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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Order reserved on 1st December, 2017
Order pronounced on 5th December, 2017

- + **CRL.M.C. 849/2017**
BIRENDER SINGH YADAV Petitioner
versus
C B I Respondent
- + **CRL.M.C. 930/2017**
RAVINDER SINGH Petitioner
versus
CENTRAL BUREAU OF INVESTIGATION Respondent
- + **CRL.M.C. 934/2017**
SUSHIL KUMAR JAIN Petitioner
versus
CENTRAL BUREAU OF INVESTIGATION Respondent
- + **CRL.M.C. 935/2017**
MUKESH KUMAR Petitioner
versus
CENTRAL BUREAU OF INVESTIGATION Respondent

Present: Mr. Sudhir Nandrajog, Senior Advocate, Mr. Manish Tiwari, Mr. Anil Kumar, Mr. Alok Sharma, Advocates for the petitioner with petitioner in person in Crl.M.C. No.849/2017.
Mr. N. Hariharan, Senior Advocate with Mr. A.K. Mittal & Ms. Rachna Maheshwari, Advocates for the petitioner in Crl.M.C. Nos.930/2017, 934/2017 & 935/2017.
Mr. Sanjeev Bhandari, Advocate for the CBI.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

Crl.M.A. 19520/2017, 19284/17, 18282/17, 19283/17 (for clarification and modification of order dated 30.10.2017)

1. The present applications have been filed by the petitioners under Section 482 The Code of Criminal procedure, 1973 (hereinafter referred as 'Cr. P.C') for clarification and modification of the order dated 30.10.2017, passed by this court.
2. Vide order dated 30.10.2017, this court passed the following orders:-

“14. Keeping in view the above, it is observed that the Charges on 10.02.2017 have not been framed against the petitioners in accordance with the Order-on – Charge dated 01.02.20147 and this requires to be settled before the commencement of recording of evidence. The recording of evidence in these circumstances would be a futile exercise and will vitiate the entire proceedings resulting in failure of justice. Resultantly, the matter is remanded to the Court of Special Judge, (PC Act), CBI-01, Central District, Tis Hazari Courts, Delhi.”

3. Mr. Hariharan, learned counsel for the petitioner through his present application prayed for revival of the present petition to its original number on the ground that on **01.02.2017**, the then Ld. Special Judge, CBI passed **order-on-charge** against the petitioners under Section 120B r/w Sections 420, 471, 465, 477A of the Indian Penal Code, 1860)hereinafter referred as 'IPC') & Sec. 13(2) r/w Sec. 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 (hereinafter referred as 'P.C.') and the substantive offences thereof; that thereafter on **10.02.2017**, the then Ld. Special Judge

framed two separate charges vide separate orders i.e. one for substantive offences punishable under Sections 120-B r/w Sections 420, 471, 465, 477A IPC and another composite charge covered under Sections 120-B r/w Sections 420, 471, 465, 477A IPC & Sec. 13(2) r/w Sec. 13(1)(d)(ii) of the P.C. Act, 1988; that inadvertently only the charges for substantive offences punishable under Sections 120-B r/w 420, 471, 465, 477-A, IPC were annexed with the petition and the separate charge covered under Sections 120-B r/w Sections 420, 471, 465, 477A IPC & Sec. 13(2) r/w Sec. 13(1)(d) of the P.C. Act, 1988 have been filed subsequently with Crl. M.A. 14616/2017 (*application for early hearing and stay of proceedings before the trial court*).; that this fact was not pointed out before this court at the time of addressing arguments on the main petition and the order dated 30.11.2017, was passed by this court keeping in view the order dated 10.02.2017, relating to offences only under the IPC. Hence, the present application.

4. It now emerges on record that on 01.02.2017, order-on-charge was passed by the learned Special Judge and subsequent to it, two separate charges were framed on 10.02.2017 instead of one composite charge in accordance with the order-on-charge dated 01.02.2017. The order dated 10.02.2017 relating to composite charges was not filed along with the main petition in the lead case and has been filed subsequently with Crl. M.A. 14616/2017 (*application for early hearing and stay of proceedings before the trial court*). In view of the above fact, order dated 30.10.2017 is recalled and all the petitions are restored to its original numbers.

5. Applications stands disposed of.

CRL.M.C. 849/2017, CRL.M.C. 930/2017, CRL.M.C. 934/2017, CRL.M.C. 935/2017

6. Having heard on the main petitions and contentions on behalf of the parties have been noted by the court in its previous order dated 30.10.2017. The relevant portion of the order dated 30.10.2017, is stated as under:-

*“1.The present petitions have been filed under Section 482 of the Code of Criminal Procedure 1973 (hereinafter referred to as ‘Cr.PC’) for setting aside the **Order-on-Charge dated 01.02.2017** and order on framing of **Charges dated 10.02.2017** passed by Special Judge, Central Bureau of Investigation (01) (hereinafter referred as ‘CBI’), The Prevention of Corruption Act, 1988(hereinafter referred to ‘PC Act’), Tis Hazari Courts, Delhi, under Section 120-B r/w Sections 420,471, 477A of the Indian Penal Code,1860 (hereinafter referred as ‘IPC’) & Section 13(2) read with Section 13(1)(d) of the PC Act,1988 and substantive offences punishable under Section 420,471 read with Section 465, 477A IPC in case titled as ‘CBI Vs Dr Sangita & Ors.’ in RC No. DAI-2013-A-0017 dated 25.07.2013 registered by CBI/ACB/ New Delhi and quashing of consequential proceedings emanating therefrom and for discharge of the petitioners.*

2.The brief facts of the case as per the prosecution is that the work regarding dense carpeting of the internal roads in Sector-7, Pocket-1, Dwarka, Delhi was allotted to the proprietor R.P. Singhal by MCD (Project Division), Najafgarh, Delhi. The MCD officials in order to gain undue advantage, accepted and processed a forged third party quality check report which was purported to have been prepared

by Dr. Sangita, (CRRRI). As per CBI, no such report was sent by CRRRI and the original report of CRRRI which showed that the sample failed was received in EE and was given to the present petitioner Birender Singh Yadav who acted dishonestly by not processing the original CRRRI Report dated 18.03.2009. The present petitioners forwarded the running bills of the work allotted along with forged CRRRI report for undue payment to the contracting firm. The case was registered against the petitioners but charge sheet was filed by CBI only against Dr. Sangita and Mr. R.P.Singhal as sanction was obtained only against these two accused.

3. Several attempts were made by the CBI, but no sanction was granted against the petitioners by the competent authority, however the Special Judge, CBI-01, Central District, Delhi took cognizance under Sections 120-B r/w Sections 420,471, 477-A IPC & Section 13(2) r/w Section 13(1)(d) of the PC Act and the charges for the substantive offences punishable u/s 420,471 r/w Sec. 465,477-A IPC against the petitioners and thereby framed charges under Section 420,471 r/w Sec. 465,477-A IPC and issued summons.

4. The counsel for the petitioners contends that the Trial Court had erred in taking cognizance of offences punishable under PC as a valid sanction under Section 19 of the PC Act as well as under Section 197 Cr.PC was never obtained by CBI from the competent authority against the petitioners; that the alleged act of the petitioners were done in their official capacity and not done in their private capacity; that obtaining sanction from the competent authority is a mandate when a public servant is charged with an offence under Section 7/10/11/13 and 15 of the PC Act; that grant of sanction by the

competent authority is a condition pre-requisite for prosecution of a government servant in respect of any act done in his official capacity; that as the sanction was not granted on account of refusal by the competent authority, therefore the court below has no jurisdiction to try the case in hand; that moreover, the Special judge has no jurisdiction to try an offence punishable under the IPC.

5.To substantiate his arguments, learned Senior Counsel for the petitioners have relied upon ‘Nanjappa vs State of Karnataka CRL.A. No.1867/2012, Baijnath vs State of MP AIR 1966 SC 220, Prof. N.K. Ganguly vs CBI New Delhi (2016) 1 SCC (Cri) 478, Amal Kumar Jha vs State of Chattisgarh CRL.A. No.396/2016, Matajog Dobey vs H.C. Bhari AIR 1956 SC 44, Prakash Singh Badal vs Union of India 16 (2007) 1 SCC 1, State of Himachal Pradesh vs Nishant Sareen CRL.A. No.2353/2010, R.S. Nayak vs A R Antulay AIR 1984 SC 684.

6.Per contra, the learned counsel for the CBI contends that obtaining of the sanction is not a pre-requisite before taking cognizance by the court, if the offence is committed under the IPC;that the false entries are made in the measurement books which states as “work has been checked by CRRI-III audit party. Report enclosed”; that despite report dated 18.03.2009, the payment of the second and final bills were released by the accused persons in connivance with the contractor; that on review of all the evidences on record collected while investigation, clearly proves that the petitioners have conspired with each other for their wrongful gain; that the order on charge is a well reasoned order and has no infirmity.”

7. During the course of arguments on the main petitions, Mr. Bhandari, learned counsel for the CBI has conceded that there is no sanction of competent authority under prevention of corruption act against the petitioners and the charges should not have been framed under the PC Act. He drew the attention of the court to the order-on-charge dated 01.02.2017 by referring that similar plea had been raised by the CBI before the Trial Court which was not acceded and the charges were also framed under the P.C act without any sanction from the competent authority. Even the trial court has also observed in its order on charge dated 01.02.2017, that no sanction of competent authority under prevention of corruption act to prosecute the petitioners have been obtained by the CBI. The relevant portion of the order dated 01.02.2017 stated that: “...*He has further conceded that the charges for the offence punishable u/s 13(2) r/w Sec. 13(1)(d) of the P.C. Act, 1988, may not be framed against accused A-3 to A-8, as these accused were never summoned to face the trial for the said offence..*”
8. It is important at this stage to rummage through Section 19 of the Prevention of Corruption Act which lays down law with respect to obtaining of sanction and states that “*No court shall take cognisance of an offence... alleged to have been committed by a public servant except with the previous sanction.*” The said provision ensures that an honest public servant is not hounded in the performance of his or her duties by frivolous complaints. Section 19 imposes a bar on the court to take “cognizance” of an offence till sanction is obtained from the government. The bar is against the court to take cognisance for the purposes of trial. The law with regard to obtaining of sanction from a

competent authority, if a complaint is lodged against a public servants during his course of employment, alleging offences punishable under The P.C. Act, is well settled. The apex court has spelt out in various cases that the court below cannot even take notice of the complaint against the public servant unless the same was accompanied by a sanction order, irrespective of whether the court was acting at the pre-cognizance stage or the post cognizance stage, if the complaint pertains to a public servant who is alleged to have committed offences in the discharge of official duties. In **Anil Kumar & Ors vs M.K Aiyappa & Anr** reported in (2013) 10 SCC 705, it was observed by the court as under:-

“....4. Aggrieved by the said order, the first respondent herein approached the High Court of Karnataka by filing Writ Petition Nos.13779-13780 of 2013. It was contended before the High Court that since the appellant is a public servant, a complaint brought against him without being accompanied by a valid sanction order could not have been entertained by the Special Court on the allegations of offences punishable under the Prevention of Corruption Act. It was submitted that even though the power to order investigation under Section 156(3) can be exercised by a Magistrate or the Special Judge at pre-cognizance stage, yet, the governmental sanction cannot be dispensed with. It was also contended that the requirement of a sanction is the pre-requisite even to present a private complaint in respect of a public servant concerning the alleged offence said to have been committed in discharge of his public duty.

5. The High Court, after hearing the parties, took the view that the Special Judge could not have taken notice of the private complaint unless the same was accompanied by a sanction order, irrespective of whether the Court was acting at a pre-cognizance stage or the post- cognizance stage, if the complaint pertains to a public servant who is alleged to have committed offences in discharge of his official duties indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C.....

In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him..... If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio....”

In *L. Narayan Swamy v. State of Karnataka and Others* reported in (2016) 9 SCC 598, it was held by the apex court that :

“(1) Whether an order directing further investigation under Section 156(3) of the Cr.P.C. can be passed in relation to public servant in the absence of valid sanction and contrary to the judgments of this Court in Anil Kumar & Ors. v. M.K. Aiyappa & Anr.[1] and Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and Ors ?.... The above view taken by the High Court is contrary to the judgments of this Court in Manharibhai Muljibhai Kakadia and Anil Kumar. In Manharibhai Muljibhai Kakadia, the facts

were that the respondent filed before the CJM a criminal complaint alleging that the appellant had, by doing the acts stated, committed the offences punishable under Sections 420, 467, 468, 471 and 120-B IPC.However, it was held that even while directing inquiry, the Magistrate applies his judicial mind on the complaint and, therefore, it would amount to taking cognizance of the matter. In this context, the Court explained the word “cognizance” in the following manner:

“34. The word “cognizance” occurring in various sections in the Code is a word of wide import. It embraces within itself all powers and authority in exercise of jurisdiction and taking of authoritative notice of the allegations made in the complaint or a police report or any information received that an offence has been committed.Second judgment in the case of Anil Kumar referred to above is directly on the point. In that case, identical question had fallen for consideration viz. whether sanction under Section 19 of the P.C. Act is a pre-condition for ordering investigation against a public servant under Section 156(3) of Cr.P.C. even at pre-cognizance stage? Answering the question in the affirmative, the Court discussed the legal position in the following manner:

