

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CrI.M.C.No.684/2018 and CrI.M.A. No. 2453/2018

Judgment reserved on: 29.05.2018
Date of decision : 28.01.2019

GOPAL SINGH BISHT

..... Petitioner

Through: Mr. M.N. Dudeja, Advocate

versus

CENTRAL BUREAU OF INVESTIGATION..... Respondent

Through: Mr. Sanjeev Bhandari, SPP
with Mr.Prateek Kumar,
Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Gopal Singh Bisht S/o Inder Singh Bisht arrayed as accused A-10, in the charge sheet filed by the respondents to the present petition i.e., the Central Bureau of Investigation, Special Crime Region-III, New Delhi, in Charge-sheet No.13 dated 25.8.2008 in relation to the FIR No. RC- 12(S)/2006/SCR-III, New Delhi for the alleged commission of offences punishable under Sections 120-B r/w 420, 468 & 471 IPC r/w Section 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences under Section 13(2) r/w 13(1)(d) of PC Act, 1988 (as it then existed) and who vide order dated 25.1.2016 of the Special Judge (CBI-01), CBI (North -West), Rohini, in CBI case No. 57/2008 *prima facie* was held to have committed offences punishable under

Section 120 B of the Indian Penal Code, Section 13(2) of the Prevention of Corruption Act, 1988 read with Section 13(1)(d)(ii) and 13(1)(d)(iii) of the Prevention of Corruption Act, 1988 and other penal offences as mentioned in the charge sheet with the aid of Section 120-B of the Indian Penal Code, 1860 and who vide the charge framed on 15.4.2016 was charged to the following effect:

“That during the year 2002 at Delhi, a criminal conspiracy was hatched with an object to fraudulently to revive Railway Line CGHS Ltd, (Registration No. 121/H), a defunct/dormant Society by submitting the forged and fabricated documents and to get sent a list of 116 members (most of them were fake) to DDA to obtain land in the name of Society at subsidized rates. You were also one of the members of the said conspiracy not only succeeded in revival of the Society on the basis of fake and fabricated documents but also succeeded in getting land i.e. plot bearing Plot No. 11, Sector-19B, Dwarka, New Delhi in the name of Society.

That in pursuance of said criminal conspiracy, you being the dealings(sic.) assistant had (sic) taken on record the forged letter dated 15.05.80 wherein the Society allegedly intimated regarding the resignation and enrol(l)ment(sic) of the members from time to time and the letter dated 20.06.1986 wherein the society allegedly intimated the change of its address from Subzi Mandi Railway Station to 21A, Gail No. 6B, Molarband Extension, Badarpur, New Delhi despite the fact that

there was no reference of any such letter in the noting portion of the society file.

Further in your note dated 05.12.2002, you mentioned that you had taken the signature of R.K. Sharma, Honorary Secretary of the Society, who allegedly produced the record of the society before you whereas R.K. Sharma was found (to be a (sic)) fictitious person and the alleged record was produced by your co-accused Sri Chand before you.

Thereafter you put up a detail (ed) note on 09.12.2002, on the basis of which a freeze list of 116 members was approved by the RCS.

You being the dealing assistant of RCS abused your official position for obtaining valuable thing or pecuniary gain for yourself or for any other person and you also acted without any public interest by taking the above list unauthorisedly on record and certifying that R.K. Sharma produced the record before you and putting up a favourable note dated 09.12.2002 and you thereby committed offences punishable under Section 13(2) r/w 13(1)(d)(ii) & 13(1)(d) (iii) of PC Act, 1988 within my cognizance and thereby direct you be tried by this court for the above said offence.”,

and who pleaded not guilty thereto and claimed trial— vide the present petition under Section 482 of the Cr.P.C., 1973 has sought the quashing of the entire criminal proceedings in the FIR No. RC-12 (S)/2006/SCR-III, New Delhi which was registered on 23.10.2006.

