HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 504 of 2019

- Ali Hussain Kapasi

---- Applicant

Versus

- State Of Chhattisgarh

---- Respondent

Post for pronouncement of the order on 27.08.2019

JUDGE

27.08.2019

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 18.07.2019

Judgment delivered on : 27.08.2019

CRR No. 504 of 2019

- Ali Hussain Kapasi S/o Late Shri Tahir Ali Aged About 61 Years Retired Chief Conservator Of Forest, R/o A-16/4, Sector-3, Udiya Society, Tatibandh Raipur Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Anti Corruption Bureau/ Economic Offences Investigation Bureau, Raipur Chhattisgarh.,

---- Respondent

For Applicant : Shri Pawan Kesarwani, Advocate
For Respondent /State : Shri Rahul Mishra, Dy.GA

Hon'ble Smt. Justice Rajani Dubey

C A V Order

27/08/2019

Present revision arises out of the impugned order dated 12.03.19 passed in Special Criminal Case No. 05/18 passed by the Special Judge (Prevention of Corruption Act,1988) district Raipur whereby the learned court below has rejected the application preferred by the applicant to discharge for want of prosecution sanctioned under Section 19 of the Prevention of Corruption Act as also under Section 197 of the Criminal Procedure Code.

2. Before the Special Court, Raipur charge sheet has been filed against the applicant under Section 13 (2) read with Section 13 (1) (e)

of the Prevention of Corruption Act, 1988. The applicant has filed application under Section 19 of the Prevention of Corruption Act read with Section 197 Cr.P.C. before the trial court on the ground that the applicant has retired on 31.01.18 and the charge sheet was filed after his retirement and no prosecution sanction has been obtained from the concerned department but the trial court has rejected this application on 12.03.19 and fixed the case for framing of charges. Hence, the present revision filed by the applicant.

3. Counsel for the applicant submits that the applicant has been falsely implicated in this case and no case in the aforesaid offence is made out against the present applicant. The Investigating Officer while investigating the offence failed to consider the entire case and did not try to go through the justification given by the applicant.

4. The presumption of commission of offence in case of Prevention of Corruption Act lies to certain extent in favour of the prosecution but it is on the prosecution to combine the presumption and prima facie to crystallize the offence which has not been committed by the applicant in the present case. The applicant is aged about 61 years and he has retired from service on 31.01.18 from the post of Chief Conservator of Forest, he has served through out his career without any blemish. After amendment in Section 19 of the Act, it is necessary for the investigating agency to obtain previous sanction for prosecuting against a retired government servant therefore, the order dated 12.03.19 is liable to be set aside and proceedings pertaining to special criminal case No. 5/18 is liable to be quashed for want of sanction for prosecution.

5. Learned counsel for the State/CBI supports the impugned order. Reliance has been placed on the judgments of **Matajog Dubey Vs. H.C.Bihari (AIR 1956 SC 44)** and **P. Arulswami Vs. State of Madras (AIR 1967 SC 776).** He however, submits that the order passed by the court below is just, proper and is in accordance with law and there is no infirmity or illegality in the same.

6. Heard counsel for the parties and perused the material available on record.

7. Before the trial court, charge sheet has been filed on 31.07.18. It is admitted position that the prosecution sanction has not been obtained from the department. Learned trial court rejected the application of the applicant on the ground that the applicant has retired on 31.01.18 therefore, on the date of cognizance i.e. 31.7.18, he was a retired government servant and sanction is not necessary.

8. On 26.7.18, Section 19 of the Prevention of Corruption Act is amended and new Section has been added which is as under:

> **Previous sanction necessary for prosecution.—** (1) No court shall take cognizance of an offence punishable under sections 7, 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 (1 of 2014)] —
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> (a) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence 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, or as the case may be, was at the time of commission of the alleged offence 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.

9. This Section is amended on 26.7.18 and charge sheet has been filed after five days of this amendment i.e. on 31.7.18. It is clear from Section 19 of the Act that no court shall take cognizance of offence in this Section without prior sanction by the prosecution from the concerned department. In the case of **Nanjappa Vs. State of Karnataka (AIR 2015 SCW 4432)** it has been held as under:

> 15. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

In the case of **R. P. Kapur Vs. State of Punjab (AIR 1960 866)** Apex Court has held that :

> Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under S. 561-A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under S.173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an

accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S.561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and' contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S.561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide: In Re: Shripad G. Chandavarkar (1), Jagat Ohandra Mozumdar v. Queen Empress (2), Dr. Shanker Singh v. The State of Punjab (3), Nripendra Bhusan Ray v. Govind Bandhu Majumdar (4) and Ramanathan Chettiyar v. K. Sivarama Subrahmanya Ayyar I.L.R. 47 Mad. 722: (AIR Mad 39).

10. In the light of amendment of Section 19, the trial court shall not take cognizance without prosecution sanction and therefore the order impugned is liable to be set aside. Accordingly, the revision is allowed. The proceedings against the accused in trial court in Cr. Case No.05/18 is quashed. Accused is discharghed of the charges against him for want of prosecution sanctioned. However, liberty is granted to the concerned department that if the department so desire, may take prosecution sanction and then file charge sheet.

Sd/-

(Rajani Dubey)
Judge

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