“13. The expression “cognizance” which appears in Section 197 CrPC came up for consideration before a three-Judge Bench of this Court in *State of U.P. v. Paras Nath Singh*[(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200], and this Court expressed the following view: ... And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other

than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. **In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.**

21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it under Section 156(3) CrPC. The

above legal position, as already indicated, has been clearly spelt out in *Paras Nath Singh* [(2009) 6 SCC 372 : (2009) 2 SCC difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers (L&S) 200] and *Subramanian Swamy* [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] cases.” Having regard to the ratio of the aforesaid judgment, we have no hesitation in answering the question of law, as formulated in para 7 above, in the negative. In other words, we hold that an order directing further investigation under Section 156(3) of the Cr.P.C. cannot be passed in the absence of valid sanction....”

9. Perusal of the above records and facts shows that the Trial court cannot take cognizance, for the offences under the Prevention of Corruption Act, against a public servant, while in discharge of his official duty, without obtaining sanction from an appropriate authority. In the present case, the CBI had filed the chargesheet against the other two co-accused(s) along with the present petitioners but the same was returned by the learned Special Judge to the CBI as no sanction was obtained qua present petitioners, with the direction to the CBI to obtain necessary sanction from a

competent authority. Thereafter, the CBI made two attempts to obtain sanction from the competent authority but the same was declined by the authority concerned and was forwarded to the CBI vide letter dated 30.03.2016. Further, while recording the submissions made by the counsel for the CBI in order-on-charge dated 01.02.2017, it was categorically stated in paragraph No.21 by the Trial court that *“However, he has conceded that during the investigations, the CBI could not collect any evidence about the person, who had forged and fabricated the purported CRRI report dated 30.09.2008 and therefore, no offence u/s 468 IPC is made out against any of the accused persons, as the identity of the said accused could not be ascertained, during the investigations. He has further conceded that the charges for the offence punishable u/s 13(2) r/w Sec. 13(1)(d) of the PC Act, 1988, may not be framed against accused A-3 to A-8 as these accused were never summoned to face the trial for the said offences...”* Further, in the same order dated 01.02.2017 in paragraph No. 64, it has been observed by the Trial Court that *“The above circumstances and the material on records, therefore, raise a strong suspicion against all the accused persons, except accused Dr. Sangita (A-) that they had all conspired together and have committed various offences, as discussed above, with the common objective of the conspiracy to cheat the MCD and to cause pecuniary advantage of a total amount of Rs. 93,96,902/- to themselves or to co-accused R.P. Singhal, proprietor of M/s R.P. Singhal & Co. and thereby caused corresponding loss to the MCD/ government exchequer.*

Accordingly, the charges for the offences punishable u/s 120-B r/w Sections 420, 471, 477-A IPC & Sec. 13(2) r/w Sec. 13(1)(d) of the P.C. Act, 1988 and the charges for the substantive offences punishable u/s 420, 471 r/w Sec. 465, 477-A IPC be framed against the accused R.P. Singhal (A-2); Raghvinder Dabas (A-3); Jitender Dabas (A-4); Mukesh Kumar(A-5); Birender singh Yadav (A-6); Sushil Kumar Jain (A-7); and Ravinder Singh (A-8). All the aforesaid accused are discharged for the offence punishable u/s 468 I.P.C...”

10. Thereafter, surprisingly, two separate charges were framed by the Trial Court vide its order dated 10.02.2017 i.e. one for substantive offences punishable under Sections 120-B r/w Sections 420, 471, 465, 477A IPC and another composite charge covered under Sections 120-B r/w Sections 420, 471, 465, 477A IPC & Sec. 13(2) r/w Sec. 13 (1) (d) of the P.C. Act, 1988.
11. Admittedly, no sanction for the prosecution under the Prevention of Corruption Act was accorded by the competent authority qua the petitioners, in the absence of which, no charges under the Prevention of Corruption Act could have been framed by the Trial Court. The charges framed for the offences under the Prevention of Corruption Act against the petitioners being illegal are set aside.
12. Ordered accordingly.
13. All the petitions and pending applications stand disposed of.

14. Copy of this Order be given dasti under the signatures of the Court Master.

SANGITA DHINGRA SEHGAL, J

DECEMBER 5, 2017

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