

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2578 of 2014

ORDER:

This revision case is preferred under Sections 397 and 401 of Code of Criminal Procedure (for short "Cr.P.C.") questioning the legality, propriety and regularity of the order dated 25.11.2014 passed in CrI.M.P.No.1087 of 2013 in C.C.No.07 of 2013 by the Principal Special Judge for CBI Cases, Hyderabad, whereby the petition filed under Section 239 of Cr.P.C. to discharge the petitioner/accused No.7 for the offences punishable under Sections 120 (B) read with 419, 420, 468 and 471 of Indian Penal Code (for short "I.P.C.") and under Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988 (for short "P.C.Act") was dismissed.

Two charge sheets were filed by the respondent in the same crime against different accused. Initially, one charge sheet is filed, which is registered as C.C.No.246 of 2008 on the file of XIV Additional Chief Metropolitan Magistrate, Hyderabad and another charge sheet is filed, which is registered as C.C.No.07 of 2013, but the same was returned and in pursuant to the orders of this Court passed in Tr.CrI.P.No.56 of 2009 in C.C.No.246 of 2008, the same was transferred from the Court of XIV Additional Chief Metropolitan Magistrate, Hyderabad to C.B.I. Court. Hence, the present Charge Sheet in C.C.No.07 of 2013 was again represented before C.B.I. Court.

Accused No.7 is the petitioner, he along A-1 to A-6 on the allegation of conspiracy to cheat Bank of India, Saroornagar Branch during the year 2004 in the matter of sanction of 10 housing loans,

each ranging from Rs.7 lakhs to Rs.7.5 lakhs totalling to about Rs.75 lakhs in the month of September, 2004 based on false and forged documents for purchasing flats constructed by M/s B.R.Constructions represented by Sri Hariharan Srinivasan (A.1), who impersonated as Sri B.Rama Rao, at Nagole Village under L.B. Nagar Municipality, Ranga Reddy District and caused wrongful loss to a tune of Rs.75 lakhs and, corresponding wrongful gain to themselves.

Initially, charge-sheet was filed against A.1 to A.5 (private persons) in the Court of the XIV Additional Chief Metropolitan Magistrate, Hyderabad and due to non-obtaining of sanction letter no charge sheet was filed against the petitioner herein/accused No.7 and accused No.6. After obtaining sanction orders against the petitioner herein/accused No.7 and accused No.6, the case pending before the XIV Additional Chief Metropolitan Magistrate, Hyderabad was transferred to the Special Court for CBI Cases. As per the orders of this Court in Crl.M.P.No.2608 of 2009 dated 23.11.2011, accused No.2 was discharged. Against the discharge of accused No.2, C.B.I filed SLP before the Apex Court and the same was dismissed on 29.10.2012.

The specific allegation made against the petitioner/accused No.7 in the charge sheet is that he certified the credentials of A.1 (Builder) as the builder is sincere and honest. The reports attributed to the petitioner/accused No.7 are Loan document (L.D.) Nos.13, 29, 47, 67, 85, 123, 141, 159 and 177. In fact these nine reports are the site reports given by the petitioner/accused No.7 and he signed on 3 of them i.e. LD Nos.13, 47 & 67 and written preliminary details and nothing else. L.D.141, the site visit report is

blank and not signed by any one and in this also the investigating officer has faithfully reproduced the aforementioned narration. Apart from what has been stated here, no other act or omission was attributed to the petitioner/accused No.7 in the entire charge-sheet.

The 161 Cr.P.C. Statements of the witnesses and documents filed along with charge-sheet reveal that the petitioner/accused No.7 had attended to the work of borrowers' credit worthiness and personal interviews in respect of 9 of the 10 housing loans. Petitioner / A-7 appraised and signed on appraisal reports in respect of 6 housing loans and the remaining four appraisal reports were given and signed by S.Ranganath (LW-44) as per memo of evidence. The petitioner/accused No.7 was not the concerned officer posted in Bank of India, Saroornagar Branch to attend the work relating to credit portfolio and he was asked by accused No.6 to attend the work in the interest of bank due to L.W-44's pre occupied work in the branch, which was deposited by LW-44. The same fact is corroborated by the expression of sanctioning authority. Though LW-44 gave four appraisal reports out of ten, he is not arraigned as accused and he was cited as witness in the list of witnesses. The 9 credit worthiness reports were not submitted on a single day i.e. on 20.09.2004 but on three different dates including 20.09.2004.

The main contention of the petitioner before the trial Court was that the credit worthiness certificates cannot be termed as pre-sanction and post sanction reports as such the petitioner/accused No.7 cannot be roped in as an accused and that the salary certificates were already attached to the loan applications and if the salary certificates attached are to be checked with the employer, it amounts to verification which is not contemplated by the Circular,

LD 2. At any rate it cannot be said that the loans sanctioned to the borrowers cannot be recovered in view of the inflated salary slips submitted by the employees themselves and that the bank had filed civil suits in all the nine housing loans and the said suits were decreed as per the information of the petitioner.

