HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITON No.33297 of 2016

ORDER:

This Writ Petition is filed seeking writ of mandamus declaring the sanction for prosecution of petitioner in CC No.17 of 2015 by virtue of proceedings vide CC/MCG/VIG/DHK/2015-16/109, dated 11.04.2015 in CBI Case No.6(E)/2013 of BS & FC, Bangalore and the proceedings of the 2nd respondent (Central Vigilance Commission) vide Letter No.1505/BNK/1-279946, dated 31.03.2015, after having first refused to accord such sanction vide CC/MCG/VIG/DHK/2014-15/1617, dated 13.02.2015, as illegal and arbitrary and consequently to set aside the above sanction.

2. Brief facts which are necessary for disposal of the Writ Petition are as follows:

The petitioner worked as Assistant General Manager (AGM), State Bank of India, Overseas Branch, Road No.36, Jubilee Hills, Hyderabad, which is categorized as Mid-Corporate Group Branch, during the period from 16.11.2009 to 27.01.2012 and later he was transferred to Mid Corporate Group in the month of January, 2012 and subsequently to Tirupati in the month of May, 2012 on completion of his term at Hyderabad. While he was working at Tirupati, he received a letter calling for his explanation on certain alleged lapses in the conduct of loan accounts of M/s.SVEN Genetech Ltd. After submission of explanation by the petitioner, the 3rd respondent Bank initiated internal disciplinary proceedings and same were concluded through its decision vide CC/MCG/VIG/DHK/2014-15/3964, dated 23.03.2015 holding that the Officer, while working as the Assistant General Manager and Branch Head, Overseas branch, Hyderabad, has committed certain lapses in adhering to laid down systems and procedures. However, the lapses are of procedural in nature and no malafides are discernible on the part of the Officer and imposed penalty on the petitioner to the effect of reduction to a lower stage in the time scale of Pay by 1 (one) stage for a period of one year, with further direction that the Officer will not earn increments to Pay during the period of such reduction, and on expiry of such period, the reduction will have the effect of postponing the future increments of his Pay, in terms of Rule No.67(f) of SBIOSR. Aggrieved by the aforesaid order of the disciplinary authority, petitioner appealed to the Appellate Disciplinary Authority and the said Appellate Authority, vide its Order dated 30.01.2016, communicated on 11.04.2016, observed as follows:

> "Having considered the matter in its entirety, the records and submissions of the appellant, **the past records and the consistently high scores in the annual appraisal reports, the Committee is of the view that though he may be lax in monitoring the account as the note was put up to him for control, the appellant cannot be faulted for actions taken by the relationship Manager in MCG credit process.** Taking into account the merits.. and **considering his role as Branch Head/AGM of Overseas branch, Hyderabad, as vicarious, the committee is inclined to take a lenient view** in the matter and it feel that ends of justice would be adequately met by modifying the punishment…by issuing an **Administrative Warning to the officer**." Thereby quashing the penalty awarded by the Disciplinary Authority."

While the matter stood thus, the 3rd respondent Bank issued proceedings refusing to sanction permission for the petitioner's prosecution vide letter CC/MCG/VIG/DHK/2014-15/1617, dated 13.02.2015 in the criminal proceedings initiated by the 1st respondent. However, the 1st respondent sought permission for prosecution of the officials of the Bank as mandated under Section 19(1)(C) of the Prevention of Corruption Act in CBI Case No.6(E)/2013, dated 31.03.2015, without any additional material evidence, warranting review of the initial rejection of sanction for prosecution on merits, only on the pressure exerted by the 1st and 2nd respondents, the 3rd respondent Bank accorded permission vide their letter dated 11.04.2015. Aggrieved by the same, present Writ Petition is filed.

3. The sum and substance of the counter affidavit filed by the 1st respondent, apart from denying the averments in the affidavit filed in support of the Writ Petition is that a Criminal Case No.Rc 6(E)/2013 was registered on 30.10.2013 by CBI, Bank Securities & Fraud Cell, Bangalore, against Sri Venkata Ramana Kalavakolani (A1, Chairman-cum-Managing Director of M/s. SVEN Genetech Limited, Sri A.Sreenivasa Reddy (A2), the then AGM/Branch Manager, SBI, Overseas Branch, Hyderabad, Sri Kuppa Srinivas (A3), the then Chief Manager & RM, SBI, Overseas Branch, Hyderabad and M/s. Sven Genetech Ltd., (A-4) and others under Section 120-B r/w 420, 468 & 471 of IPC and 13 (2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988 (for short 'the Act of 1988') on the basis of written complaint bearing

