

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment Reserved on 03.12.2019****Judgment Delivered on 28.02.2020****Writ Appeal No.472 of 2018**

*(Arising out of order dated 06.04.2018 passed in Writ Petition
(Cr.) No.355 of 2017 by the learned Single Judge)*

Dilip Kumar Sharma, S/o Late Shiv Dayal Sharma, Aged about 55 years, Resident of Dunda- K.P.S. Road, Behind Medical Complex Devpuri Raipur, P.S. Tikrapara, District Raipur (C.G.).

(Earlier was in jail as such writ petition was represented through his wife Smt. Sudha Sharma).

---- Appellant**Versus**

1. State of Chhattisgarh, Through Chief Secretary, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (C.G.).
2. Additional Director General of Police, State Economic Offences Investigation and Anti Corruption Bureau, Raipur, District Raipur (C.G.).
3. Superintendent of Police Anti Corruption Bureau, Raipur, District Raipur (C.G.).
4. Chhattisgarh State Ware Housing Corporation Raipur through Managing Director, Principal Office Udyog Bhawan, 3rd Floor, Ring Road No.1 Raipur, District Raipur (C.G.).
5. Managing Director, Chhattisgarh State Ware Housing Corporation Raipur, Principal Office Udyog Bhawan, 3rd Floor, Ring Road No.1 Raipur, District Raipur (C.G.).

---- Respondents

For Appellant	: Shri Shashank Thakur, Advocate
For Respondent/State	: Shri Gagan Tiwari, Dy. Govt. Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V Judgment

Per Parth Prateem Sahu, Judge

1. Correctness and sustainability of order dated 06.04.2018 passed in Writ Petition (Cr.) No.355 of 2017 is put to challenge in this writ appeal. The Appellant has questioned the grant of sanction dated 17.05.2017 passed by Respondent No.5 for prosecution of the Appellant under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act of 1988') in the writ petition, which came to be dismissed.

2. Facts of the case in nutshell are that, the Appellant was working as Technical Assistant with Respondent No.4 i.e. Chhattisgarh State Ware Housing Corporation Raipur and was posted as Godown In-charge at Ware Housing Corporation, Balod. On anonymous complaint, Anti Corruption Bureau registered Crime bearing No.9/2015 mentioning therein the allegation with regard to the illegal recovery of amount from rice millers. As the Appellant was working as public servant, the Investigating Agency moved an application under Section 19 of the Act of 1988 for grant of sanction for prosecution of the Appellant. Initially the application for grant of sanction was refused, but subsequently sanction was ordered.

3. In the writ petition, the Appellant has challenged the grant of sanction of his prosecution in Crime No.15/2015 registered by Anti corruption Bureau, Raipur for offence under Section 13(1)(e) and 13(2) of the Act of 1988. The challenge was on the ground that the

Sanctioning Authority rejected the application under Section 19 of the Act of 1988 vide order dated 29.07.2016 by a reasoned order, but subsequently, on letter dated 29.08.2016 (Annexure P/5) written by Additional Director General, Anti Corruption Bureau, Respondent No.5 has granted sanction for prosecution of the Appellant in Crime No.15/2015 vide order dated 17.05.2017.

4. The grant of sanction for prosecution of the Appellant in Crime No.15/2015 was challenged in the writ petition on the ground that earlier Sanctioning Authority has rejected the application under Section 19 of the Act of 1988 and refused to grant sanction by a detailed order, but Respondent No.5 without there being any fresh material collected and placed before him by Investigating Agency, has reviewed its own order, for which, Respondent No.5 has no power of review.

5. The Respondents submitted reply mentioning therein that the rejection of first application under Section 19 of the Act of 1988 was on wrong premise as the Sanctioning Authority arrived at a conclusion that no sanction can be accorded under the same provision and offence and under Article 20(2) of the Constitution of India, a person cannot be prosecuted and punished for one offence twice.

