

IN THE HIGH COURT OF BOMBAY AT GOA***CRIMINAL WRIT PETITION NO.13 OF 2018***

Shri Sunil Garg,
S/o Late Lakshanji Garg,
major of age, service,
r/o 2/2 Court Lane,
Civil Lines, New Delhi.

... Petitioner

Versus

1. The Officer-In-Charge
Anti-Corruption Branch,
Directorate of Vigilance,
Altinho, Panaji Goa.
2. The Superintendent of Police,
Anti Corruption Branch,
Directorate of Vigilance,
Altinho, Panaji Goa.
3. Shri Munnalal Halwai,
major of age, FF Complex,
5th Floor, Above Bank
of Baroda, Vasco Goa.
4. The State of Goa,
Through the Officer in Charge
Anti-Corruption Branch,
Directorate of Vigilance,
Altinho, Panaji Goa.

.... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. Jatin Sehgal, Ms. Devna Soni and Mr. Ryan Da Piedade Menezes, Advocates for the Petitioner.
Mr. S. R. Rivankar, Public Prosecutor for Respondent Nos.1, 2 & 4.

Mr. Nigel Da Costa Frias with Ms. L. Sawant, Advocates for Respondent No.3.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 27 June 2018.

Oral Judgment : (Per N. M. Jamdar, J)

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal.

2. The Petitioner is a member of Indian Police Services and had served as a Inspector General of Police of Goa. The Petitioner has approached this Court with a prayer to quash and set aside the order passed by the Additional Sessions Court, North Goa, Panaji, dated 8 January 2018 in Criminal Misc. Application No.87/2016 and/or any investigation or FIR registered pursuant thereof. The order was passed by the learned Magistrate on the application filed by the Respondent No.3.

3. The case of Respondent No.3 is as follows: Respondent No.3 had filed a complaint to the Director General of Police, Panaji

Goa on 3 August 2015 in respect of one Shrikant Nayak for cheating and other offences. Since this complaint was not acted upon, he approached the higher authorities of the police for directions to the Ponda Police Station to take action on the complaint. Respondent No.3 along with his friend met the Petitioner and during the meeting the Petitioner demanded certain amounts as an illegal gratification. In spite of payment nothing further taken place pursuant to their agreement. Respondent No.3 had recorded conversations between him and the Petitioner while handing over some amount to the Petitioner. Since the acts of the Petitioner attracted the Prevention of Corruption Act, 1988, Respondent No.3 lodged a complaint to the Officer incharge of the Anti Corruption Branch, Directorate of Vigilance on 11 August 2016 requesting to register an FIR under Sections 7 and 13 of the Prevention of Corruption Act, 1988. It was the grievance of the Respondent No.3 that no sanction was accorded and nothing was done in respect of his complaint. Respondent No.3 stated that he approached the Superintendent of Police but no sanction was forthcoming. Respondent No.3 filed a Criminal Misc. Application No.87/2016 in the Court of Additional Sessions Judge, North Goa, under Section 156(3) of the Code of Criminal Procedure. The Respondent No.3 sought a direction to the police authorities to register an FIR under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 against the Petitioner.

4. The application was heard by the learned Additional Sessions Judge, North Goa, Panaji. It was pointed out to the learned Additional Sessions Judge that till date there was no sanction accorded in respect of the complaint made by Respondent No.3 and that the application under Section 156(3) was liable to be dismissed. Reliance was placed on the decisions of *Anil Kumar & others Vs M. K. Aiyappa & Another*¹, *Sailesh Vs State of Maharashtra & Others*² *Jignesh Patel V/s Edrich Miranda & Others*³.

5. The learned Additional Sessions Judge noted the ratio of these decisions and further considered the decisions of the Apex Court in the case of *Vineet Narain and others V/s Union of India & Another*⁴ and *Subramanian Swamy V/s Manmohan Singh & Another*⁵. The learned Additional Sessions Judge while referring to these decisions of the Apex Court, which rest upon the need to have a time bound disposal of application for sanction, came to the conclusion that the fact that no sanction was granted cannot be an impediment to direct the investigation under Section 156(3) of the Code of Criminal Procedure. The learned Additional Sessions Judge also took note of the Circular dated 29 March 2012 issued by the

1 (2013) 10 SCC 705

2 MANU/MH/2722/2017

3 MANU/MH/2223/2016

4 (1998) 1 SCC 226

5 (2012) 3 SCC 64

Central Vigilance Commission which directed the police authorities to process the application for sanction for prosecution for timely manner. Therefore, what the learned Additional Sessions Judge did was, though it is not stated in those precise terms, is to introduce a concept of deemed sanction.

