



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on : 28th April, 2022

Pronounced on: 10th June, 2022

+ CRL.M.C. 5049/2014, CRL.M.A. 17295/2014, CRL.M.A. 621/2020 & CRL.M.A. 2813/2021

DEVENDER GUPTA

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate
with Mr. Asim Naeem, Advocate

versus

C B I

..... Respondent

Through: Mr. Rajesh Kumar, SPP with Ms.
Mishika Pandita, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") read with Article 227 of the Constitution of India has been filed seeking setting aside of order dated 7th August 2014 passed by learned Special Judge-CBI (PC Act) -06, Tis Hazari Courts, Delhi (hereinafter "learned Special Judge") in CC No. 03/12.

FACTUAL MATRIX

2. The petitioner herein is a public servant who has been named as an accused in RC No. 47(A)/99/CBI/ACB/ND under Section 13(2) read with



Section 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter “PC Act”). Learned Special Judge vide order dated 11th April 2008 framed charges against the petitioner for the offence punishable under Section 13(2) read with Section 13(1)(d) and 13(1)(e) of the PC Act for disproportionate assets of Rs.9,48,19,816/-. Learned Special Judge also framed charges under Section 109 of the Indian Penal Code, 1860 (hereinafter “IPC”) against the other persons named as accused.

3. During pendency of the trial, in the present case, this Court in Crl. M.C. No.2695 of 2010, titled as **G.S. Matharoo vs. CBI** vide judgment and order dated 25th January 2012, held that in cases of Group-A employees of the Municipal Corporation of Delhi (hereinafter “MCD”), it is the Corporation, that is the authority competent to grant sanction under Section 19 of the PC Act and the Commissioner, MCD is not the competent authority to grant sanction for prosecution of Group-A employees of the MCD. The said judgment was confirmed by the Hon’ble Supreme Court vide order dated 26th August 2014 passed in SLP (Crl) No. 7931/2012.

4. The petitioner, after pronouncement of judgment dated 25th January 2012 by a coordinate bench of this Court, filed an application dated 3rd April 2012 before the learned Special Judge praying for dropping of the criminal proceedings pending against him on the ground that since in present case the sanction as required under Section 19 of the PC Act was not obtained from the Corporation, which is the competent authority, therefore, the cognizance taken by the learned Special Judge and the



proceedings initiated against the petitioner were without jurisdiction and void, having been initiated without obtaining sanction from the Corporation as mandated by Section 19 of the PC Act.

5. Learned Special Judge vide order dated 7th August 2014 dismissed the said application. Hence, the present petition has been filed.

SUBMISSIONS

6. The learned counsel appearing on behalf of the petitioner submitted that the impugned order dated 7th August 2014, whereby the petitioner's application for dropping of criminal proceedings was dismissed, is contrary to the law laid down by this Court in the case of ***G.S. Matharoo*** (Supra) and again in ***CBI vs. Ram Bhaj Banal & Anr*** passed in Crl.Rev. P. 68/2013 on 14th September 2013, which settles down the position that in cases of Group 'A' employees of the MCD, it is the Corporation, that is the competent authority to grant sanction in terms of Section 19 of the PC Act and not the Commissioner, MCD. The decision of ***G.S. Matharoo*** (Supra) was further upheld by the Division Bench of this Court in the case of ***MCD vs. Dr. Ved Prakash Kanoji & Anr***; 2013 SCC OnLine Del 791.

7. It is submitted that the petitioner herein was an Executive Engineer, MCD, Group-A employee of MCD, at the time of grant of sanction of the prosecution. Thus, prosecution of the petitioner is without jurisdiction and against the mandate of law thereby making the entire proceedings *void ab initio*.