2. The petitioner contends that in the instant case sanction under Section 19 of the Prevention of Corruption Act, 1988 had been accorded and that no requisite sanction in terms of Section 197 of the Cr.P.C., 1973 having been accorded for the offences punishable under the Indian Penal Code, the charges levelled against the petitioner cannot be sustained and cannot be allowed to remain on the record in as much as the previous sanction of the Central Government or the State Government concerned was a condition precedent for taking cognizance of any offence against the petitioner herein, a public servant, in as much as the offences punishable under the Indian Penal Code, 1860, alleged against him, if any, have been done by him only whilst acting or purporting to act in the discharge of his official duty and that further more, the sanctioning authority Mr.R.K.Srivastava, the then Secretary (SC/ST/OBC/Min) i.e., the then Secretary for the Department for the Welfare of the SC/ST/OBC/Minorities, Government of NCT of Delhi, himself is arrayed as a co-accused with the present petitioner in another Co-operative Group Housing Scam case, *namely*, Uttar Bharat CGHS and 32 other cases in relation to Co-operative Societies originating from the very same order of this Court dated 13.2.2006 in CWP 10066/2004, and thus the sanction order suffered from gross bias which in turn has caused the petitioner herein grave prejudice vide which sanction was granted. *Inter alia* it was sought to be contended on behalf of the petitioner that the sanction accorded by Sh. R.K.Srivastava was not given by the competent authority in as much as the same was given by Sh. R.K.Srivastava, in the capacity of the then Secretary of the Department for the Welfare of SC/ST/OBC/Minority

and he was not in a position to ascertain as to whether any actual misconduct had been committed by the petitioner or not whilst the petitioner was employed as the LDC in the office of the Registrar of Co-operative Societies, New Delhi.

3. The proceedings before the learned Trial Court, during the course of submissions that have been made on 23.5.2018, were at the stage of defence evidence and vide order dated 29.5.2018 of this Court, the pronouncement of judgment by the learned Trial Court in FIR No. RC-12 (S)/2006/SCR-III, New Delhi against the petitioner herein has been stayed.

4. On behalf of the petitioner, a catena of verdicts has been relied upon in support of his contentions that the plea qua the absence of the requisite sanction in terms of Section 197 of the Cr.P.C. 1973, could be taken at any stage and that the requisite sanction under Section 197 of the Cr.P.C., 1973, is required when a public servant is charged with the offences punishable under Section 120-B of the Indian Penal Code, 1860 and that there is a difference in sanction under Section 19 of the Prevention of Corruption Act, 1988 and sanction under Section 197 of the Cr.P.C, 1973, for whereas in the case of a public servant sanction under Section 19 of the Prevention of Corruption Act, 1988 is virtually automatic in nature, for the grant of sanction under Section 197 of the Cr.P.C, 1973, the basic features have to be considered to find out whether the alleged act had any *nexus* with the discharge of the duties.

5. The verdicts of the Hon'ble Supreme Court relied upon on behalf of the petitioner are

a. ***Sankaran Moitra v. Sadhna Das & Anr;*** (2006) 4 SCC 584

- b. *State of H.P. v. M.P. Gupta*; (2004) 2 SCC 349;
- c. *Rizwan Ahmed Javed Sahikh & Ors. V. Jammal Patel and Ors*; AIR 2001 SC 2198 and;
- d. *Abdul Wahab Ansari V. State of Bihar and Another*; (2008) 8 SCC 500
- e. *N.K.Ganguly v. C.B.I., New Delhi*; (2016) 1 ALL LJ 315
- f. *A. Sivaprakash V. State of Kerala*; (2016) 12 SCC 273
- g. *C. Chenga Reddy and Ors. V. State of Andhra Pradesh*; AIR 1996 SC 3390
- h. *R.S. Nayak v. A.R.Antulay*; (1984) 2 SCC 183
- i. *Lalu Prasad Yadav v. State of Bihar through CBI*; (2007) 1 SCC 49;
- j. *Great Bombay Coop. Bank Ltd. V. United Yarn Textile Ltd.*; AIR 2007 SC 1584
- k. *Mayawati v. Union of India*; AIR 2012 SC 3765
- l. *Rakesh Kumar Mishra v. State of Bihar & Ors.*; AIR 2006 SC 820

6. It was submitted thus on behalf of the petitioner that in the instant case, the FIR, if any, ought to have been registered under the Delhi Co-operative Societies Act, 2003 in relation to the alleged commission of any offence , if any, punishable to the extent of fine of Rs.200/- and that the matter qua the offence punishable under the Delhi Co-operative Societies Act was thus to be tried by the Court of a Magistrate rather than before the Special Judge (CBI) or by any other Court.

7. It was also submitted on behalf of the petitioner that the provisions of Section 140 of the Delhi Co-operative Societies Act, 2003, have an overriding effect in as much as they provide:

“140. Act to override other laws.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.”,

and it has thus been submitted by the petitioner that the requisite previous sanction required in terms of Section 121(2) of the Delhi Co-operative Societies Act, 2003 was not obtained nor was the requisite sanction under Section 197 of the Cr.P.C, 1973, granted in the instant case and thus the petitioner was not liable to be prosecuted.