6. The Petitioner being aggrieved has filed this petition challenging the order dated 8 January 2018. On 19 January 2018, notice was issued to the Respondents and by interim order it was directed that the FIR will not be registered against the Petitioner. After the notice was served, the appearance has been entered on behalf of the Respondent/Complainant.

7. We have heard Mr. S. D. Lotlikar, learned Senior Advocate for the Petitioner, Mr. S. R. Rivankar, learned Public Prosecutor for Respondent Nos.1, 2 and 4 and Mr. Nigel Da Costa Frias, learned counsel for Respondent No.3.

8. Mr. Lotlikar, learned Senior Advocate for the Petitioner submitted that apart from various grounds on merits and law, the main ground on which the order of the learned Additional Sessions Judge is being challenged and so also further investigation is that there is no sanction accorded by the competent authority in respect of the

complaint made by Respondent No.3 against the Petitioner under the Prevention of Corruption Act. Mr. Lotlikar submitted that under Sections 19 and 20 of the Prevention and Corruption Act, sanction from the competent authority which is a important safeguard, is necessary to prosecute a government servant under the Act of 1988. He submitted that even while considering an application under Section 156(3) of the Code if necessary for the Court to ascertain whether any sanction given by the competent authority failing which such application cannot be entertained. He relied upon a decision in the case of *Anil Kumar & others Vs M. K. Aiyappa & Others*⁶, *Dilawar Singh Vs Parvinder Singh alias Iqbal Singh and Another*⁷. The decisions of this Court in the case of *Pradeep Ramchandra Velip Vs State of Goa and others*⁸, *Advocate Aires Rodrigues V/s Officer in Charge*⁹, *Nilesh S. Rane Vs Ravikanth Yadav & Anr*¹⁰. The learned Senior Advocate submitted that even though the Apex Court in the case of *Subramanian Swamy* and *Vineet Narain* have directed that there should be time bound disposal of the application for grant of sanction, not disposing them on time cannot result into a deemed sanction and therefore, the order passed by the learned Additional Sessions Judge is patently erroneous.

6 (2013) 10 SCC 705

7 2005(12)SCC 709

8 Criminal Appln (Main) No.71 of 2017 dated 5 January 2018

9 Criminal Writ Petition No.126 of 2014 dated 22 December 2014.

10 2015(3) BomCR(Cri)410

9. Mr. Costa Frias, learned advocate for the Respondent-Complainant submitted that in the decisions of *Vineet Narain and Subramanian Swamy*, the Apex Court has in detail discussed the chronic problem of not deciding the matters of sanction to prosecute the government servant in time and has issued various directions for time bound disposal. The learned counsel submitted that even a Circular has been issued by the Central Vigilance Commission directing all investigating agencies to strictly adhere to the time limits laid down. The learned counsel submitted that since the Magistrate has given effect to this Circular and the decisions of the Apex Court, under equity jurisdiction of this Court, this Court should not interfere. He submitted that a *prima facie* case has been made out and, therefore, at the behest of such Petitioner the order need not be interfered with assuming a question of law arises. The learned counsel also relied upon a decision of the Apex Court in the case of *Manju Surana Vs Sunil Arora & Others*¹¹ to point out that the position of law as to whether for invoking jurisdiction under Section 156(3) of the Code of Criminal Procedure, a sanction is required or not is referred to a larger bench.

10. The admitted fact is there is no sanction in respect of the complaint made by Respondent No.3. Secondly, the complaint is in

¹¹ Criminal Appeal No.457 of 2018 dated 27 March 2018

respect of Prevention of Corruption Act. Thirdly, the order is passed by the learned Judge under Section 156 of the Code of Criminal Procedure. Therefore short question is whether under Section 156(3) of the Code of Criminal Procedure, the learned Judge could have directed registration of FIR without there being any sanction.

11. In the case of *Anil Kumar*, the Apex Court observed thus :

*“13. 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 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 under Section 156(3) Cr.P.C. The legal position, as already indicated, has been clearly spelt out in *Paras Nath Singh* and *Subramaniam Swamy* cases (*supra*).”*

(emphasis supplied)

12. This decision of the Apex Court was thereafter followed

by the Division Bench of this Court in the case of *Sailesh Vs State of Maharashtra and others*. In the case of *Jignesh Patel Vs Edrich Miranda and others*, the Division Bench observed as under :

“The material on record reveals that the acts alleged against the Applicant were performed by him in discharge of official duties and are reasonably connected with his official duties. In the light of the said circular and in view of the principles laid down by the Apex Court in Rizwan Ahmad as well as Anil Kumar Yadav (supra) the Applicant would be entitled for the benefit of sub section 3 of section 197 of the Cr.P. C. Undisputedly in the instant case there is no sanction order and hence the learned Magistrate was not justified in issuing the order under section 156 (3) of Cr. P. C.”

(emphasis supplied)

In the case of *Pradeep Ramchandra Velip Vs State of Goa and others*, the Division Bench of this Court again considered the question of power of the Court to entertain and grant the application under Section 156 in respect of the government servant when there is no sanction. The Division Bench observed at paras 12 & 15 thus :

“12. Thus, in view of the clear pronouncements of the Supreme Court, in our considered view the learned Magistrate did not have jurisdiction to order registration of the FIR and direct investigation into the offences under the Indian Penal Code against the Petitioner in the absence of there being any sanction for prosecution under Section 197 of the Cr.P.C.

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15. So far as the reason assigned by both the Courts below

that since the law laid down by the Supreme Court in the case of Anil Kumar & Ors. (supra) is in the matter of the Prevention of Corruption Act and therefore is not applicable, cannot be accepted. As the provisions contained under Section 19(1) of the Prevention of Corruption Act, as also in Section 197(1) of the Cr.P.C., so far as they relate to the sanction being identical, the ratio of the said Judgment applies with full force to the present matter and, as such, the law laid down by the Supreme Court in the case of Anil Kumar & Ors. (supra) was required to have been followed.

(emphasis supplied)

13. These decisions and the position of law were placed before the learned Additional Sessions Judge. The learned Additional Sessions Judge however relied upon the decisions of the Apex Court in the case of *Vineet Narain and Subramanian Swamy*. In the case of *Vineet Narain*, the Apex Court observed that the withholding the decision on sanction for inordinate time is against public interest and there should be a time limit within which the decision needs to be taken. This concern was reiterated in the case of *Subramanian Swamy*. The Apex Court observed that in future every competent authority shall take appropriate action on the representation made by a citizen for sanction of the prosecution of a public servant strictly in accordance with the direction contained in *Vineet Narain v. Union of India* and the guidelines framed by the CVC. The Apex Court also took note of the lacuna in the law and recommended that the

Parliament should consider the imposition of a time limit of three months of the receipt of the proposal by the authority concerned.

14. The Apex Court in the decisions of *Vineet Narain and Subramanian Swamy*, underscored the malady of government servants charged with corruption continuing to work as sanctions are not granted in time. It is in this context, the Apex Court made the above observations and stressed upon the need to dispose of the application for sanction. It was however not laid down in *Vineet Narain and Subramanian Swamy* that if the sanction is not granted in time, the sanction is deemed to have been granted and the Court can proceed without sanction. Position of law regarding absence of sanction and Section 156 of the Code is already reiterated by the Division benches of this Court in the decisions cited supra. A complainant, on whose complaint the matter of grant of sanction is pending can bring it to the notice of a writ Court the administrative lapse and non-adherence to the observations of the Apex Court regarding the timely disposal and seek suitable direction. But a sequitor does not follow that if sanction is not accorded in time, it is deemed to have been granted for the Sessions Judge to proceed.

15. In the decision of *Manju Surana*, two learned Judge of the Apex Court have referred the position of law laid down in *Anil*

Kumar for the consideration of the larger bench. It is however settled position that a reference for the constitution of a larger bench does not mean that the legal position holding the field is suspended. Therefore, as on today since there is no sanction upon the complaint filed by Respondent No.3 against the Petitioner, in view of the law laid down, the order under Section 156(3) could not have been passed and on this ground alone, without going into any other aspect, it will have to be set aside.

16. In view of the above, the petition is required to be allowed. Accordingly, Rule is made absolute in terms of prayer clause (a). The impugned order passed by the learned Additional Sessions Judge is set aside.

17. We do however observe that the grant of sanction not being decided for a long period of time would be against the observations of the Apex Court, and the concerned authorities should take a decision upon the same as expeditiously as possible.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.