

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH T JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

CRR 50 of 2020

Shobha Saxena

Vs.

Central Bureau of Investigation (CBI)

For the Petitioners	: <i>Mr. A.K. Goutam,</i> <i>Mr. Tapes Ch. Bhattacharya,</i> <i>Mr. Debasish Chaki,</i> <i>Mr. Subhajyoti Ghosh.</i>
For the CBI	: <i>Mr. Sudipta Kumar Mazumdar, Ld. DSGI,</i> <i>Mr. Ajoy Kumar Singhanian,</i> <i>Mr. Saptak Sarkar,</i> <i>Mr. Sourab Kar.</i>

Heard on : 11.10.2023

Judgement on : 18.10.2023

PARTHA SARATHI CHATTERJEE, J.:

1. Legality, propriety and correctness of the order dated 16th January, 2020 passed by the learned Special Judge, (CBI) Court, Siliguri, Darjeeling in Special (CBI) case No. 41 of 2022 titled as CBI vs. D.K. Saxena & Anr. have been called in question in this application preferred at the instance

of the petitioner namely, Mrs. Shobha Saxena under Sections 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short, the Code). By the order dated 16th January, 2020, the learned court below turned down an application taken out by the petitioner on 3rd September, 2019 praying for an order to drop the proceeding and/or case vide. Special (CBI) case no.41 of 2022 against her.

2. Sans unnecessary details, the facts as unfurled in the application are that on 05th January, 2011, one Assish Prasad, Deputy S.P, CBI, ACB, Kolkata lodged a complaint, *inter alia*, alleging therein that one Debendra Prasad Saxena, while working as Superintending Engineer (Electrical)/Chief Engineer (Electrical), CPWD, Siliguri, Darjeeling during the period commencing from 1st January, 2001 to 30th September, 2010 accumulated huge assets disproportionate to his known sources of income in his name and in name of his family members. The complaint was registered as FIR No. RC0102011A001 dated 05th January, 2011 under Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988 (in short, PC Act).
3. After completion of investigation, the investigating officer submitted charge sheet against D.K. Saxena Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988 and also against the petitioner herein under Section 109 of Indian Penal Code read with Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988 on 31.05.2012.

4. On 09th July, 2012 the learned special court took cognizance of the offence and issued process against the petitioner and on 15th July, 2012, the learned court below framed the charges against the Mr. D.B. Saxena under sections Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988 and against the petitioner under Section 109 IPC read with Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988.
5. On 3rd September, 2012, the petitioner made an application praying for an order to drop the proceeding against her on the ground that she happened to be the public servant within the meaning of Section 2(c) of the PC Act and before taking cognizance no sanction had been taken under section 19 of the PC Act. On 20.12.2019, the CBI filed its response to the application dated 3.9.2019. By an order dated 16.01.2020, the application dated 3.9.2019 was rejected by the learned court below. Hence, the petitioner has preferred this application seeking quashing of the order dated 16.01.2020 with a further order to drop the proceeding against her.
6. Questioning the defensibility of the order dated 16.01.2020 and justification of the continuation of the proceeding against the petitioner, Mr. Gautam, learned advocate for the petitioner contends that at the time of initiation of the proceeding and even at the time of taking cognizance of the offence, the petitioner happened to be Head-mistress of Kendriya Vidyalaya and hence, she was public servant within the

meaning of Section 2(c) of the PC Act. Drawing my attention to the provision of section 19 of the PC Act, he strenuously contends that as per the legislative mandate incorporated in section 19 of the PC Act, before taking cognizance of the offence, the prosecution was required to take sanction from the employer of the petitioner, namely, Mrs. Saxena. He argues that though the petitioner raised this issue in her application dated 3.9.2019 but the learned Trial Court has glossed over this issue and did not return any finding on the issue. According to Mr. Gautam, for this reason, order dated 16.01.2020 cannot be sustained and proceeding cannot be allowed to be continued against the petitioner. To invigorate his submissions, he places reliance upon the judgments delivered in cases of R.S. Nayak –vs- A.R. Antulay reported in (1984) 2 SCC 183, State of Karnataka Thr. CBI –vs- C. Nagarajaswamy reported in (2005) 8 SCC 370, Prakash Singh Badal & Anr. –vs- State of Punjab & Ors. reported in (2007) 1 SCC (Cri) 193, State of Punjab –vs- Davinder Pal Singh Bhullar & Ors. reported in (2011) 4 SCC 770, CBI Etc. –vs- Mrs. Pramila Virendra Kumar Agarwal & Anr. Etc. reported in 2019(14) SCALE 246.

