

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 557 of 2019**Order reserved on : 14.07.2019Order delivered on : 30.07.2019

- A. R. Naidu, aged about 52 years, S/o Shri K. Ramalu Naidu, R/o Smriti Nagar, Qtr. No.347, Street No.1, Bhilai (C.G.)

----Petitioner**Versus**

- State of Chhattisgarh Through : Anti Corruption Bureau, Raipur (C.G.)

---- Respondent

For Petitioner	:	Shri P.K.C. Tiwari, Sr. Adv. Assisted by Shri Ashutosh Trivedi, Adv.
For Respondent/State	:	Shri Anant Bajpai, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V ORDER****30/07/2019**

01. The petitioner has filed present revision being aggrieved by the order dated 04.12.2018 passed in Case No.05/2018 by Special Judge, (Prevention of Corruption Act) for short 'the P.C. Act', Durg, whereby the learned trial Court has rejected the application filed by the applicant under Section 19 of the P.C. Act.

02. Brief facts of the case, as revealed from the documents,

are that during the posting of appellant as Ranger in Forest Department at Manpur, Mohla, District Rajnandgaon, on 03.06.2016, a raid was conducted by the Anti Corruption Bureau in the residential house of the applicant at Civil Lines, Durg and Crime No.48/16 was registered under Section 13(1) (e) and 13(2) of the P.C. Act. During the investigation, the petitioner was asked to submit documents in the prescribed forms i.e. form 1, 2 and 3 in his defence, which was submitted by him to his department on 30.01.2017 and the said documents were sent to Superintendent of Police, Anti Corruption Bureau, Raipur, by registered post on 02.02.2017 by Forest Department through covering letter No.1395 dated 01.02.2017. Further case is that on 28.03.2018, the Anti Corruption Bureau, Raipur, sent the matter of the applicant to Law Department seeking permission to prosecute the applicant, to which the Law Department, on 21.05.2018, issued sanctioned order against the applicant. After obtaining the sanctioned order, the investigating agency produced charge sheet before the learned Special Judge. There is list of documents which were considered by the sanctioning authority while passing the prosecution sanction order which reveals that the documents submitted by the applicants through its department were not sent to the sanctioning authority. It has been mentioned in the final report filed along with the charge-sheet that the applicant was provided opportunity twice to submit the documents as his explanation

but neither the applicant nor the parent Department of the applicant submitted the documents. The petitioner had filed an application under Section 19 of the P.C. Act challenging the validity of sanction order passed against the applicant but the said application was rejected vide order dated 04.12.2018. Hence, this revision.

03. Learned counsel for the petitioner submits that the impugned order passed by the trial Court rejecting the application of petitioner is contrary to the material available on record and against the well settled principle of law, therefore, the same is liable to be set aside. He further submits that it is mandatory provision of Section 19 of the P.C. Act that no Court shall take cognizance against a public servant without obtaining a valid sanction. Hon'ble the Supreme Court in catena of judgments has held that granting of sanction is not a mere formality, rather it is *pious* and *sacrosanct* act. It is a mandatory provision and has to be followed in its true sense. It has been also submitted that it is precedent that if the sanction obtained against the public servant is not valid due to irregularities present in it then the entire proceeding becomes *void-ab-initio*. Learned counsel also submits that it is evident from the final report that the sanctioning authority was not made available with the defence documents presented by the petitioner through its department and, therefore, it could be inferred that the sanctioning authority did not possess those documents which

were for the protection of the accused or to say which were favoring the accused. Not sending the said documents of the petitioner to the sanctioning authority is abused of process of law which creates a doubt over the geniuses of the investigation and makes it clear that the investigating agency had suppressed those documents to obtain sanction against the petitioner by the sanctioning authority. He placed reliance on the decision of Apex Court in the matter of **C.B.I. V. Ashok Kumar Aggarwal**¹ wherein it has been observed in para 8 as under:-

8. *In view of above, the legal proposition can be summarised as under:*

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/documents, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be

¹ 2014 AIR SCW 472

exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evidence that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

04. On the other hand, learned State counsel supported the impugned order passed by the trial Court.

05. I have heard learned counsel for the parties and perused the material on record.

06. The ground of rejection of application filed under Section 19 of the P.C. Act by the trial Court is that the validity of sanctioned order shall be examined during trial itself and not during inquiry or at pretrial stage. The Supreme Court in the matter of **C.B.I. (Supra)**, has held in para 47, which reads thus:-

“47. Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pretrial state.”

07. The learned trial Court, relying upon the decision of

Supreme Court in the matter of **C.B.I. (Supra)**, has rightly rejected the application of the applicant, and this Court do not find any illegality or infirmity in the impugned order warranting interference by this Court.

08. Accordingly, the revision petition is dismissed. However, the applicant is at liberty to raise this issue during the trial and the trial Court shall decide the same at the time of final decision of the case.

Sd/-

(Rajani Dubey)
JUDGE