No.MCCRO/HYD/1657, dated 30.09.2013 received from Rakesh Sharma, General Manager (MC), SBI, Mid Corporate Group Regional Office, LHO Premises, Koti, Hyderabad alleging that the aforesaid accused persons along with other parties to a criminal conspiracy hatched at Hyderabad, to cheat SBI, Overseas Branch, Hyderabad in furtherance of the conspiracy, A1 to A3, got sanctioned Corporate Loan of Rs.22.50 crores stated to be for the purpose purchase of new equipments/implementation of the expansion program of the company and LC limit of Rs.5 crores for the purpose of purchase of raw materials from domestic and a cash credit limit of Rs.20 crores to be used as a working capital from the 3rd respondent Bank. The facilities sanctioned were not utilized for the purpose for which it was sanctioned & disbursed and diverted the funds for personal benefits and to clear his old debts. That the petitioner, the then AGM, approved release of corporate loan without ensuring compliance of all the pre-disbursement conditions and also approved the release of cash credit limit of Rs.10.00 Crores on the recommendations of A3, despite having knowledge of non-installation of machinery, proposed to be purchased out of corporate loan amounts. After completion of investigation, the 1st respondent filed charge sheet against the accused including the petitioner and others on 21.04.2015 before the Principal Special Judge for CBI Cases at Hyderabad and subsequently forwarded to Hon'ble III Addl. Special Judge for CBI Cases at Hyderabad, which took cognizance and allotted CC No.17/2015. It is stated that the sanctioning authority of the 3rd respondent Bank had never denied granting sanction for prosecution either to the petitioner (A2) or A-3 and that in the case of petitioner, the 3rd respondent referred the matter to CVC and arranged for a joint discussion of the case. The 1st respondent attended the said discussion as requested by CVO of the Bank and clarified the issues. After thorough examination of the facts brought out in the investigation by CBI, the sanctioning authority had accorded sanction order for prosecuting the petitioner (A2) and A.3. It is stated that Administrative matters cannot be compared with the judicial proceeding and that the sanction for prosecuting the petitioner was received vide letter dated 11.04.2015, which was submitted to the Court of III Addl. Special Judge for CBI Cases at Hyderabad along with supplementary report Charge Sheet on 21.04.2015. The sanctioning authority had never denied permission for prosecution of the petitioner, even though tentatively declined to accord sanction for prosecution, after thorough examination of the facts brought out in the investigation by CBI, the sanctioning authority had accorded sanction order for prosecuting the petitioner, as such, sought for dismissal of the Writ Petition.

4. The sum and substance of the counter affidavit filed by the 3rd respondent is that the Writ Petition is not maintainable either in law or on facts and liable to be rejected in *limini*. The petitioner has alternate and efficacious remedy to seek for discharge or for other reliefs questioning the sanction for

prosecution and that the petitioner had invoked the said right and sought to discharge, as such, he is estopped to file the present Writ Petition indirectly seeking for the same relief. That the 3rd respondent never refused at first instance to accord sanction under Section 19(1)(c) of the PC Act for prosecuting the petitioner. To resolve the difference of opinion in the matter of grant of sanction for prosecution of petitioner between the Disciplinary Authority/ Appointing Authority i.e, this respondent and CBI, the 1st respondent, a joint meeting was called at the office of the 2nd respondent as per extant guidelines regarding the issue of sanction for prosecution. After considering the submissions of respondents 1 and 3, the 2nd respondent advised for grant of sanction for prosecution. It is stated that there was no communication between the 1st respondent and 3rd respondent refusing or denying permission at the first instance as alleged by the petitioner. The appellate authority of the 3rd respondent had not given complete clean chit to the petitioner and had only modified the penalty imposed by the disciplinary authority to the extent of administrative warning. The 3rd respondent independently examined and accorded sanction for prosecution of the petitioner. It is stated that the petitioner being the Head of the Branch, falling under Mid Corporate Group is bestowed with responsibilities directly being the Head of the Branch and he has appended his signature of approval on disbursement notes which eventually proved to loss to the Bank. If there was a delay in the matter of adjudication of the discharge application, the petitioner has to work out his rights for expedite hearing of discharge application but he cannot be permitted to circumvent and move this Court seeking to decide serious disputed questions of facts and law in writ jurisdiction, as such, sought for dismissal of the Writ Petition.

5. Heard Smt. B.Rachana Reddy, learned counsel for the petitioner, Sri K.Surender, learned Standing Counsel for the 1st respondent and Sri B.S.Prasad, learned Standing Counsel for the 3rd respondent.

