. Rajeev Sangwan, AETO (PW-10) as Duty Magistrate Sh. Sharvan Kumar (PW-11) as Shadow Witness	Challenging capacity to do alleged work
11	CRA-S-273-SB-2017	<u>Ex. P 23-</u> Dr. Basant Garg, IAS, Deputy Commissioner, Bathinda	-do-	DSP	
12	CRA-S-609-SB-2017	SP, Palwal accorded sanction, has not been examined by the prosecution, so, the sanction has not been proved. Sh. Suresh Kumar, Tehsildar, Palwal as Duty Magistrate	-do-	Inspector Smarth Singh	Challenging sanction
13	CRA-S-2285-SB-2017	<u>Ex. PW 10/A-</u> Smt. Anindita Mitra, IAS, Deputy Commissioner, Nawanshahr	-do-	PW-15 DSP Sarabjit Singh with PW-14 ASI Balbeg Singh	
14	CRA-S-714-SB-2017	<u>Ex. PW 9/A-</u> Sh. Rajiv Rattan, IAS, Deputy Magistrate <u>Ex. PW 13/A-</u> Sh. Ashok Kumar, IPS, SP Sonapat issued Prosecution Sanction	-do-	Sh. Bansilal, Naib Tehsilda, Gohana as Duty Magistrate Sh. Baje Singh, License Clerk as Shadow Witness	
15	CRA-S-2031-SB-2017	<u>Ex.PAA-</u> Deputy Commissioner, Kaithal	-do-	Sh. Sanjay Tank, BDPO, Siwan as Duty Magistrate Sh. Prem Kumar, Assistant, O/O BDPO, Siwan	
16	CRA-S-3885-SB-2016	Deputy Commissioner, Sonapat <u>Ex. PW 14/B-</u> Sh. P.K. Gupta, IAS, Additional Chief Secretary Sanction Order to prosecute against Sh. Balwan Singh Officer, Circle-II, Sonapat <u>Ex. PW 16/A-</u> Sh. Anand Mohan, IAS, Labour Commissioner, Chandigarh Sanction Order to prosecute against Sh. Ashok Kumar, Labour Inspector	-do-	Sh. Virender Singh Lather, SDM as Duty Magistrate Sh. Jasbir Singh, Reader as Shadow Witness	Challenging sanction
17	CRA-S-1618-SB-2017	<u>Ex. PW8/A-</u> Sh. Roop Singh, IAS, Managing Director, Punjab Agro Food Grains Corporation, Sanction Order to prosecute	-do-	PW-1 DSP (Vigilance) Gurcharan Singh,	
18	CRA-S-1977-SB-2017	<u>Ex. PW7/A-</u> Sh. Harmesh Singh, Sr. Executive Engineer, Distribution, PSPCL, Amlloh, Sanction Order to prosecute	-do-	DSP	Competency to do alleged work challenged