8. Reliance was thus placed also on behalf of the petitioner on the provisions of Section 134 of the Delhi Co-operative Societies Act, 2003 to contend that the requisite opportunity of being present in person to explain the acts done by the petitioner under good faith having not been granted to the petitioner in terms of Section 134 of the Delhi Co-operative Societies Act, 2003, the petitioner could not be held liable to face the trial.

9. It was also contended on behalf of the petitioner that the sanction given by Sh. R.K.Srivastava in any event was insufficient for the initiation of prosecution against the petitioner herein in as much as at the relevant time when such sanction was accorded, Sh. R. K.Srivastava was not working in the department of the Registrar of Co-operative Societies in relation to which and qua which the alleged offences were committed qua alleged forged documents submitted in the said office, and it was thus contended that the charge sheet has been filed on the basis of the erroneous provisions of law and that the trial should have been conducted before the Metropolitan Magistrate in terms of the Delhi Co-operative Societies Act, 2003.

10. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *M.P. Special Police Establishment Vs. State of M.P. and Others* (2004) 8 SCC 788, *State of Bihar and Another Vs. P.P. Sharma, IAS and Another* 1992 Supp (1) SCC 222, *Vineet Narain and Others Vs. Union of India and Another* AIR 1998 SC 889, *Vinod B. Vs. K.S. Eshwarappa* 2014 SCC Online Kar 4175 and on a notification no.F.14(32)/LA-2003/149 dated 02.04.2004, whereby the Delhi Co-operative Societies Act, 2003 was given effect to.

11. Reliance was thus placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in **Greater Bombay Co-op bank Ltd. V. United Yarn Tex. P. Ltd.** (2007) 5 SCALE 366.

12. *Inter alia* Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *Rakesh Kumar Mishra v. State of Bihar and Others*: AIR 2006 SC 820 to contend that qua the offences for which sanction under Section 197 of the Cr.P.C, 1973 was required, even if the petitioner had ceased to be working in the Department of the Registrar of Co-operative Societies on the date when the sanction was accorded by Sh. R.K. Srivastava vide sanction communicated vide letter dated 10.03.2008, the same did not suffice to obviate the grant of requisite sanction in terms of Section 197 of the Cr.P.C, 1973 qua offences punishable under sections 120-B/420/468/471 of the Indian Penal Code, 1860. Reliance was also thus sought to be placed on behalf of the petitioner on the verdicts of the Supreme Court in *R.R. Chari V. State of Uttar Pradesh*: (1963) 1 SCR

121 and **R.S. Nayak v. A.R. Antulay**; AIR 1984 SC 684 in para 23 wherein it had been observed to the effect:

“23.The Legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that authority alone would be able, when facts and evidence are placed before him to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the Legislature clearly provided that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office.”

13. Reliance was also placed on behalf of the petitioner on the verdict in ***Rakesh Kumar Mishra v. State of Bihar and Others*** (*supra*) on the observations made in paragraph 6 which reads to the effect:

“6. The protection given under [Section 197](#) is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before [Section 197](#) can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of

the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of [Section 197](#) does not get immediately attracted on institution of the complaint case.”

14. On behalf of the CBI it was submitted that sanction in the instant case had been granted by the Competent Authority Shri R.K. Srivastava, Secretary, Department of Welfare of the SC/ST/OBC/Minorities, Government of NCT of Delhi, who was the competent authority to remove the petitioner/accused from his office but the complete contents of the sanction letter particularly the last four paragraphs of the **said sanction by the competent authority make it clear that the sanction has been accorded under the provision of the Prevention of Corruption Act, 1988 and for all other relevant provisions of law for which the public servant i.e. the petitioner has been prosecuted in the present case and that the Sanctioning Authority had taken note of the offences allegedly committed by the**

petitioner/accused in the same transaction which included the offence punishable under Section 120-B of the Indian Penal Code, 1860 r/w 420, 468 & 471 of the Indian Penal Code, 1860 and also under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 allegedly committed by the petitioner/accused and that the sanctioning authority for the grant of the sanction for the offence punishable u/s 120-B of the Indian Penal Code, 1860 r/w Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 was one and the same and thus there was no necessity of seeking sanction in two separate formats to prosecute the same accused from the same sanctioning authority in the same case.