6. Learned counsel for the petitioner submits that initially, the 3rd respondent Bank, after considering all the material documents, refused to grant permission for prosecuting the petitioner on 13.02.2015 and same was communicated to the 1st respondent-CBI and Chief Vigilance Officer-2nd respondent. She submits that by the time the refusal order is passed, charge sheet has already been filed by the 1st respondent in the matter before the Spl. Judge for CBI Cases, Hyderabad arraying the petitioner as Accused No.2. She submits that the entire material along with charge sheet dated 21.12.2014, is placed before the 3rd respondent, who in turn, after considering each of the allegations made by the 1st respondent against the petitioner, held that lapses attributed to the petitioner are more of procedural in nature and reflect lack of effective control on the Branch and the loan accounts, rather than as acts of deliberation, implying any malafide intents or connivance with the borrower and that the said lapses will be dealt with, through

their internal disciplinary proceedings. She submits that the impugned proceedings dated 11.04.2015 is issued, without reference to the proceedings dated 13.02.2015, without any independent application of mind on the part of 3rd respondent and that only due to pressure exerted by the 1st and 2nd respondents. She further submits that the loan was sanctioned by the Mid Corporate Group and disbursements were made through the Overseas Branch and disbursements were done by the Relationship Manager, as per the Standard Operating Procedure (SOP) of the 3rd respondent Bank. She submits that the firm i.e, M/s.SVEN Genetech Ltd., involved in this case, was in existence for more than 10 years and was sanctioned a Corporate loan of Rs.22.50 Crores and LC limit of Rs.5.00 crores for the specific purpose of addition/purchase of equipment and strengthening of Research and developmental facilities. She submits that in the March, 2011, the same company was sanctioned a working capital limit of Rs.20 crores for its existing operations and that the limits were sanctioned by Mid Corporate Credit Committee and disbursements were made through the Overseas branch. She submits that when the note for disbursement was put up by the Deputy Manager (AMO) and approved by Chief Manager & Relationship Manager with his comment “Release” and put up to the petitioner. She submits that the petitioner, instead of disbursing Rs.20 Crores, released only Rs.10.00 Crores, that too with certain conditions and saved the 3rd respondent Bank from the loss that could have been occurred. She submits that the allegations leveled against the petitioner were considered by the appellate authority as well as disciplinary authority and ultimately, the punishment imposed by the disciplinary authority was set aside by the appellate authority by holding that the lapses are procedural in nature and that the petitioner cannot be faulted for the action taken by the Relationship Manager. She further submits that the appellate authority consisting of three CGMs set aside the punishment imposed by the Disciplinary Authority by holding that the charges leveled against the petitioner are not proved. She also submits that no specific malafides are attributed against the petitioner during disciplinary proceedings. In support of her contention, she relied on the judgment reported in **State of Himachal Pradesh v. Nishant Sareen**[1] and also the Judgment of Madras High Court in **M.S.Vijayakumar vs. The Chairman and Managing Director**,IOB and others in W.A.No.69 of 2010 and WP No.10569 of 2010, dated 12.03.2012.

7. On the other hand, Sri B.S.Prasad, learned Standing Counsel for the 3rd respondent Bank submits that when petitioner already filed discharge petition before the III Additional Special Judge for CBI Cases at Hyderabad, he cannot file the present Writ Petition, as such, the same has to be dismissed on this ground alone. He submits that there is no refusal of sanction for prosecuting the petitioner by this respondent and that it is only tentative decision of the 3rd respondent vide proceedings dated 13.02.2015, which was never communicated

[1] (2010) 14 Supreme Court Cases 527

to the 1st respondent-CBI. He submits that when there was a difference of opinion by the Central Vigilance Commission in the matter of sanction for prosecution of the petitioner, they held a joint meeting with the 1st and 2nd respondents, after considering the material evidence and on the advice of the 2nd respondent, the impugned proceedings were issued. He submits that since there was no refusal in the first instance, the question of reviewing the same does not arise. He also submits that the sanctioning authority has applied its independent mind and *prima facie,* came to the conclusion that the offence has been committed by the petitioner and at this stage, the competent authority is not expected to undertake a detailed enquiry whether or not the allegations made against the petitioner are true or false.

8. In view of above rival contentions, the point that arise for consideration is:

> "Whether the 3rd respondent Bank refused to grant permission for prosecution of the petitioner vide proceedings dated 13.02.2015 and if so, whether the 3rd respondent again can review the said proceedings by issuing impugned proceedings?"