Points for determination framed but point regarding sanction not at all framed

SR. NO.	APPEAL NO.	SANCTION OBTAINED FOR RAIDING AND TO PROSECUTE ACCUSED	POINTES OF DETERMINTION	AUTHORISE D OFFICER TO RAIDE	DEFENCE TAKEN BY DEFENCE COUNSEL
1	CRA-S-2269-SB-2017	Competent Authority <u>Ex. PW 8/A-</u> Principal Secretary of the Department of Industries and Commerce, Punjab,Chandigarh	1. Whether the prosecution evidence is sufficient to prove the demand and acceptance of bribe by the accused? 2. Whether the recovery of tainted money from the accused has been proved? 3. Whether the accused has been implicated in a false case?	DSP	Challenging sanction
2	CRA-S-2066-SB-2017	<u>Ex. PW 8/A-</u> Sh. Basant Garg, District Commissioner, Bathinda,	Whether on 09.09.2015 accused Hans Raj while posted as Patwari Halqa Dikh, being a public servant, hd demanded Rs. 15,000/- and accepted Rs. 10,000/- as illegal gratification other than legal remuneration as motive or reward from complainant Pritam Singh, for incorporating an entry in the revenue record qua the exchange of land with his brother Jarnail Singh?	DSP	Defence counsel challenged the sanction, competency to exchange the land by competent authority
3	CRA-S-168-SB-2017	<u>Ex. PW 1/A1</u> – Sh. Rajwinder Singh, SP(D) Fatehgarsh Sahib marked enquiry to SHO PS Kotwali Nabha	Whether accused Mohinder Singh 212 and accused Mohinder Singh 1137 were posted at Maximum Security Jail, Nabha whether during posting in connivance with accused Kuldeep Singh alias Keepa, Suman Kumar and Shahid Iqbal Bhatti, accused Mohinder Singh 212 and Mohinder Singh 1137 received amount of Rs. 5000/- and 9500/- in their accounts and thereafter handed over the same to accused, whether by this act accused Mohinder Singh 212 and Mohinder Singh 1137 being public servants abused their official position.		
4	CRA-S-313-SB-2017	--DO--	--DO--		
5	CRA-S-2346-SB-2017	<u>Ex. PP & PQ-</u> Deputy Commissioner, Sirsa PW-10 Sh. Ram Niwas Bhamboo, Naib Tehsildar as Duty Magistrate PW-3 Sh. Kuldeep Singh, Kanungo as Shadow Witness	1 Whether on 20.12.2014 in the area of Police Station SVB Unit Sirsa, accused demanded and accepted Rs. 500/- as gratification other than legal remuneration. 2 Whether this gratification was for doing any official act in the exercise of his official functions 3 Whether accused obtained Rs. 500/- from complainant by abusing his position.	PW-11 Jagjit Singh, Inspector	Challenging of sanction
6	CRA-S-1828-SB-2017	Ex. PW 16/A Sh. Kanwaldeep Singh, Naib Tehsildar-cum-Duty Magistrarte	1. Whether the evidence on file proved the recovery of 2 Kgs. Of opium from conscious possession of the accused? 2. Whether the link evidence is completely established? 3. Whether the prosecution was able to prove conspiracy between all the accused to commit offence u/s 13(1)(d) read with section 13(2) of PC Act 4. Whether the accused Bhupinder Singh and Gurjit Singh abetted Joginder Singh to commit criminal misconduct being a public servant?	DSP Gurmit Singh, DSP Baljit Singh ASP Kuldeep Singh Chahal	
7	CRA-S-1905-SB-2017	--DO--	--DO--	--DO--	
8	CRA-S-735-SB-2017 ALONGWITH 15 APPEALS	<u>Ex. PW49/A-</u> Mrs. Pankaj Sharma, Director Administration Sanction Order to prosecute	1. Whether the accused in the capacity of a public servant was entrusted with a duty to deal with the GP funds of her co-employees such as teachers and other staff members of the school. 2. Whether the accused had forged letters nd signitures of the DDO's (Principals) and bills of GP funds of teachers and other staff members of the school. 3. Whether the accused is guilty of siphoning off funds from the GPF accounts of various teachers/employees into her own accounts by forging documents/bills/letters/signitures etc. and is guilty of misappropriation of the said funds apart from criminal misconduct, forgery, cheating and using of forged documents as genuine.	DSP Vigilance Bureau, Bathinda	Challenging sanction
9	CRA-S-1729-SB-2017	<u>Ex. PW8/A-</u> Director,	1. Whether prosecution succeeded in proving that the accused forged and	PW-11 as I.O. Harjinder Singh,	

