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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2021
DELIVERED ON : 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.806 of 2021
and Crl.M.P.Nos.11840 & 11841 of 2021

N.Sivakumar

.. Petitioner/A3

Vs.

State of Tamil Nadu,
Rep. by the Inspector of Police,
Special Investigation Cell,
Vigilance and Anti Corruption,
Chennai.

.. Respondent/ Complainant

Prayer: Criminal Revision Petition filed under Sections 397(2) & 401 of Cr.P.C. r/w Section 27 of the Prevention of Corruption Act, 1988, seeking to call for the records and set aside the order dated 12.10.2021 made in Crl.M.P.No.635 of 2021 in C.C.No.1 of 2020 on the file of the learned Special Judge for trial of cases under the Prevention of Corruption Act at Chennai and allow this Criminal Revision Case.

For Petitioner : Mr.S.Karthikeyan

For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl.Side)

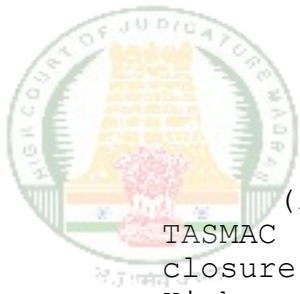
ORDER

(The case has been heard through video conference)

This revision has been filed against the dismissal of the petition filed under Section 239 Cr.P.C. to discharge the petitioner from the charges.

2. The facts leading to the filing of the revision are as follows:

(i) Totally there are three accused. The petitioner is arrayed as A3. A1, was working as Senior Regional Manager in the Tamil Nadu State Marketing Corporation Limited (TASMAC), Chennai Region. A2 was working as Salesman in TASMAC Shop and he was acting as a duty driver to A1. The petitioner/A3 was working as Supervisor in the TASMAC shop, and he was removed from service at the time of occurrence.



(ii) The de facto complainant was working as Supervisor of TASMAC shop No.4538, Kancheepuram South. Consequent to the closure of various TASMAC shops, which were located in the Highways, excess salesmen were sought to be posted as additional salesmen in the above said TASMAC shop. So the de facto complainant approached A1 and requested him not to post any additional strength to the above said TASMAC shop.

(iii) However, A1 appointed one A.Dharmalingam as a salesmen, then the de facto complainant approached A1 to cancel the said posting order, for that, A1 demanded Rs.20,000/- as bribe and instructed the de facto complainant to contact the petitioner/A3 in this regard. The de facto complainant contacted the petitioner over phone, and he asked the de facto complainant to come to SRM office on 28.02.2018 with the bribe money of Rs.20,000/- as demanded by A1 and he will handover the same to A1.

(iv) Not willing to pay bribe, the de facto complainant lodged a complaint before the respondent police. Based on that, a crime was registered and a trap proceeding was arranged on 02.03.2018, and on the instructions given by A1, bribe money was handed over to A2, the driver of A1, and he was caught red handed and they were arrested.

(v) After completion of the investigation, the final report has been filed charging A1 for offences punishable under Sections 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. A2 was charged for offences punishable under Section 12 r/w Section 7 of the Prevention of Corruption Act, 1988 and Section 109 of IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act. So far as this petitioner/A3 is concerned, he was charged for offences punishable under Section 12 r/w Section 7 of the Prevention of Corruption Act and Section 109 of I.P.C.

(vi) Thereafter, to discharge him from the above said charges, the petitioner/A3 approached the trial Court by filing a petition under Section 239 Cr.P.C, contending that petitioner being a public servant, prior sanction for prosecution was necessary as contemplated under Section 19 of the Prevention of Corruption Act (hereinafter referred to as the 'Act'). Without obtaining prior sanction, no cognizance can be taken against the petitioner.