6. The conclusion of the Sanctioning Authority was not correct and accordingly it was corrected by passing another order on 17.05.2017 whereby sanction for prosecution has been ordered. The offences which are subject matter of Crime No.9/2015 is for the

offences under Sections 11, 13(1)(d) and 13(2) of the Act of 1988 and under Sections 109, 120-B, 420 and 409 of the IPC whereas the offences in Crime No.15/2015 which is subject matter of the writ petition is for the offences under Sections 13(1)(e) and 13(2) of the Act of 1988. The nature of offences in both the crime numbers are different.

7. Respondents No.4 and 5 have specifically pleaded that the order of sanction dated 17.05.2017 has been passed after following due procedure. Respondent No.5 has obtained authorization from Board of Directors and it is only thereafter, Respondent No.5 proceeded and granted sanction vide order dated 17.05.2017 (Annexure P/1).

8. The learned Single Judge while considering the materials and pleadings made by respective parties, submissions made by learned counsel for the respective parties and also considering the relevant laws/rulings on the issue, dismissed the writ petition and held that the Sanctioning Authority was justified in holding that the grant of sanction under Section 19 of the Act of 1988 is made out, prosecution under the Act of 1988 cannot be quashed on account of irregularity in granting sanction by the Authority unless it is satisfied such error/irregularity has resulted in failure of justice, which the learned counsel for the Petitioner therein failed to demonstrate.

9. Shri Shashank Thakur, learned counsel for the Appellant submits that the Anti Corruption Bureau registered the Crime No.9/2015 on the same material and registered offences under

Sections 11, 13(1)(d) and 13(2) of the Act of 1988 as well as Sections 109, 120-B, 420 and 409 of the IPC. The second Crime No.15/2015 is also arising out of same complaint and the seizure made by Investigating Agency in Crime No.9/2015. It is pointed out that the Sanctioning Authority had already rejected application under Section 19 of the Act of 1988 against the Appellant for offences under Sections 13(1)(e) and 13(2) of the Act of 1988 by a detailed and reasoned order. The Sanctioning Authority has no jurisdiction to review its earlier order without there being any fresh material placed before him, by the Investigating Agency. In this case, the Anti Corruption Bureau has not produced any fresh material for sanction for prosecution in another crime against the Appellant. It is the contention of the learned counsel for the Appellant that in Crime No.9/2015, in which, the sanction was granted under Section 19 of the Act of 1988, the Investigating Agency has also submitted charge-sheet before the Competent Court. The sanction granted by Respondent No.5 vide order dated 17.05.2017 was only under compulsion made by Respondent No.2 vide letter dated 29.08.2016 (Annexure P/5). Respondent No.2 has misused his office by writing a letter dated 29.08.2016 to Respondent No.5. The grant of sanction is only because of the pressure made by Respondent No.2 and not by applying mind on the application forwarded before Respondent No.5. He also pointed out that once the Sanctioning Authority after application of mind rejected the request/application under Section 19 of the Act of 1988 by a detailed and reasoned order, then, the said Authority could not have granted sanction. He placed reliance on the

ruling rendered by Hon'ble Supreme Court in the matter of **State of Himachal Pradesh v. Nishant Sareen**, reported in **(2010) 14 SCC 527** in support of his contention. He has also placed reliance on the ruling of **State Through Anti- Corruption Bureau, Government of Maharashtra, Bombay v. Krishanchand Khushalchand Jagtiani**, reported in **AIR 1996 SC 1910** and submits that Section 19 of the Act of 1988 is only to save the Government Officials from unnecessary harassment and the Appellant in this case, is put to harassment mentally by registering two crimes against him for one and same allegation.

10. Per contra, Shri Gagan Tiwari, learned Deputy Government Advocate representing the State submits that the submission made by learned counsel for the Appellant that here it is not a case that consideration in the order of grant of sanction vide Annexure P/1 is based on new material, but in fact, it is a case where second sanction order is for the other crimes. He submits that ground of sanction in question is with regard to the disproportionate property possessed by a Government employee whereas earlier offence registered for misconduct of obtaining valuable things by corrupt or illegal means along with Sections 109, 120-B, 420, 409 of the IPC. It is also pointed out that Annexure P/3 has been passed by Sanctioning Authority only taking into consideration that the sanction cannot be accorded for same act or same sections and wrongly it held to be in violation of Article 20(2) of the Constitution of India. He points out that the offences of both the crimes are different. It is also contended that from the material available on record, Respondent