7. In response, Mr. Majumder, learned Deputy Solicitor General appearing for the CBI contends that the allegation against the present petitioner is that being the wife of principle accused person, Mr. Saxena, she allowed her husband to use her bank account to keep gratifications and hence, the charge-sheet against the petitioner was submitted under section 109

IPC read with read with Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988. He contends that there was no connection with her official duty and the alleged offence and hence, there was no requirement of taking sanction to prosecute her in the case. He strenuously contends that there was no illegality in the order impugned in the revision warranting interference by the court. To buttress his submission, he places reliance upon the judgments delivered in cases of P.K. Prodhan –vs- State of Sikkim Rep. by the CBI, reported in (2001) 6 SCC 704, Babu @ Balasubramaniam & Anr. –vs- State of Tamil Nadu, reported in (2013) 8 SCC 60 & Punjab State Warehousing Corp. –vs- Bhushan Chander & Anr., reported in (2016) 13 SCC 44.

8. The allegations, as emerges from the complaint and charge-sheet are that during the period commencing from January, 2001 to 30.09.2010, the petitioner as Head-Mistress of Kendriya Vidyalaya, New Delhi and her husband as Superintending Engineer(Elec.) and Chief Engineer(Elec.) , CPWD had drawn net salary of Rs. 46,92,051/- and Rs. 99,31,077/- respectively but on investigation, it revealed that both of them acquired huge assets, both movable and immovable, to the tune of Rs. 4,28,42,600/- (approx.) and after investigation, charge-sheet under 109 IPC read with Section 13(2) and 13(1) (e) of the PC Act was submitted against the petitioner. The petitioner was treated as an abettor. Admittedly, petitioner being the Head-Mistress happened to be the public servant within the meaning of section 2(c) of the PC Act. In

the given case, charge under section 12 of the PC Act has not been brought against her.

9. Section 19 of PC Act creates an embargo upon the court to take cognizance of the offences punishable under sections 7,11,13 and 15 of the PC Act allegedly to have been committed by the public servant. Even if charge was brought under section 12 of PC Act against the petitioner, there was no requirement of taking prior sanction.

10. Indisputably, the petitioner has been charge-sheeted for commission of abetment under Section 109 of IPC. Hence, the issue of taking prior sanction from the employer would be dealt with by the provision of the section 197 of the Code. Section 197 of Cr.P.C. provides that no Court shall take cognizance against a public servant of offence which is alleged to have been committed while acting or purporting to act in the discharge of his official duty except with the sanction of the Government. The offence alleged against the petitioner is that she abetted her husband in accumulating assets disproportionate to his known sources of income. Sanction of the Government is necessary only when the offence alleged to have been committed by a public servant during discharge of his/her official duty. The offences complained against the petitioner, Mrs. Saxena are in no way related to official discharge of any duty. So, she is not entitled to any protection of Section 197 Cr.P.C.

11. Needless to observe that the object of the provision of Section 197 of the Code is to afford adequate protection to public servants to ensure that

they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause. The petitioner allegedly abetted her husband in accumulating assets in the capacity of his wife not as Headmistress of the Kendriya Vidyalaya and there was no connection with her official duty and the act complained of. Hence, there was no requirement of taking sanction from her employer before taking cognizance of the offence allegedly to have been committed by her. Consequently, it is an irresistible conclusion that the learned court below has not committed any error in taking cognizance of the offence allegedly committed by the petitioner, Mrs. Saxena which is punishable under section 109 read with S. 13(2) and 13(1)(e) of the PC Act and in rejecting the application dated 3.9.2019 by refusing to drop the proceeding against the petitioner.

12. In the judgment of R.S. Nayak –vs- A.R. Antulay (*supra*), it was held that a trial without a valid sanction where it is necessary is void *ab initio* and the *terminus quo* for a valid sanction is the time when the court is called upon to take cognizance of the offence. In case of State of Karnataka –vs- C. Nagarajaswamy (*supra*) , it was ruled that grant of proper sanction by competent authority as per S. 19 of PC Act is sine qua non for taking cognizance of the offence and plea of absence of sanction can be raised in appellate forum for the first time. In the judgment of CBI Etc. –vs- Mrs. Pramila Virendra Kumar Agarwal & Anr. Etc. (*supra*) and in case of Prakash Singh Badal (*supra*) (para-48), it was held

that absence of sanction can be agitated at the threshold but invalidity of the section is to be raised during the trial. So, there is no scintilla of doubt regarding binding effect of the judgments relied upon by Mr. Gautam but those are distinguishable on facts.

13. In view of such consequence of facts and enunciation of law, I do not find any justification to interfere with the order impugned and drop the proceeding against the petitioner for the reason that no sanction had been taken prior to taking cognizance of the offence allegedly committed by the petitioner which is punishable under section 109 IPC read with S. 13(2) and 13(1)(e) of the PC Act.

14. In view thereof, the revision being **CRR No. 50 of 2020** is **dismissed**.

15. There is no order as to cost.

16. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Partha Sarathi Chatterjee, J.)