Finally, it is contended that the ten persons to whom housing loans were sanctioned by the bank are not the fictitious persons and five of them belong to South Central Railway and remaining five belong to HAL. The acts attributed to the petitioner/accused No.7 fall in the category of lack of due diligence in the matter of attending to the assigned work, for which he can be dealt with departmentally for abusing his official position as a public servant to take disciplinary action against the petitioner, but instead of initiating departmental proceedings, a charge sheet is filed against the petitioner. The sanctioning authority refused to accord sanction against the petitioner/ accused No.7 and accused No.6 which resulted in the CBI filing a charge-sheet in the Court of XIV Additional Chief Metropolitan Magistrate, Hyderabad and later the competent authority accorded sanction against the petitioner/accused No.7 and accused No.6 without there being any additional material. The Constitutional Courts in India have held that when once the sanction was refused, the sanctioning authority becomes "functus officio" and cannot later review its own order. Therefore, the sanction against the petitioner/accused No.7 and accused No.6 is not a valid one and there is no evidence or grounds to frame charge against accused No.7 and requested to discharge the petitioner/accused No.7.

The respondent/CBI filed counter denying the averments of the petition contended that a case in RC No.25(A)/2005 was registered against the accused for the offences punishable under Sections 120-B, read with 419, 420, 468 & 471 of I.P.C and Sections 13(2) r/w.13(1) (d) of PC Act, 1988 on the allegations that GDS Prasad (Accused No.6) - Branch Manager and the petitioner (accused No.7) - Asst. Manager, of Bank of India, Saroornagar branch, Hyderabad connived with B.Rama Rao (Accused No.3) and others with a dishonest and fraudulent intention to cheat the Bank funds by way of sanctioning ten housing loans ranging from Rs.7 lakhs to 7.5 lakhs each, totalling an amount of Rs.75 lakhs in the month of September, 2004 based on false and forged documents for purchase of flats constructed by M/S.BR Constructions, which was represented by B.Rama Rao at Sai Chandra Apartments, Plot No.59, Survey No.94/2, Nagole Village, LB Nagar Municipality, Ranga Reddy District. In the said process, the bank officials abused their official positions being public servants and deliberately violated all guidelines and the procedure laid down by the bank.

The CBI sought for sanction for prosecution of accused No.7 and accused No.6 but the competent authority denied to accord sanction, hence the case was transferred to XIV Additional Chief Metropolitan Magistrate, Hyderabad by excluding the names of accused No.6 and accused No.7. The sanctioning authority later accorded sanction for prosecution of accused No.6 and accused No.7, then the same was re-transferred to the C.B.I. Court.

It is contended in the counter that the petitioner/accused No.7, who assigned with the duties of credit verification, has failed

to verify the information and credentials of borrowers such as credit worthiness verification, personal interview and documents submitted in support of their loan application and the information and documents that were produced by the borrowers are found to be fake and forged during the course of investigation. Investigation revealed that the petitioner/accused No.7 conspired with accused No.1 to accused No.6 in sanctioning loan amounts to account Nos.941 to 945 and 948. The credit information report submitted by the petitioner would prove his involvement and criminal intention in commission of fraud and prayed to dismiss the petition.

The Principal Special Judge for C.B.I. cases, Hyderabad dismissed the petition holding that there is *prima facie* material to proceed against the petitioner by framing charges.

Aggrieved by the said order, the present revision is filed on various grounds mainly on the ground that the sanction for prosecution of the petitioner is illegal, therefore, no charge can be framed against the petitioner and prayed to discharge the petitioner by exercising power under Section 239 of Cr.P.C.

During hearing Sri Vinod Kumar Deshpande, learned senior counsel on behalf of Sri C.Hari Preeth, learned counsel for the petitioner contended that when sanction is illegal, framing of charges against the petitioner for the offences punishable under Sections 120 (B) read with 419, 420, 468 and 471 of I.P.C. and under Section 13 (2) read with 13 (1) (d) of P.C.Act is nothing but futile exercise and even if the trial is conducted, it would end in acquittal; there is no material to proceed against the petitioner *prima facie* and as the charges are groundless, the Court can discharge the petitioner. He further contended that when sanction

was denied previously by the competent authority, passing of sanction order without any additional material to prosecute the petitioner/accused No.7 and accused No.6 and filing of charge sheet is serious illegality, irregularity, which warrants interference by this Court and the petitioner is entitled to be discharged for the offences punishable under Sections 120 (B) read with 419, 420, 468 and 471 of I.P.C. and under Section 13 (2) read with 13 (1) (d) of P.C.Act. He placed reliance on the judgments of Apex Court rendered in “**Mansukhlal Vithaldas Chauhan v. State of Gujarat**”¹ “**State of T.N. v. M.M.Rajendran**”² and judgment of this Court rendered in “**Mohd.Aleemuddin v. State of Andhra Pradesh**”³ to contend that when sanction was denied initially by the competent authority, passing sanction order without any additional material before the competent authority is invalid and that the petitioner is not liable to be prosecuted for the offences punishable under Sections Sections 120 (B) read with 419, 420, 468 and 471 of I.P.C. and under Section 13 (2) read with 13 (1) (d) of P.C.Act.