8. It is further submitted that the sanction is the genesis of the cognizance, and without such sanction the entire proceedings are *void ab initio* and unlawful. It is further submitted that sanction is a precursory sacrosanct step to initiate criminal proceedings against Public Officer, and the lack of a valid sanction precludes a Court from taking cognizance of an offence under Section 19(1) of PC Act. Section 19(1) of PC Act affords protection to those Public Servants who could get trapped in vexatious proceedings while discharging their official functions. If this protection is not afforded to a Public Servant, then the cognizance taken under section 19(1) PC Act also stands vitiated.

9. The Hon'ble Supreme Court in *Nanjappa vs. State of Karnataka*, (2015) 14 SCC 186, has 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."

10. The Hon'ble Supreme Court in ***State of Goa vs. Babu Thomas***, (2005) 8 SCC 130, dealt with a sanction order issued by an authority who was not competent, as is also the position in the case at hand. The second sanction order issued for the prosecution of the accused in the said case was also held to be incompetent, apart from the fact that the same was purported to be retrospective in its operation. In the said case, the Supreme Court held that when cognizance was taken by the Special Judge on 29th March 1995, there was no order sanctioning the prosecution, hence, the court could not have taken cognizance. The Hon'ble Supreme Court also observed that the error was so fundamental that it invalidated the proceedings conducted by the court.

11. Furthermore, in ***State of Uttarakhand vs. Yogendra Nath Arora & Anr.***, (2013)14 SCC 299 the Hon'ble Supreme Court confirmed the quashing of prosecution initiated against the person without valid sanction.

12. The cases of ***State of Goa*** and ***Nanjappa*** (Supra) have been relied upon for the purposes of deciding issue of sanction by the Hon'ble Supreme Court in a recent judgment titled ***State of Mizoram vs. C. Sangnghina***, Criminal Appeal No.1322/18, decided on 30th October 2018. As per the facts of the said case before the Hon'ble Supreme Court, the petitioner got discharged due to lack of proper sanction even before commencement of the trial.



13. Lastly, the judgment tilted *State of Bihar vs. Rajmangal Ram 2014 (4) SCALE 338* is not applicable to the case in hand, as in the said case the accused/applicant had straightaway approached the High Court by way of Writ Petition. However, in the present case, the petitioner preferred an application before the learned Trial Judge for dropping of proceedings which was dismissed vide order dated 7th August 2014 whereby the learned Trial Judge himself observed that the Trial Court did not have the power to deal with the point of validity of sanction at that particular stage and the appropriate remedy lied with the High Court in terms of the Section 482 of the Cr.P.C, and/or under Article 227 of the Constitution of India. Thereafter, petitioner approached this Court in terms of Section 482 of Cr.P.C, read with Article 227 of the Constitution of India as well as in terms of the judgment of *Nanjappa* (supra).

14. Learned counsel for the petitioner vehemently submitted that in view of the aforesaid discussions, it is crystal clear that the sanction granted by the Commissioner of MCD is not a valid sanction and therefore, the dismissal of the application vide impugned order is contrary to law and without proper appreciation of the facts and circumstances of the matter.

15. *Per Contra*, Mr. Rajesh Kumar, learned SPP for CBI/respondent vehemently opposed the submissions made by the learned counsel for the petitioner submitting that learned Special Judge has passed a detailed and reasoned order after considering the legal position as well as the facts of the case and there is no illegality or error in the impugned order.



16. It is submitted that the judgment passed in the case of **G.S. Matharoo** (Supra) is not applicable in the instant case. It is submitted that for all Municipal Officers and other employees who are appointed by the Commissioner, including the Grade 'A' Category post, the Commissioner is the Competent/disciplinary authority to impose all penalties. It is submitted that the Commissioner may not be disciplinary authority for the 'A' category post officers who are appointed by the Corporation, as the Commissioner is subordinate to the Corporation, and as per Proviso to Section 95(1) of the Delhi Municipal Corporation Act, 1957 (hereinafter "DMC Act"), no officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by an authority subordinate to that by which he was appointed. Therefore, two types of officers fall in the Category 'A' posts, the ones who are appointed by the Commissioner and others who are appointed by the Corporation. The Commissioner is disciplinary authority to impose all penalties on the category 'A' post Officers who are appointed by the Commissioner, however, for the Officers appointed by the Corporation, the Corporation shall be the disciplinary authority to impose all penalties.