(vii) The Trial Court dismissed the said petition holding that at the time of committing the offence, the petitioner was removed from service and he was not in public service on that date. Hence, no sanction is required and further held that



3. Now challenging the above order, the present revision has been filed.

5. The respondent filed a detailed counter affidavit and Mr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent would submit that at the time of offence being committed, admittedly the petitioner was removed from service and he was not in employment with TASMAC and he would not come under the definition of public servant as defined under Section 2(c) of the Act. Hence, no sanction is necessary. Subsequently, he was appointed only as contract employee on consolidated pay from the month of July, 2018 and he is not a full time employee of TASMAC.

6. The learned Government Advocate (CrI.Side) would further submit that admittedly, the petitioner was not an employee of TASMAL at the time the offence being committed and merely because he was reinstated as contract labour subsequently, there is no necessity to obtain sanction from the competent authority. He further submitted that even otherwise, as the petitioner was charged for offence punishable under Section 12 of the Act, no sanction is required under Section 19 of the Act.

7. I have considered the rival submissions and perused the records carefully.

8. The primordial contention of the learned counsel appearing for the petitioner is that, the petitioner was a public servant as defined under Section 2(c) of the Act, and hence obtaining prior sanction is a condition precedent for taking cognizance and without prior sanction, no prosecution can be initiated against the petitioner.

9. The admitted facts in this case are that, the



petitioner was working as a Supervisor, subsequently he was removed from service w.e.f 13.12.2017 and said to be reinstated into service from 27.07.2018, which is in dispute. However, the occurrence has taken place only on 02.03.2018, and on the date of the alleged occurrence, the petitioner was not in the services of TASMAL. The allegations against the petitioner is that, A1 demanded Rs.20,000/- from the de facto complainant to cancel the posting order in the TASMAL shop, the petitioner acted as a tout and mediated between A1 and the de facto complainant and he abetted the accused to commit the offence, which is punishable under Sections 7 r/w Section 12 of the Act.

10. Now the petitioner seeks protection under Section 19 of the Act, on the ground that, he was an employee of TASMAL and falls under the definition of public servant under Section 2(c) of the Act, hence prior sanction is necessary. Section 19 of the Act, speaks about obtaining previous sanction from the competent authority for prosecuting a public servant, which reads as follows:

"Section 19. Previous sanction necessary for prosecution.-

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority,



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such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(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;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,— (a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a



similar nature."

11. The necessary requirements for obtaining sanction under Section 19 of the Act, is that, the accused must be a public servant at the time of commission of the offence, and he committed the offence while acting or purporting to act in the discharge of his official duty. The object and purpose of this Section is to offer protection to public servant against frivolous, vexatious and false prosecution for the offence said to have been committed by them while acting or purporting to act in the discharge of his official duty and to protect them from undue harassment by false and vexatious allegations. Section 19 of the Act is enacted only to protect those public servants who are discharging the public duty bonafidely and genuinely.

12. In the instant case, admittedly, on the date of commission of the alleged offence, the petitioner was removed from service and he was not holding any post in TASMAL and he will not fall under the category of public servant discharging a public duty. Even assuming that the petitioner was reinstated into service, before taking cognizance of the offence, there is no necessity to obtain sanction, as on the date of the commission of the offence, he was not a public servant and he was not discharging any public duty.

13. So far as on merits of the case, there are materials available on record prima facie shows that the petitioner actively involved in the commission of the offence, and the probative value of all those materials cannot be looked into at this stage and it is for the trial Court to consider all those materials during the trial.

14. The trial Court, after considering all those materials correctly came to a conclusion that no sanction is necessary to prosecute the petitioner. I do not find any illegality or irregularity in the order passed by the trial Court.

15. In such circumstances, I do not find any merit in this revision petition and hence it is liable to be dismissed and accordingly dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge for trial of cases
under the Prevention of Corruption Act
at Chennai.

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2. The Inspector of Police,
Special Investigation Cell,
Vigilance and Anti Corruption,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

CrI.R.C.No.806 of 2021 and
CrI.M.P.Nos.11840 & 11841 of 2021

JPL(CO)
SB(0902/2022)