Sri K.Surender, Special Public Prosecutor for C.B.I. contended that sanction can be obtained at any stage of proceedings and for mere failure to obtain sanction, the petitioner cannot be discharged for the offences, which seriously affects the financial stability of the Bank and that as per the allegations made in the charge sheet, the authorities were not inclined to accord sanction, but not refused and if for any reason, sanction was refused by appropriate order, the petitioner may claim such relief, but here the sanction was not refused initially by the competent authority. Therefore, sanction

¹ (1997) 7 SCC 622

² (1998) 9 SCC 268

³ 2014 (1) ALD (Crl.) 120 (AP)

accorded by the competent authority for prosecution of the petitioner is in accordance with law and the same cannot vitiate the entire prosecution and prayed for dismissal of revision.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

Whether the material produced along with the charge sheet is sufficient to proceed against the petitioner by framing charges? If not, whether the petitioner is liable to be discharged for the offences punishable under Sections 120 (B) read with 419, 420, 468 and 471 of I.P.C. and under Section 13 (2) read with 13 (1) (d) of P.C.Act?

P O I N T:

The present revision is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or lack of proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional

jurisdiction in a given case, must depend upon facts and circumstances of each case? The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

According to section 239 of Cr.P.C. if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 and making such examination, if any, of the accused, as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing on the evidence if needed. The word "groundless" would mean the absence of reasonable ground to expect conviction. "Groundless" is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is

groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in "**P.Vijayan v. State of Kerala**"⁴

It is also contended that when the material available on record is groundless, based on such material a charge sheet is filed, the Court cannot proceed, since, it would amount to harassment. No doubt, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only few witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate or Sessions Judge summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate or Sessions Judge is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate or Sessions Judge has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant

⁴ AIR 2010 SC 663

and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

The main endeavour of the learned counsel for the petitioner is that to prosecute the public servant, sanction is necessary in view of Section 19 of the P.C.Act. According to Section 19 of P.C. Act, previous sanction is necessary for prosecution, which reads thus:

“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.”

Thus, Section 19 of P.C.Act mandates previous sanction to prosecute the public servant, who is removable from his office by the Union or the State.

In the present facts of the case, the petitioner/accused No.7 is a public servant within the meaning of Section 2 (c) of the P.C.Act or Section 21 of I.P.C. and the alleged act committed by the petitioner is in discharge of his duties as a public servant. But as per the allegations made in the charge sheet filed against the petitioner/accused No.7 in paragraph No.54 that ***“the sanction for prosecution was denied by the competent authorities of the Bank of India, hence, they are not sent for trial, while filing charge sheet in XIV ACMM Court”***. Thus, this allegation in paragraph No.54 of the charge sheet itself indicates that the sanction for prosecution was denied by the competent authority initially. According to the learned counsel for the petitioner when the sanction was denied initially, the authorities approached Central Vigilance Commission, who in turn directed the competent

authority to accord sanction for prosecution of petitioner/accused No.7 and accused No.6.

In paragraph No.56 of the Charge sheet it is alleged that “the sanctioning authority subsequently gave sanction order for prosecution of accused No.6 and accused No.7 by Sri L.Janarthanam, Assistant General Manager and Disciplinary authority, Bank of India, Hyderabad Zone, vide reference Nos. (1) HYD ZO LJ:SO:001 in respect of Sri G.D.S.Prasad, accused No.6 and (2) HYD ZO:LJ:SO:002 in respect of Sri K.Nageswara Rao, accused No.7. Accordingly, additional charge sheet filed in Special Judge Court, C.B.I., Hyderabad on 20.02.2009 by adding accused Nos.6 and 7”

According to the Special Public Prosecutor for C.B.I, the competent authority did not deny the sanction, who was not inclined to accord sanction for prosecution of the petitioner herein, but this contention is merit less for the simple reason that the allegations made in paragraph Nos.54 and 56 of the charge sheet and admission made in paragraph No.2 of page No.2 of the counter filed by the respondent are suffice to conclude that sanction for prosecution was denied by the competent authority. But sanction was accorded subsequently for prosecution of petitioner/accused No.7 and accused No.6. Whether the subsequent sanction was based on any additional material or not is a question to be decided.

