

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17th JULY, 2018
Pronounced on: 08th AUGUST, 2018

+ CRL.M.C. 3886/2015 & Crl.M.A. No. 13819/2015

SRIJANA SHRESTHA Petitioner

Through: Mr. Anoop George Chaudhari,
Senior Advocate with Mr.
Javedur Rahaman, Advocate.

versus

KHAJAN SINGH & ORS Respondents

Through: Ms. Rajdipa Behura, SPP with
Mr. Philoon Kani, Mr. A.
Behura, Advocates
Ms. Kriti Handa & Ms. Hansika
Sahu, Advocates for CBI.

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

ORDER

1. The petitioner describes himself as an advocate practising in the Rajasthan High Court at Jaipur. He, joining with the sixth respondent, had submitted an application before the Special Judge (Prevention of Corruption Act), New Delhi – registered as Application no.01/2013 on 08.07.2013, seeking to invoke the jurisdiction of the said court under Section 156(3) of the Code of the Criminal Procedure, 1973 (Cr. PC) to seek investigation into certain offences allegedly committed by the

first to fourth respondents and certain others, such offences statedly being punishable under Sections 13(1)(c) and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 read with Sections 120B, 166 167, 169, 175, 197, 217, 218, 409, 441, 467, 468, 469, 471 and 466 of Indian Penal Code, 1860 (IPC). Noticeably, the first respondent is described as the competent authority appointed by notification of Ministry of Shipping, Road Transport and Highways (Department of Road, Transport & Highways) of the Government of India, the acts of commission and omission attributed to the third respondent pertaining to the period when she was the Chief Minister of the State of Rajasthan or the period during which she was leader of opposition in the Legislative Assembly of the State of Rajasthan. Similarly, the fourth respondent is generally described as officers of the Ministry of Shipping, Road Transport and Highways (Department of Road, Transport & Highways) of the Government of India which would put them as well in the category of public servants.

2. The Special Judge, by her order dated 18.04.2015, held that in absence of the sanction under Section 197 of Cr. PC, she could not proceed further referring in this context to the ruling of the Supreme Court in *Anil Kumar and Ors. Vs. M.K. Aiyappa*, (2013) 10 SCC 705. Feeling aggrieved by the aforementioned order of the Special Judge, the present petition has been filed invoking the jurisdiction of this court under Section 482 Cr. PC.

3. In *M.K. Aiyappa* (supra), the Supreme Court ruled thus :

15. The judgments referred to hereinabove clearly indicate that 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 refers a complaint for investigation under Section 156(3) CrPC, 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 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

16. A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act 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 options: he may take cognizance of the offence under Section 190 Cr.PC or 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.PC. 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) CrPC.

21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 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, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh [(2009) 6 SCC 372] and Subramanian Swamy [(2012) 3 SCC 64] cases.”

(emphasis supplied)

4. In view of the above, the impugned order of the Special Judge cannot be faulted.
5. The petition and the application filed therewith are dismissed.

(R.K. GAUBA)
JUDGE

AUGUST 08, 2018

yg