

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.Nos.23523, 23530, 23531
and 23533 of 2018

State through
The Inspector of Police
CBI/ACB/Chennai.

... Petitioner in all Crl.OP's
Vs.

1.UVVS.N.Raju
2.Pratap Jampala
3.R.Sundar
4.Usha Seshadri
5.Gunasekaran Rengasamy
6.Maria Joseph Raj
7.Sheeba
8.Bipash Saran
9.H.Rajasekar

.. Respondents in Crl.OP.No.23523 of 2018

1.P.G.K.Gohale
2.K.Sekar
3.Velkumaran
4.N.Madhusudhana Reddy
5.Ragunath Gali
6.Suragani Venkata Surendra Babu
7.Bijaya Kumar Nayak
8.Aruna Venkatesh
9.H.Jahabar Sathik
10.G.Sangeetha
11.K.Subramaniam

.. Respondents in Crl.OP.No.23530 of 2018

1.Anil Kumar Tiwari
2.R.Sundar
3.Usha Seshadri
4.Namonarayan Meena

.. Respondents in Crl.OP.No.23531 of 2018

1.P.G.K.Gokhale
2.Ragunath Gali
3.K.Sekar
4.Anusuya Vadivelu
5.G.Sangeetha

.. Respondents in Crl.OP.No.23533 of 2018

PRAYER in Crl.OP.No.23523 of 2018: Criminal Original Petition
filed under Section 482 Cr.P.C. to direct the learned
Principal Special Judge for CBI Cases, Chennai to accept the
charge sheet No.16 dated 30.08.2017 in RC MA1 2013 A0029 and
to take on file.

PRAYER in Crl.OP.No.23530 of 2018: Criminal Original Petition filed under Section 482 Cr.P.C. to direct the learned Principal Special Judge for CBI Cases, Chennai to accept the charge sheet No.17 dated 30.08.2017 in RC MA1 2013 A0030 and to take on file.

PRAYER in Crl.OP.No.23531 of 2018: Criminal Original Petition filed under Section 482 Cr.P.C. to direct the learned Principal Special Judge for CBI Cases, Chennai to accept the charge sheet No.14 dated 30.08.2017 in RC MA1 2013 A0027 and to take on file.

PRAYER in Crl.OP.No.23533 of 2018: Criminal Original Petition filed under Section 482 Cr.P.C. to direct the learned Principal Special Judge for CBI Cases, Chennai to accept the charge sheet No.15 dated 30.08.2017 in RC MA1 2013 A0028 and to take on file.

For Petitioner : Mr.K.Srinivasan
in all Crl.OP's : Special Public Prosecutor
for CBI Cases

COMMON ORDER

The Criminal Original Petitions have been filed to set aside the impugned order dated 08.02.2018 passed by the learned Principal Special Judge for CBI Cases, Chennai, returning the charge sheets filed in RC MA1 2013 A 0029, RC MA1 2013 A0030, RC MA1 2013 A0027 and RC MA1 2013 A0028.

2.Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases would submit that the question of requirement of sanction to prosecute public servants has been decided by the Honourable Apex Court in Criminal Appeal No.721 of 2016(with 722 of 2016) in the case of L.Narayana Swamy Vs. State of Karnataka and Others.,. He would further submit that in the above stated Judgment, the Honourable Apex Court had raised two questions of law in para 7. Which arose for consideration regarding requirement of sanction.

Para 7:

Within this factual background, we advert to the question of law that arise for consideration:

“(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. And Manharibhai Muljibhai Kakadia and Anr. V. Shaileshbhai Mohanbhai Patel and Ors. ?

(2) Whether a public servant who is not on the

same post and is transferred (whether by way of promotion or otherwise to another post) loses the protection under Section 19(1) of the P.C.Act, though he continues to be a public servant, albeit on a different post ?”

He would submit that the learned Principal Special Judge at the time of considering the charge sheet ought to have taken into consideration of question No.2 formulated by the Honourable Apex Court, whereas he had taken into consideration question No.1 and had returned the charge sheet, directing the prosecution to produce the sanction order along with charge sheet. He would further submit that if question No.2 had been taken into consideration, the learned Principal Special Judge would be able to rightly decide with regard to the requirement of sanction order. He would further submit that the accused in this case can be categorized into three categories.

1. Public servants who have retired by way of superannuation or VRS.
2. Public servants who are not in the same post (either by way of promotion or transfer to another post)
3. Public servants who continue in the same post.

In respect of category 1 & 2, requirement of sanction is not necessary, since they lose their protection as per 19(1) of Prevention of Corruption Act as held by L.Narayana Swamy Vs. State of Karnataka and Others. In respect of the 3rd category sanction may be required, whereas, the learned Principal Special Judge had wrongly basing reliance on question No.1 formulated in the case of L.Narayana Swamy Vs. State of Karnataka and Others, had returned the complaint without proper application of mind. He would submit that this Court may remand the matter to the learned Principal Special Judge to properly decide the issue in accordance with question No.2 raised in the Judgment of the Honourable Apex Court.