9. Point:

In this case, it is to be seen that the satisfaction of the competent authority is paramount requirement for granting sanction for prosecuting the petitioner under Section 19(1) (c) of the Act of 1988. For the sake of convenience, Section 19(1) (c) of the Act reads as follows:

> "19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 3 and 15 alleged to have been committed by a public servant, except with the previous sanction,—
(a) …..
(b) …..
(c) in the case of any other person, of the authority competent to remove him from his office.

A perusal of the aforesaid provision goes to show that the competent authority, which is competent to remove petitioner from office, has to issue sanction for prosecuting the petitioner. The object underlying Section 19 is to ensure that a public servant like that of the petitioner does not suffer persecution on false, frivolous and unsubstantiated allegations. The exercise of power under Section 19 is not an empty formality since the Government or for that matter the sanctioning authority is supposed to apply its mind to the entire material and evidence placed before it and on examination thereof, reach the conclusion fairly and objectively as to whether or not in the facts and circumstances, sanction be accorded to prosecute the public servant or not. In this case, initially, sanction for prosecution was refused by the 3rd respondent vide proceedings No.CC/MCG/VIG/DHK/2014-15/1617, dated 13.02.2015. For the sake of convenience and better appreciation, the same is reproduced as follows:

CC/MCG/VIG/DHK/2014-15/1617

CHIEF VIGILANCE OFFICER

M/s.SVEN GENETECH LIMITED (OB HYDERABAD-MCRO HYDERABAD)
SHRI A.SRINIVASA REDDY (SMGS-V)
SANCTION FOR PROSECUTION SOUGHT BY CBI

With reference to your Memo No.VIG/MCG/N-22/1652, dated 23.12.2014, we advise that, while the undersigned has permitted prosecution of Shri Kuppa Srinivas (A-3), the then Chief Manager & Relationship Manager, Overseas Branch, Hyderabad, u/s 19 (1)(c) of the Prevention of Corruption Act, 1988, for the alleged irregularities/lapses in handling the captioned account, we now differ with the views of CBI in the case of the other official, Shri A.Srinivasa Reddy, Asst.General Manager, Overseas Branch, Hyderabad, who also was associated with the said loan account.

2. CBI, vide its Report/Charge Sheet No.DPBSB2014/6/E/2013-BSFC/BLR/3267 dated 21.12.2014 (in the matter of RC-6(E)/2013), has attributed the following acts and major lapses to Shri A.Srinivasa Reddy and our comments are as under:-

Sl.No.	Observations of CBI	Our comments
i)	Hastily approved the release of funds without exercising due care and caution in respect of the account-"New connection" and failed in supervising the conduct of the account.	The first release of limits (partial disbursement of Corporate Loan) was done, after complying with the pre-disbursement conditions, except for obtention of CIR from Punjab National Bank. Telephonic confirmation that the account is "Standard" was obtained from Punjab National Bank by the Relationship Manager, with an assurance that the CIR would be submitted in a week's time, which was subsequently obtained. From the papers/documents, we find that, although this was a new connection, in view of the satisfactory market reports of the Company and the Group, limits appears to have been released to provide the required funding support for timely execution of the Project. Hence, release of limits may not be considered as hastily approved. Further the account was regularly monitored/supervised, as is evident from the various inspections conducted by the Branch.
ii)	Ignored the deviations regarding installation of machinery reported by Shri G.Sures, Deputy Manager & Asset Monitoring Officer, Overseas Branch, Hyderabad, and chose to release the funds, instead of ensuring compliance of Terms & Conditions of sanction.	We find that the observations of Shri G.Suresh, Deputy Manager & Asset Monitoring Officer, were not ignored and only Rs.10.80 Crores were approved by the AGM to be released initially, out of sanctioned Cash Credit limit of Rs.20.00 Crores. In the said Note, Shri Suresh had stated that the Company had requested for a fortnight's time for installation of the machinery, as the delay was reportedly due to slow supply and assembling of material. This explanation appears to have been accepted, as the Project was at implementation stage and it is possible that machinery may not