The petitioner though allegedly committed offences punishable under I.P.C. and the provisions of the P.C.Act, the competent authority accorded sanction for prosecution of the petitioner for all the offences covered by the P.C. Act and I.P.C. As these two provisions are identical, the law applicable to Section 197

Cr.P.C. and Section 19 of P.C. Act are relevant for deciding the issue. Therefore, it is appropriate to advert to the law laid down by the Apex Court with regard to sanction under Section 197 of Cr.P.C as discussed below.

Though, Section 197 Cr.P.C has no application to the case of the petitioner, but the language couched in both Section 197 Cr.P.C and Section 19 of the Prevention of Corruption Act is identical, except to the extent of Clause (2) of Section 19 of Prevention of Corruption Act, which includes employees working in any other government department, including undertakings who are removable by the competent authority from his office. Therefore, Section 19 of Prevention of Corruption Act is wider than Section 197 Cr.P.C. The petitioner is only an employee in the bank and he is covered by Section 19 of Prevention of Corruption Act, but not by Section 197 Cr.P.C. But, the object and purpose of Section 197 Cr.P.C and Section 19 of Prevention of Corruption Act is one and the same. Therefore, the principles laid down under Section 197 Cr.P.C are also relevant at this stage.

The object and purpose underlying Section 197 Cr.P.C is to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of the efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance of injury may have been caused by their

legitimate acts done in the discharge of their official duty. Section 197 Cr.P.C is designed to facilitate effective and unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as condition precedent to the cognizance of the case against them by Court. (vide **B.P. Srivastava v. N.D. Mishra**⁵)

To consider whether Section 197 Cr.P.C applies or not, the Court has to look into the allegations made in the complaint and ascertain their substance. It is not necessary for the Court to confine itself to the allegations in the complaint, it can take into account all the material on the record when the question is considered, it cannot be made to depend upon the case which the accused may put forward after the proceedings have been started. The special protection provided under Section 197 Cr.P.C should be strictly construed and until material is placed before the Court to justify, invoking of Section 197 Cr.P.C, ordinarily even if the accused be a police officer, he should not be given a special treatment. Section 197 Cr.P.C, if construed too narrowly can never be applied, for, of course, it is no part of an official's duty to commit an offence, and never can be. (vide **Shreekantiah Ramayya Munipalli v. The State of Bombay**⁶).

Thus, the Court must scrutinize the allegations in the charge sheet and find out whether those omissions or commissions allegedly committed by the petitioner while discharging his official

⁵ AIR 1970 SC 1661

⁶ 1955 (1) SCR 1177

duties based on nexus test. But, at what stage, such question can be considered is again difficult to decide, because of the law declared by the Apex Court in long line of perspective pronouncements.

Of course, the learned counsel for the petitioner placed reliance on the judgment of the Apex Court in “**N.K. Ganguly v. Central Bureau of Investigation, New Delhi**”⁷, wherein, the Division Bench of the Apex Court held thus:

“Therefore, the provision of Section 197 of Code of Criminal Procedure is squarely applicable to the facts of the case. Prior sanction of the Central Government was required to be taken by the Respondent before the learned Special Judge took cognizance of the offence once the final report was filed Under Section 173(2) of Code of Criminal Procedure”

Taking advantage of the law declared by the Apex Court in “**N.K. Ganguly v. Central Bureau of Investigation, New Delhi**” (referred supra) case, learned counsel for the petitioner would contend that sanction under Section 197 Cr.P.C is mandatory.

Section 19 of P.C.Act is identical to Section 197 of Cr.P.C. In both the sections, the language used is one and the same and the Court can discharge the petitioner if no sanction or valid sanction is accorded by the competent authority by exercising power under Section 19 of P.C. Act. But in the present facts of the case, the petitioner contended that initially no sanction was accorded by the competent authority, but only on the advice of Central Vigilance Commission, sanction was accorded to prosecute the petitioner herein/accused No.7 and accused No.6. When once the competent

⁷ (2016) 2 Supreme Court Cases 143

authority declined to accord sanction for prosecution of the petitioner, unless there is additional material placed before the competent authority, subsequent sanction is invalid. As seen from the paragraph No.2 of page No.2 of counter filed in the petition, sanction was denied by the authorities, but whereas in the charge sheet it is averred as follows:

