

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.46673 of 2015**

Arising Out of PS. Case No.-7 Year-2015 Thana- GOVERNMENT OFFICIAL COMP.  
District- West Champaran

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C.L. Shukla, Son of late Ram Achal Shukla presently working as Chief General Manager of Jay Shree Sugar Mill, Majhauria, West Champaran, Resident of Jay Shree Sugar Mill Campus, P.S. Majhauria District- West Champaran.

... .. Petitioner

Versus

1. The State of Bihar
2. Vedvrat Kumar, Cane Officer, West Champaran, Motihari

... .. Opposite Parties

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**Appearance :**

|                          |   |                                   |
|--------------------------|---|-----------------------------------|
| For the Petitioner       | : | Mr. Sushmita Mishra, Advocate     |
|                          |   | Mr. Suya Narayan Sah, Advocate    |
|                          |   | Mr. Shishira Pathak, Advocate     |
|                          |   | Mr. Rakesh Kumar Pandey, Advocate |
| For the Opposite Parties | : | Mr. Upendra Kumar, APP            |

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR**  
**ORAL JUDGMENT**

**Date : 01-03-2024**

The present petition under Section 482 Cr. PC has been preferred by the Petitioner against the impugned order dated 16.06.2015, whereby Ld. Chief Judicial Magistrate, Bettiah, West Champaran has taken cognizance of the offence punishable under Section 52 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 against the Petitioner C. L



Shukla, General Manager, Shree Sugar Mills Limited, Majhaulia, West Champaran, and two other co-accused R.S. Sachan and Nandlal Pandey.

2. Co-accused R.S Sachan has already died and as per information given by Ld. Counsel for the Petitioner cognizance order taken against the co-accused Nandlal Pandey has been quashed by a co-ordinate Bench of this Court vide order dated 18.08.2023 passed in Cr. Misc. No. 51452 of 2015.

3. As per the prosecution case, management of Majhaulia Sugar Mill has violated the departmental direction contained in letter no. 1958 dated 09.09.2014 by paying in cash the price of sugarcane to the sugarcane growers and the payment was made through middleman. It is further alleged that in crushing season 2013-14, at purchase centres, namely, Rampur Chapkahian, Balhan and others, there was illegal extortion of Rs. 100-150 by the workmen and transporter of the concerned sugar mill, which is a violation of the aforesaid departmental direction. It is further alleged that concerned mill has violated Sections 43(4) and (5) of the Bihar Sugarcane Act.

4. Heard Ld. Counsel for the Petitioner and Ld. APP for the State.

5. Ld. Counsel for the Petitioner submits that the



cognizance order has been passed in a mechanical manner and does not show any application of mind. She further submits that the complaint is not maintainable because the complaint has been made against the Sugar Mill and the sugar Mill is a company registered under companies Act, 1956 but the company has not been impleaded as an accused. Hence, such complaint is defective and not maintainable and upon such complaint no cognizance of offence can be taken by Ld. Judicial Magistrate. She further submits that for filing complaint, sanction from prosecution is required to be annexed with the complaint. Sanction order is non-speaking and it does not show that the sanctioning authority has applied his mind. From perusal of the sanction order, it nowhere transpires that the sanctioning authority has looked into the material in support of the proposal for prosecution. Such sanction cannot be sanction in the eye of law.

6. However, Ld. APP for the State vehemently opposes the prayer of the Petitioner for quashing the impugned order saying that there is no illegality or infirmity in the impugned order whereby cognizance has been taken against the Petitioner.

7. Before I proceed to consider the rival



submissions of the parties on merits, it would be pertinent to see the scope and ambit of Section 482 of the Cr. P.C.

**8.** Section 482 Cr. P.C. saves inherent power of High Court and it reads as follows:-

**“482. Saving of inherent powers of High Court.-** Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

**9. In Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandojirao Angre, [(1988) 1 SCC 692],** Hon’ble three-Judge Bench of Supreme Court has laid down the law as to quashment of proceedings under Section 482 CrPC as follows :

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

( Emphasis Supplied)



**10. Hon'ble Supreme Court in State of Haryana Vs. Bhajan Lal [1992 Suppl (1) SCC 335]**, delivered the landmark judgment on the scope and extent of the jurisdiction of High Court under Section 482 Cr. P.C. It is still holding the field and being consistently followed and relied upon by all Courts including the Apex Court.