		have been installed, due to delay in delivery of machinery by the suppliers, as informed by the promoters. With hindsight, it is now evident that the borrower did not intend to fulfill their promises/assurances and cheated the Bank. The Note also indicates that the position of stocks was satisfactory and that D.P to the extent of Rs.20.00 crores was available. However, the AGM had approved release of only Rs.10.80crores, and had also observed that regular inspections be conducted and reports put up, which implies that the reports should cover the aspect of machinery installation also.
iii)	Failed to insist for a revised Report from M/s.Lodha & Co, when their Report was silent on the information of stocks held by the Company, which defeated the very purpose for which Stock Audit was done.	The Branch had already taken up, the serious observations made by M/s.Lodha & Co., with the Company, seeking their comments within 7 days, which is the normal practice followed in the Bank, before taking any other action. Upon receipt of clarifications from the borrower, the Branch would be required to take further necessary action. However, no response was submitted by the Company.
iv)	Failed to take action on the Inspection Reports of Shri K.Prakash Rao, asset Verification Officer (AVO), Overseas Branch, Hyderabad, and was not keen to take any action and kept silent.	From the notings made by the AGM on the Note dated 08.08.2011, it is evident that the AGM had earlier orally instructed the RM and AVO to conduct a joint inspection and to put up a Note covering utilization of Corporate Loan and status of machinery (which was yet to be done). He also observed that such Note should now be put up to him as also to DGM (SH)-by 10.08.2011. This shows that necessary action was initiated/contemplated by him. Since the Bank had already released the Corporate Loan and partial Working Capital limits by this time, no other precipitative action would have been advisable, until the factual position was known, through a detailed inspection.
v)	Failed to properly supervise and monitor the account and end-use of funds.	The limits were disbursed after complying with the pre-disbursement conditions and infusion of stipulated margin by

		the promoters (as certified by the Chartered Accountant). Periodical inspections were also carried out at different stages of disbursements and on a regular basis. While the AGM had the overall responsibility for follow-up and end-use of funds in loan accounts, he may not be held directly accountable for the lapses in this regard, although he can be held as being vicariously responsible.

3. In the specific case of Shri A.Srinivas Reddy (A-2), we would like to submit further, the following:-

Overseas Branch Hyderabad was headed by Asst.General Manager (AGM) branch, which was earlier in Hyderabad Circle-with a few off-site accounts handled by Mid Corporate Group (MCG) through Deputy General Manager (SH) and the Relationship Manager (RM) located at the Branch. While the Branch was brought into the fold of MCG from Hyderabad Circle w.e.f.01.01.2009, the pre-sanction/sanction processes followed under the off-site model were continued to be followed e.g.RM submitting loan proposals directly to the Credit Processing Cell at MCRO and the DGM (SH), without the intervention of the Branch Head AGM, who otherwise had the overall responsibility of supervising all loan accounts.

_ In Overseas Branch, Hyderabad (and similar other AGM headed MCH Branches), RM continued as the owner of loan accounts, with the Branch Head AGM being in overall charge of the Branch, including responsibility of the credit portfolio.

-<u>In the above back-drop, it is our considered view that the lapses attributed to the official in the present case are more of procedural, and reflect lack of effective control on the Branch and the loan accounts, rather than as acts of deliberation, implying any malafide intents or connivance with the borrower.</u>

-Lapses of similar nature, are being separately dealt with, through our internal disciplinary proceedings.

-We are in the process of concluding the disciplinary proceedings and action against the official will be finalized shortly.

-<u>No specific malafides or corruption charges have been indicated against the official by the CBI or noticed during our internal investigations.</u>

4. Accordingly, after going through the relevant papers, it is tentatively decided to not to grant permission for prosecution of Shri A.Srinivasa Reddy. We request you to advise CBI Bangalore/CVC suitably in the matter."

(S.V.Joshi)
Chief General Manager (MCG-I)
Mid Corporate Group

Phone No.022-22741231

Date: 13.02.2015."

A perusal of the aforesaid proceedings of the 3rd respondent Bank goes to show that after filing of charge sheet dated 21.12.2014 by the CBI-1st respondent before the Special Judge for CBI Cases showing the petitioner as A-2, they sought for sanction for prosecuting the petitioner herein. The competent authority of the 3rd respondent, after considering the allegations leveled against the petitioner including the material placed before him, has opined that the lapses attributed to the petitioner are more of procedural, and reflect lack of effective control on the Branch and the loan accounts, rather than as acts of deliberation, implying any malafide intents or connivance with the borrower. It is also specifically observed that no malafides or corruption charges have been indicated against the petitioner or noticed during their internal investigations and the competent authority-3rd respondent wanted to proceed against the petitioner by way of disciplinary proceedings only. This observation goes to show that the 3rd respondent has independently came to the conclusion with respect to charges/allegations leveled against the petitioner by the 1st respondent. In the aforesaid decision it is also stated that 1st respondent should be advised and thereafter only, the 2nd respondent arranged a joint meeting on 12.03.2015 and later advised the 3rd respondent to grant sanction and subsequent to the same, impugned proceedings 11.04.2015 was issued. Therefore, the contention of the learned Standing Counsel for the 3rd respondent that permission for prosecuting the petitioner was not refused at the first instance and same was not communicated to the 2nd respondent, cannot be accepted.

