

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8292 of 2018

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed to quash the proceedings in C.C.No.9 of 2013 on the file of Principal Special Judge for CBI Cases at Gaganvihar, Hyderabad, registered for the offences under Section 7 of Prevention of Corruption Act, 1988, on the ground that the sanction accorded for prosecution of this petitioner by Railway Divisional Manager is incompetent in view of the circulars issued by the Railway Department.

According to the petitioner, the entire trial is completed since the matter pertains to the year 2013, except advancing argument and pronouncing judgment by the Court. At this stage, the petitioner approached this Court questioning the legality and validity of the sanction accorded by the authorities to prosecute this Petitioner by exercising power under Section 19 of the Prevention of Corruption Act.

Learned Special Public Prosecutor for CBI contended that the validity of the sanction cannot be decided by this Court by exercising power under Section 482 Cr.P.C. and placed reliance on a judgment reported in *Dinesh Kumar v Chairman, Airport Authority of India and another*¹ and on the strength of the principle laid down by the Apex Court, he requested this Court to dismiss the petition.

¹ (2012) 1 SCC 532

The main ground raised in the petition is about the competency to grant sanction for prosecution of this petitioner by exercising power under Section 19 of the P.C. Act. A Letter No.52-E/O/31 E (D&A) was issued by the Northern Railway and according to it, the General Manager shall be considered to be the appointing authority for staff in Class-III and IV categories as also semi-skilled, skilled and artisan staff where records or appointment letters to show the actual appointing authority of such staff are not available. Accordingly, the punishment of dismissal/removal/compulsory retirement from service cannot be inflicted on such staff by an authority lower than the General Manager.

A bare reading of the Letter, only the General Manager is competent person to remove or take disciplinary action under the Rules and he is the competent person to accord sanction for prosecution, according to the petitioner. But, in view of the Judgment of the Apex Court in *Dinesh Kumar's* supra, the validity of sanction can be decided by the trial Court alone, but not by the High Court since the cognizance was already taken against the appellant by the trial Court and leaving it open the question of validity of the sanction by the authorities to the trial Court, the Apex Court dismissed the petition filed by the said Dinesh Kumar.

In the present case, the cognizance of the offence was taken against this petitioner and proceeded with the trial and at the stage of argument, a transfer petition was allegedly filed for withdrawing and transfer of the case to some other Court and also come up

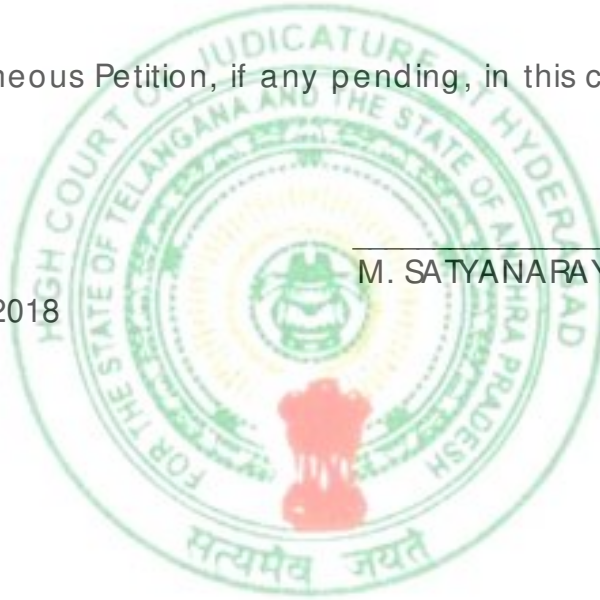
with this petition questioning the validity of sanction for prosecution passed by the authorities referred above and such question cannot be decided at this stage in view of the law declared by the Apex Court in *Dinesh Kumar*. Therefore, leaving it open to the petitioner to raise such contention i.e., the validity of sanction for prosecution against this petitioner before the trial Court during argument, the present is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed at the stage of admission itself.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

Date: 14-08-2018
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M. SATYANARAYANA MURTHY, J



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