No.5 has sought prior approval from the Board of Directors for re-considering the application under Section 19 of the Act of 1988 and thereby followed the entire procedure. From reading of Annexure P/1, it makes clear that the Sanctioning Authority had applied its mind and the order of sanction has been granted only when he arrived at a conclusion that the first order rejecting application under Section 19 of the Act of 1988 is on the ground that both the crimes are of similar nature and offences, whereas, Sanctioning Authority recorded a specific finding that both the cases are of different nature while granting sanction.

11. In reply to submission made by learned counsel for the State, the learned counsel for the Appellant submits that second Crime No.15/2015 has been registered based on the recovery of an amount from the possession of the Appellant during the course of investigation of the first Crime No.9/2015.

12. We have heard learned counsel appearing for the respective parties and perused the record.

13. It is not in dispute that vide order dated 03.06.2015, Respondent No.5 passed an order on the application filed under Section 19(1)(c) of the Act of 1988 against the Appellant and granted sanction for his prosecution in Crime No.9/2015 for offences under Sections 109, 120-B, 420 and 409 of the IPC and Sections 11, 13(1) (d) and 13(2) of the Act of 1988. The Sanctioning Authority vide order dated 29.07.2016 has rejected the application under Section 19 of the Act of 1988 filed by Respondent No.2 considering that no

sanction can be granted for offences of same act and same section whereas Respondent No.5 in its order dated 17.05.2017 while granting sanction, arrived at a finding that the sanction which is being sought by the Investigating Agency for prosecution of the Appellant was of for different offences.

14. Section 13(1)(d) of the Act of 1988, for which, the sanction for prosecution of Appellant was granted by Respondent No.5 reads as under :

“13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—

(a) * * *

(b) * * *

(c) * * *

(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; or”

15. Section 13(1)(d) of the Act of 1988 is for commission of misconduct by a public servant when he obtains for himself or for

any other person any valuable thing or pecuniary advantage by abusing his position as a public servant.

16. Section 13(1)(e) of the Act of 1988 reads as under :

“13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.”

17. Perusal of both the provisions as mentioned above itself shows a vast difference between the commission of act of a public servant for the purpose of making a public officer guilty. He can be charged only for one incident irrespective to the quantum of the

amount obtained by him or for any person by corrupt or illegal means abusing by his position as a public servant. The quantum of amount or value of things may be Rs.50, 100 thousand etc., but when the provisions of Section 13(1)(e) of the Act of 1988 is read, it is apparent that the public servant when found with property with him, can be held guilty of commission of an offence when he fails to satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

18. For charging under Section 13(1)(d), proof of one incident will be sufficient, but for charging a public servant under Section 13(1)(e), it is the period of his service as public servant and his total income is to be taken into account before charging the public servant with the aforementioned section of the Act of 1988. The major difference between the two offences i.e. Section 13(1)(d) and Section 13(1)(e) is that the former is an 'incident specific' offence whereas the latter is 'period specific' offence.

19. The Hon'ble Supreme Court in the matter of **Yogendra Kumar Jaiswal and Others v. State of Bihar and Others**, reported in **(2016) 3 SCC 183** has considered the basic difference between Section 13(1)(d) and Section 13(1)(e) of the Act of 1988 and held thus :

“118. The next aspect of challenge pertains to the classification made by the legislature in respect of the accused persons facing trial under Sections 13(1)(a) to (d) and the accused persons under Section 13(1)(e). It is urged by the

learned counsel for the appellants that there is no intelligible differentia for making such a classification qua the offence and moreover by adopting a rigorous procedure.