“Investigation disclosed that, first of all, FIR was registered u/s 120-B, 419, 420, 468, 471 IPC and Sec.13 (2) r/w 13 (1) (d) of PC Act, 1988 against A1 to A3 and others. After completion of investigation, the Investigating Officer forwarded the entire case records, statement of witnesses and material documents to General Manager/CVO, Bank of India, Head Office, Mumbai requesting for issue of sanction for prosecution against A1 and A2. The competent authority **“not inclined”** to grant sanction for prosecution against A1 and A2. The Chairman and Managing Director (CMD) is also concurred with the view of the competent authority. Wherein CMD further stated that in case CBI not inclined with the bank’s view, may take up the matter with the Central Vigilance Commission for resolving the differences of opinion. Later on 15.1.2008 Central Vigilance Commission opined that this is a fit case for launching prosecution against Sri GDS Prasad (A1) and Sri K.Nageshwar Rao (A2). Hence, finally, on 04.11.2008 the bank competent authority accord sanction for prosecution against Sri G.D.S.Prasad (A-1), Branch Manager, and Sri K.Nageshwar Rao (A-2), Asst.Manager, Bank of India, Saroor Nagar Branch, Hyderabad, had committed offences u/s 120-B r/w 419, 420, 467, 468 and 471 IPC and Sec.13 (2) r/w 13 (1) (d) of PC Act, 1988.”

From the paragraph extracted from the charge sheet, the competent authority including Chairman and Managing Director (CMD) were not inclined to accord sanction for prosecution of the petitioner and other accused. In the opinion expressed by the Chairman and Managing Director (CMD), he made it clear that CBI may take up the matter with the Central Vigilance Commission for resolving the difference of opinion between the competent authority to accord sanction and C.B.I. The word “not inclined” used in the

above paragraph indicates that the competent authority has not accorded sanction for prosecution. The word “disinclination” or “not inclined” are synonyms. The word “disinclination” means “certain degree of unwillingness”; “reluctance to commit himself”; “his hesitancy revealed his basic indisposition”, “after some hesitation he agreed”. Thus, true meaning of word “disinclination” is not willing to do some act.

The expression “refusal to sanction” is totally different. Refusal means denial; an expression of unwillingness to accept or grant an offer or request; an appeal against the refusal of a licence. Therefore, there is lot of distinction between “disinclination” or “not inclined” and the word “refusal” or “denial”. As such, the language used in the charge sheet extracted above and the allegations made in the counter are slightly different. In the counter, it is admitted that the sanction was denied, but whereas in the charge sheet it is mentioned that the competent authority was not inclined to accord sanction for prosecution. Moreover, if the competent authority denied or not willing to accord sanction for prosecution, the course open to the authorities is to refer the matter to Central Vigilance Commission for appropriate action in this regard to resolve differences between C.B.I and the competent authority.

The Chief Vigilance Commissioner issued guidelines for grant of sanction of prosecution dated 31.05.2012, so also communicated office order dated 23.06.2006, No.006/DSP/002. This office order is pertaining to difference of opinion between State Anti Corruption Bureaus and Central Government authorities regarding sanction of prosecution of Central Government officials.

In paragraph No.2 (b) it is clarified that in the case of public servants other than government servants (i.e. employees of local bodies, autonomous bodies, public sector organisations, nationalised banks, insurance companies etc.) the competent authority may communicate its views to the Chief Executive of the Organisation who may either direct that sanction for prosecution should be given, or in support of the views of the competent authority have the case forwarded to the Central Vigilance Commission for resolving the difference of opinion between the competent authority and the CBI.

The basis for this circular is the judgments of Apex Court referred in Circular No.07/03/12 under the caption for “Guidelines for checking delay in grant of sanction for prosecution” dated 28.03.2012 bearing No.005/VGL/011/170096, Central Vigilance Commission. In the said circular, the Vigilance Commissioner referred the guidelines issued by the Apex Court in “**Vineet Narain & Ors. Vs. Union of India**⁸” dated 18.12.1997. In the said judgment the Apex Court issued a direction to the effect that “Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other Law Officer in the AG's office”.

The Central Vigilance Commission under the CVC Act, 2003 has been empowered to review the progress of applications pending with the Competent Authorities for sanction of prosecution under the PC Act, 1988. Taking into account delays involved and the lack of appreciation on the part of Competent Authorities as to what is to

⁸ AIR 1998 SC 889

be done while processing such requests, the Commission had prescribed detailed guidelines based on various decisions of the Supreme Court including the Vineet Narain case, to be followed strictly by the Competent Authorities while processing requests for sanction for prosecution vide its office order No. 31/5/05 dated 12.05.2005.

In the later judgment of Apex Court dated 31.01.2012 rendered in “Subramanian Swamy Vs. Dr. Manmohan Singh⁹” (Civil Appeal No. 1193 of 2012)” while reiterating the time limits prescribed for grant or otherwise of sanction for prosecution, the Apex Court, also observed that the guidelines laid down by the Central Vigilance Commission in its office order dated 12.05.2005 (copy enclosed) are in conformity with the law laid down by the Apex Court. The grant of sanction is an administrative act and the purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise and the sanctioning authority has only to see whether the facts would *prima facie* constitute the offence.

Earlier to the circular dated 28.03.2012, an office order No.31/5/05 was passed and communicated to the concerned departments laying down guidelines to be followed by the authorities competent to accord sanction for prosecution under Section 19 of the PC Act by the Central Vigilance Commission Coordination 1, by its letter dated 12.05.2005. In the said circular, the Central Vigilance Commission referred the following four (4) judgments.

⁹ AIR 2012 SC 1185

- (1) Jagjit Singh V. State of Punjab¹⁰.
- (2) State of Bihar V. P.P. Sharma¹¹.
- (3) Superintendent of Police (CBI) Vs. Deepak Chowdhary¹²
- (4) Vineet Narain Vs. Union of India. (referred supra)

The guidelines to be followed by the sanctioning authority, as declared by the Supreme Court are summarized hereunder:

- (i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would prima-facie constitutes the offence.
- (ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.
- (iii) When an offence alleged to have been committed under the P.C. Act has been investigated by the SPE, the report of the IO is invariably scrutinized by the DIG, IG and thereafter by DG (CB1). Then the matter is further scrutinized by the concerned Law Officers in CBI.
- (iv) When the matter has been investigated by such a specialized agency and the report of the IO of such agency has been scrutinized so many times at such high levels, there will hardly be an issue where the Government would find it difficult to disagree with the request for sanction.
- (v) The accused person has the liberty to file representations when the matter is pending investigation. When representations so made have already been considered and comments of the IO are already before the Competent

¹⁰ 1996 Cr.L.J. 2962

¹¹ AIR 1991 SC 1260

¹² AIR 1996 SC 186

Authority, there can be no need for any further comments of IO on any further representation.

- (vi) A representation subsequent to the completion of investigation is not known to law, as the law is well established that the material to be considered by the Competent Authority is the material which was collected during investigation and was placed before the Competent Authority.
- (vii) However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.
- (viii) If the Sanctioning Authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the Sanctioning Authority to adhere to the time limit allowed by the Supreme Court in Vineet Narain's case. (referred supra)

On the basis of guidelines formulated by the Apex Court, culled out by the Central Vigilance Commission, the Central Vigilance Commission directed the competent authority to refer the differences between competent authority and C.B.I. for resolution.

In the present case, instead of following those guidelines, the competent authority referred the difference of opinion to the Central Vigilance Commission and the Central Vigilance Commission resolved the difference of opinion and advised the competent authority to accord sanction for prosecution of petitioner herein. Central Vigilance Commission is only advisory body and only on the basis of advice given by the Central Vigilance Commission, sanction was accorded for prosecution.

According to Section 8 of the Central Vigilance Commission Act, the important powers and functions of Central Vigilance Commission are as follows:

(1) The functions and powers of the Commission shall be to—

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946 (25 of 1946): Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(c) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988), or an offence with which a public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) or the public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988 (49 of 1988);

(g) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise:

(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government:

Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters.

The reason for conferring power on Central Vigilance Commission is to have a check on the exercise of power by the competent authority either to prosecute the dishonest government servant or employee of any Central Government or banks etc., or to avoid unnecessary prosecution against honest officials in different departments of Central Government or banks etc. One more reason for conferring power is only to avoid unnecessary prosecutions and to keep a watch on the competent authority in negating sanction for prosecution in suitable and deserving cases and to resolve the difference of opinion between C.B.I and the competent authority.

In view of the powers conferred on Central Vigilance Commission and guidelines issued by the Apex Court referred above, the file was referred to Central Vigilance Commission to resolve the difference of opinion between competent authority to

accord sanction for prosecution and C.B.I. Accordingly, the Central Vigilance Commission resolved the differences and advised the competent authority to accord sanction for prosecution. The role of Central Vigilance Commission is advisory but not recommendatory. The order of sanction was filed along with the petition dated 04.11.2008 in reference No.HYZO:LJ:SO:002. In the entire order of sanction, the facts of the case were narrated and accorded sanction for prosecution, since, there is *prima facie* material to proceed against the petitioner herein/accused No.7 and other accused No.6 for various offences referred above, thereby granted sanction for prosecution by L.Janarthanan on its advice after resolving differences between the competent authority and C.B.I. by Central Vigilance Commission. Whether any additional material is placed before the sanctioning authority or not is a question, but in the absence of order, if any, passed earlier declining sanction for prosecution, it is difficult to conclude at this stage whether any additional material is placed before the competent authority to accord sanction based on the copy of sanction order.

Learned counsel for the petitioner contended that in the absence of any additional material, the sanction accorded for prosecution of the petitioner is illegal and he placed reliance on “**State of T.N. v. M.M.Rajendran**” (referred above), wherein the Apex Court held that the Commissioner of Police had occasion to consider a report of the Vigilance Department. Even if such report is a detailed one, such report cannot be held to be the complete records required to be considered for sanction on application of mind to the relevant materials on records.