**11. Hon'ble Apex Court in Bhajan Lal case (supra)** held as follows:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence



and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

( Emphasis Supplied)

**12. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konujalgi [(1976) 3 SCC 736],** while considering the scope of Sections 202 and 204 of CrPC, Hon’ble Supreme Court laid down the following guidelines and grounds on which proceeding would be quashed.



“(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.”

( Emphasis Supplied)

**13.** As such, it emerges that if there is any legal bar, like want of sanction or otherwise, to the institution or continuance of any criminal proceeding, such Criminal Proceeding is liable to be quashed under Section 482 CrPC.

**14.** Now question is whether the Criminal Complaint is liable to be quashed on account of non-impleadment of the Sugar Mills as one of the accused. Another question which arises for consideration is whether the sanction for prosecution granted against the Accused/Petitioner is proper and valid, and if the sanction is not found to be proper and valid, what would be its effect on the continuance of the Criminal Complaint against the Petitioner.

**15.** Hence, it becomes pertinent to refer to



observations of Hon'ble Apex Court in regard to criminal liability of a company and vicarious liability of its Officers.

**16. In the case of Maksud Saiyed Vs. State of Gujarat, [(2008) 5 SCC 668], Hon'ble Supreme Court held as follows:**

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

(Emphasis Supplied)

**17. In the case of Sunil Bharti Mittal v. CBI, [(2015) 4 SCC 609], Hon'ble Supreme Court held as follows:**

“42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the



commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”

**18. In the case of *Sharad Kumar Sanghi v. Sangita Rane*, (2015) 12 SCC 781 , Hon’ble Supreme Court held as follows:**

“11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in *Aneeta Hada v. Godfather Travels and Tours (P) Ltd.*,



(2012) 5 SCC 661 in the context of the Negotiable Instruments Act, 1881.”

**19. In the case of Shiv Kumar Jatia Vs. State (NCT of Delhi), (2019) 17 SCC 193, Hon’ble Supreme Court**

held as follows:

“21. By applying the ratio laid down by this Court in Sunil Bharti Mittal Vs. CBI, (2015) 4 SCC 609 , it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692, this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further held that statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

**20. In the case of Sushil Sethi Vs. State of Arunachal Pradesh, (2020) 3 SCC 240, Hon’ble Supreme Court held as follows:**

“6. Considering the averments and the allegations in the FIR and even the charge-sheet the main allegations are that the company, namely, M/s SPML Infra Limited supplied sub-standard materials—runner bucket turbines and the supplied runner bucket turbines were not as per



the technical specifications. It is also required to be noted that there is no FIR/complaint/charge-sheet against the company—M/s SPML Infra Limited and the appellants are arrayed as an accused as the Managing Director and Director of M/s SPML Infra Limited respectively. From a bare reading of the FIR and even the charge-sheet, there are no allegations that there was a fraudulent and dishonest intention to cheat the Government from the very beginning of the transaction. Even there are no specific allegations and averments in the FIR/charge-sheet that the appellants were in-charge of administration and management of the company and thereby vicariously liable. In light of the aforesaid, the prayer of the appellants to quash the criminal proceedings against the appellants for the offence under Section 420 IPC is required to be considered.”

**21.** As such, it emerges that when an allegation is made against a company, the company has to be impleaded as an accused. Moreover, vicarious liability of a director or a manager of the company can not be automatically imputed. There must be statutory provision providing for such vicarious liability of the officers of the company and there must be allegation of active role played by such officers with criminal intent.

**22.** Now let us refer to observations made by Hon’ble Apex Court in regard to grant of sanction for prosecution.

**23. Hon’ble Supreme Court** in the case of **Jaswant Singh Vs. State of Punjab, AIR 1958 SC 124**, has



held as follows:

“4. The sanction under the Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness; (Basdeo Agarwala v. King-Emperor [(1945) FCR 93, 98]). The object of the provision for sanctions is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. In Gokulchand Dwarkadas Morarka v. King [(1948) LR 75 Indian Appeals 30, 37] the Judicial Committee of the Privy Council also took a similar view when it observed:

“In Their Lordships' view, to comply with the provisions of clause 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were plucked before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction.”

It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case. In Yusufalli Mulla Noorbhoy v. King [(1949) LR 76 Indian Appeals 158] it was held that a valid sanction on separate charges of hoarding and profiteering was essential to give the court jurisdiction to try the charge. Without such sanction the prosecution would be a nullity and the trial without jurisdiction.

