

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.218 of 2019

Surya Sagar Swain.

....

Petitioner

M/s. Devashis Panda, S. Panda,
D. Das, G. Mohanty, Advocates

-versus-

Republic of India.

....

Opposite Party

Mr. Sarthak Nayak, Advocate – For the O.P.-CBI

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
13.05.2022**

**Order
No.**

15. **1.** The petitioner seeks to invoke the jurisdiction of this Court under Section 482 of Cr.P.C. for quashing of the directions contained in the judgment dated 27.12.2018 of the Special Judge, CBI-I, Bhubaneswar in T.R. No.8 of 2015.

2. The accused-petitioner faced a trial before the Court below in the aforesaid case for the charge under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short “P.C. Act”), and after conclusion of trial, the learned

Court below vide the judgment rendered a finding that the sanction for prosecution as required under Section 19 of the P.C. Act had been issued by an Officer / authority not competent to accord sanction for the purpose. For a ready reference the concluding paragraphs of the judgment of the learned Court below are extracted here below:-

“15. So, keeping in mind the proposition of law enunciated by the Hon’ble Apex Court in the case of Nanjappa vs. State of Karnataka in CrI. Appeal No.1867 of 2012, in the case of State of Mizoram vs. Dr. C. Sangnghina in Criminal Appeal No.1322 of 2018 and in the case of State of Goa vs. Babu Thomas reported in (2005) 8 SCC 130 in Appeal (Criminal) No.215 of 2004 and having regard to the gravity of the allegation leveled against the present accused, the parties are relegated to the position prior to the date of cognizance i.e. 22.7.2015, where the competent authority could issue a proper order sanctioning prosecution. As this court is not competent to take cognizance for invalid sanction by incompetent authority, this court is also not competent to try the case in view of the decision cited supra. So, the evidence already recorded is of no use and the same cannot be used for any purpose. Hence, the parties are relegated back to the position prior to the date of cognizance i.e. 22.7.2015, where the competent authority can issue a proper sanction.

16. Resultantly, the accused is discharged for the offences. The parties are relegated to the position prior to the date of cognizance i.e. 22.7.2015, where the competent authority may grant sanction afresh for the prosecution in accordance with law. The accused shall be re-tried on a second trial for the self same offence upon grant a valid sanction for such prosecution. The prosecution is at liberty to file fresh sanction if accorded by competent authority in the supplementary charge sheet.”

3. Heard Mr. Devashis Panda, learned counsel for the petitioner and Mr. Sarthak Nayak, the learned counsel appearing for the opposite party-Republic of India.

4. The petitioner challenges the aforestated directions of the learned trial Court on the ground that the same has resulted in failure of justice causing gross prejudice to him. In course of hearing, his learned counsel sought to distinguish the decisions relied on by the trial Court, and argued with reference to the decision of the Apex Court in ***Bikash Ranjan Rout vrs. State (NCT of Delhi)***, reported in (2019) 5 SCC 542, that the power of the Court to order for further investigation at post cognizance stage may not be available, especially when the Court has become *functus officio* after the case was disposed of with an order of discharge in favour of the accused. His submission is that even while concurring with the view of the trial Court that the trial was nonest in law,

the direction issued to the I.O. to obtain fresh sanction for re-trial of the petitioner being unjust and erroneous needs to be quashed.

5. The learned counsel appearing for the opposite party – Republic of India, however, supports the impugned judgment passed by the trial Court containing the directions indicated above, on the ground that the same is in tune with the facts involved and the settled principles of law. It is his argument that when there is an order of discharge and not acquittal, it always remains open for the Investigating Agency and prosecution to seek for re-trial of the accused, depending upon the facts, materials on exigencies emerging at subsequent stage. He urges this Court not to interfere with the order impugned.

6. In the context, a reference may be made to the pronouncement of the Apex Court in the case of **Nanjappa Vrs. State of Karnataka**, reported in

(2015) 14 SCC 186. Referring to various earlier decisions, the Apex Court in the said case held as follows:-

“22. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act 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 the 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.”

7. The contention of the petitioner as to the difference / distinction between the pre and post cognizance stages and lack of power of trial Court to direct for re-investigation at post cognizance stage is not relevant to the fact situation of the present case, inasmuch as there is no direction by the Court below for re-investigation, but a liberty has been given to the I.O. to obtain valid sanction. Here also, there is no challenge from the side of the petitioner to the finding

of the trial Court that the sanction as relied on by the prosecution was not valid one and in fact, the said question had been raised by the accused-petitioner during the trial. In view of the explanation appended to Section 300 of Cr.P.C., discharge of the accused is not an acquittal, and since the order of cognizance was nonest for want of a valid sanction, the Court below cannot be said to have been competent to try the accused for the offences under the P.C. Act. Hence, the bar of double jeopardy under Section 300(1) of Cr.P.C. is not attracted to the second trial, if any, of the accused-petitioner for the same offences. The learned Court below is found to have passed the order on correct application of law which needs no interference by this Court.

8. Hence, this CRLMC stands dismissed.

(S.Pujahari)
Judge