10. The High Court of Madras in **M.S.Vijayakumar vs. The Chairman and Managing Director**, IOB and others in W.A.No.69 of 2010 and WP No.10569 of 2010, dated 12.03.2012. While considering similar issue by relying on the judgment in **Mansukhlal Vithaldas Chauhan v. State of Gujarat[2],** held as follows:

> "28.While dealing with the same Section 6(1) of the Prevention of Corruption Act, 1947 in Mansukhlal Vithaldas Chauhan V. State of Gujarat, (1997) 7 SCC 622, the Hon'ble Supreme Court, while referring to the hierarchy of the judgments on granting of sanction, has held that grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servants against frivolous prosecutions. The Hon'ble Supreme Court in that case has held that the grant of sanction is based on the application of mind and the materials and evidence collected during investigation and it was also further held that the High Court by exercising its power under Article 226 of the Constitution of India is entitled to take a decision if the Sanctioning Authority has not made its decision on the materials. Of course, it is not the sufficiency of materials which has to be considered by the High Court, but the availability of the materials that have been considered to the satisfaction of the Sanctioning Authority. It is not the decision making process, which can be the subject matter under Article 226 of the Constitution of India. The categoric pronouncement of the judgment by the Hon'ble Apex Court is reflected in the following paragraphs:
>
> " 14. From a perusal of Section 6, it would appear that the Central or the State Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that ‼ public servant¶ is to be prosecuted or not. Since the section clearly prohibits the courts from taking cognizance of the offences specified therein, it envisages that the Central or the State Government or the ‼ other authority¶ has not only the right to consider the question of grant of sanction, it has also the discretion to grant or not to grant sanction.
>
> 15. In Gokulchand Dwarkadas Morarka v. King, AIR 1948 PC 82 it was pointed out that:
>
> ‼ ... The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not, as the High Court seem to have thought, concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as inexpedient. Looked at as a matter of substance it is plain that the Government cannot adequately discharge the obligation of deciding whether

[2] (1997) 7 SCC 622

to give or withhold a sanction without a knowledge of the facts of the case.¶ (emphasis supplied)

16. In Basdeo Agarwalla v. Emperor, AIR 1945 FC 16, it was pointed out that sanction under the Act is not intended to be, nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. This Court in State through Anti-Corruption Bureau, Govt. of Maharashtra v. Krishanchand Khushalchand Jagtiani, (1996) 4 SCC 472 while considering the provisions of Section 6 of the Act held that one of the guiding principles for sanctioning authority would be the public interest and, therefore, the protection available under Section 6 cannot be said to be absolute.

17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. (See Mohd. Iqbal Ahmed v. State of A.P., (1979) 4 SCC 172) Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also Jaswant Singh v. State of Punjab, AIR 1958 SC 124 and State of Bihar v. P.P. Sharma, 1992 Supp(1) SCC 222)

19. Since the validity of ‼ sanction¶ depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority ‼ not to sanction¶ was taken away and it was compelled to act mechanically to sanction the prosecution.

21. The question is whether the High Court could issue a mandamus of this nature and whether the order of sanction, in these circumstances, is valid.

22. Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words ‼ shall¶ or ‼ must¶ . But this is not conclusive as ‼ shall¶ and ‼ must¶ have, sometimes, been interpreted as ‼ may¶ . What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the ‼ duty¶ has been set out. Even if the ‼ duty¶ is not set out clearly and specifically in the statute, it may be implied as correlative to a ‼ right¶ .

> 23. In the performance of this duty, if the authority in whom the discretion is vested under the statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion."

Grant of sanction is not an empty formality but a solemn and sacred act which affords protection to the government servants against frivolous prosecutions. The Hon'ble Supreme Court in the aforesaid case has held that the grant of sanction is based on the application of mind by the competent authority and the materials and evidence collected during investigation. It was also further held that the High Court by exercising its power under Article 226 of the Constitution of India can intervene if the sanctioning authority has not made its decision independently. Normally, this Court will not conduct any roving enquiry into the validity or otherwise of the sanction order by going into the merits of the case, whether or not the material placed before the competent authority is sufficient for taking a decision to grant sanction for prosecution. It is only the decision making process that will be tested by this Court and if the decision making is not in accordance with law or without jurisdiction, then this Court exercise its power of judicial review under Article 226 of the Constitution India and interdict the process for granting sanction, as has been held in the decision referred to supra. In the present case, that question may not arise since the ground alleged is that having refused to grant sanction for prosecuting the petitioner vide proceedings dated 13.02.2015 by considering the entire material placed by the 1st respondent-CBI along with charge-sheet filed before the III Addl. Special Judge for CBI Cases at Hyderabad, the 3rd respondent has taken a decision not to grant sanction for prosecuting the petitioner. It is also pertinent to note that the said proceedings are communicated to the 1st respondent as well as 2nd respondent. It appears, after the said decision is made known to 1st respondent, on the advice of the 2nd respondent, the impugned proceedings have been passed. For the sake of convenience, the impugned proceedings dated 11.04.2015 extracted hereunder:

"CC/MCH/VIG/DHK/2015-16/109, 11.04.2015.

