

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present: - Hon'ble Mr. Justice Subhendu Samanta.

CRR 3452 of 2017

With

IA No. CRAN 1 of 2018(Old No. CRAN 823 of 2018)

Anjan Bose

Vs.

Central Bureau of Investigation.

**For the petitioner : Mr. Sakhar Basu, Sr. Adv.
Mr. Soubhik Mittar,**

For the CBI : Mr. Anirban Mitra,

Heard on : 30.1.2023

Judgment on : 06-2-2024

Subhendu Samanta, J.

The instant revisional application has been preferred under section 401 read with Section 482 of the Code of Criminal Procedure for quashing of a proceedings being case no. SPL 11/2009 arising out of RC 0102008A0004 dated 4.2.2008 under Sections 120B,419,420,468,471 of the Indian Penal Code and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act 1988 now pending before the Learned Special Judge(CBI Court) at Alipore, 24 Parganas(South); also against the order dated 2.8.2017 wherein the learned Special Judge(CBI Court) at Alipore,

24 Parganas(South) rejected the petitioner's prayer for discharge in connection with the same case.

The brief fact of the case is that the Regional Provident Fund Commissioner lodged a written complaint to the Superintendent, ACB, CBI that one Iti (Mondal) Poddar have claiming herself as a widow of Subal Poddar, since the deceased who was an employee of Bharatia Electric Steel Co.(here in after referred to as BESCO) submitted a from10D on 2.1.2005, which was forwarded to the Employees Provident Fund Organization(hereinafter referred to as 'EPFO') on 24.1.2005 by the authoursed signatory of BESCO through Mr. Nikhil Ranjan Ganguly, the Assistant Manger of BESCO. The claim was accompanied with the death certificate of Subal Poddar issued by Kolkata Municipal Corporation and countersigned of the Nikhil Ranjan Ganguly. The claim was processed by Sunil Kumar Mondal, dealing assistant 'EPFO' on 27.12.2005 and approved by Manas Saha Sardar, the Section Supervisor on the same day. After such approval Shri Anjan Bose the Accounts officer of EPFO approved the same. Thereafter, Shri Rupak Gupta accorded the approval and PPO was issued. Ms. Iti(Mondal) Poddar received sum of Rs.1,73,484 as pension arrears, Rs.,17,325/- as relief arrears and Rs.1750/- as monthly pension. Subsequently, it was found that the death certificate was forged. 3 P. S. record shows that name of the father of the employee was and not Subal Poddar as claimed has found by EPFO official. 3P.S. revealed that Subal Poddal was born on 01/01/1935 while 10-D disclosed his date of birth as 31.1.1946. It was also fund that there was

discrepancy in the name of the father/husband of the Iti (Mondal) Poddar as claim was based on forged documents and official EPFO processed the paper in adduce of their office.

According to the complaint, the CBI registered a case and take up investigation. Investigation of the CBI ended in charge-sheet against the accused persons namely, Manas Saha Sardar, Sunil Kumar Mondal, Nikhil Ranjan Ganguly, Iti Mondal, Rupak Gupta and Anjan Bose under Sections 120B, 419,420,468,471 IPC and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act 1988. The present petitioner being the Assistant Account Officer charged with the alleged offence of conspiracy with the other officials of EPFO and the Assistant Manager BESCO and Iti(Mondal) Poddar. The petitioner has submitted one application under Section 239 of the Code of Criminal Procedure before the Learned Special Judge for discharge. After hearing the parties, the learned Special Judge has rejected the prayer of the present petitioner and charge has been framed against all the accused persons including the present petitioner except accused Rupak Gupta(APFC). The accused Rupak Gupta was discharged by the learned Special Judge by the impugned order.

Being aggrieved by and dissatisfied with the said order, the instant revisional application has been preferred.

Learned advocate for the petitioner submits that the impugned order of the learned Special Judge is illegal and improper in the eye of law. The learned Special Judge has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. The

learned Special Judge should not have framed charge against the present petitioner and he should have discharged the present petitioner along with the Rupak Gupta.

