

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

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Reserved on: 05.09.2017

Delivered on: 14.09.2017

+ CRL.REV.P.501/2012

CENTRAL BUREAU OF INVESTIGATION Petitioner

versus

RAJINDER PRAKASH KOHLI Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Narender Mann, Spl. Public Prosecutor
with Mr. Manoj Pant

For the Respondent : Mr.Brahm S. Nagar

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. The petitioner/CBI has questioned the order dated 05.06.2012 passed by the Special Judge CBI (P.C. Act) Karkardooma Court: East District, Delhi in RC No.3A/05-ACU-VIII whereby the respondent/Rajinder Prakash Kohli, the then Executive Engineer was discharged on the ground of invalid sanction to prosecute him as the sanction to prosecute was accorded by a person who was not competent for the same.

2. It has been submitted on behalf of the petitioner/CBI that RC No.3A/05-ACU-VIII was registered on 01.02.2005 on source information against accused persons including respondent No.1, who was the then Executive Engineer, Municipal Corporation of Delhi and

was working in Division No.XI (Shahdara South) of the MCD alleging that the accused persons had entered into criminal conspiracy with private contractors with an object to cheat the MCD and in furtherance of the same, they had placed orders for signboards made of superior quality of sheets (micro prismatic retro reflective Type-IX) at Rs.12,387.60 per sq. mtr. It was alleged that the contractors in collusion with the officers of the MCD supplied signboards made of inferior quality of sheets costing only Rs.3,000/- per sq. mtr. The accused persons, including the petitioner, had misused their official position by accepting those inferior quality signboards and dishonestly and fraudulently, processing and passing the bills for payment to the contractors, thereby having caused wrongful gain to them and corresponding losses to the government exchequer.

3. Since the challenge to the order impugned is primarily on the question of the competence of the Commissioner, Municipal Corporation of Delhi to accord sanction to prosecute and whether on the ground of sanction having been given by an incompetent person, the trial court could interdict the prosecution at an intermediate stage and whether the want of proper sanction under Section 19(1) of the P.C. Act, 1988 went to the root of the matter for the prosecution to be stopped, there would be no necessity of dwelling on the facts/allegations concerning the petitioner in the present case.

4. Suffice it to say that after completion of investigation, charge sheet dated 09.12.2005 under Section 120B read with Section 420, 468 and 471 of the IPC and Section 13(2) read with Section 13(1)(d)

of PC Act, 1988 was filed against the respondent and others in the Court of Special Judge, CBI cases Karkardooma Court, Delhi.

5. It has been submitted that sanction for prosecution under Section 19(1) of PC Act, 1988 to prosecute the respondent was granted on 11.09.2006 by one Mr. Ashok Kumar, IAS, the then Commissioner, Municipal Corporation of Delhi, which in the opinion of the petitioner/CBI was competent to remove the respondent from his service. Thereafter, the Special Judge took cognizance of the offence on 24.04.2007 and the respondent was summoned along with other persons to face trial.

6. The charges in this case were framed against the respondent and others on 20.03.2010 under Sections 120B read with Sections 420/511 of the IPC and 13(2) read with Section 13(1)(d) of the PC Act, 1988.

7. About 9 prosecution witnesses were examined, when on 07.04.2012, the respondent filed an application before the trial court seeking dropping of proceedings as against him on the ground that the sanction for prosecution had been accorded by Commissioner, MCD who was not competent to give sanction and that it was the Corporation only which could have granted sanction for prosecution.

8. The learned trial court, vide the order impugned, allowed the said application and dropped the proceedings against him and others on the ground of invalidity of the sanction by the Commissioner, MCD, after relying on the judgment of Delhi High Court in **G.S. Matharoo v. CBI** (CRL. M.C. No.2695/2010 & CRL. M.A. No.13999/10).

9. It was submitted on behalf of the petitioner/CBI that the other officers who were subordinate to the respondent were at that time facing trial of the case.