5. In the present case the sanction strictly construed indicates the consideration by the sanctioning authority



of the facts relating to the receiving of the illegal gratification from Pal Singh and therefore the appellant could only be validly tried for that offence. The contention that a trial for two offences requiring sanction is wholly void, where the sanction is granted for one offence and not for the other, is in our opinion unsustainable. Section 6(1) of the Act bars the jurisdiction of the court to take cognizance of an offence for which previous sanction is required and has not been given. The prosecution for offence under Section 5(1)(d) therefore is not barred because the proceedings are not without previous sanction which was validly given for the offence of receiving a bribe from Pal Singh, but the offence of habitually receiving illegal gratification could not be taken cognizance of and the prosecution and trial for that offence was void for want of sanction which is a condition precedent for the courts taking cognizance of the offence alleged to be committed and therefore the High Court has rightly set aside the conviction for that offence. In *Hori Ram Singh v. Crown* [(1939) FCR 159] the charges against a public servant were under Sections 409 and 477-A of the Indian Penal Code, one for dishonestly converting and misappropriating certain medicines entrusted to the public servant and the other for wilful omission with intent to defraud to record certain entries in the account books of the hospital where he was employed. Thus two distinct offences were committed in the course of the same transaction in which the one under Section 477-A of the Indian Penal Code required sanction under Section 270(1) of the Government of India Act and the other under Section 409 of the Indian Penal Code did not. But the bar to taking cognizance of the former offence was not considered a bar to the trial for an offence, for which no sanction was required and therefore the proceedings under Section 477-A were quashed as being without jurisdiction but the proceedings under Section 409 of the Indian Penal Code were allowed to proceed. Similarly the Supreme Court in *Basirul Haq v. State of West Bengal* [(1953) SCR 836] held Section 195 of the Criminal Procedure Code to be no bar to the trial for a distinct offence not requiring sanction although disclosed by the same facts if the offence is not included in the ambit of an offence requiring such sanction. The want of sanction for the offence of habitually accepting bribes therefore does not make the taking of cognizance of the offence of taking a bribe of Rs 50 from Pal Singh void nor the



trial for that offence illegal and the court a court without jurisdiction.”

(Emphasis Supplied)

**24. Hon’ble Supreme Court in the case of Mohd.**

**Iqbal Ahmed Vs. State of A.P., (1979) 4 SCC 172**, has held as follows:

“3. A perusal of the resolution of the Sanctioning Authority clearly shows that no facts on the basis of which the prosecution was to be sanctioned against the appellant are mentioned in the sanction nor does this document contain any ground on which the satisfaction of the Sanctioning Authority was based and its mind applied. This document merely mentions that the sanction has been given on the basis of a note of the Commissioner, Municipal Corporation which appears to have been placed before the Committee. It is obvious, therefore, that this note, if any, must have come into existence either on March 31, 1969 or at any date prior to this. The prosecution could have proved the facts constituting the offence which were placed before the Sanctioning Authority by producing the note at the trial. But no such thing has been done. What the prosecution did was merely to examine two witnesses PWs 2 and 7. PW 2 has produced the order implementing the Resolution of the Sanctioning Authority which is Ex. P10 and is dated April 21, 1969, that is to say after the sanction was given. This document no doubt contains the facts constituting the offence but that does not solve the legal issues that arise in this case. It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio. In the instant case no evidence has been led either primary or secondary to prove as to what were the



contents of the note mentioned in Ex. PI 6 which was placed before the Sanctioning Authority. The evidence of PW 2 or PW 7 is wholly irrelevant because they were not in a position to say as to what were the contents of the note which formed the subject-matter of the sanction by the Standing Committee of the Corporation. The note referred to above was the only primary evidence for this purpose. Mr Rao vehemently argued that although the resolution, Ex. PI 6 does not mention the facts, the Court should presume the facts on the basis of the evidence given by PW 2 and the order implementing sanction which mentions these facts. This argument is wholly untenable because what the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact which may come into existence after the resolution granting sanction has been passed, is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.”

(Emphasis Supplied)

**25. Hon’ble Supreme court in the case Kuntesh**

**Gupta Vs. Hindu Kanya Mahavidyalaya, (1987) 4 SCC 525,**

has held as follows:

“11. It is now well established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi-judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing her order dated 24-1-1987 by her order dated 7-3-1987. The said order of the Vice-Chancellor dated 7-3-1987 was a nullity.”



**26. Hon'ble Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi, (1991) 2 SCC 716,** has held as follows:

“21. Thus it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person.”