On the factual aspect, the learned advocate for the petitioner submits that any claim raised before the EPFO is forwarded by the employer concerned; thereafter the official procedure required to be followed is as follows:

- i) *“The claim is at first handled by the Dealing Hand Clerk who verifies the claim as per the records of the concerned company in the 3PS register and then prepares the Input Data Sheet (containing the details of the deceased employee).*
- ii) *The Dealing Hand Clerk then forwards the records to the Section Supervisor, who tallies the records with the 3PS register and then forwards the same to the Account Officer.*
- iii) *The Assistant Accounts Officer tallies the signature and other entries as appearing in the 3PS register and then forwards the said claim to the Assistant Provident Fund Commissioner.*
- iv) *The Assistant Provident Fund Commissioner on his part verifies the details and is the person in authority who approves the pension.*
- v) *Once the claim is approved then the same is forwarded to the Pension Pre-Audit Cell and then to the Pension Disbursement Cell wherefrom the pension is sent to the Bank account of the concerned recipient.”*

The present petitioner being the Assistant Accounts Officer, as per the EPFO manual, has only one day to verify the claim and to deal it with the records and thereafter released the claim from his end. The entire document goes to show that the present petitioner being the Assistant Accounts Officer is only to verify the report submitted by the concerned dealing head clerk and to forward it to the upper authority. The prosecution of CBI alleged that the present petitioner along with the other accused persons has committed criminal conspiracy and by dint of that

conspiracy. Iti(Mondal) Poddar has got huge amount of money with the help of the present petitioner and other accused persons.

He further argued that it would be appear from the entire case record that initially the CBI submitted charge sheet dated 19.5.2009, inter alia, alleging commission of offence punishable under 120B, 419,420, 468,471 of IPC read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act 1988 against the accused persons, namely, Manas Saha Sardar, Sumil Kumar Mondal, Mikhil Ranjan Ganguly and Iti Poddar. However, no charge-sheet was filed against the Rupak Gupta and the present petitioner. On receiving such report of CBI, the learned Special Judge vide order dated 20.5.2009 was pleased to discharge the Rupak Gupta and the present petitioner from the instant case. It is the fact of the petitioner that between the period of 23.12.2008 to 10.3.2010 sanction for prosecution against the present petitioner was denied for four(4) times by the Central Provident Fund Commissioner(herein after referred to CPFC), New Delhi as no criminal intention was evident from the records. Thereafter, in the mean time, a tripartite meeting was held between CBI and CVC(Central Vigilance Commissioner) and EPFO where it was decided sanction would be accorded, yet still on 23.4.2009 the EPFO decided not to accord sanction against the petitioner and Rupak Gupta. The matter reached the Expert Committee Meeting of the CVC on account of difference of opinion with regard to grant of sanction on 24.11.2009. It was proposed by the CVC that sanction be accorded but still sanction was denied by the sanctioning authority. Lastly, on

10.3.2010 the sanctioning authority was of opinion that since no new materials has been placed before it hence sanction could not be accorded on the basis of the earlier materials based on which grant of sanction had already been refused.

Finally, the matter was referred to the Ministry Department of Personal and Training, Government of India, New Delhi by its order dated 1.7.2010 directed the Provident Fund Authorities to grant sanction against the petitioner and Rupak Gupta. This was conveyed by the Ministry to the Central Provident Fund Organization on 12.7.2010.

Accordingly, a draft sanction was prepared and put up before the Central Provident Fund Commissioner by the Central Vigilance Officer(CVO) on 4.11.2010 and the authority granted sanction for prosecution against the petitioner and Rupak Gupta by its order dated 30.12.2010.

On the basis of the sanction so obtained, the investigating agency on 1.2.2011 filed a supplementary charge-sheet against the present petitioner and Rupak Gupta. On this occasion, the learned Judge was pleased to take cognizance of the said supplementary charge-sheet and decided to proceed against the petitioner and Rupak Gupta.

Learned advocate for the petitioner further submits that the matter of sanction for prosecution was refused four times by the competent authority; it was assailed before the learned Special Judge but the learned Special Judge is not considered the prayer of the present petitioner.

The present petitioner further argued that the instant criminal revisional application has preferred before this Hon'ble Court only on the ground that the learned Special Judge has failed to appreciate the refusal of sanction four times by the CPFC. He argued that sanction was accorded only after being forced to do on the Direction of Central Ministry. The grant of sanction is a nullity in the eye of law and no prosecution can be maintained on the basis of such coercive methods as adopted by the CBI. He further argued that it is trite law that according of sanction and subsequently refusal is not continuous process, i.e., such prayer and refusal cannot go on for upteen number of times.

In support of his contention, the learned advocate for the petitioner cited some decisions of **Mansukhlal Vithaldas Chauhan Vs. State of Gujarat** reported in (1997) 7 SCC 622, **States of H.P. Vs. Nishant Sareen** reported in (2010) 14 SCC 527, **Ramanand Chaudhary Vs. State of Bihar & Ors.** reported in (2002) 1 SCC 153, **Gopikant Choudhary Vs. State of Bihar & Ors.**, reported in (2000) 9 SCC 53.

