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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1406 OF 2014

Meena H. Pomal].. Petitioner.

v.

Spl. Judge Court of Special Judge & Anr.].. Respondents.

None for the Petitioner.

Ms.Rebecca Gonsalvez, for Respondent No.1.

Mr.N.B. Patil, APP for the State.

**CORAM : SADHANA S. JADHAV &
N.R.BORKAR, JJ.**

DATE : 19TH MARCH, 2021.

P.C.

1] Learned counsel Ms.Gonsalvez has appeared on behalf of the first respondent and has placed on record order dated 2nd March, 2015 passed by the learned Special Judge under Prevention of Corruption Act. The order is taken on record.

2] The facts of the case are that, the Petitioner herein had filed Criminal Writ Petition No.3136/2012 seeking writ of mandamus directing the State of Maharashtra to register First Information Report on the basis of various complaints filed by her against two private persons and two public servants.

3] At that juncture, the prosecutor had made a statement before the Court that no cognizance could have been taken for commission of the alleged offences under the Prevention of Corruption Act. The said Writ Petition was disposed of by an order dated 24th September, 2012.

4] At the time of hearing, the Petitioner had brought it to the notice of the Court that the proceedings taken out by her under the special Act were still pending. This Court had granted liberty to the Petitioner appearing in person to adopt appropriate proceedings. It was also observed that if an application is made by the Petitioner for grant of sanction to prosecute the proposed accused under the said Act, the same shall be decided within a period of 8 weeks.

5] The Petitioner had filed Miscellaneous Application No.204/2013 in the form of complaint before the learned Special Judge. The learned Special Judge had placed reliance upon the Judgment of this Court in Criminal Writ Petition No.3644/2013, in which the learned Single Judge of this Court had taken note of the Judgment of the Hon'ble Apex Court in the case of Anil Kumar vs. M.K. Aiyappa &

Anr.¹ and had observed that in the said case the Apex Court has held that as far as the Prevention of Corruption Act was concerned, there was a necessity to have sanction even at the stage when an order under Section 156(3) of the Code is expected to be made. The learned Special Judge has also placed reliance upon the Judgment of a Division Bench of this Court in Criminal Writ Petition No.4765/2014, wherein, the learned Division Bench of this Court had again emphatically placed reliance upon the Judgment of the Hon'ble Apex Court in the case of Anil Kumar (*supra*) wherein it is held as follows :

“Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant, while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases.”

6] As already communicated in various Judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under section 156(3) of the Code. The above legal position already communicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases. Accordingly, the complaint was returned to the complainant by the learned Special Judge for presenting before the appropriate Court for taking cognizance

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for the offence under Indian Penal Code as alleged. As this Court cannot take cognizance of an offence punishable under Prevention of Corruption Act, 1988, on the basis of private complaint without a sanction from the appropriate authority the prayers in the Petition cannot be granted. We refrain ourselves from commenting on the correctness of the order passed by the learned Special Judge. However, it appears that the said order is not under challenge.

7] In view of the above, the present Petition has become infructuous and hence stands disposed of.

[N.R.BORKAR, J]

[SADHANA S. JADHAV]