SR. NO.	APPEAL NO.	SANCTION OBTAINED FOR RAIDING AND TO PROSECUTE ACCUSED	POINTES OF DETERMINTION	AUTHORISED OFFICER TO RAIDE	DEFENCE TAKEN BY DEFENCE COUNSEL
		Department of Rural Development and Panchayats Sanction Order to prosecute	fabricated the cheques as detailed and described in the charge-sheet, which were drawn on the accounts of the Gram Panchayats of villges Luteru Khurd, Muradpur and Jagrawan? 2. Whether prosecution succeeded in proving the forgery and fabrication of the resolutions of the Gram Panchayats, which were relied upon by the accused for withdrawing the amounts from the banks? 3. Whether the accused committed the offence under Section 471 IPC by using forged and fabricated cheques and copies of the resolutions of the Gram Panchayats and thereby withdrew the amounts from the accounts of the Gram Panchayats of villages Luteru Khurd, Muradpur and Jagrawan? 4. Whether the accused committed the offence under Section 420 IPC by cheating the officials of the banks and thereby obtaining payment from them on the basis of the forged and fabricated cheques and resolutions of the Gram Panchayats? 5. Whether accused being a public servant and entrusted with money in his capacity as public servant is proved to have committed offence under Section 409 IPC? 6. Whether prosecution succeeded in proving commission of offence under Section 13 (1) (d) read with Section 13 (2) of the PC Act?	Inspector Vigilance Bureau,	

In the present case, the trial Court framed the following three points for determination but did not frame the point for determination regarding sanction, which according to me is in violation of provision of Section 354 Cr. P.C.:-

- “1. What is the effect of improvements made by PW1 Gurdial Singh and PW4 Baljit Singh over their police statements?*
- 2. Whether defence plea taken by the accused has been sufficiently proved so as to extend benefit of doubt to the accused?*
- 3. Whether the evidence on record is sufficient to hold the accused guilty?”*

The trial Court, however, recorded the arguments made by the learned counsel for the appellant based on evidence before it regarding sanction and I quote Para 11 therefrom which reads thus:-

“11. Another point raised by the learned counsel for the accused is that sanction letter Ex.PM is invalid without any application of mind by the competent authority. PW8 Anil Kumar Kanungo deposed

regarding Ex.PM identifying the signatures of the then Deputy Commissioner-cum-Collector. In his cross-examination the witness has stated that he got the sanction order typed and the same was sent to the above said authority for signatures. This shows that the sanctioning authority did not apply its mind. Without a valid sanction for prosecution, the accused is not liable to be convicted.”

It is thus, clear that the objection was raised by the appellant before the trial Court regarding sanction Exhibit PM. In that view of the matter, it was essential to have point for determination regarding sanction and the same could not be trivialized.

Bar for examination of point for determination regarding sanction for the Court in Appeal/Appellate Court/High Court under Section 19(1) of the P.C. Act.

Learned State counsel vehemently opposed the appeal and the limitation on the power of High Court/Court in Appeal to examine the issue of sanction. Learned State counsel contended that Section 19 of the P.C. Act read with Section 465 Cr. P.C. provides for a blanket prohibition for examination of issue regarding sanction by the appellate Court. Section 19(3)(a) of the P.C. Act shows that even in the absence of sanction, the appellate Court would not be in a position to interfere with or alter the finding of conviction recorded by the trial Court. According to her, it therefore, follows that any alleged illegality or want of proof of sanction would also not effect the prosecution case in the present appellate jurisdiction in view of the said bar.

Per contra, learned counsel for the appellant contended that in the absence of legal and valid sanction there would obviously be a failure of justice qua the appellant and at any rate, the objection was

raised by the present appellant before the trial Court and the concerned witness was also cross-examined on the point of sanction.

The above issue is of considerable significance.

Section 19(3) (a) (b) (c) and Section 4 and explanation of Prevention of Corruption Act, 1988 (for short 'P.C. Act') read thus:-

“19. Previous sanction necessary for prosecution.— xxx

(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.”

Section 465 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') reads thus:-

“465. Finding or sentence when reversible by reason of error, omission irregularity.

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent

jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”

Section 27 of P.C. Act reads thus:-

“27. Appeal and revision — *Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the Court of the Special Judge were a Court of Session trying cases within the local limits of the High Court.”*

Sub Section 3 of Section 19 of the P.C. Act opens with the non-obstante clause qua the provisions of Cr. P.C. Therefore, provisions of Sub Sections 3 & 4 of the Section 19 of the P.C. Act would prevail over relevant Section 465 Cr. P.C. and appellate powers conferred under Section 374 Cr. P.C. and chapter XXIX thereof have been made subject to the provisions of P.C. Act.

