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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Revision No.338 of 2019**

Order Reserved on : 28.6.2019

Order Passed on : 15.7.2019

Suresh Kumar Pandey, son of Radhika Prasad Pandey, aged about 52 years, posted as Executive Engineer, resident of Yash Villa, Professor Colony, Nehru Nagar (West), Bhilai, District Durg, Chhattisgarh

---- Applicant

**versus**

State of Chhattisgarh through the Incharge, Anti Corruption Bureau, Raipur, District Raipur, Chhattisgarh

--- Respondent

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| For Applicant  | : | Shri Goutam Khetrpal, Advocate                      |
| For Respondent | : | Shri Devendra Pratap Singh, Deputy Advocate General |

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**Hon'ble Shri Justice Arvind Singh Chandel**

**C.A.V. ORDER**

1. The instant revision has been preferred against the order dated 19.2.2019 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the PC Act'), Raipur in Special Criminal Case No.11 of 2018, whereby the Special Judge has rejected the application/objection raised by the Applicant under Section 19 of the PC Act.
2. Facts of the case, in brief, are that on 11.10.1989, the Applicant joined services as a Sub-Engineer in Water Resources Department. At the relevant time, he was posted as an Executive Engineer of the Water Resources Department at Raipur Division No.1. On 20.7.2015, the Anti Corruption Bureau, Raipur conducted a raid at the house of the Applicant situated at Professor Colony,

Nehru Nagar, Bhilai, District Durg, Chhattisgarh and in pursuance thereof registered Crime No.37 of 2015 for offence punishable under Sections 13(1)(e) and 13(2) of the PC Act and also prepared an inventory. On 21.7.2015, the Anti Corruption Bureau also conducted a search in Morvi Beauti Parlour which belonged to the wife of the Applicant, namely, Anita Pandey. As directed by the Anti Corruption Bureau, the Applicant has submitted details of the properties and assets to the Anti Corruption Bureau. After completion of the investigation, initially, the Anti Corruption Bureau sent a file to the original department of the Applicant, i.e., the Water Resources Department for obtaining sanction for prosecution, but the sanction was not granted by the department. Thereafter, the case was forwarded to the competent authority, i.e., the Law and Legislative Affairs Department for grant of sanction for prosecution. Since there was a difference of opinion between the General Administration Department and the Law and Legislative Affairs Department regarding grant of sanction for prosecution, as per the procedure laid down in circular dated 26.5.2003 issued by the General Administration Department, approval was taken through coordination and thereafter the Law and Legislative Affairs Department granted sanction for prosecution vide order dated 8.9.2017. Since there was a difference of opinion between the General Administration Department and the Law and Legislative Affairs Department, after granting sanction for prosecution by the Law and Legislative Affairs Department, the Applicant moved a representation before the Chief Minister of the State. Vide order dated 15.6.2018, the Chief Minister directed for re-examination of the matter. Thereafter, on 10.12.2018, a charge-sheet has been filed against the Applicant for the alleged offence. Since despite

there being a direction of the Chief Minister for re-examination of the matter, without further inquiry or re-examination of the matter and without obtaining a fresh sanction for prosecution, charge-sheet has been filed and cognizance has been taken by the Special Court, the Applicant preferred an application under Section 19 of the PC Act. The said application has been rejected by the Special Court vide the impugned order dated 19.2.2019. Hence, this revision.

3. Learned Counsel appearing for the Applicant submitted that there was a difference of opinion between the General Administration Department and the Law and Legislative Affairs Department and the sanction has been obtained through coordination. After the sanction, vide order dated 15.6.2018, a direction was issued by the Chief Minister for re-examination of the matter. Thus, it is clear that the order dated 8.9.2017 granting sanction for prosecution was recalled vide the order dated 15.6.2018 passed by the Chief Minister. Therefore, the order dated 8.9.2017 has already been merged into the order dated 15.6.2018 and, therefore, no valid sanction is in existence. Thus, without obtaining a valid sanction for prosecution, the charge-sheet filed by the prosecution on which cognizance has been taken by the Special Court against the Applicant is not sustainable. Therefore, the Special Court has committed a serious error of law in holding that the prosecuting agency has obtained a valid sanction for prosecution of the Applicant.

4. Learned Counsel appearing for the State supported the impugned order and submitted that the order dated 8.9.2017 has been passed in accordance with the applicable governing procedure that

too after taking approval from the Chief Minister through coordination as per the circular dated 26.5.2003. Therefore, the said order is valid and statutory in nature. So far as the order dated 15.6.2018 is concerned, it is an observation on the representation made by the Applicant only and cannot supersede the order dated 8.9.2017 which has been passed after following due process of law. Even otherwise, it is well settled that once the competent authority takes conscious decision on the basis of relevant material, the same would not be opened to review.