In the facts of the above judgment, sanction was accorded for prosecution of the accused based on the report of Vigilance department, which is not a complete record. But here, the situation is totally different and the entire material was placed before the competent authority to accord sanction for prosecution of the petitioner, but the competent authority was not willing to accord sanction for prosecution of the petitioner for one reason or the other, but the Chairman and Managing Director of the bank in view of the directions of the Central Vigilance Commission referred the case to Central Vigilance Commission to resolve the difference between the competent authority and C.B.I. Therefore, the principle laid down in the above judgment has no direct application to the present facts of the case.

In “***Mansukhlal Vithaldas Chauhan v. State of Gujarat***” (referred supra) the Apex Court held that 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 Andhra Pradesh 1979CriLJ633). Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecutions and is a safeguard for the innocent but not a shield for the guilty. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact is 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: Jaswant Singh v. The State of Punjab (1957)IILLJ696SC ; State of Bihar vs P.P. Sharma 1991Cri L J 1438.)

The Apex Court further held that 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.

Taking advantage of the principle laid down in the above judgment, learned senior counsel contended that according sanction for prosecution on the advice of Central Vigilance Commission amounts to putting pressure on the sanctioning

authority to prosecute the petitioner and that the competent authority did not exercise its discretion fairly, but it was out of extraneous consideration.

The facts in the above case pertain to 1982 i.e. prior to enactment of Central Vigilance Commission Act. After the advent of Central Vigilance Commission Act and in view of the directions issued by the Apex Court in the decision referred supra, powers have been conferred on the Central Vigilance Commission to resolve the differences between the competent authority and C.B.I. Therefore, in view of the guidelines of Apex Court and guidelines issued by the Central Vigilance Commission (referred supra), the sanction was accorded for prosecution of the petitioner by competent authority, such order cannot be said to be passed for extraneous consideration or out of pressure of any authority or preventing the competent authority to exercise its discretion not to grant sanction for prosecution since the Central Vigilance Commission is a statutory authority, which was vested with the power to resolve the differences between the competent authority and to have a check over exercise of such power by the competent authority under Section 19 of the P.C.Act for extraneous reasons to rope in innocent accused for obvious reasons or to protect the dishonest government servant or employees of banks etc., declining sanction for prosecution. Though an advice was given by Central Vigilance Commission to accord sanction for prosecution, still the competent authority may decline to accord sanction since it is purely discretion of competent authority. The resolution of difference is only exercise of advisory jurisdiction by Central Vigilance Commission. Therefore, the Central Vigilance

Commission has discharged its statutory obligation based on the power conferred on it and in terms of directions issued by the Apex Court in various judgments referred supra and such advice to the competent authority on reference to resolve the differences between the competent authority and C.B.I. does not amount to putting pressure on the sanctioning authority for any extraneous consideration or preventing the competent authority to exercise its discretion based on material. The Central Vigilance Commission advised for sanction only in exercise of authority conferred on it, but not otherwise. Therefore, the principle laid down by the Apex Court in “**Mansukhlal Vithaldas Chauhan v. State of Gujarat**” (referred supra) is prior to enactment of Central Vigilance Commission Act and guidelines issued by the Apex Court in “**Vineet Narain & Ors. Vs. Union of India**” and other judgments (referred supra). Consequently, the principle laid down in “**Mansukhlal Vithaldas Chauhan v. State of Gujarat**” (referred supra) is not applicable to the present facts of the case.

This Court in “**Mohd.Aleemuddin v. State of Andhra Pradesh**” (referred supra) did not consider the duties and powers conferred on it by the Statute including the principles laid down by the Apex Court in various judgments referred in the circular issued by the Central Vigilance Commission.

Incidentally, in “**Nanjappa v. State of Karnataka**”¹³ the Apex Court had an occasion to consider the power of the Court to examine the validity of the sanction at the time of taking cognizance.

¹³ AIR2015SC3060

The Apex Court referring to “**State of Karnataka v. C. Nagarajaswamy**¹⁴” held that ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefore or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

The Apex Court also referred another judgment in “**B. Saha and Ors. v. M.S. Kochar**¹⁵”, wherein the Apex Court held that the question of validity of an order of sanction Under Section 197 Code of Criminal Procedure could be raised and considered at any stage of proceedings. Reference may also be made to the decision of the Apex Court in “**K. Kalimuthu v. State by DSP**¹⁶” wherein it was held that the question touching the need for a valid sanction Under Section 197 of the Code of Criminal Procedure need not be raised as soon as the complaint is lodged but can be agitated at any stage of the proceedings. The following observation in this connection is apposite:

“The question relating to the need of sanction Under Section 197 of the Code is not necessarily be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned the effect of Section 19, dealing with question of prejudice has also to be noted.”