119. First, we shall advert to the class of offence and the persons. It is submitted by Mr Vinoo Bhagat, learned counsel appearing for some of the appellants, that when a person holding public office is accused of an offence under Sections 13(1)(a) to (d), he will be tried by the Special Courts under the 1988 Act, but when Section 13(1)(e) is combined along with other offences, namely, Sections 7 to 11 of the 1988 Act, he will be facing the trial under the Orissa Act or two trials. Mr P.S Narasimha, learned Senior Counsel, would contend that the bifurcation of offences defeats the concept of classification, for it pertains to a “stand-alone offence”, though no discernible principle is perceptible. The learned Senior Counsel would contend that there is no difference between Sections 13(1)(a) to (d) and Section 13(1)(e) of the 1988 Act, but the legislature has made a special classification which the law does not countenance. It is also canvassed that a person not holding high public or political office would be tried by the Special Judge under the 1988 Act, whereas the differentiated category will be tried by the

Orissa Act as a consequence of which an unacceptable discrimination takes place. It is contended that the only basis of classification for choosing a different forum with a different procedure is that the accused persons held “high public or high political office” though there can be cases where holders of low public office can amass assets by illegal means but they would not be liable to face confiscation proceedings as provided under the Orissa Act. It has been argued that the classification is not to be done on the basis of post which a public servant holds.

121. The submission of Mr Narasimha, learned Senior Counsel and others, as we have referred to earlier, is that it is a micro-mini classification and classification is on the base of a stand-alone offence or to put it differently, it is a classification qua a singular class. It is to be noted that Section 13(1)(e) has its own significance in the context of the range of offences provided under the 1988 Act. Section 13(1)(e) covers a period which is called check period. It pertains to amassing of disproportionate assets. The condition precedent is that the accused is prima facie found in possession of disproportionate properties or possessing resources not known to his sources of income. It is obligatory on the part of the accused in

that case to explain his sources, which has been the basis for accumulating the assets which are alleged to be disproportionate. The offences under Sections 13(1)(a) to (d) in a broad way can be called incident-specific or situation-specific whereas the offence under Section 13(1)(e) is period-specific and it is not incident-specific. There can be different check periods. A person holding high public office or political office has opportunities to accumulate disproportionate assets other than his known sources of income. It has been submitted by the learned counsel for the appellants that disproportionate assets can be accumulated by the persons working in the lesser rank or not holding such high offices. This submission is noted only to be rejected, for the holders of high post or high public office do definitely enjoy a distinguished position in contrast to other categories of officers or post-holders. They form a separate class. The legislature, regard being had to the position the public servant holds, has put them in a different class. There is a manifest reason that sustains the said classification. The contention of the learned counsel for the appellants is that the provision suffers because of under-inclusive classification but the same does not impress us as in the instant case we are disposed to think that there

is a perceptible differential in such exclusion. The Court cannot adopt an attitude to scrutinise a provision with mathematical exactitude. A pedantic approach in this regard cannot be visualised. The learned counsel for the State of Odisha would submit that the distinction is writ large and the legislature in its wisdom has carved out the offence of Section 13(1)(e) to be tried by Special Courts in a speedy manner. It is urged by him that the onus is on the accused to prove that the asset is not disproportionate and within the known sources of his income. He has drawn inspiration from *P. Nallamal v. State P. Nallammal v. State*, (1999) 6 SCC 559, wherein it has been held that the words “known sources of income” have to be understood as “any lawful source”. That apart, the Explanation to Section 13(1) (e) further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. Such a public servant cannot escape from Section 13(1)(e) of the 1988 Act by showing other legally forbidden sources, albeit such sources are outside the purview of clauses (a) to (d) of the sub-section.”

20. The rejection of an application under Section 19 one of Act of 1988 by Respondent No.5 on 29.07.2016 was only on the count that

one person cannot be prosecuted and punished for more than once for same offence as the sanction for prosecution has been sought on similar section under the similar offence. There is no bar for exercising the jurisdiction once again when the said jurisdiction/power has been exercised on earlier occasion and no specific power of review is required for the same. The Hon'ble Supreme Court in the matter of **State of Punjab & Anr. v. Mohammed Iqbal Bhatti**, reported in **2010 AIR SCW 1186** has held that the power to grant sanction is administrative in character and hence in our considered opinion, Respondent No.5 who is head of the Institution in exercise of his administrative power can very well reconsider the application for grant of sanction, if placed, before him. The only rider has been put that the power should be exercised with application of mind taking into consideration the material placed before it and if found that fresh materials are placed or arrived at a conclusion that the earlier order of rejection of an application of selection is based on consideration of an irrelevant fact. The reason assigned for rejection of an application for grant of sanction appears to this Court is on consideration of irrelevant fact as the Sanctioning Authority has rejected the application taking note that for same offence and same provision of same act, second sanction cannot be granted, which cannot be said to be relevant consideration of the fact.