Dr. Soorya thankappan
Head of Branch
Central Bureau of Investigation
Bank Securities & Fraud Cell
No.36, Bellary Road, 2nd floor,
Ganga Nagar Bangalore-32.

Dear Sir,
CBI, BANGALORE
SVEN GENETECH LIMITED (SGL)
PERMISSION FOR PROSECUTION
CASE No.RC-6(E)/2013
SHRI A.SREENIVASA REDDY, ASST. GENERALMANAGER, R.O.ANANTHAPUR

With reference to your letter No.1505/BNK/1-279946 dated 31.03.2015, we forward herewith Sanction order dated 11.04.2015 for prosecution of Shri A.Sreenivasa Reddy (A-2), Assistant General Manager, State Bank of India, Regional Office, Ananthapur (Andhra Pradesh), as mandated u/s 19(1) (c) of the Prevention of Corruption Act, 1988, for his alleged irregularities/lapses.

2.We are also enclosing copies of following documents/circulars:

a) Rule 67 of State Bank of India Officers Service Rules 1992
for your information

b)Copy of relevant portion of our Circular No.CDO/PM/CIR73 dated 14th February, 1997, wherein it is mentioned that for officers in the Grade Scale SMGS-IV & V, the Appointing Authority is the Chief General Manager.

Yours faithfully,

For Chief General Manager (MCG)
Phone No.022-22741250
Encl.as above."

A perusal of the impugned proceedings goes to show that there is no reference with regard to proceedings dated 13.02.2015 passed by the 3rd respondent. In fact, basing on the said proceedings only, on difference of opinion with regard to sanction permission to prosecute the petitioner arose between the respondents 1 and 2, a joint meeting was held at the 2nd respondent Commission and on the advise of the 2nd respondent only, the present impugned proceedings have been issued. It is surprising to note that in the impugned sanction orders passed by the 3rd respondent, there is not even a whisper about the earlier order refusing to grant sanction and there is absolutely nothing to show that the impugned order has been passed based on any new material, which were brought to the notice of the competent authority after earlier decision is taken on 13.02.2015. In fact, as already observed supra, initially the 3rd respondent refused to grant permission to prosecute the petitioner, after considering the material placed by the 1st respondent-CBI, by independently considering all the allegations made by 1st respondent against petitioner, which reflected in tabular form in proceedings dated 13.02.2015.

11. The validity of sanction for prosecution solely depends on the applicability of mind by the sanctioning authority to the facts and circumstances of the case along with the material evidence brought before it during investigation. It is needless to state that that the sanctioning authority has to apply its own independent mind for arriving at genuine satisfaction whether prosecution has

to be sanctioned or not. It means to say that the mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. The discretion to grant or not to grant sanction vests absolutely in the sanctioning authority and that its discretion should not have been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority not to sanction was taken away and it was compelled to act mechanically to sanction the prosecution. It is not the case of the 3rd respondent that fresh materials were collected by the 1st respondent-CBI and placed before it for consideration for reviewing the earlier order refusing to grant sanction. It is pertinent to note that the competent authority has passed the impugned proceedings, on the same material placed before it while passing the order dated 13.02.2015. Therefore, this Court is of the considered opinion that the impugned decision taken by the 3rd respondent is without exercising its independent mind and without any new material. In **State of Himachal Pradesh v. Nishant Sareen (supra)**, the Hon'ble Supreme Court held as follows:

> "8. Section 19 or for that matter Section 197 of Code of Criminal Procedure, 1973 (for short, `the Code') does not make any express provision regarding review or reconsideration of the matter by the sanctioning authority once such power has been exercised. In Gopikant Choudhary v. State of Bihar and Ors. (2000) 9 SCC 53), initially the concerned Minister refused to accord sanction to prosecute the public servant therein and an order was passed to that effect. Subsequently, after retirement of the public servant, the matter was taken up by the Chief Minister

and he granted sanction for prosecution of the concerned public servant. The question that arose for consideration before this Court was the correctness of the order passed by the Chief Minister. This Court set aside the order of the Chief Minister granting sanction to prosecute the public servant, inter alia, on the ground that the Chief Minister did not have any occasion to reconsider the matter and pass fresh order sanctioning the prosecution.