¹⁴ (2005) 8 SCC 370

¹⁵ (1979) 4 SCC 177

¹⁶ (2005) 4 SCC 512

In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

In “**Devinder Singh and others v. State of Punjab through CBI**¹⁷” the Supreme Court discussed the judgment of “**Matajog Dobey v. H.C. Bhari**¹⁸” and held as follows:

“It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar Under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dubey v. H.C. Bhari: AIR 1956 SC 44 thus:

[T]he offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty ... there must be a

¹⁷ AIR 2016 SC 1606

¹⁸ 1955(2) SCR 925

reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

(Emphasis supplied)

In "**K.M. Mathew v. State of Kerala and another**"¹⁹

wherein Apex Court had observed that even after issuance of process Under Section 204 of the Code, if the accused appears before the Magistrate and establishes that the allegations in the complaint petition do not make out any offence for which process has been issued then the Magistrate will be fully within his powers to drop the proceeding or rescind the process and it is in that connection the Court had observed "if the complaint on the very face of it does not disclose any offence against the accused". The aforesaid observation made in the context of a case made out by the accused either for recall of process already issued or for quashing of the proceedings may not apply fully to a case where the sanction Under Section 197(1) of the Code of Criminal Procedure is pleaded as a bar for taking cognizance. The legislative mandate engrafted in Sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the court on process being issued, by an application indicating that Section

¹⁹ (1992) 1 SCC 217

197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings.

In “***Matajog Dobey v. H.C. Bhari***” (referred supra) the Constitution Bench is of the consistent view that the complaint may not disclose all the facts to decide the question of applicability of Section 197, but facts subsequently coming either on police or judicial inquiry or even in the course of prosecution evidence may establish the necessity for sanction.

In “***Pukhraj v. State of Rajasthan***²⁰” the Apex Court observed that whether sanction is necessary or not may depend from stage to stage. In “***Matajog Dobey v. H.C. Bhari***” (referred supra), the Constitution Bench had further observed that the necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place the material on record during the course of trial for showing what his duty was and also the acts complained of were so interrelated with his official duty so as to attract the protection afforded by Section 197 of the Code of Criminal Procedure. This being the position it would be unreasonable to hold that the accused even though might

²⁰ (1973) 2 SCC 701

have really acted in discharge of his official duty for which the complaints have been lodged yet he will have to wait till the stage under Sub-section (4) Section 246 of the Code is reached or at least till he will be able to bring in relevant materials while cross-examining the prosecution witnesses. On the other hand it would be logical to hold that the matter being one dealing with the jurisdiction of the court to take cognizance, the accused would be entitled to produce the relevant material documents which can be admitted into evidence without formal proof, for the limited consideration of the court whether the necessary ingredients to attract Section 197 of the Code have been established or not. The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognizance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. In the aforesaid premises the Apex Court was of the considered opinion that an accused is not debarred from producing the relevant documentary material which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority. Further, the Supreme Court held that considering the facts and circumstances of the case, it prima facie appears that the alleged acts on the part of the Respondents were purported to be in the exercise of official duties. Therefore, a case of sanction under Section 197 Code of Criminal Procedure has been prima facie made

out. Whether it was unjustified on the part of the Respondents to take recourse to the actions alleged in the complaint or the Respondents were guilty of excesses committed by them will be gone into in the trial after the required sanction is obtained on the basis of evidences adduced by the parties. At this stage, such questions are not required to be considered because the accused have not yet led evidence in support of his case on merits.

In view of the aforesaid discussion, more particularly in view of the directions issued by the Apex Court in “**Vineet Narain & Ors. Vs. Union of India**” (referred supra) and other judgments referred in circular and the guidelines issued by the Central Vigilance Commission in pursuance of the directions issued in “**Vineet Narain & Ors. Vs. Union of India**” (referred supra) and other judgments, the sanction accorded by the competent authority dated 04.11.2008 in reference No.HYZO:LJ:SO:002, cannot be said to be invalid or illegal and whether any additional material produced or not for according sanction by the competent authority cannot be decided since the order allegedly passed by the competent authority declining to accord sanction is not placed on record and even both the parties did not take any steps to call for file relating to denial of sanction to verify the entire file to come to any conclusion. In the absence of any material, it is difficult for me to conclude that the sanction is not valid and contrary to the law declared by the Apex Court in the judgments referred supra. Consequently, at this stage, the Court below declined to discharge the petitioner by exercising power under Section 239 of Cr.P.C. and this Court while exercising power under Section 397 and 401 of Cr.P.C. find no error and irregularity in the order passed by the

Principal Special Judge for CBI Cases, Hyderabad warranting interference of this Court. Consequently, the revision is liable to be dismissed as devoid of merits.

In the result, the criminal revision case is dismissed leaving it open to petitioner to raise any objection regarding validity of sanction and produce material before the Court to substantiate such contention and on raising such contention by producing material before the Court during trial, the Principal Special Judge for CBI Cases, Hyderabad is bound to decide the validity of sanction and pass appropriate orders. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

13.08.2018
Ksp



JUSTICE M. SATYANARAYANA MURTHY