Section 465 Cr. P.C. Sub Section 1, first part thereof relates to error, omission or irregularity in the ‘complaint’. Second part relates to summons, warrants, proclamation, order, judgment or other proceedings before or during trial. Third part relates to in any inquiry

or other proceedings under the Cr. P.C. and the last part relates to or any error, or irregularity in any sanction for the prosecution. Sub Section 2 of the Section 465 Cr. P.C. provides for guidelines to the Court whether objection could have or should have been raised at an earliest stage of the proceedings would be the relevant factor. The Object and Reasons (SOR) reads thus:-

“The committee was given to understand that there are quite a few cases where a prosecution ultimately fails in the Appellate Court on the ground of some defect or irregularity in the sanction for prosecution as required by law. The provision for sanction is usually made in respect of certain anti-social offences. It would undoubtedly be a frustrating experience for those entrusted with the difficult task of enforcing such laws for the protection of society if all the time, trouble and expenditure spent in prosecuting say a black marketeer or a corrupt official go to waste when the Appellate Court acquits him completely on the technical ground of an irregularity in the sanction. The Committee therefore feels that so long as there has been no failure of justice a Court of Appeal or Revision should not set aside a conviction merely on the ground of any error or irregularity in the sanction.”

Reading of Sub Section 1 of Section 465 Cr. P.C. shows that the words “*absence of, _____, omission, (qua sanction)*” occurring in Sub Section 3(a) of Section 19 of P.C. Act are conspicuously absent. This clearly means that total absence of sanction for taking cognizance of the charge-sheet for offences punishable under Sections 7, 10, 11, 13 and 15 of P.C. Act would be no ground for the Court in Appeal or Revision to reverse or alter the finding of conviction, sentence or order. There is, however, a caveat viz. whether the “failure of justice has, in fact, been occasioned” would, however, be a pre-condition. Sub

Section 4 of Section 19 of P.C. Act provides that the Courts shall have regard to the fact whether the objection about absence of sanction could or should have been raised at an earliest stage in the proceedings. The word ‘proceedings’ connotes trial looking at the Statements of Object and Reasons. Explanation (b) of Sub Section 4 of Section 19 of P.C. Act does away with any objection to the grant of sanction by any other authority than the specified authority/person. That means, even if the sanction by specified authority is not granted and such an objection was not raised in the earliest stage of proceedings, the Court in Appeal or Revision would not be able to reverse or alter the findings of conviction, sentence or order, unless there is a failure of justice.

It is, thus, clear that for compliance of Sub Section 3(a) of Section 19, Court in Appeal will have to consider whether “absence” or error, omission or irregularity of grant of sanction resulted into failure of justice?

Clause (b) of Section 19(3) of P.C. Act prevents any Court from granting stay of the proceedings under the P.C. Act on the ground of error, omission or irregularity in the sanction unless the same has resulted into failure of justice.

Clause (c) of Section 19(3) of P.C. Act prohibits the exercise of power of Revision in relation to any interlocutory order or for grant of stay of the proceedings.

In 2014 Vol. 11 SCC 388 in the case of State of Bihar versus Rajmangal Ram, the Supreme Court held thus in Paras 10 and 11:-

“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.

11. We, therefore, hold that the orders dated 23.3.2012 and 3.3.2011 passed by the High Court cannot be sustained in law. We, therefore, allow both the appeals; set aside the said orders and direct that the criminal proceeding against each of the respondents in the appeals under consideration shall now commence and shall be concluded as expeditiously as possible.”

In the light of the said judgment, I think the usual attempt to challenge the sanction before recording of evidence in the trial deserves to be curbed, unless failure of justice has in fact been occasioned. There is one more angle from which the above provisions can be harmoniously interpreted. The trial Court should, at the time of taking cognizance, find out, may be upon hearing the public prosecutor, as to whether sanction is given by the specified authority and that the same suffers from any error, omission or irregularity. If the same is found in the negative, the trial Court can very well ask the prosecution to get a fresh sanction for the purposes of taking

cognizance. This would clearly obviate the possible objections to the sanction in the proceedings before the trial Court and would also prevent any failure of justice being caused to either of the parties to the prosecution besides delay. Section 19(3) of P.C. Act obviously does not come in the way of the trial Court to examine the issue about sanction since the bar under Sub Sections 3 & 4 of Section 19 of the P.C. Act relate only to the Court in Appeal, confirmation or Revision. That is what has been held by the Supreme Court in the case of **Nanjappa versus State of Karnataka, (2015) 14 SCC 186**, in the following paragraphs:-

“23.2 A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section(3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.2 Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the

prosecution is not maintainable for want of a valid order sanctioning the same.