10. The order impugned has been challenged on the ground that the learned Special Judge did not take into account that as per Section 59(d) of the Delhi Municipal Corporation Act, 1957, the Commissioner, MCD is the disciplinary authority in relation to all municipal officers and other municipal employees and therefore he was competent to grant sanction for prosecution of the respondent. It was submitted that prior to the amendment in 1993, the disciplinary authority vested with the Corporation and after the amendment, it now vests with the Commissioner. It was further submitted that though the schedule to the regulations was not amended along with the amendment of the Act in 1993, the provisions of the Section had to be read in priority over the regulations which has not yet been modified/amended. It was submitted that till the time, the new regulations are made on a future date, the Commissioner, MCD only shall be the disciplinary authority of all municipal officers and other municipal employees.

11. The other ground of challenge by the CBI is that once the court had proceeded with the trial of the case, the issue of sanction could not have been entertained on the ground of any error or defects in the sanction order in view of the clear intendment of Section 19 (3) and (4) of the Prevention of Corruption Act, 1988. It has been submitted that in **Prakash Singh Badal v. State of Punjab 2007 (1) SCC 1**, it has been held that the effect of sub-section (3) and (4) of Section 19 of the

Act are of considerable significance. In sub-section (3), the stress is on 'failure of justice' and that too 'in the opinion of the court'. In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the failure of justice is relatable to error, omission or irregularity in the sanction. Therefore, it was held in the aforesaid case that mere error, omission or irregularity in sanction should not be fatal unless it results in failure of justice. In the aforesaid judgment, it was also observed that Section 19(1) is a matter of procedure and does not go to the root of the jurisdiction. Since neither the respondent took the plea of failure of justice nor the trial court adverted to the same, the order impugned, dropping the proceedings as against the respondent, is incorrect. The issue of failure of justice could only have come to fore and determined accordingly, when trial would have been held and evidence was led on behalf of the prosecution.

12. The contention regarding the Commissioner, MCD being the competent person to accord sanction to prosecute as against the respondent is not correct in view of the decision rendered in **G.S. Matharoo v. CBI** (CRL. M.C. No.2695/2010 & CRL. M.A. No.13999/10) in which, a bench of this court, after going through the provisions of DMC Act has laid as hereunder:

"13. It may be noted that as per Section 92(1) DMC Act, the power of the Commissioner to appoint municipal officers and other municipal employees is not subject to the Regulations but subject to provisions of Section 89 which provide that the Corporation shall appoint suitable persons to be the municipal engineers, the municipal health officers, the education officer, the municipal chief accountant, the municipal secretary and

the municipal chief auditor and may appoint one or more deputy commissioners and such other officer or officers of a status equivalent to or higher than the officers specified in this sub-Section. Thus, except those officers mentioned in Section 89(1) and category "B" and "C" posts officers under the Municipal Secretary or the Municipal Chief Auditor, the Commissioner MCD is the appointing authority. However, Section 59(d) provides that the power of the Commissioner to be the disciplinary authority in relation to all municipal officers and other municipal employees is subject to the Regulation that may be made in this behalf. This Section 59(d) was introduced by way of amendment by Act 67 of 1993 with effect from 1.10.1993. Further the opening words of the Section 59, which provides for the functions of the Commissioner are, "save as otherwise provided in this Act". Thus, the power of the Commissioner to be the discretionary authority in relation to all municipal officers and other municipal employees is subject to other provisions of the Act and Regulations. However, Section 95(1) which already existed in the Statute provides that every municipal officer or other municipal employee shall be liable to have his increment or promotion withheld, to be removed or dismissed by such authority as may be prescribed by Regulations. Thus both the provision relating to the power of the disciplinary authority and the provision relating to the functions of the Commissioner MCD as disciplinary authority are subject to the Regulations. The only difference is in the words used i.e. "any regulations that may be made in this behalf" in Section 59(d) and "by such authority as may be prescribed by regulations" under Section 95(1) of the DMC Act. Further the power under Section 59(d) is subject to other provisions of the DMC Act i.e. Section 95.

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22. *In view of the discussion hereinabove, the only conclusion that can be drawn in the present case is that the authority competent to remove the Petitioner is the Corporation as notified in the schedule to the Regulations on 15th December, 1976 which regulations have neither been rescinded nor amended till date. Thus, the Corporation is the competent authority to grant sanction under Section 19 of the P.C. Act and not the Commissioner in the case of the Petitioner, who is a Group "A" employee."*

13. The SLP filed before the Supreme Court of India against the aforesaid judgment of the Delhi High Court has been dismissed and the review petition also met with the same fate. The respondent is, admittedly, a group 'A' employee and hence only the Corporation was the competent authority to grant sanction for prosecution.

14. So far as the other contentions of the petitioner/CBI is concerned, those do not have much substance.

15. Section 19 of the PC Act reads as hereunder:-

"19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(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”

16. It would be necessary to refer to the provisions of Section 465 of the Cr.P.C. also which deals with the effect of any error, omission or irregularity in grant of sanction on the prosecution.

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

17. A bare reading of Section 19(1) of the PC Act makes it clear that a court will have the competence to take cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 against public servants when previous sanction of the competent authority has been accorded. The terms are absolute and brooks of no dispute. What has been prohibited is that a court of appeal, confirmation or revision shall not reverse or alter the findings of the Special Judge on the ground of error, omission or irregularity in the sanction unless in the opinion of

that court, a failure of justice has been occasioned, and while coming to such opinion, such court shall have regard to the fact whether such objection ought to have been raised at any earlier stage in the proceedings.

18. The Supreme Court in **Nanjappa v. State of Karnataka (2015)**

8 SCALE 171 has held as follows:

"16. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to Section 19, which starts with a non-obstante clause. Also relevant to the same aspect would be Section 465 of the Cr.P.C. which we have extracted earlier. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny. 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). 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. 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. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned

would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision".

(emphasis provided by the court)

19. The argument of Mr. Narender Mann, learned Special Public Prosecutor that the judgment delivered in *Nanjappa* (supra) is *per incuriam* as it does not take into account the judgments delivered in *State of Bihar and Others v. Rajmangal Ram* 2014 (4) SCALE 338, *Prakash Singh Badal and Anr. v. State of Punjab and Ors.* (2007) 1 SCC 1, *State of Madhya Pradesh v. Virender Kumar Tripathi* 2009 (7) SCR etc. is not correct. The issues involved in the aforesaid cases were different. In *State of Bihar v. Rajmangal Ram* (supra), sanction for prosecution as against the accused persons was granted by the law department of the State and not by the parent department, to which those accused persons belonged. The accused person preferred a writ petition before the High Court of Patna, challenging the maintainability of criminal proceedings on the ground that the sanction was invalid. The High Court interdicted the prosecution on the aforesaid ground. The question, therefore, before the Supreme Court of India in *Rajmangal Ram* (supra) was whether criminal prosecution could be interfered with by the High Court at the instance of an accused who had sought mid-course relief from the criminal charges leveled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of

jurisdiction to grant sanction. The Supreme Court of India, on going through the provisions of Section 19 PC Act read with Section 465 Cr.P.C., answered the aforesaid question in the negative while saying so, the Supreme Court took note of the decisions in ***Prakash Singh Badal and Virender Kumar Tripathi*** (supra). Thus, what was the challenge before the Supreme Court was the order of the High Court whereby the prosecution against the accused was interdicted mid way. In the present case, the trial court/special court only has dropped the proceedings on the grounds of incompetence of the authority granting sanction to prosecute.

20. In ***Prakash Singh Badal*** (supra), the question which had arisen for consideration before the Supreme Court was as to whether an order of sanction is required to be passed in terms of Section 197 of the Cr.P.C. in relation to an accused who has ceased to be a public servant. It was in that context that a question had arisen as to whether the act alleged to be performed under the colour of office is for the benefit of the officer or for his own pleasure. In the context of the question as to whether the public servant concerned should receive continuous protection, it was opined: (SCC Page 25 para 29 herein)

"29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on "failure of justice" and that too "in the opinion of the court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice

or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of Narasimha Rao case. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary."

21. Similarly, in other cases referred by the learned counsel for the petitioner/CBI, the issues were different.
22. The mandate of Sections 3 and 4 of Section 19 is required to be exercised by the superior courts as has held in *Nanjappa* (supra).
23. It was open for the petitioner/CBI to have obtained a fresh sanction from the competent authority as against the respondent, which concession was also given by the trial court. The same was never responded to; rather the order impugned was challenged by way of the present revision petition.
24. Thus, we find no folly with the order impugned.
25. The revision petition is dismissed accordingly.

ASHUTOSH KUMAR, J

SEPTEMBER 14, 2017/ns