Learned advocate for the petitioner further submits that the refused of the prayer of discharge of the present petitioner by the Special Judge is erroneous. The instant prosecution against the petitioner is not tenable in the eye of law. Sanction to prosecute a public servant on refusal may be again only considered where fresh materials have been collected by the investigating agency subsequently to earlier order and matter is re-considered by the sanctioning authority in the light of fresh materials. In the present case, there are no fresh materials before the sanctioning

authority. Thus, sanction for prosecution against the present petitioner is illegal. Application for discharge filed by the petitioner is liable to be allowed by the learned Special Judge.

Learned advocate appearing on behalf of the CBI submits that the CBI has taken up the investigation of this case on the basis of specific complaint. After completion of investigation, the CBI has submitted charge-sheet against all the accused persons. Initially, after completion of investigation the CBI requested to competent authority i.e. CPF Commissioner to grant sanction against the present petitioner and Rupak Gupta. There was different of opinion between the competent authority and CBI regarding the grant of sanction. So, the matter was referred to CVC in view of sub-para 112 of Chapter VII of vigilance manual(Vol-1) for referring the difference of opinion and the same was communicated to the Deputy Secretary CVC. Thereafter, a joint meeting was held between CVC and EPFO on 24.2.2009. Despite of availability of sufficient materials to proceed against the present petitioner and one Rupak Gupta. EPFO did not accord sanction for prosecution and the same was communicated to the Deputy Director(Vigilance). Subsequently, the sanction was accorded by the competent authority for prosecution of the present petitioner. Accordingly, the CBI submitted supplementary charge-sheet against the present petitioner and one Rupak Gupta. During the argument the CBI has submitted the manual for prosecution of sanction under Section 19 of Prevention of Corruption Act, 1988. Sub para 11.2 Chapter VII of the said vigilance manual is read as follows:

“11.2 If in any case, the competent authority does not propose to accord the sanction sought for by the SPE, action may be taken as under:-

- i) In the case of government servants, the competent authority may refer the case to its Administrative Ministry/Department which may after considering the matter, either direct that prosecution should be sanctioned by the competent authority or by an authority next higher to the competent authority; or in support of the view of the competent authority, forward the case to the Central Vigilance Commission along with its own commends and all relevant material for resolving the difference of opinion between the competent authority and the CBI. If the Commission also advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to the Department for Personnel & Training for a final decision.”*

He argued that the CBI being the Prime Investigating Agency has followed the procedure laid down in the manual and according to the manual as there is a dispute between the administrative wing and the investigating agency. The same was forwarded to the CVC and thereafter to the Ministry/department concerned.

Finally, the matter was placed before the Department for Personal & Training for final decision. On the basis of the decision of the Department for Personal & Training, the sanction was accorded by the competent authority. He argued that there is not illegality in the eye of law regarding the sanction of prosecution in this case.

In support of his contention he cited a decision of **Vivek Batra Vs Vs. Union of India and Ors.** reported in **(2017) 1 C Cr LR(SC) 539** wherein the Hon'ble Supreme Court has held that sanction for prosecuting Government servant cannot be held an invalid on the ground of difference of opinion appeared in the administrative notice and such decision is valid taken on proper application of mind.

He also cited a decision of Hon'ble Supreme Court passed in **State of Bihar & ors. Vs. Rajmahgal Ram** wherein the Hon'ble Supreme Court has held that:

“The object behind the requirement of grant of sanction to prosecute a public servant need not detain the Court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute a honest public servant for acts arising out of due discharge of duty and also enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test therefore, always is whether the act complained of has a reasonable connection with the discharge.”

Learned advocate for the CBI further argued regarding the scope of interference of the High Court in exercise of jurisdiction under Section 397 of the Code of Criminal Procedure and referred to a decision of Hon'ble Supreme Court in **Rajasthan Vs. Fatehkaran Mehdu** it has categorically stated -

“The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of reference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage of framing of the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

It is further held that-

“Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the court should be more inclined to permit continuation or prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima

facie”.”

Learned advocate for the CBI further cited a decision of **Director of Centra Bureau Vs. A, K. Agarwal** reported in **(2015) 16 SCC 163** and also **Musthak Ahamad Vs. Md. Habibur Rahaman and ors.** reported in **1996 SCC(Cri) 443** and argued that the validity of order of sanction cannot be challenge of the stage charge. The validity of sanction is a mixed question of law and fact. So, where there are other materials available in the record to substantiate the prima facie allegation against the present petitioner, the High Court would not be justified in quashing the complaint by considering the rival contention and entertain into a debatable area of which was true. Under the above circumstances, he argued that at this juncture the order passed by the Special Judge couldn't be set aside.

Learned advocate for the petitioner has contradict the judgement cited by the CBI in **Vivek Batra(supra)** on the ground that the facts and circumstances of the case and law laid down therein is totally different to that of the present issue involved. He also pointed out the difference and the issues involved in the other decision cited by the CBI.