23.4 The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused.”

In the same decision, the Apex Court declined to permit launching of fresh prosecution having found the sanction to be illegal considering the lapse of period of over two decades. Paras 28 and 29 of the same read thus:-

“28. The next question then is whether we should, while allowing this appeal, set aside the order passed by the High Court and permit the launch of a fresh prosecution against the appellant, at this distant point of time. The incident in question occurred on 24th March, 1998. The appellant was, at that point of time, around 38 years old. The appellant is today a senior citizen. Putting the clock back at this stage when the prosecution witnesses themselves may not be available, will in our opinion, serve no purpose. That apart, the trial Court had, even upon appreciation of the evidence, although it was not required to do so, given its finding on the validity of the sanction, and had held that the prosecution case was doubtful, rejecting the prosecution story. It will, therefore, serve no purpose to resume the proceedings over and again.

29. We do not, at any rate, see any compelling reason for directing a fresh trial at this distant point of time in a case of this nature involving a bribe of Rs.500/-, for which the appellant has already

suffered the ignominy of a trial, conviction and a jail term no matter for a short while. We, accordingly, allow this appeal and set aside the order passed by the High Court.”

However, in **2005 SCC Vol. 8 130 in the case of State of Goa versus Babu Thomas**, the Apex Court having held order of sanction to be invalid relegated the parties to a position where the competent authority could issue a proper order of sanction, in the following paragraphs:-

“As already noticed, the sanction order is not a mere irregularity, error or omission. The first sanction order dated 2.1.1995 was issued by an authority that was not a competent authority to have issued such order under the Rules. The second sanction order dated 7.9.1997 was also issued by an authority, which was not competent to issue the same under the relevant rules, apart from the fact that the same was issued retrospectively w.e.f. 14.9.1994, which is bad. The cognizance was taken by the Special Judge on 29.5.1995. Therefore, when the Special Judge took cognizance on 29.5.1995, there was no sanction order under the law authorising him to take cognizance. This is a fundamental error which invalidates the cognizance as without jurisdiction.

13. This being the law, we are unable to sustain the submission of learned counsel for the appellant.

14. Having regard to the gravity of the allegations levelled against the respondent, we permit the competent authority to issue a fresh sanction order by an authority competent under the Rules and proceed afresh against the respondent from the stage of taking cognizance of the offence and in accordance with law.

15. The appeal stands disposed of in the above terms.”

In **2005 Vol. 8 SCC 370 in the case of State of Karnataka through CBI versus C. Nagarajaswamy**, the Supreme Court held that sanction by competent authority is a *sine qua non* for the prosecution of a public servant. However, in the said decision, the provisions of Sections 19(3) & (4) of P.C. Act qua the appeal

proceedings in the High Court were not considered. In my opinion, therefore, the objection to the sanction order on the ground that the same is not given by competent/specified authority can always be taken before the trial Court. But the same cannot be taken, for the first time, before the Court in Appeal in view of the bar in Sections 19(4) Explanation (b) of P.C. Act.

The proceedings before the Court in the matter of proof by the prosecution are governed by the Evidence Act, 1872 and in particular Section 3 thereof. In other words, a fact can be said to have been proved by the prosecution only if the same is proved in accordance with law and the settled procedure for proof. It is a settled legal position that prosecution is under an obligation to prove that the sanction was granted by the competent/specified authority after due application of mind and not in a mechanical/pedantic manner. Ordinarily, to prove the same, the authority granting sanction must depose before the Court howsoever high the authority may be (which includes the person granting sanction under delegated powers). But then depending on facts of each case, proof of sanction can well be examined.