15. It was also submitted on behalf of the CBI that the sanctioning authority in the instant case was well aware that the accused was also liable to be prosecuted for the commission of the offences punishable under Section 120-B of the Indian Penal Code, 1860 r/w 420, 468 & 471 of the Indian Penal Code, 1860 and also under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and that it could thus be safely concluded that the sanction order is valid for the prosecution of the petitioner for the offences punishable under Section 120-B of the Indian Penal Code, 1860 r/w 420, 468 & 471 of the Indian Penal Code, 1860 and also under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

16. It was further submitted on behalf of the CBI that even apart from the factum that the sanction accorded in the instant case was a complete valid sanction for prosecution of the accused/petitioner herein for the alleged commission of the offences punishable under the Prevention of

Corruption Act, 1988 as well as those offences punishable under the Indian Penal Code, nevertheless the alleged commission of offences by the petitioner punishable under Section 120-B of the Indian Penal Code, 1860 that is the offence of being part of the criminal conspiracy, the offence punishable under Section 420 of the Indian Penal Code, 1860 i.e. an offence of cheating and dishonestly inducing delivery of property, the offence punishable under Section 468 of the Indian Penal Code, 1860 i.e. an offence of forgery for the purpose of cheating and the offence punishable under Section 471 of the Indian Penal Code, 1860 i.e. an offence of using as genuine a forged document or an electronic record, in any event, could not be said to be in discharge of the official duty of the petitioner.

17. Reliance was thus sought to be placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in ***Inspector of Police and another versus Battenapatla Venkata Ratnam and another (2015) 13 SCC 87*** with specific reference to the observations to the effect:

"The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue."

18. Furthermore, reliance was also placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in ***Rajib Ranjan and others V. R. Vijaykumar(2015) 1 SCC 513*** with specific reference to the observations to the effect:

"Even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal

misconduct, such mis demeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted".

19. The CBI also placed reliance on the verdict of the Hon'ble Supreme Court in ***Devinder Singh v. State of Punjab, (2016) 12 SCC 87*** with specific reference to the observations to the effect:

39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.”

20. A further submission was made on behalf of the CBI to the effect that the testimony of the Sanctioning Authority i.e. of PW-15 Shri R.K. Srivastava, Chief Secretary, Government of Goa has already been recorded on 23.08.2016 and the same cannot be read in piecemeal and its effect can be determined only at the stage of judgment by the learned trial Court in as much as the sanction letter had been exhibited and the contents of the same had been established during evidence and that the trial is in progress. It has also been submitted on behalf of the CBI that

the petitioner was posted and functioning as UDC-III in the Office of the Registrar, Cooperative Societies, Government of NCT, New Delhi for the period from March, 2000 to February, 2004 (i.e. the period of the alleged commission of the offence) and that whilst so working he along with the co-accused conspired to cheat the DDA and to get the land allotted to a society which was defunct for more than 28 years and that in the year 2008, the petitioner herein was posted as an UDC in the Department for the Welfare of SC/ST/OBC/Minorities, Government of Delhi and during that period when he was posted and functioning as an UDC-III in the said Department for Welfare of SC/ST/OBC/Minorities, Government of NCT, Delhi, the Secretary of the said Department Shri R.K. Srivasatava who had accorded sanction for prosecution of the petitioner was the Competent Authority to remove the petitioner from his office and thus Shri RK Srivastava was as competent to accord the sanction as per Section 19 (1)(c) of the Prevention of Corruption Act, 1988.

21. The CBI has further contended that the Competent Authority was the Secretary in the Department for Welfare of SC/ST/OBC/Minorities which comes under the Government of NCT of Delhi and both the offices i.e. the Office of the Registrar of Cooperative Societies and the Office of the Department for Welfare of SC/ST/OBC/Minorities also come under the Government of NCT of Delhi. The CBI has further submitted that after completion of the investigation the SP Report along with the documents relied upon and the statements relied upon vide letter no.10829-108/3/12(S)/06/SCR-III/ New Delhi dated 31.12.2007 were sent to Chief Secretary, Government of Delhi in connection with

sanction for prosecution against the accused persons including the petitioner herein Gopal Singh Bisht and that in compliance thereto Shri V.K. Behl, Deputy Director (SC/ST), Government of NCT of Delhi, Department for Welfare of SC/ST/OBC/Minorities, New Delhi vide letter dated 10.03.2008 forwarded the sanction for prosecution of the accused i.e. the petitioner Gopal Singh Bisht accorded by Shri RK Srivastava, Secretary, Department for Welfare of SC/ST/OBC/Minorities under Section 19 of the Prevention of Corruption Act, 1988.