Heard the learned advocates and perused the materials on record, it is the fact that sanction for prosecution was refused by the competent authority in respect of present petitioner and one Rupak Gupta for four times. Thereafter, the CBI proceeded to the CVC and thereafter to the Ministry/department concerned and thereafter Department for Personal and Training. So, it is true that there are no new materials before the

authority concerned to re-consider the sanction for prosecution against the present petitioner. Let me see the ration laid down by the Apex Court in dealing with the issues. By virtue of decision of Hon'ble Supreme Court in **Mansukhlal Vithaldas Chauhan(Supra)**

"17. Sanction lifts the bar for prosecution. 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. (See Mohd. Iqbal Ahmed v. State of A.P.) Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also Jaswant Singh V. State of Punjab and State of Bihar v. P.P. Sharma).

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

In **State of Himachal Pradesh(Supra)** the Hon'ble Supreme Court has held that:

“12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us a sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

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 maybe granted, there may not be any impediment to adopt such a course.”

Section 19 of the Prevention of Corruption Act 1988 provides previous sanction necessary for prosecution. The object underlying Section 19 is to ensure that a public servant may not suffer harassment on false, frivolous concocted on unsubstantiated allegations. The exercise of power under Section 19 is not an empty formality since the government or for that matter the like the sanctioning authority is supposed to apply its mind to the entire materials and evidence placed before it and on examination thereof reach the conclusion fairly, objectively and

consistantt with the public interest as to whether or not in the facts and circumstances sanction be accorded to prosecute the public servant.

In the present case, it appears that initially the CPF Commissioner after placing the report of investigation by the CBI is of opinion that **“taking into account the IBID aspects I am considered of opinion that there were procedural irregularities and not illegalities amounting to criminal mis-conduct in respect of aforesaid officers. Hence, prosecution sanction is categorically denied in respect of Rupak Gupta(APFC) , Anjan Bose (AAO).”**

The Central PF Commissioner four(4) times was of the same view thereafter, when the matter was placed before the Department of Personal and Training, the sanction was accorded without production of new materials.

The law laid down by the Hon’ble Supreme Court stipulates that when the sanction is initially denied thereafter without any new material being placed the sanction cannot be accorded. The Hon’ble Supreme Court has also criticised the order of High Court **in M.M. Das Chawaan(supra)** wherein the sanctioning authority accorded sanction by virtue of order of High Court. The sanctity of Section 19 of the Prevention of Corruption Act has been categorized by the Hon’ble Supreme Court in the above observations that sanction cannot be obtained under any pressure or compulsion.

In the present case, the CBI is of opinion that they have acted according to their CVC manual and the sanction was accorded according

to the rule. But the law laid down by the Supreme Court is the final authority to hold the field; any manual cannot over ride the provision of law enunciated by the Apex Court. The CBI has referred 11.2 of the Vigilance Manual, the said manual suggests that competent authority may forward a case for grant of sanction to the CVC along with its own comment and all relevant materials for resolving the difference of opinion between the competent authority and the CBI. But it is nowhere suggests that the CVC can act in supersession of the provision of law laid down by the Hon'ble Supreme Court. The law of the land Declared by the Hon'ble Supreme Court definitely stands high above over all the administrative and executive decisions of the sanctioning authority. In this case, it appears that initially the present petitioner was discharged from the case thereafter the cognizance of offence was taken by the learned Special Judge on the basis of sanction of the prosecution, but the sanction for prosecution in respect of the present petitioner is appears to me, has accorded dehorse the principle of law. The learned Special Court has passed the impugned order without referring the conduct of the sanctioning authority though it has been specifically pleaded by the petitioners in his application under Section 239 of the Code of Criminal Procedure. On that score, the impugned order passed by the learned Special Judge appears to me improper.

Section 19 of P. C. Act 1988 requires previous sanction for prosecution. The Sanctioning Authority required to apply his own independent mind on the basis of the materials on record. In this case

the sanctioning Authority applied his independent mind more than once. In four(4) times he refused to accord sanctions. After the matter is placed before the Department of Personal and Training, the sanction for prosecution was accorded. Thus, the sanction for prosecution accorded after four(4) times refused can not be said to be an act of application of independent mind by the sanctioning Authority.

Considering all facts and circumstances of the case, it appears to me that the order of framing charge against the present petitioner appears to me not justified. Thus, the instant revisional application has got merit and is allowed. The impugned order passed by the learned Special Judge is hereby modified. The order of framing of charge against the present petitioner is hereby quashed. The petitioner be discharged from the case U/S 239 Cr. P.C.

Accordingly, CRR 3452 of 2017 is disposed of.

Connected CRAN applications, if any, are also disposed of.

Any order of stay passed by this Court during the pendency of the Criminal Revisional Application is also vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)