In the case of **CRA-S-1192-SB of 2002 titled as Jagat Ram versus CBI**, decided on 10.05.2017 by this Court, a Desk Officer (Vigilance) in the Postal Secretariat deposed that sanction was granted in the name of President and under delegated powers by the competent/specified authority. However, before the trial Court, the

said Desk Officer who had got printed the sanction order and issued under his signatures was examined to prove sanction. Obviously except saying that he had got printed and signed the sanction order, he could say nothing further, namely, about the application of mind for grant of sanction. In such a case, even if the officer granting sanction was not available for whatsoever reasons or could not be produced before the Court for reasons beyond the control of the prosecution, the entire file relating to sanction could be brought before the Court to show that there was indeed an application of mind. Further the signed sanction order in original was not brought before the Court.

Undoubtedly, the Court has power to find out from the sanction order itself and/or from the relevant file which should be ordinarily produced before Court as to whether the sanction was given upon application of mind or not. But, then the prosecution must complete its responsibility. In so far as “absence” of sanction is concerned, the appellate Court would be barred from reversing or altering the finding of conviction & sentence unless it is found that there is a failure of justice. But if there is a sanction relied upon by the prosecution, the appellate Court would be entitled to find out whether the same has been proved according to law and/or the same was issued upon application of mind, or could be upheld or not upon the entire file being produced, save and except any omission, error or irregularity.

The Apex Court stated thus, in Paras, 9, 10, 19 and 20 in the case of **State of Karnataka versus Ameer Jan**, (2007) 11 SCC 273:-

“9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced.

19. In this case, the High Court called for the original records. It had gone therein. It was found that except the report, no other record was made available before the sanctioning authority. The order of sanction also stated so. PW 8 also did not have the occasion to consider the records except the purported report.

20. We are, therefore, of the opinion that the impugned judgment does not suffer from any legal infirmity although some observations made by the High Court, as noticed hereinbefore, do not lay down the correct legal position. The appeal is dismissed.”

The next question is about the objection at the trial stage.

In my opinion, if there is a challenge to the sanction by cross-examining the witnesses brought for proving the sanction by the prosecution then even if the point of sanction is not argued before the appellate Court, but the same was objected to and/or argued before the trial Court, it can be said that the objection was raised in the trial Court itself as required by sub Section 4 of Section 19 of P.C. Act. If the trial Court accepts the sanction order as valid and legal or in a case it does not give any finding about it, still in the wake of objection taken in the cross-examination, the Court in Appeal would always be entitled to examine the validity and legality and proof of sanction if not omission, error or irregularity. But if the objection regarding sanction was not at all raised anywhere in the trial in any form including the cross-examination, then the bar created by Sub Sections 3 & 4 of Section 19 of P.C. Act would clearly apply for the Court in Appeal save and except clause regarding “failure of justice”.

In the case of **Central Bureau of Investigation versus V.K. Sehgal and another**, (1999) 8 SCC 501, the Supreme Court reversed the judgment of this Court since this Court in appellate jurisdiction held that the specified authority/competent authority to accord sanction was Controller General of Defence Accounts, but sanction was accorded by subordinate officer to the said authority.

That was the sole ground on which this Court had recorded acquittal. The Supreme Court, however, in Para 8 that the objection regarding sanction was never raised by the accused in the trial Court and therefore, in the wake of bar under Section 465 Cr. P.C. and Section 19(3) of P.C. Act, the High Court could not have reversed the finding of conviction. The Supreme Court remanded the matter to the High Court for fresh consideration.

It is clear from the above Supreme Court judgment that on the sole ground of sanction by authority who was not competent, the High Court had reversed the finding of conviction as against the bar provided by explanation 'a' to sub-Section 4 of Section 19 of P.C. Act. To put in other words, the Apex Court did not have occasion to deal with the objections being raised and answered in the present matter.