22. It was also submitted on behalf of the CBI that during the cross examination of RK Srivastava as PW-15 on 26.08.2016 conducted on behalf of the petitioner herein, it was revealed that there was no question put to him regarding his competency to grant sanction for prosecution of the petitioner Gopal Singh Bisht and that even in the petition, there was no ground taken qua the incompetency of Shri RK Srivastava to grant sanction in the subject matter and that the said contention was raised only in the oral arguments made before the Court. It was further submitted on behalf of the CBI that the validity of the sanction letter should be left in the circumstances of the case to be determined in the course of the trial, and not in the exercise of jurisdiction under Section 482 Cr.PC nor under Article 226 & 227 of the Constitution of India as laid down by the Hon'ble Supreme Court in ***CBI Vs. Ashok Kumar Aswal (2015) SCC OnLine SC 1085*** wherein it has been observed vide para-15 to the effect:

“15. In fact, all that the corrigendum does is to split up the alleged “reduced” demand of bribe into two separate amounts

*of Rs 25 lakhs each instead of a lump sum amount of Rs 50 lakhs as mentioned in the sanction order dated 12-8-2009. The corrigendum also dispenses with certain provisions of IPC. The aforesaid exclusion of some of the specific provisions of IPC really works to the benefit of Respondent 1-accused and not to his prejudice. If the corrigendum does not, as we are inclined to hold, affect the substratum of the sanction granted initially on 8-8-2009/12-8-2009 we will have no reason to take the view that initial sanction order has in any way been modified or altered so as to require the approval of the Finance Minister once again. Surely for correction of typographical errors the file need not have travelled all the way up to the Finance Minister, once again. The fact that the said sanction order has been superseded may have been mentioned in the letter of the Under-Secretary communicating the said order dated 21-10-2009 to the appellant. However, what is of relevance is that the said fact of supersession is not supported by reference to any authority or decision in the file and, therefore, would not deserve any further attention of the Court. **All the above part, time and again, this Court has laid down that the validity of a sanction order, if one exists, has to be tested on the touchstone of the prejudice to the accused which is essentially a question of fact and, therefore, should be left to be determined in the course of the trial and not in the exercise of jurisdiction either under Section 482 of the Code of Criminal Procedure, 1973 or in a proceeding under Articles 226/227 of the Constitution.***

23. It was further submitted on behalf of the CBI that no prejudice nor failure of justice had been caused to the petitioner in any manner by the sanction accorded and there is nothing to indicate that the sanction order had been passed mechanically or without any consideration of the relevant facts and records and that the more appropriate stage to reach the conclusion as to whether there had been any failure of justice by grant of the sanction in the manner in which it had been accorded was

only after all evidence was led in the matter and at the stage of judgment.

24. Reliance was also placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in the *State of Bihar Vs. Rajmangal* (2014) 11 SCC 388 with observations therein to the effect:

“8. There is a contrary view of this Court in [State of Goa vs. Babu Thomas](#)[(2005) 8 SCC 130: 2005 SCC (Crl) 1995] holding that an error in grant of sanction goes to the root of the prosecution. But the decision in Babu Thomas (supra) has to be necessarily understood in the facts thereof, namely, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect to validate the cognizance already taken on the basis of the initial sanction order. Even otherwise, the position has been clarified by the larger Bench in [State of Madhya Pradesh vs. Virender Kumar Tripathi](#) [(2009) 15 SCC 533: (2010) 2 SCC (Crl) 667]

*9. In the instant cases the High Court had interdicted the criminal proceedings on the ground that the Law Department was not the competent authority to accord sanction for the prosecution of the respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders[**Rajmangal Ram V. State of Bihar, Criminal Writ No.487 of 2011**, order dated 23.03.2011, Criminal Misc. No.44151 of 2008, order dated 03.03.2011 (pat)] of the High Court.*

10. The High Court in both the cases had also come to the conclusion that the sanction orders in question were passed mechanically and without consideration of the relevant facts and records. This was treated as an additional ground for interference with the criminal proceedings registered against the respondents. Having perused the relevant part of the orders

under challenge we do not think that the High Court was justified in coming to the said findings at the stage when the same were recorded. A more appropriate stage for reaching the said conclusion would have been only after evidence in the cases had been led on the issue in question.”