17. It is further submitted that the petitioner joined MCD as Junior Engineer on 3rd January 1986 and was promoted to Assistant Engineer on 27th February 1991. He became Executive Engineer in the year 1998 and was appointed by the Commissioner MCD in exercise of the powers under Section 92 of the DMC Act. The Commissioner is competent to make all appointments in the Corporation including Category 'A' Officers, except the officers under Section 89 of the DMC Act. The



Commissioner MCD was the appointing authority for the petitioner. The appointing as well as removal authority in case of accused appellant is also the Commissioner, MCD. Hence, prosecution sanction accorded by Commissioner, MCD is a valid sanction.

18. As per section 59 (d) of the DMC Act, the Commissioner, MCD, is the disciplinary Authority in relation to all Municipal Officers and other municipal employees and therefore, is competent to grant sanction for prosecution of the respondent. As per Section 59 of the DMC Act, the entire executive power for the purpose of carrying out the provisions of this Act and or to any other Act for the time being in force which confers any power or imposes any duty on the Corporation, vest in the Commissioner. It also includes the power of appointment and removal of Municipal Officers and other employees of the Corporation.

19. Learned SPP for the respondent submitted that in the present case, the petitioner has failed to establish that there has been a failure of justice with regards to the sanction order. It is further submitted that objection of error in the sanction order has been taken when the case has already proceeded for trial. It is submitted that whether failure of justice has in fact been occasioned is to be determined only after evidence is led during the trial.

20. To strengthen his arguments, learned counsel has relied upon the judgment of ***Prakash Singh Badal vs. State of Punjab* (2007) 1 SCC 1**. In paragraph 29 of the judgment, the Hon'ble Supreme Court has held as under:-



"29. The effect of sub-section (3) and (4) of section 19 of the Act are of considerable significance. In sub section (3) the stress is on "failure of justice" and that too "in the opinion of the Court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) A is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of Narasimha Rao case."

21. Learned SPP for the respondent submitted that learned Special Judge has rightly relied upon the judgment passed by Hon'ble Supreme Court in the matter of ***State of Bihar & Ors. vs. Rajmangai Ram***, SLP (CRL) 8013/2012 decided on 31st March 2014, wherein the Hon'ble Supreme Court has dealt with the similar issue that whether a criminal prosecution ought to be interfered with by the High Courts at the instance of the accused who seeks midcourse relief from the criminal charges levelled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant such sanction. 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 failure of justice has also been occasioned.



22. Learned SPP for the respondent submitted that therefore, in view of the law settled, learned Special Judge has rightly passed the impugned order on the ground that it is not an appropriate stage to grant a valid sanction by the competent authority. It is submitted that the instant petition is devoid of any merit and is liable to be dismissed.

ANALYSIS AND FINDINGS

23. Heard learned counsel for the parties and perused the record.

24. For proper adjudication of the matter, the relevant portion of the impugned order is reproduced herein below:-

“23. Ld. Counsel for the applicant/accused argued that he is seeking dropping of proceedings because proceeding with the trial will be an illegality in view of the observation made in G. S. Matharoo's case (Supra) where Hon'ble High Court has categorically held that the Corporation is the Competent Authority to grant sanction under Sec. 19 of P.C. Act, 1988 in respect of public servant who is a group 'A' employee of MCD. Ld. Counsel further submitted that this judgment has been endorsed by D. B. Judgment titled as MCD Vs Ved Prakash Kanoji, WP (CrI.) 5544/2011 decided on 25.02.2013. In this case, the Division Bench has agreed with the findings in the G.S. Matharoo's case (Supra).