21. The learned Single Judge while taking note of the various rulings of Hon'ble Supreme Court, dismissed the writ petition by assigning reasons as under:

“20. Taking note of the aforesaid grounds for reviewing/reconsidering the order under Section 19 of the Act of 1988, reverting to the facts of the present case, it is quite vivid that in the present case, the sanctioning authority while rejecting the application under Section 19 of the Act in its order dated 29-7-2016 apart from other grounds, merely impressed with the fact that the sanction is being sought for the petitioner to prosecute him twice for the offence committed once which is not permissible, whereas it was subsequently brought to his notice that Crime No.9/2015 relates to commission of offence under Sections 109, 120-B, 420 and 409 of the IPC and Sections 11, 13(1)(d) and 13(2) of the Act of 1988 i.e. a public servant is said to have committed the offence of criminal misconduct by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest, whereas Section 13(1)(e) of the Act of 1988 provides that a public servant is said to have committed the offence of criminal misconduct if he or any person

on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. The said facts having been brought to the notice of the sanctioning authority, the sanctioning authority has omitted to consider relevant facts and impressed with the non-existent facts and finding that Crime No.9/2015 relates to criminal misconduct under Section 13(1)(d) of the Act of 1988 whereas, Crime No.15/2015 relates to Section 13(1)(e) of the Act i.e. possession of property disproportionate to known sources of income which the Government servant cannot account satisfactorily. The sanctioning authority decided to grant sanction for prosecution against the petitioner under Sections 13(1)(e) and 13(2) of the Act of 1988 finding prima facie case for grant of sanction for prosecution under Section 19 of the Act of 1988 which in the considered opinion of this Court is strictly in accordance with law, as the relevant fact was omitted to be considered and the earlier order declining sanction was reviewed on the ground of declining sanction by omitting to consider the relevant fact. In the aforesaid order of the sanctioning authority, I do not find

any jurisdictional error. The learned sanctioning authority is absolutely justified in holding that case for grant of sanction under Section 19 of the Act of 1988 is made out.

25. In the instant case, neither it has been pleaded nor it has been demonstrated that the order granting sanction has resulted into failure of justice as it has clearly been held that the power of review can be exercised when irrelevant consideration has been taken into account in the earlier order and relevant consideration has been ignored while passing the order. I do not find any error of jurisdiction in the impugned order. The sanctioning authority is justified in granting sanction for prosecution against the petitioner under Section 19 of the Act of 1988 for his prosecution under Sections 13(1)(e) and 13(2) of the Act of 1988.”

22. The judgment of **Nishant Sareen** (supra) relied upon by learned counsel for the Appellant is on different facts of case. In that case, the Sanctioning Authority while considering the same material and evidence placed before him, changed his mind, whereas the facts of the case at hand is for irrelevant consideration of the fact by the Sanctioning Authority.

23. As we have discussed in preceding paragraphs, rejection of an application for grant of sanction under Section 19 of the Act of 1988 is on the sole consideration that for similar offences, the sanction

was granted earlier and no sanction is further required, whereas the Sanctioning Authority subsequently has granted sanction by recording a finding that the earlier sanction was granted for offence under Section 13(1)(d) of the Act of 1988 with other offences of the IPC, which is a different offence than the sanction sought for and granted for prosecution of the Appellant under Section 13(1)(e) of the Act of 1988.

24. For the foregoing discussions and considering the rulings of Hon'ble Supreme Court, particularly, in **Yogendra Kumar Jaiswal** (supra) along with other rulings of Hon'ble Supreme Court as considered by the learned Single Judge, we are of the view that the reasoning and rationale given by learned Single Judge for dismissal of writ petition is correct. There is no merit in the appeal. It is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge