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

+ **W.P.(CRL) 2732/2017**

MAHESH KUMAR

..... Petitioner

Through: Mr.Amit Sharma, Advocate with
Ms.Heena Khan, Mr.Aamir Khan and Ms.Kanika
Singh, Advocates.

versus

CBI

..... Respondent

Through: Mr.Sanjeev Bhandari, SPP for CBI.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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19.09.2017

Crl.M.A. 15690/2017 (exemption)

Exemption allowed subject to all just exceptions.

Application is disposed of.

W.P.(CRL) 2732/2017

1. On an advance copy having been served, Mr. Bhandari, learned SPP appears for the respondent/CBI.
2. The petitioner invokes the writ jurisdiction of this court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.PC') impugning the order dated 29.07.2017 passed by the learned Special Judge, PC Act, CBI-

05, New Delhi in case being CC No.38/16 (old CC No.03/2013) titled as “CBI Vs. Mahesh Kumar & Others” vide FIR bearing No. RC-2172013A0004 dated 03.05.2013.

3. The petitioner is facing trial having been charged under Section 120-B of Indian Penal Code, 1860 (in short ‘IPC’) read with Section 7, 9, 12 and 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988 (in short ‘P.C. Act’) along with his nine co-accused persons. The petitioner is a public servant amongst the accused persons facing the trial. During the relevant period between January, 2013 till 03.05.2013, the petitioner was working in his various capacities i.e. General Manager, Western Railway till forenoon 01.05.2013 and Member (Staff) in the Ministry of Railway.
4. His Excellency, Hon’ble the President of India, being the competent authority to remove the petitioner from the service accorded sanction under Section 19 (1) of P.C. Act for prosecution of the petitioner for the said offences, which was conveyed to the CBI by the Deputy Secretary (Establishment-02), Railway Board on 02.07.2013. The CBI i.e. the prosecuting agency examined Sh. Jag Mohan Singh Rawat, Deputy Secretary (Establishment) as PW-1. His examination in chief was recorded by the learned Special Judge, CBI on 15.09.2014. He was cross-examined thoroughly by the accused persons including the learned counsel for the petitioner on 27.07.2017.
5. Meanwhile, the petitioner filed an application under Section 91 of Cr.PC. For the disposal of this petition, it would be necessary to refer relevant Para 2, 3, 5 and prayer clause of the application, which reads as under:-

“2. That the aforesaid witness was summoned by the Prosecuting Agency to prove the Accord of Sanction for Prosecuting the applicant, who was a Public Servant at the relevant time. However, during the course of the Examination-in-chief of the aforesaid witness, it was noticed that the said witness had only conveyed the Order of Sanction for Prosecuting the Applicant and **the sanction for Prosecuting the Applicant was granted by the then Railway Minister Sh. Mallikarjun Kharge on behalf of the President of India.** It is not out of place to mention here that from the aforesaid admission of the Witness it is apparent that the said witness had not applied his mind in granting sanction. Further, the occasion for **summoning the Entire File has also arisen due to the fact that the aforesaid Witness failed to mention the date of accord of Sanction in his Examination-in-Chief** and it is apparent therefore that the said file would be required to refresh the memory of the witness so that an effective Cross Examination can be carried out and the Judicial time is not wasted.

3. That in the said circumstance, the applicant/accused in order to confront the witness on accord of Sanction, needs the Original and Complete file pertaining to grant of Sanction for prosecution of applicant.

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5. That however it is essential that the respective file/document of the concerned Dept. must be made available to the applicant/accused for confronting the same to the witness and to prove the innocence of applicant/accused. Therefore, the present application.

PRAYER:

In view of these circumstances, it is respectfully prayed that this Hon’ble Court may be pleased to direct the summoning of the Original complete File detailed herein-below from the Office of the Government of India, Ministry of Railways, (Railway Board), New Delhi.

Sanction file pertaining to Accused no.1/Mahesh Kumar in respect of R.C. No. 2172013A004 2013/VC/RB/15-CBI from Government of India, Ministry of Railways,

(Railway Board), New Delhi], inclusive of sanction order dated 02.07.2013, issued/bearing signature of Sh. Jagmohan Singh Rawat.

Any other or further order(s) may be passed in the interest of justice, fair play and good conscious.

It is submitted and prayed accordingly.”

6. Admittedly, the sanctioning authority of the petitioner is His Excellency the President of India and as per the Government of India (Transaction of Business) Rules, 1961 such sanction is to be disposed of by or under the special directions of the Minister Incharge. As per Para 102 of The Authentication (Order and Instrument) Rules, 2002, all orders or other instrument made and executed in the name of the President have to be expressed to be made in his name and signed by an officer to authenticate such orders, which includes Deputy Secretary. PW-1 Sh. Jag Mohan Singh Rawat is the Deputy Secretary, who was authorised to authenticate such order passed by the concerned Minister i.e. the Railway Minister. It was for the Railway Minister to apply the mind in order to accord sanction for prosecution of the petitioner. The prosecution witness PW-1, who has been the Deputy Secretary, had authenticated and conveyed such sanction accorded by the Railway Minister on behalf of the President of India under Section 19 of the P.C. Act.
7. In his application under Section 91 Cr.PC, the petitioner wanted to confront the said witness from the file as to grant of sanction by the concerned Minister and to the date of accord of sanction. Admittedly, in the cross-examination of PW-1, the copy of the sanction order granted by the Railway Minister dated 02.07.2013 Mark 'X' was

placed on record in his cross-examination. The Railway Minister has accorded sanction on 02.07.2013 under Section 19 (1) of P.C. Act for prosecution of the petitioner in the competent court of law for the said offence after going through the relevant record and considering all aspects of the case. The sanction order, which was authenticated and conveyed by the Deputy Secretary Mr. Jag Mohan Singh Rawat (PW-1), is already on record, which is Ex.PW-1/A.

8. Learned counsel argued that it is not a question of just production of the file and it is the right of the petitioner to confront the author of the order/document conveying the sanction. He submits that curtailment of the right of the petitioner/accused for cross-examination amounts to violation of his fundamental right guaranteed under Article 21 of the Constitution of India.
9. The petitioner/accused had already cross-examined the witness (PW-1) at length running into 08 pages apart from examination-in-chief and the cross-examination by the co-accused persons. Whatever information the petitioner wanted to have by application under Section 91 Cr.PC is already available in the deposition of PW-1. Still the learned Special Judge has given liberty to the petitioner to summon the sanction file during the stage of his defence evidence.
10. In these circumstances, having noticed that the petitioner had already cross-examined the concerned witness i.e. PW-1 on the point of granting sanction under Section 19 of P.C. Act at length and as his prayer in application under Section 91 of Cr.PC to find sanction order by the concerned Minister and date of sanction is already made available by placing on record such copy of sanction accorded by the

Railway Minster dated 02.07.2013, there is no merit in the petition particularly when learned Special Judge, CBI, had given liberty to the petitioner to summon the file in his defence evidence.

11. Therefore, the petition is dismissed being devoid of any merit.

VINOD GOEL, J.

SEPTEMBER 19, 2017

"shailendra"