5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. Section 19 of the Prevention of Corruption Act, 1988 runs 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 save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—

(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.”

7. While dealing with the issue relating to sanction for prosecution, the Supreme Court, in **(2007) 1 SCC 1 (Prakash Singh Badal v. State of Punjab)**, observed as follows:

“29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on “failure of justice” and that too “in the opinion of the court”. In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the “failure of justice’ is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (*sic* not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary.”

It was further observed by the Supreme Court thus:

“47. The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard.”

8. With regard to power of review on the part of sanctioning authority, in **(2010) 14 SCC 527 (State of Himachal Pradesh v. Nishant Sareen)**, it was observed by the Supreme Court as under:

“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 a 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.

**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 a course.”

- 9.** Relying on **Nishant Sareen case** (supra), this Court, in **Dilip Kumar Sharma v. State of Chhattisgarh, Writ Petition (Cr.) No.355 of 2017 (Order dated 6.4.2018)**, observed as under:

**“18.** Thus, the order passed under Section 19 of the Act of 1988 by the sanctioning authority can be reviewed/reconsidered on the following circumstances:

1. Where fresh materials have been collected by the investigating agency and if on that basis, the matter can be reconsidered.
2. When the authority has failed to take into consideration a relevant fact or took into consideration an irrelevant fact.

**19.** Thus, it is quite vivid that the order under Section 19 of the Act of 1988 can be reviewed by the sanctioning authority where fresh material has been

collected and brought to the notice of the said authority and secondly, when the sanctioning authority has failed to take into consideration relevant facts and took into consideration irrelevant facts while passing order under Section 19 of the Act of 1988.”

10. On examination of the facts of the present case in the light of above observations, there is no doubt that the General Administration Department had refused to grant sanction for prosecution. Thereafter, the Law and Legislative Affairs Department, vide order dated 8.9.2017, granted sanction for prosecution through coordination. From perusal of the charge-sheet also, it reveals that the charge-sheet was prepared and signed on 8.6.2018, but it was submitted before the Trial Court on 10.12.2018. After granting the sanction on 8.9.2017 and before filing the charge-sheet on 10.12.2018, the order dated 15.6.2018 was passed by the Chief Minister for re-examination of the matter on being represented by the Applicant. The letter/order dated 20.7.2018 (Annexure A9) issued by the Law and Legislative Affairs Department also reveals that vide this letter/order the Law and Legislative Affairs Department, after receipt of the order of the Chief Minister dated 15.6.2018 for re-examination of the matter, sent the representation of the Applicant to the Anti Corruption Bureau for re-examination of the matter and necessary action. Thus, it is clear that the sanctioning authority, i.e., the Law and Legislative Affairs Department had sent the matter to the Anti Corruption Bureau along with the representation of the Applicant and the order of the Chief Minister passed thereon dated 15.6.2018 for re-examination of the matter and necessary action. Thus, the Anti Corruption Bureau ought to have re-examined the

matter as directed by the sanctioning authority in pursuance of the order of the Chief Minister before filing of the charge-sheet and if any new material was collected by the Anti Corruption Bureau the same ought to have been placed by the Bureau before the sanctioning authority for obtaining fresh sanction for prosecution. But, the Anti Corruption Bureau did not do so and without re-examining the matter, in violation of the direction of the sanctioning authority, filed the already prepared and signed charge-sheet dated 8.6.2018. Filing of the final report/charge-sheet by the Anti Corruption Bureau without placing the facts emerged after the subsequent inquiry before the sanctioning authority has caused a serious prejudice to the Applicant and, therefore, in my considered view, a failure of justice, within the purview of Section 19(3)(a) of the PC Act has been occasioned. Before filing of the final report/charge-sheet, the investigating agency must have obtained a fresh sanction for prosecution based on the entire facts and circumstances of the case.

11. As a consequence, the impugned order dated 19.2.2019 passed by the Special Judge is set aside. As directed by the sanctioning authority, the investigating agency shall re-examine the matter and thereafter obtain a fresh sanction for prosecution based on the entire facts and circumstances of the case. The Special Judge shall take cognizance of the offence on filing of a fresh order of sanction for prosecution.
12. The instant revision is allowed in the aforesaid terms.

Sd/-

**(Arvind Singh Chandel)**  
**JUDGE**