24. Ld. Public Prosecutor countered this argument stating that firstly this Court cannot review its order and secondly, the judgment in G.S. Matharoo's case (Supra) has been challenged and the Hon'ble Supreme Court in SLP (CrI.) MIC No. 7932-7933/2011 has restricted the operation of the judgment in G.S. Matharoo's case (Supra) to the



parties to the Petition only, meaning thereby the findings therein, are specific to the parties in the said Petition.

25. The competency of the Sanctioning Authority in the present case is now being challenged by the applicant / accused when the case is at the stage of trial and evidence is being recorded. Interdicting the proceedings at this stage is not feasible for this Court for want of any provision under the law. The mandate of Supreme Court in Bharat Parikh's case is very clear that Subordinate Criminal Court do not have power to review or recall its order. Though, the remedy under Section 482 Cr. P.C. or Article 227 of Constitution is not disputed. Not only this, Hon'ble Supreme Court in the case of State of Bihar and Ors Vs Raj Mangal Ram (Supra) has dealt with the issue of validity of sanction being raised during the trial. The Hon'ble Supreme Court observed as under;-

"7. 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".



26. While making the above observation, reliance was placed on a three Judges Bench judgment in the case of *State of Madhya Pradesh V/s. Virendra Kumar Tripathi*, (2009) 5 SCC 533. In the said case also, the question of defective sanction for prosecution was raised before the Hon'ble High Court when the case was at the stage of framing of charge. The Hon'ble High Court found that sanction was not proper. The said order was challenged before the Hon'ble Supreme Court which observed:-

"9. Further, the High Court has failed to consider the effect of Section 19(3) of the PC 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 of pleading about any failure of justice. The stage when this failure is to be established is 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".

27. Thus, the question of validity of sanction is also linked with the question whether invalid sanction has resulted in the failure of justice, the issue cannot be gone into during the trial unless the evidence is completely recorded as observed in



Virender Kumar Tripathi's case (Supra). Moreover, there is no provision in the law which empower this Court to drop the proceedings after the framing of charges. Needless to say that under Chapter-XIX of the Cr.PC, once the charges have been framed, the trial has to reach its logical conclusion resulting in acquittal or conviction under Sec.248 Cr.PC. Therefore, in view of above discussion, this Court cannot accede to the prayer of the applicant/accused Devender Gupta to drop the proceedings at this stage. The application accordingly stands dismissed.”

25. The relevant provisions of DMC Act are also being reproduced hereunder:-

59. Functions of the Commissioner

Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which confers, any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also—

(a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force;

(b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and other municipal employees other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them and subject to any regulation that may be made in this behalf, dispose of all questions relating to the service of



the said officers and other employees and their pay, privileges, allowances and other conditions of service;

(c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damage to any property of the Corporation, or danger to human life, take such immediate action as he considers necessary and make a report forthwith to the Standing Committee and the Corporation of the action he has taken and the reasons for the same as also of the amount of cost, if any, incurred or likely to be incurred in consequence of such action, which is not covered by a budget-grant;

(d) Subject to any regulation that may be made in this behalf, be the disciplinary authority in relation to all municipal officers and other municipal employees.

89. Appointment of certain officers

(1) The Corporation shall appoint suitable persons to be respectively, the Municipal Engineer, the Municipal Health Officer, the Education Officer, the Municipal Chief Accountant, the Municipal Secretary and the Municipal Chief Auditor and may appoint one or more Deputy Commissioners and such other officer or officers of a status equivalent to or higher than the status of any of the officers specified earlier in this sub-section as the Corporation may deem fit on such monthly salaries and such allowances, if any, as may be fixed by the Corporation.



(2) The appointment of the Municipal Chief Auditor shall be made with the previous approval of the Government and every other appointment referred to in sub-section (1) except that of the Municipal Chief Accountant and the Municipal Secretary shall be subject to confirmation by that Government: Provided that the Municipal Chief Auditor shall not be eligible for any other office under the Corporation after he has ceased to hold his office.