The upshot of the above discussion is that total absence of sanction would debar the Court in Appeal from examining the said issue unless it is found that there is a failure of justice. But the trial Court would be in a position to refuse to take cognizance in the absence of sanction and even may return the papers for getting sanction. However, if the sanction order is pressed into service by the prosecution before the trial Court, the Court in Appeal would be entitled to examine whether such sanction order was proved according to law or was made upon application of mind by the specified authority and whether the same is legal and valid as these fundamental aspects do not come in

the category of error, omission or irregularity. In that event it would be irrelevant whether the objection regarding sanction was raised in the trial Court or not. However, the Court in Appeal is certainly denuded of its power to examine or alter the finding of conviction on the ground of any error, omission or irregularity unless the same has resulted into failure of justice. It is also seen that the Court in Appeal would be entitled to examine the validity, legality and legal proof of the sanction order by requisitioning the entire record of the file regarding sanction from the concerned authority as was decided in the case of **State of Karnataka versus Ameer Jan** (supra) and **Nanjappa versus State of Karnataka** (supra). This Court, therefore, finds no merit in the submission made by the learned State counsel that Section 19 of the P.C. Act read with Section 465 Cr. P.C. would completely denude the Court in Appeal of its power to examine the issue regarding legality and validity of the sanction.

The present case

The submission that the police officer should have offered himself to the accused for his personal search before conducting search of the accused is unfathomable and will have to be rejected outright being ridiculous. In the first place, there is no such a provision anywhere in Cr. P.C. or P.C. Act or the police manual that the police officer should offer himself to the accused for his personal search. Even otherwise, the judgment in **Sushil Kumar's case** (supra) is not the *ratio decidendi* for such a proposition, which is clear in Para 6

therein in which on appreciation of evidence, the case was decided, which I quote hereunder:-

“6. The evidence of Harbans Singh Inspector can also not be implicitly relied upon, as he did not conduct the search in a proper manner. Neither Beli Ram nor Harbans Singh has deposed that before the accused was searched Harbans Singh had offered himself to be searched by the accused. Consequently the possibility that the money had been planted is not ruled out. No doubt, it is not specifically provided in the Criminal Procedure Code that a police officer searching others must offer himself for search and that a search without this formality would be illegal, but in order to inspire confidence in the search conducted by the police officer it is necessary that he must offer himself for search before searching an accused person. Unless this precaution is taken it cannot be said that the search was conducted properly and in a manner which was wholly above board. By these observations it is not implied that in no case can a conviction be based where a police officer was himself not searched or had not offered himself for search. In an appropriate case even in spite of this infirmity, the evidence of the police officer or other witness may be accepted, but a failure to offer himself for search does not attach some infirmity to the testimony of a police officer. In the present case, as the evidence of Beli Ram is of a tainted nature and the other witnesses have also not supported the case, I find that it would not be safe to act on the testimony of Harbans Singh, Inspector Vigilance.”

However, in the case of **State of Punjab versus Kushal Singh Pathania**, 2004 (4) R.C.R. (Criminal) 498, in which the judgment in **Sushil Kumar's case** (supra) has been referred, Para 16 reads thus:-

“16. It is only in the challan papers where it has been recorded that D.S.P. Vigilance himself offered for personal search. But the statement could not ipso facto be accepted as the witness has not offered for cross-examination. Therefore, the benefit given by the Special Judge in favour of the accused-respondent on the basis of a

*judgment of this Court in **Sushil Kumar v. State of Punjab, 1974 Chandigarh Law Reporter 193** is meritorious. It is pertinent to mention that this Court in Sushil Kumar's case (supra) has taken the view that failure of a police officer to offer himself for search by the accused, then search conducted on the accused is absolutely illegal and acquittal is bound to follow”*

In my humble opinion both these judgments will have to be held as *per incuriam*.

Sanction in the present case

In the present case, as stated earlier, there was no point framed for determination regarding sanction. The prosecution examined PW8-Anil Kumar Kanungo to prove the sanction, who merely, identified the signature of the Deputy Commissioner-cum-Collector who had granted the sanction and the document was exhibited as Exhibit PM. In his cross-examination, he candidly admitted that he got the sanction order typed and then the same was sent to the specified authority for signatures. The prosecution did not examine Deputy Commissioner-cum-Collector who had actually granted the sanction to prove that there was application of mind. Apart from that the sanction order appears to have been got typed by PW8-Anil Kumar Kanungo and was signed by the specified authority, which never proved that there was application of mind by the sanctioning authority. The prosecution did not place on record the file regarding the sanction before the trial Court for examination. In my opinion, the trial Court ought to have insisted the prosecution to examine the sanctioning, i.e. the Deputy Commissioner-cum-Collector. In the absence thereof, it could have taken recourse to other modes of proof

of sanction. However, record does not show any attempt on the part of the prosecution or the trial Court to follow this mandate of law regarding proof of sanction. No other mode to prove the same was followed.

In this context, the trial Court has given reasons, which are weird, I quote hereunder:-

“.....The accused has also failed to establish that sanction letter Ex.PM was issued without the application of mind of a competent authority. Statement of PW8 Anil Kumar Kanungo to the effect that he typed the sanction letter which was sent to the competent authority, ipso facto does not rule out the application of mind by competent authority. Even otherwise, acceptance of bribe does not require any sanction for prosecution as it is not done by the employee in the exercise of his public function.”

Perusal of the above reasons show that the trial Court has thrown the burden on the accused to prove legal and valid sanction and then held that it does not rule out the application of mind and further that no sanction is even necessary. This Court finds all this to be bizarre and contrary to the criminal jurisprudence.

In the light of the above discussion, it must be held that the prosecution failed to prove that there was legal and valid sanction for prosecution of the appellant in the present case. This cannot be called error, omission or irregularity but will have to be held as the illegality.

The genesis of the prosecution case as stated earlier shows suspicious circumstances, namely that the complainant-Gurdial Singh did not have any land, but when he went, he claimed that the land belong to his uncle and himself. But then the copy of Exhibit P1

revealed that the land was owned by his father-Karam Singh. Therefore, the very foundation was shaken. There is one more circumstance, which makes the prosecution case highly improbable. The circumstance is that the shadow witness Baljit Singh stated that the complainant-Gurdial Singh sold ear-rings of his wife and brought ₹400/- for obtaining jamabandi aforesaid. It is highly unbelievable that for obtaining copy of jamabandi of the field, which does not belong to the complainant he would sell the ornaments for ₹400/-. Thus, it can safely be interfered that the benefit of doubt on the merits of the prosecution evidence will go to the appellant accused rather than the prosecution.

This Court issues the following directions:-

DIRECTIONS

- (i) Every judgment, in every trial, in any criminal Court of original jurisdiction and particularly, special Courts trying the cases under P.C. Act shall frame the point or points for determination before rendering the decision; and particularly the point regarding the validity and legality of the sanction contemplated by Section 19(1) of P.C. Act.
- (ii) The Court under P.C. Act, at the time of taking cognizance, if necessary upon hearing the public prosecutor, shall decline to take cognizance in the absence of sanction. In case of production of sanction, the Court shall examine whether the same has been given by specified authority/competent authority and in the event of finding any defect to ask the prosecution to get a fresh sanction. The Court shall also insist upon the file to be

produced before it under which the process of sanction was undertaken;

- (iii) State of Punjab, State of Haryana and Union Territory, Chandigarh are directed to issue directions that the authority granting sanction (in service or retired) shall have to appear before the Court for recording of evidence on oath. In case, it is not possible to produce such person before the Court, the State shall take resort to the other modes of proof of sanction recognized by law. The States and U.T. shall produce the original document(s) of sanction before the Court and in the absence thereof, to follow the procedure for leading secondary evidence;
- (iv) The Court shall exercise its power to compel the sanctioning authority and or any other competent witness to appear before it.

In the result, I make the following order:-

ORDER

- (i) CRA-S-2441-SB of 2007 is allowed;
- (ii) Impugned judgment and order dated 20.11.2007 passed by the learned Special Judge, Tarn Taran, in S.C. (RBT) Case No.25 of 2007, is quashed and set aside;
- (iii) Appellant is acquitted of the charge against him;
- (iv) Registry is directed to circulate the copy of this judgment to the Special Courts trying the offences under P.C. Act.

(A.B. CHAUDHARI)
JUDGE

July 12, 2017

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**