25. *Inter alia* it has been submitted on behalf of the CBI whilst placing reliance on the provisions of Section 19(3)(b) of the Prevention of Corruption Act, 1988 which read to the effect:

“(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.”

to reiterate its contention that there had been no failure of justice in according of the sanction in the manner that it had been accorded and the same can only be determined after completion of evidence at the stage of judgment and reliance was thus placed on behalf of the CBI on the verdict of the Hon’ble Supreme Court in ***State of M.P. Vs. Virender Kumar Tripathi (2010) 2 SCC (CrI) 667*** with specific reference to the observations to the effect:

“8. So far as the defect in sanction aspect is concerned, the circular of which the High Court has placed reliance needs to be noted. The Circular in question is dated 9.2.1988 the relevant portion reads as follows :

"The Government also decided that before giving approval of prosecutions, the Principal Secretary, Law and Legal Deptt. will obtain the advise of concerned Department."

A bare perusal of the paragraph shows that before giving approval for prosecution, advice of the concerned Department

was necessary. The question arises whether the absence of advice renders the sanction inoperative. Undisputedly the sanction has been given by the Department of Law and Legislative. The State government had granted approval of the prosecution. As noted above, the sanction was granted in the name of the Governor of the State by Additional Secretary, Department of Law and Legislative Affairs. The advice at the most is an inter-departmental matter.

9. *Further the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of /or any error, omission or irregularity in sanction required under sub-section (1) of [Section 19](#) unless in the opinion of the Court a failure of justice has in fact been occasioned thereby.*

10. *In the instant case there was not even a whisper or pleading about any failure of justice. **The stage when this failure is to be established yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was led.** In this connection the decisions of this Court in [State v. T. Venkatesh Murthy](#) [2004(7) SCC 763] : 2004 SCC (Crl) 2140] and in [Prakash Singh Badal v. State of Punjab](#) [2007(1) SCC 1] : (2007) 1 SCC (Crl) 193] need to be noted. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct."*

It was also submitted on behalf of the CBI that at the time of taking cognizance in the instant case, the petitioner was holding a different office and had ceased to hold the office qua which the allegations of the commission of the offence were made and thus in terms of the verdict of the Hon'ble Supreme Court in ***L. Narayana Swamy V. State of Karnataka* (2016) 9 SCC 598 908**, there was no necessity to take any

sanction at all and reliance was thus placed on the observations in para-23 of the said verdict to the effect:

“23. In the case of the present appellants, there was no question of the appellants' getting any protection by a sanction. The High Court was absolutely right in relying on the decision in Prakash Singh Badal [Prakash Singh Badal v. State of Punjab, (2007) 1 SCC 1 : (2007) 1 SCC (Crl) 193] to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19, P.C. Act. Where the public servant had abused the office which he held in the check period but had ceased to hold “that office” or was holding a different office, then a sanction would not be necessary. Where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction.”

26. It is further essential to observe that even in terms of Section 465 of the Code of Criminal Procedure, 1973, it is provided as follows:

465. Finding or sentence when reversible by reason of error, omission irregularity.

*(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, **a failure of justice has in fact been occasioned thereby.***

*(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court **shall have regard to the fact whether the***

objection could and should have been raised at an earlier stage in the proceedings.

(emphasis supplied)

27. As laid down by the Hon'ble Supreme Court in ***State of Bihar v. Rajmangal*** (supra) vide paragraphs 6 and 7 thereof to the effect:

6. *In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in State by [Police Inspector vs. T. Venkatesh Murthy](#) wherein it has been inter alia observed that,*

“14.Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice.”

7. *The above view also found reiteration in [Prakash Singh Badal and Another vs. State of Punjab and Others](#) wherein it was, inter*

alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Prakash Singh Badal (supra) it was further held that [Section 19\(1\)](#) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in [R. Venkatkrishnan vs. Central Bureau of Investigation](#). In fact, a three Judge Bench in [State of Madhya Pradesh vs. Virender Kumar Tripathi](#) while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of [Section 19](#) (3) of the [PC Act](#), interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report).”,

thus it cannot presently at this stage be gauged as to whether there has been any failure of justice that has been caused to the petitioner nor has it been explained as to why in terms of Section 465 (2) of the Code of Criminal Procedure, 1973, the objection in relation to any stated

irregularity in sanction for the prosecution could not have been raised by the petitioner at an earlier stage in the proceedings and thus at this stage when the petition was taken up for consideration was at the stage of defence evidence, the provisions of Section 19(3) of the Prevention of Corruption Act, 1988 cannot be nullified.