**27. Hon'ble Supreme Court in the case of Supdt. of Police (C.B.I.) Vs. Deepak Chowdhary, (1995) 6 SCC 225,** has held as follows:

“ 5. We find force in the contention. The grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore, being administrative act the need to provide an opportunity of



hearing to the accused before according sanction does not arise. The High Court, therefore, was clearly in error in holding that the order of sanction is vitiated by violation of the principles of natural justice.”

(Emphasis Supplied)

## **28. Hon’ble Supreme Court in the case of State**

**Vs. T. Venkatesh Murthy, (2004) 7 SCC 763, has held as follows:-**

“11. The expression “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 (the simile is borrowed from Lord Diplock in *Town Investments Ltd. v. Deptt. of Environment* [(1977) 1 All ER 813 : 1978 AC 359]. 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. (See *Shamnsaheb M. Multtani v. State of Karnataka* [(2001) 2 SCC 577.]

.....  
13. 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.

14. In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding “failure of justice”. Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. The same logic also applies to the appellate or revisional court. The requirement of sub-section (4) about raising the issue at the earliest stage has not been also considered. Unfortunately, the High Court by a practically non-reasoned order, confirmed the order passed by the learned trial Judge. The orders are, therefore, indefensible. We set aside the said orders. It



would be appropriate to require the trial court to record findings in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19.”

**29. Hon’ble Supreme Court in the case of C.S.**

**Krishnamurthy Vs. State of Karnataka, (2005) 4 SCC 81,**

has held as follows:

“9. Therefore, the ratio is sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. In the present case, the sanction order speaks for itself that the incumbent has to account for the assets disproportionate to his known source of income. That is contained in the sanction order itself. More so, as pointed out, the sanctioning authority has come in the witness box as Witness 40 and has deposed about his application of mind and after going through the report of the Superintendent of Police, CBI and after discussing the matter with his Legal Department, he accorded sanction. It is not a case that the sanction is lacking in the present case. The view taken by the Additional Sessions Judge is not correct and the view taken by learned Single Judge of the High Court is justified.”

(Emphasis Supplied)

**30. Hon’ble Supreme Court in the case of R.**

**Sundararajan Vs. State, (2006) 12 SCC 749,** has held as

follows:

“ 14. In this connection, it may be mentioned that we cannot look into the adequacy or inadequacy of the material before the sanctioning authority and we cannot sit as a court of appeal over the sanction order. The order granting sanction shows that all the available materials were placed before the sanctioning authority



who considered the same in great detail. Only because some of the said materials could not be proved, the same by itself, in our opinion, would not vitiate the order of sanction. In fact in this case there was abundant material before the sanctioning authority, and hence we do not agree that the sanction order was in any way vitiated.”

**31. Hon’ble Supreme Court in the case of State of Karnataka Vs. Ameerjan, (2007) 11 SCC 273, has held as follows:**

“ 9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.”

**32. Hon’ble Supreme court in the case State of Punjab Vs. Mohd. Iqbal Bhatti, (2009) 17 SCC 92, has held as follows:**

“21.The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise.

22.For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.”

**33. Hon’ble Supreme court in the case State of**



**Himachal Pradesh Vs. Nishant Sareen, (2010) 14 SCC 527,**

has held as follows:

“13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such a course.

14. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent Order dated 15-3-2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.

15. By way of footnote, we may observe that the investigating agency might have had legitimate grievance about the Order dated 27-11-2007 refusing to grant sanction, and if that were so and no fresh materials were necessary, it ought to have challenged the order of the sanctioning authority but that was not done. The power of the sanctioning authority being not of continuing character could have been exercised only once on the same materials.”

**34. Hon’ble Supreme Court in the case of State of Maharashtra Vs. Mahesh G. Jain, (2013) 8 SCC 119,** has held as follows:

“ 13. In Kootha Perumal v. State [(2011) 1 SCC 491, it has been opined that the sanctioning authority when grants sanction on an examination of the statements of the witnesses as also the material on record, it can safely be concluded that the sanctioning authority



has duly recorded its satisfaction and, therefore, the sanction order is valid.

14. From the aforesaid authorities the following principles can be culled out:

14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity.”

(Emphasis Supplied)

### **35. Hon’ble Supreme Court in the case of CBI Vs.**

**Ashok Kumar Aggarwal, (2014) 14 SCC 295**, has held as follows:

“13. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may



also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

14. It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

15. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge-sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter alia on the ground that the order suffers from the vice of total non-application of mind....