92. Power to make appointments

(1) Subject to the provisions of section 89, the power of the appointing municipal officers and other municipal employees whether temporary or permanent shall vest in the Commissioner:

Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor to category B posts or category C posts shall vest in the Standing Committee:

Provided further that the Standing Committee may delegate to the Municipal Secretary or the Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to the said Secretary or Auditor, to category C posts.

(2) The claims of the members of the Scheduled Castes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments of municipal officers and other municipal employees.

26. The Proviso to section 95(1) of the DMC Act reads as under:-



95. Punishment for municipal officers and other employees

(1) Every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be censured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by regulations:

Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed:

Provided further that the Corporation may by regulations provide that municipal employees belonging to such classes or categories as may be specified in the regulations shall be liable also to be fined by such authority as may be specified therein.

27. In the instant case, the issue involved for determination is 'whether a criminal prosecution ought to be interfered with by the High Courts at the instance of the accused who seeks midcourse relief from the criminal charges levelled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant such sanction.

28. The object behind the requirement of grant of sanction to prosecute a public servant need not detain the Court to proceed against an officer, save and except to reiterate that the provisions in this regard, either



under the Cr.P.C. or the PC Act, are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute an honest public servant for acts arising out of due discharge of his duty and also to enable him to efficiently perform the wide range of duties casted upon him by virtue of his office. The test, therefore, always is whether the act complained of has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is *prima facie* founded on the *bona fide* judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant.

29. Section 19 is a part of Chapter 5 of the PC Act which deals with "*Sanction For Prosecution and Other Miscellaneous Provisions*". This Section has four sub- sections which read as follows :

"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,-

(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 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, 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."

30. A combined reading of sub-sections (3) and (4) make the position clear that notwithstanding anything contained in the Cr.P.C., no finding, sentence and 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.



31. The phrase “failure of justice” is too pliable or facile an expression, which could be fitted in any situation of a case. The expression “failure of justice” would appear, sometimes, as an etymological chameleon as has been observed by Lord Diplock in *Town Investments Ltd. v. Deptt of Environment*, (1977) 1 All ER 813. The criminal Court, particularly the superior Court, should make a close examination to ascertain whether there was really a failure of justice or it is only a camouflage.

32. However, realising that the dividing line between an act in the discharge of official duty and an act that is not may, at times, get blurred thereby, enabling certain unjustified claims to be raised also on behalf of the public servant, so as to derive undue advantage of the requirement of sanction, specific provisions have been incorporated in Section 19(3) of the PC Act as well as in Section 465 of the Cr.P.C. which, *inter alia*, make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent Court unless in the opinion of the court a failure of justice has been occasioned.

33. It would also be relevant to take note of Sections 462 and 465 of the Cr.P.C., which read as follows:

“462. Proceedings in wrong place.—No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.



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

34. In ***State of M.P. v. Bhooraji***, (2001) 7 SCC 679, the true essence of the expression “failure of justice” was highlighted. Section 465 of the Code in fact deals with finding or sentences when reversible by reason of error, omission or irregularity, in sanction.

35. In the instant case, the learned Special Judge, while examining the application filed by the petitioner for dropping of the criminal proceedings pending against him, has taken a correct view that the



question of validity of sanction is also linked with the question whether invalid sanction has resulted in the failure of justice, the issue cannot be gone into during the trial unless the evidence is completely recorded.

CONCLUSION

36. Having perused the aforesaid relevant part of the impugned order under challenge as well as the provisions and law discussed in foregoing paragraphs, I do not find any illegality or error in the impugned order. I do not find any cogent reason for invoking of the extraordinary jurisdiction under Section 482 of the Cr.P.C. for the purpose of quashing the entire criminal proceedings against the petitioner.

37. In view of the above facts and circumstances and forgoing reasons, I do not find any merit in the instant petition and the same is accordingly dismissed. Pending application, if any, stands disposed of.

38. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JUNE 10, 2022

Aj/ek