28. *Inter alia* it was submitted on behalf of the CBI that the petitioner by way of the present petition is seeking that this Court exercise the original jurisdiction of the Sessions Court which is vested in the Sessions Court by virtue of Chapter-12 of the Cr.PC, it being a Sessions trial case and the matter having been at the stage of the defence evidence, the present petition is liable to be dismissed with costs and that the sanction letter had been proved in evidence and cannot be tested in the present proceedings under Section 482 of the Cr.PC till the final verdict is delivered by the Sessions Court by the Court of original jurisdiction.

29. The CBI has further contended that the present petition is an abuse of the process of law and intended to defeat the legislative intent expressed under Section 19(3)(c) of the Prevention of Corruption Act, 1988 for expeditious disposal of the corruption cases and that the petitioner cannot seek the quashing of the entire criminal proceedings during the continuation of the trial before the Sessions Court.

30. On behalf of the CBI it was further contended as an alternate submission that it is rather an obligation and burden upon the petitioner, the public servant, to prove by leading defence evidence that acts committed by him had a nexus with the discharge of his public duties in as much as the acts alleged to have been committed by the

accused/petitioner herein of the alleged commission of the offences punishable under Sections 120-B of the Indian Penal Code, 1860 r/w 420, 468 & 471 of the Indian Penal Code, 1860 and also under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 cannot be termed to be part of discharge of official duty.

31. At the outset, it is essential to observe that qua the commission of the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 as it then stood, the sanction had been granted by Shri R.K. Srivastava, Secretary (SC/ST), Department for Welfare of the SC/ST/OBC/Minorities and that the sanction has also been accorded thereby for prosecution of the petitioner for the offences punishable under the Prevention of Corruption Act, 1988 and for any other offence punishable under any other provision of law in respect of the act (i.e. for the acts) committed, which made the act punishable as an offence, makes it apparent that the aspect as to whether or not the petitioner has in any manner been prejudiced by the grant of sanction for prosecution by Sh. R.K. Srivastava or whether it had caused any failure of justice to the petitioner can be determined only at the stage of conclusion of the trial, and on analysis of the evidence thereof by adjudication.

32. As rightly contended on behalf of the respondent/CBI, the Petitioner seeks the pre-judging of the issues before the Sessions Court. Reliance in the instant case has been placed on behalf of the CBI on the verdict of this Court in ***Suresh Kumar Duggal Vs. State (NCT of Delhi)*** ***CBI 2013 SCC OnLine Del 2527*** to contend that where there is a detailed sanction order after due consideration of material on record

which contains all facts and circumstances constituting the offence, the prosecution must establish by those facts placed before the Court while there is no requirement of law to mention the provision for which the prosecution of sanction has been granted. Reference is made to para-6 of the said verdict to the effect:

*“6. The sanction for prosecution was granted by PW1 Rakesh Mohan who was then working as the Additional Commissioner (Water), MCD Delhi and was competent to appoint and terminate the Appellant who was working as LDC-cum-Meter Reader in the MCD. PW1 stated that before granting sanction for prosecution, he perused the report of the Zonal Revenue officer, the copy of the FIR and the detailed reports sent by the CBI. Learned counsel for the Appellant has assailed the sanction order on the grounds that it does not mention the provisions of law and secondly it is verbatim the same as the draft sanction order. In **Indu Bhushan Chatterjee Vs. State of West Bengal AIR 1958 SC 1482** their Lordships upheld the grant of sanction wherein a draft sanction order was prepared by the Police and put up before the sanctioning authority, who thereafter after going through all the relevant papers signed the same. The sanction on the basis of a draft sanction order was held to be a valid sanction accorded by the competent authority. A perusal of Ex.PW1/A shows that it is a detailed order passed after due consideration of material on record. It is well settled that a valid sanction order must either contain all the facts and materials constituting the offence or the prosecution must establish aliunde by evidence that those facts were placed before the sanctioning authority (**Major Som Nath Vs. UOI 1971 Cr.L.J 1422**). There is no requirement in law to mention the provisions of Act for which prosecution sanction is being granted. The same can be also inferred by the recital in the order or from the accompanying documents. Hence, I find no infirmity in the order granting sanction.”*

33. It is essential to observe that the ratio of the rulings relied upon on behalf of the CBI, would apply in the instant case, even if the final arguments have been concluded, as it is not considered appropriate to prejudice the adjudication of the *lis* before the learned Trial Court.