3. I have gone through the orders passed by the learned Principal Special Judge for CBI Cases, Chennai, dated 08.02.2018. The charge sheets had been returned by the learned Principal Special Judge with the following endorsement,

“RC MA 1 2013 A 0029

The Investigation officer/Inspector of Police, CBI/ACB/Chennai has filed a charge sheet in RC MA 1 2013 A 0029 enclosing copy of the ruling of the Hon'ble Supreme Court of India in CrI.A.No.721/2016 (with 722 of 2016) in L.Narayana Swamy Vs. State of Karnataka and others, stating that there will be no necessity for obtain sanction for prosecuting the accused for taking cognizance of the offences in RC MA 1 2013 A 0029.

Perused the Judgment. It is categorically stated that the Judgment of Supreme Court though on the

issue of obtaining the sanction at the time of taking cognizance may not be correct in so far as question No.1 formulated above is concerned, in the facts of the present case.

Hence the prosecution is directed to produce sanction order along with charge sheet.

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Principal Special Judge
for CBI Cases
VIII Additional City Civil
Court Chennai - 600 104."

"RC MA 1 2013 A 0030

The Investigation officer/Inspector of Police, CBI/ACB/Chennai has filed a charge sheet in RC MA 1 2013 A 0030 enclosing copy of the ruling of the Hon'ble Supreme Court of India in CrI.A.No.721/2016 (with 722 of 2016) in L.Narayana Swamy Vs. State of Karnataka and others, stating that there will be no necessity for obtain sanction for prosecuting the accused for taking cognizance of the offences in RC MA 1 2013 A 0030.

Perused the Judgment. It is categorically stated that the Judgment of Supreme Court though on the issue of obtaining the sanction at the time of taking cognizance may not be correct in so far as question No.1 formulated above is concerned, in the facts of the present case.

Hence the prosecution is directed to produce sanction order along with charge sheet.

-sd-

Principal Special Judge
for CBI Cases
VIII Additional City Civil
Court Chennai - 600 104."

"RC MA 1 2013 A 0027

The Investigation officer/Inspector of Police, CBI/ACB/Chennai has filed a charge sheet in RC MA 1 2013 A 0027 enclosing copy of the ruling of the Hon'ble Supreme Court of India in CrI.A.No.721/2016 (with 722 of 2016) in L.Narayana Swamy Vs. State of Karnataka and others, stating that there will be no necessity for obtain sanction for prosecuting the accused for taking cognizance of the offences in RC MA 1 2013 A 0027.

Perused the Judgment. It is categorically stated that the Judgment of Supreme Court though on

the issue of obtaining the sanction at the time of taking cognizance may not be correct in so far as question No.1 formulated above is concerned, in the facts of the present case.

Hence the prosecution is directed to produce sanction order along with charge sheet.

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Principal Special Judge
for CBI Cases
VIII Additional City Civil
Court Chennai - 600 104."

"RC MA 1 2013 A 0028

The Investigation officer/Inspector of Police, CBI/ACB/Chennai has filed a charge sheet in RC MA 1 2013 A 0028 enclosing copy of the ruling of the Hon'ble Supreme Court of India in Crl.A.No.721/2016 (with 722 of 2016) in L.Narayana Swamy Vs. State of Karnataka and others, stating that there will be no necessity for obtain sanction for prosecuting the accused for taking cognizance of the offences in RC MA 1 2013 A 0028.

Perused the Judgment. It is categorically stated that the Judgment of Supreme Court though on the issue of obtaining the sanction at the time of taking cognizance may not be correct in so far as question No.1 formulated above is concerned, in the facts of the present case.

Hence the prosecution is directed to produce sanction order along with charge sheet.

-sd-

Principal Special Judge
for CBI Cases
VIII Additional City Civil
Court Chennai - 600 104."

4. The learned Principal Special Judge placing reliance on the question No.1 formulated in the Judgment of the Honourable Apex Court in L.Narayana Swamy Vs. State of Karnataka and Others has returned the charge sheets with a direction to produce the sanction order along with the charge sheet.

5. While going through the petition, it is also stated by the petitioner/The Inspector of Police, CBI, ACB, Chennai, that the sanctioning authority has earlier refused to accord sanction to prosecute the respondents. In such circumstances, another question arises for consideration is whether the petitioner has to challenge the order of the authorities

refusing to grant sanction or not?. In the opinion of this Court, in view of the decision in L.Narayana Swamy Vs. State of Karnataka and Others, sanction has to be necessarily obtained for the accused falling within the 3rd category.

6. The learned Principal Special Judge is directed to consider the charge sheets regarding the requirement of sanction afresh, taking into consideration, the issue No.2 formulated in L.Narayana Swamy Vs. State of Karnataka and Others. Further, in light of the discussion made above in para 5, the petitioner/The Inspector of Police, CBI, ACB, Chennai, shall also satisfy the learned Principal Special Judge with regard to the requirement of sanction in view of the earlier rejection/refusal by the sanctioning authority to accord sanction to prosecute.

7. With this observation, the Criminal Original Petitions are disposed of.

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Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Special Judge for CBI Cases Chennai.
2. The Inspector of Police, CBI/ACB/Chennai.
3. The Public Prosecutor, High Court, Madras.

KR/15/11/18

सत्यमेव जयते

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