16. In view of the above, the legal propositions can be summarised as under:

16.1. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses,



recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

16.2. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

16.5. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

17. In view of the above, we do not find force in the submissions advanced by Shri Viswanathan, learned ASG that the competent authority can delegate its power to some other officer or authority, or the Hon'ble Minister could grant sanction even on the basis of the report of the SP. The ratio of the judgment relied upon for this purpose, in A. Sanjeevi Naidu v. State of Madras (1970) 1 SCC 443, is not applicable as in the case of grant of sanction, the statutory authority has to apply its mind and take a decision whether to grant sanction or not.

18. This Court in Ashok Tshering Bhutia v. State of Sikkim [(2011) 4 SCC 402], while dealing with the issue whether invalid sanction goes to the root of jurisdiction of the Court which would vitiate the trial and conviction, held (SCC p. 411, para 25) that in the absence of anything to show that any defect or irregularity therein caused a failure of justice, the contention was without any substance. (emphasis supplied) The failure of justice would be relatable to error, omission or irregularity in the



grant of sanction. However, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice or has been occasioned thereby.

19. The court must examine whether the issue raised regarding failure of justice is actually a failure of justice in the true sense or whether it is only a camouflage argument. The expression “failure of justice” is an extremely pliable or facile an expression which can be made to fit into any case. The court must endeavour to find out the truth. There would be “failure of justice” not only by unjust conviction but also by acquittal of the guilty as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be overemphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence. “Prejudice” is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under legal jurisprudence, the accused can seek relief from the court....

20. Be that as it may, in State of T.N. v. M.M. Rajendran [State of T.N. v. M.M. Rajendran, (1998) 9 SCC 268 : 1998 SCC (Cri) 1000] this Court dealt with a case under the provisions of the 1988 Act, wherein the prosecuting agency had submitted a very detailed report before the sanctioning authority and on consideration of the same, the competent authority had accorded the sanction. This Court found that though the report was a detailed one, however, such report could not be held to be the complete records required to be considered for sanction on application of mind to the relevant material on record and thereby quashed the sanction.

.....

26. Before proceeding further, it may be pertinent to note that the sanction order speaks of consideration of the entire material including the case diaries and documents collected during the course of



investigation and statements recorded under Section 161 CrPC and statements recorded by the Magistrate under Section 164 CrPC. The learned Special Judge dealt with the issue in its order and brushed aside the same observing that the same may be factually incorrect, and there was a letter on record showing the true picture that the relevant documents had not been sent to the sanctioning authority. However, it is open to the prosecution during the course of trial to examine the sanctioning authority where such a discrepancy can be explained. The learned Special Judge has wrongly labelled such a fact which goes to the root of jurisdiction and clearly shows that the extent to which there could be application of mind was a mere discrepancy.

.....

35. The provisions of Sections 91 and 92 of the Evidence Act provide that evidence may be led to invalidate a document itself. The best evidence as to the contents of a document is the document itself and it is the production of the document that is required by this section in proof of its contents. Section 91 describes the “best evidence rule”, while Section 92 comes into operation for the purpose of excluding evidence of any oral agreement, statement, etc. for the purpose of contracting or adding or subtracting from its terms. However, these sections differ in some material particulars.

36. The charge-sheet filed by the appellant CBI against the respondent does not reveal that it had examined any witness to the effect that the relevant documents had been produced before the sanctioning authority or the authority had asked for a document and the same had been shown to him.

.....

59. Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pre-trial stage.

60. However, in the instant case, the fact situation warrants a different course altogether as the impugned order had already been partly complied with before filing the petition before this Court. The appellant admittedly did not disclose the material facts in this petition. Had the said facts been disclosed perhaps this Court would not have entertained this petition and the



matter could have been concluded by the trial court much earlier. The affidavit filed by the sanctioning authority may tilt the balance in favour of the respondent if duly supported by the deponent and not disclosing the material fact i.e. filing of such an affidavit by the sanctioning authority before the Special Judge, indicates serious and substantial prejudice to the respondent. The material on record reveals that it could be a case of serious prejudice to the respondent so far as the decision-making process by the sanctioning authority is concerned. The benefit of interim protection granted in favour of the appellant where the appellant has not disclosed the material facts, should be neutralised.

61. We do not find any force in the submission made by Shri Jethmalani, learned Senior Counsel that as the matter is about one-and-a-half decade old and the respondent has already suffered because of protracted legal proceedings at various stages before different forums, it is warranted that prosecution against him be closed altogether. This Court has consistently held that no latitude can be given in the matter of corruption.....”