34. It is essential to observe that the testimony of R. K. Srivastava, the stated Sanctioning Authority has been recorded and as rightly contended on behalf of the CBI, the evidentiary value thereof can be gauged only at the stage of judgment and ought not to be pre-judged in the mode that the petitioner now seeks.

35. Furthermore, it is essential to observe that qua the allegations levelled against the petitioner in relation to the alleged commission of the offences punishable under Section 120-B r/w 420, 468, 471 of the IPC in relation to which, the petitioner contended that there has been no sanction accorded in terms of Section 197 of the Cr.PC, 1973 it is essential to observe that the allegations against the petitioner herein relate to the alleged commission of gross cheating, criminal misappropriation, causing pecuniary loss to the owner of the land i.e. the DDA by user of forged documents by seeking to contend that there existed a society which society had in fact been defunct for 28 years and thereby the society had been got allotted land by the petitioner herein—taking into account the factum that the alleged acts of commission of the offences of cheating, forgery and user of forged documents as genuine and participating in a criminal conspiracy for the commission of such acts, do not fall within the domain of exercise of official duty by any official servant as laid down in ***Rakesh Asthana Vs. CBI & Ors.*** In WP (Crl.) 3248/2018 vide verdict dated 11.01.2019 of this Court

that when the act of a public servant is ex-facie criminal or constitutes an offence, prior approval of the Government is not necessary, as is well settled.

36. Even if it be sought to be contended on behalf of the petitioner that the provisions of Section 13(1)(d) of the Prevention of Corruption Act, 1988 as they stood earlier at the time of the alleged commission of the offence to the effect:

“(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.”,

do not stand in existence as of date in view of the amendment to the Prevention of Corruption Act, 1988 vide the Amendment Acts 2016 & 2018 brought into play w.e.f. 26.07.2018, the same does not in any event obliterate the alleged commission of the alleged offence in terms of Section 13 (1)(d) of the Prevention of Corruption Act, 1988 as it stood at the time of alleged commission of the offence during the period March, 2000 to February, 2004.

37. As regards the contention raised on behalf of the petitioner that the prosecution, if any, of the petitioner ought to have been initiated in terms of the Delhi Cooperative Societies, 2003 and that the proceedings

ought to have been initiated in the Court of the First Jurisdiction i.e. the Court of the Metropolitan Magistrate in view of the sentence imposable thereunder in terms of Section 118, 120 & 121 of the said enactment and not by the Court of the Special Judge, CBI i.e. the Special Court of Sessions so constituted, it is essential to observe that in the instant case there are allegations, which cannot be overlooked with gross alleged criminal misconduct against the petitioner in terms of Section 13(1)(d) of the Prevention of Corruption Act, 1988 as it stood for the alleged commission of the offences punishable under Section 120-B r/w Sections 420, 468, 471 of the IPC whereby the petitioner is alleged to have facilitated the allotment of land to the group housing society namely the Railway Land Staff Cooperative Group Housing Societies Ltd. which was not functioning and had been dormant for more than 28 years and allegedly forged a list of 116 members of the society which did not exist which list had been got approved by the petitioner by putting up the same to the then Assistant Registrar by production of documents which did not exist and thus in the circumstances, the prosecution thus initiated of the petitioner prima facie for the offences alleged at this stage cannot be faulted with.

38. Thus in the instant case, where the charge has been framed against the petitioner, the evidence of the prosecution has been led and the evidence of the defence was in progress and arguments were addressed qua the present petition on behalf of either side and thereafter written submissions submitted, there is nothing on the record prima facie to establish that the petitioner in any manner has undergone any grave prejudice or that a failure of justice would be caused for as to

whether any miscarriage of justice had been caused to the petitioner by according sanction in the manner that it has been done can be determined now only at the stage of judgment by the learned Trial court and it is not considered appropriate to invoke the provisions of Section 482 of the Cr.PC in the instant case.

39. In view thereof, the petition and the accompanying application are dismissed. The stay of the pronouncement of the judgement by the learned trial Court in FIR No. RC—12(S)/2006/SCR-III, New Delhi under Section 120-B r/w 420/468/471 IPC & 13(2) r/w 13(1) (d) of the PC Act, 1988 granted vide order dated 29.05.2018 is vacated.

Nothing stated herein above shall however amount to any expression on the merits or demerits of the proceedings qua FIR No. 12(S)/2006/SCR-III, New Delhi against the present petitioner pending before the learned Trial Court.

ANU MALHOTRA, J.

JANUARY 28, 2019/ sv/vm