(1997) 7 SCC 622 (2000) 9 SCC 53

9. In Romesh Lal Jain v. Naginder Singh Rana & Ors.[(2006) 1 SCC 294)] , it was held by this Court that an order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority. If the complainant or accused can demonstrate such an order granting or refusing sanction to be suffering from non- application of mind, the same may be called in question before the competent court of law."

10. Recently, in the case of State of Punjab and Anr. v. Mohammed Iqbal Bhatti [(2009) 17 SCC 92)], this Court had an occasion to consider the question whether the State has any power of review in the matter of grant of sanction in terms of Section 197 of the Code. This Court observed as under:

"6. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts.

7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered."

11. This Court then noticed the opinion of the High Court which was recorded as follows :

"9. Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible."

While affirming the above opinion of the High Court, this Court held in paragraphs 20 and 21 of the Report as under : (*Bhatti* case)

"20. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that

> the Government sent nine letters for obtaining the clarifications which were not replied to."
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> "21.The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise."
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> 12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.
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> 13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.
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> 14. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated 15-3-2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible."

In the aforesaid decision, in similar circumstances, the Hon'ble Supreme Court categorically held that the sanctioning authority has to exercise its independent mind, by examining the material produced by the investigating agency and pass order of sanction for prosecution, without being influenced from any corner. As such, there cannot be any review of the decision taken by the sanctioning authority, refusing to sanction without there being any new material like in the present case.

12. In the circular No.08/05/2015, dated 25.05.2015 of the Central Vigilance Commission, relied on by the learned Standing Counsel for the 3rd respondent, wherein guidelines to be followed by the administrative authorities competent to accord sanction for prosecution under Section 19 of the Act of 1988, as per the Judgment in Criminal Appeal No.1838 of 2013 (CBI Vs. Ashok Kumar Agarwal), were mentioned, which reads as follows:

> "4. In para 8 of the above judgment, the Court has issued guidelines to be followed with complete strictness by the Competent Authorities while considering grant of sanction as below:-
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> a). The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.
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> b). The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently apply its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.
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> c). The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom sanction is sought.
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> d). The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.
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> e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.
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> 5. The Commission, would therefore, in terms of its powers and functions under Section 8(1)(f) of the CVC Act, 2003 direct all administrative authorities to scrupulously follow the guidelines contained in para 2(i) to (vii) of Commission's circular No.31/5/05 dated 12/05/2015 and the recent explicit guidelines laid down for compliance by the Hon'ble Supreme Court at para 4 above, while considering and deciding requests for sanction for prosecution. Since non-compliance of the above guidelines vitiates the sanction for prosecution, therefore, competent sanctioning authorities should discharge their obligations with complete strictness and would be held responsible for any deviation/non-adherence and

issues questioning the validity of sanction arising at a later stage in matters of sanction for prosecution."

13. It is pertinent to note that in fact the 1st respondent-CBI has placed all the material along with charge sheet before the 3rd respondent seeking sanction for prosecuting the petitioner. The 3rd petitioner, after considering each of the allegations against the petitioner, passed orders dated 13.02.2015 refusing to grant sanction for prosecution, which appears to be in terms of the circular relied on by the learned Standing Counsel for the 3rd respondent. As such, even without reference to the aforesaid circular, the impugned order is passed.

14. Section 239 in the Code of Criminal Procedure, 1973, deals with Discharge, which reads as follows:

> "239. When accused shall be discharged.
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> If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

Application for discharge from the criminal proceedings is one aspect and quashing of the sanction order is another aspect. More so, in all the judgments referred to above, sanction orders were quashed in the writ petitions filed under Article 226 of the Constitution of India, as such, the contention of learned counsel for 3rd respondent that the writ petition cannot be entertained, cannot be accepted.

15. Learned Standing Counsel for 3rd respondent-SBI submits that the petitioner already filed discharge petition before the III

Addl. Special Judge for CBI Cases at Hyderabad for discharging him in CC No.17 of 2015. But the fact remains that the discharge petition filed by the petitioner for discharging him is due to lack of evidence, but the trial Court cannot go into the validity of the sanction order.

In view of above facts and circumstances, this Writ Petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stands closed.

A.RAJASHEKER REDDY,J

30-10-2018
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITON No.33297 of 2016

Date 30.10.2018.

kvs