(Emphasis Supplied)

**36. Kerela High Court in the case of Asokan Vs.**

**State of Kerala, 2021 SCC OnLine Ker 4590**, has held as follows:

“10. I find some force in the said contentions. Going by the principles laid down by the Honourable Supreme Court in the aforesaid judgments, the contents of the order should reflect the materials considered by the authority for the purpose of deciding the necessity for granting sanction for prosecution of the public servant. Without highlighting any reason and without any indication as to the documents perused, no order of sanction should be passed. In this case, the order granting sanction was without any such observations and materials.”

**37. This Court in Md. Iqbal Ahmad & Ors. Vs.**

**The State of Bihar (1988 BBCJ 611)** has held that the sanction



for prosecution has to be accorded by a speaking order showing application of mind. It has held as follows:

“It is expected that the Cane Commissioner will go through the proposal for the prosecution and will exercise his discretion in the matter. If after going through the proposal he feels that the prosecution should be launched he should pass a speaking order apporving the proposal of the Cane Officer for filing the Complaint petition.”

**38. The ratio of Md. Iqbal Ahmad case (supra)** has been followed subsequently by this Court in (i) **Vishnu Kumar Surekha @ B.K. Surekha Vs. The State of Bihar, 2017 (3) PLJR 958**, (ii) **PRS Panikker & Ors Vs. The State of Bihar, 2018(3) PLJR 163** and (iii) **Vishnu Sugar Mills Ltd. Vs. State of Bihar, 2019 (3) PLJR 848**.

**39.** As such, it emerges that grant of sanction for prosecution of any public servant is a solemn and sacrosanct act. It is not intended to be empty and automatic formality. The Sanctioning Authority is required to pass sanction order with all sincerity keeping in mind the public interest and protection available to the public servants. The prosecution is required to provide all the relevant facts/material collected during investigation which constitute the alleged offence. Thereafter, the Sanctioning Authority is required to consider such facts/material to reach satisfaction whether the Accused has *prima facie* committed the alleged offence. The sanction order



must *ex facie* reflect production of all relevant materials by the prosecution to the Sanctioning Authority and application of mind by the Sanctioning Authority to the facts and circumstances produced before him. The order must be speaking in nature. If it transpires from the sanction order that all the relevant facts/material was not produced before the Sanctioning Authority or the Sanctioning Authority has not applied his mind giving reason while passing the sanction order, the grant of sanction is *ex facie* or patently, illegal and invalid and *non est* in the eye of law and criminal proceeding is liable to be quashed.

**40.** However, if the sanction order *ex facie* does not suffer from the aforesaid illegality or invalidity but there is allegation of invalidity of the sanction order on the ground of some error, omission or irregularity resulting into failure of justice or prejudice being caused to the Accused, such invalidity cannot be looked into at pre-trial stage because prejudice or failure of justice are questions of facts which could be examined only during trial.

**41.** Now coming to the case on hand, I find that the allegation has been made by the Complainant against Jay Shree Sugar Mill, Majhauria, West Champaran. But the sugar mill has not been impleaded as an Accused. Only the Petitioner



along with two other co-accused, who were officers of the sugar mill, have been made accused, though there is no specific role allegedly played by the Petitioner and other co-accused in commission of the alleged offence with criminal intent. Hence Criminal proceeding instituted against the Petitioner and other co-accused is liable to be quashed in the absence of the sugar mill as an accused and for want of any specific allegation against the Petitioner.

**42.** Now coming to the sanction order, it transpires that for illegality allegedly committed by M/s Jay Shree Sugar Mill, Majhaulia, West Champaran, under Section 52 of the **Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981**, sanction for prosecution has been granted, but the sanction order is silent about prosecution of any officer of the sugar mill. Nor does it *ex facie* show that all the relevant material constituting the alleged offence was placed by the prosecution before the Sanctioning Authority, Cane Commissioner. Hence, application of mind by the Cane Commissioner to the relevant facts and circumstances does not arise. In such situation, the sanction as granted by the Sanctioning Authority is patently/*ex facie* illegal/invalid and *non est* in the eye of law and on this ground also, the impugned



cognizance order and the criminal proceeding arising out of it is liable to be quashed.

43. Accordingly, the present petition is allowed quashing the impugned cognizance order dated 16.06.2015, and the criminal proceeding arising out of the same, with reference to the Petitioner.

(Jitendra Kumar, J.)

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| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 04.04.2024 |
| Transmission Date | 04.04.2024 |

