

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 482 of 2019**Order reserved on : 20.08.2019Order delivered on : 20.11.2019

- S. Rudra Murty, S/o Shri S. Veer Sawmi, aged about 46 years, R/o Qtr. No. Type 2/12 B Railway Colony, Kirandul , District Dantewara (C.G.)

----Petitioner**Versus**

- Union of India, Through Central Bureau of Investigation (ACB), Chhattisgarh, Bhilai, District Durg (C.G.)

---- Respondent

For Petitioner	:	Shri Pragalbha Sharma, Adv.
For Respondent	:	Shri B. Gopa Kumar, A.S.G.

Hon'ble Smt. Justice Rajani Dubey**C A V ORDER****20/11/2019**

01. Challenge in this revision petition is to the order dated 16.01.2019 passed in CBI Case No.04/2017 by the learned Additional Sessions Judge (Special Judge of Special Court for trial of CBI cases), Raipur (C.G.), whereby the learned Court below has rejected the application of the applicant seeking direction for production of documents and note-sheet from the office of Sanctioning Authority.

02. The applicant is facing special criminal trial before Special Judge, C.B.I., under Sections 7 and 13 (2) r/w section 13 (1) (d) of Prevention of Corruption Act, 1988 (for short 'the Act'). Before the trial Court, the applicant filed an application under Section 91 of Cr.P.C. seeking direction for production of documents and note-sheet from the office of Sanctioning Authority (Senior Divisional Engineer (Co-ord) East Coast, Railways, (Waltair Division), which was dismissed by the trial Court holding that there exists an opportunity to confront the witness relevant questions at the time of cross-examination related to the prosecution sanction in relation to the documents submitted by the Vigilance Department, East Coast Railway, Bhubneshwar, Orissa. Hence, this revision petition.

03. Learned counsel for the applicant submits that the Court below has not taken into consideration the importance of sanction and the true purport of the protection extended to the Government Servant. The trial Court has also not taken into consideration the fact that the applicant confronted the sanctioning officer with the specific question regarding his competency for grant of sanction for the prosecution of the applicant. He further submits that the purpose of providing previous sanction as pre-requisite before prosecuting a Government Servant is to discourage rivalrous complaints against them and also to encourage the government servant to discharge their duty without any fear and favour, but the

trial Court has completely ignored this aspect of the matter and rejected the application without recording any reason whatsoever. He also submits that in this case sanction has been granted in routine manner, which does not disclose the material having been considered before passing such order. The purpose of moving the application for production of the document is based on the fact that the PW/1 has tried to evade the question of non-consideration of the material at the time of grant of sanction. It is next submitted that the learned trial Court has failed to consider that the sanctioning authority was provided the draft sanction order which has been confronted at the time of cross-examination and marked as Ex.D-1, it is most absurd that the prosecution agency who is required to seek a sanction before prosecuting a government servant, has itself proposed the sanction order which ought to be signed by the sanctioning authority, whereas under the law, a duty has been enjoined upon the sanctioning authority to apply its mind and balance the public interest on the one hand and protection available to the accused on the other hand. He also submits that the Court below has wrongly rejected the application only on the ground that the Court has to see the documents relied upon by the prosecution only. In support of his argument, he placed reliance on the decision of this Court's order dated 19.07.2017 passed in CRR No. 704/2017 (Mahaveer Chandrakar Vs. State of Chhattisgarh),

04. On the other hand, learned counsel for respondent

supporting the impugned order and submitted that the trial Court has not committed any illegality while passing the impugned order. He also submits that the accused has every right to confront them during cross examination and thereby the order of the Court below is without any fault.

05. Heard learned counsel for the parties and perused the material on record.

06. The applicant has filed photocopy of deposition of Ashok Kumar (PW/1), Sr. Divisional Engineer (Co-ord), E.Co., Railway, Waltair, who has granted sanction order for prosecuting the applicant in corruption case. In para 11 of his cross-examination, he has stated that the request for prosecution sanction order was made by his Vigilance Department East Coast Railway, Visakhapatnam, Bhubaneshwar, Orissa and after issuing the Prosecution Sanction Order, all the documents related to the case were returned to the vigilance department. The applicant has also attached the list of documents along with the sanction order (Annexure A/2). The learned trial Court, while deciding the application of the applicant filed under Section 91 of Cr.P.C., has rightly held that the accused has the opportunity to confront the witness (sanctioning authority) relevant questions at the time of cross-examination related to the prosecution sanction and in relation to the documents submitted before him by the Vigilance Department, East Coast Railway, Bhubneshwar, Orissa. Thus, the order cited by learned counsel for the

applicant in the matter of **Mahaveer** (supra) is of no help to him being distinguishable on the facts.

07. That apart, the impugned order refusing to call the documents and rejecting the application under Section 91 Cr.P.C., is interlocutory orders in nature and, in view of decision of Hon'ble Supreme Court in the matter of **Sethuraman Vs. Rajamanickam** reported in **(2009) 5 SCC 153**, the revision against interlocutory in nature, in which case, under Section 397(2), revision is clearly not maintainable.

08. Accordingly, the criminal revision being without any force is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE