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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 421/2016**

GULSHAN CHANANA Petitioner
Through: Mr. Gulshan Channa, Advocate for
Mr. Rohit Kumar, Advocate

versus

STATE NCT OF DELHI & ORS Respondents
Through: Mr. Kewal Singh Ahuja, APP for
State with ASI Kuldeep Singh, PS
Rajouri Garden

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **27.11.2018**

On 25.06.2013, on the complaint of the fifth respondent, First Information Report No. 350/2013 was registered by Police Station Rajouri Garden wherein allegations have been made against the petitioner constituting offences punishable under Sections 328/366/376/506 of Indian Penal Code, 1860 (IPC). On the same day, i.e. 25.06.2013, the petitioner statedly had lodged a complaint vide DD No. 88B to the effect that the fourth and fifth respondents had defrauded him by misappropriating an amount of Rs. 25 Lacs, this in the context of an agreement to sell, which had statedly been earlier entered upon. The petitioner was arrested in case FIR No. 350/2013 on 28.06.2013 and remained in custody till he was enlarged on bail by order dated 21.12.2013 of the court of sessions.

In 2015, he presented a criminal complaint case in the court of Special Judge (Prevention of Corruption Act) making averments against the respondents herein seeking criminal action for offences allegedly committed by them, they being punishable under Sections 166/167/169/192/120-B IPC and Sections 7/8/9/11/13 of Prevention of Corruption Act, 1988. The complaint was presented invoking the jurisdiction of the Special Judge under Section 156(3) read with Section 200 of the Code of Criminal Procedure (Cr.P.C.).

The Special Judge, considered the abovesaid complaint and, by order dated 07.12.2015, held that primarily in view of the fact that the respondents against whom allegations of demand of illegal gratification or abuse of official positions have been levelled are public servants, they being entitled to the protection of law in terms of Section 19(1) of the Prevention of Corruption Act, 1988, no sanction having been applied for, or granted, the copy of Special Judge could not even direct investigation to be undertaken, leave alone take cognizance to hold an inquiry and, in this context, reference was made to the decision of the Supreme Court reported as *Anil Kumar & Ors. vs. M.K. Aiyappa & Anr. (2013) 10 SCC 705*.

Assailing the above-mentioned order dated 07.12.2015 of the Special Judge, the present petition was filed invoking the inherent powers and jurisdiction of this Court under Section 482 Cr.P.C.

The relevant observations of the Supreme Court in *M.K. Aiyappa* (supra) have been noted in the impugned order and the same are being quoted for ready reference, they reading thus:

“Where jurisdiction is exercised on a complaint filed in terms
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of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, and in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) Cr.P.C. for investigation against a public servant without a valid sanction order under Section 19(1) of the Prevention of Corruption Act, 1988 (PC Act). The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted.

The Special Judge/Magistrate in the present case, has stated no reasons for ordering investigation.....

The word “cognizance” has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge under the Prevention of Corruption Act, 1988 refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C., the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

A Special Judge for Prevention of Corruption is deemed to be a Magistrate under Section 5(4) of the Prevention of Corruption Act, 1988 and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two opinions: he may take cognizance of the offence under Section 190 Cr.P.C. proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation

under Section 156(3) Cr.P.C. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) Cr.P.C.....

The submission by the appellants (complainants) that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) of the PC Act would be rendered otiose, is difficult to accept. Section 19(3) of the PC Act has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. Therefore, there is no error in the order passed by the High Court.”

In the considered view of this Court, the law to the above effect having been well settled by the Supreme Court, the view taken by the Special Judge in the impugned order cannot be questioned. The public servants who are shown in the array of prospective accused are entitled to the protection of Section 19(1) of the Prevention of Corruption Act, 1988. Given the above ruling of *M.K. Aiyappa* (supra), the Special Judge could not have acted upon the complaint of the petitioner in absence of a previous sanction. The petition is thus dismissed.

R.K.GAUBA, J.

NOVEMBER 27, 2018

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