IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.297 OF 2023
WITH
CRIMINAL APPLICATION NO.246 OF 2019

CENTRAL BUREAU OF INVESTIGATION ..APPLICANT
VS.
R. BHUVANESWARI W/O C.N.
VENKATARAMAN AND ANR. ..RESPONDENTS

WITH
WRIT PETITION NO.4812 OF 2022

DATTATRAYA SHRIKANT PENDSE ..PETITIONER
VS.
CENTRAL BUREAU OF INVESTIGATION
AND ANR. ..RESPONDENTS

WITH
WRIT PETITION NO.4811 OF 2022

NATESAN GANESH S/O V. NATESAN ..PETITIONER
VS.
CENTRAL BUREAU OF INVESTIGATION
AND ANR. ..RESPONDENTS

Adv. H. S. Venegavkar for the applicant in REVN/297/2023 and for respondent No.1-CBI in WP/4811/2022 and WP/4812/2022.
Adv. Amol A. Patankar a/w Adv. Vatsal Thakkar for the petitioners in WP/4811/2022 and WP/4812/2022.
Adv. P. M. Havnur a/w Adv. Prajakta Jagtap for respondent No.1 in REVN/297/2023.
Mr. S. H. Yadav, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 9, 2024

ORAL JUDGMENT :

CRIMINAL REVISION APPLICATION NO.297 OF 2023

1. Since common issues are involved in the two Writ Petitions filed by the accused and in Criminal Revision Application No.297 of 2023 filed by the Central Bureau of Investigation ("CBI", for short) these matters are being disposed of by a common judgment by consent of the parties. For convenience I have preferred to hear Criminal Revision Application No.297 of 2023 filed by the CBI in the first instance as the decision in this Criminal Revision Application will govern the fate of the other two writ petitions.

2. CBI impugns the order dated 26.09.2018 passed by the Special Judge for CBI, Mumbai ("Special Judge", for short) thereby discharging the present respondent/original accused No.6-R. Bhuvaneswari w/o C.N. Venkataraman in CBI Special Case No.67 of 2013. The prosecution case in brief is as under :-

On 26.03.2009 CBI filed FIR bearing No.RC/8/E/2009/ CBI/BS&FC/Mumbai against M/s. Satav Infrastructure

Private Limited ("SIPL", for short) formerly known as Satav Construction Private Limited, Mahendra Satav, Anil M. Howale and other unknown persons for the offences punishable under Sections 406, 420, 467, 468, 471 read with 120-B of the Indian Penal Code and under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter "P.C. Act", for short). The allegation against the accused persons in these matters is that they have conspired to cheat and defraud the Syndicate Bank, Shivaji Nagar Branch, Pune to the tune of Rs.54.68 crores during the year from 2004 to 2007 in respect of the cash credit account of SIPL as well as several sanctions and in respect of release of various credit facilities to the said company and thereby committed the aforesaid offences.

3. The respondent-R. Bhuvaneswari in the Criminal Revision Application at the relevant time was working as Senior Manager/Chief Manager, Syndicate Bank, Regional Office, Pune. The CBI conducted the investigation in the matter of SIPL and sought sanction of prosecution of the accused vide letter dated 20.10.2010 enclosing their report in support thereof from the Chief Vigilance Officer ("CVO", for short) of the Syndicate Bank. Thereafter, the CVO referred the matter to the concerned Competent Authority through the Industrial Relation Division of the Bank. The Competent Authority of Bank duly examined the request of CBI with the report of CBI. The Competent Authority i.e. the General Manager Personnel after duly examining the report of CBI and the materials placed before it, concluded about non-existence of any criminal conspiracy, refused to grant sanction for prosecution of the accused. The CVO, who is the complainant in this case, after going through the note dated 10.01.2011 concurred with the opinion of the Competent Authority and forwarded the same to CBI. By a communication dated 13.01.2011 the bank communicated refusal of sanction to prosecute the accused to Central Vigilance Commission ("CVC", for short).

4. It appears that again a request for sanction was made and by a letter dated 28.10.2011 the bank informed the CVC that the sanction to prosecute the accused was refused. Another attempt was made for seeking sanction.

The Competent Authority for the third time refused to grant sanction to prosecute the accused involved in the present matters.

5. It is pertinent to mention that despite the refusal of the sanction for a third time, the CBI persisted with the Competent Authority for granting the permission to prosecute the accused. At the result of such insistence, even after refusal of the sanction three times over, the Chairman of Syndicate Bank referred the matter to the Department of Financial Services (Vigilance), Ministry of Finance. The Ministry of Financial Services replied that the request to accord sanction for prosecution of the applicant-accused be granted. Hence the prosecution.

6. An application Exhibit-47 came to be filed by the accused-R. Bhuvaneswari for discharge. For the reasons mentioned in the order dated 26.09.2018 the Special Judge has allowed the application Exhibit-47 filed by the accused-R. Bhuvaneswari. The reasons are thus :-

> "7. At the outset, I would like to refer the established principle of law as elucidated by the Hon'ble Supreme Court of India in the case of State of Madhya Pradesh v/s. S. B. Johari with State of Madhya Pradesh v/s. Sudhir

Pingle [2000 Cri.L.J. 944 (SC)], wherein the Hon'ble Lordships of Supreme Court of India have observed that it is a settled law that at the stage of framing of charge, the Court has to prima-facie consider whether there is sufficient material for proceeding against the accused or not. The Court is not required to appreciate the entire evidence and arrive at the conclusion that the material produced are sufficient or not for convicting the accused. If the Court is satisfied that the prima-facie case is made out for proceeding further, then charge has to be framed against the accused. The charge can not be framed if the evidence which prosecutor proposes to adduce to prove guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, can not show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial.

8. It is important to note that the present applicant/accused was working in a Bank in a capacity as Sr. Manager, Advances, Regional Office, Pune. Meaning thereby, she was a public servant and as per section 19 of the Prevention of Corruption Act, 1988, prior sanction for prosecution is necessary. It has already been referred in the earlier part of this order that the CBI conducted investigation in the matter and sought sanction for prosecution of the applicant/accused vide their letter no. DPBSM 2010/003/RCBSM2009E0008 dated 20/10/2010 enclosing their report. The Competent Authority of the Bank duly examined the request of CBI with the report of CBI. The Competent Authority i.e. the General Manager Personnel after duly examining the report of CBI and the material placed before it, concluded about non-existence of any criminal conspiracy and refused to grant sanction for prosecution. The refusal thereby attained its finality. On the behest of CBI, sanction for prosecution was again reconsidered by the Disciplinary Authority of applicant/accused and after duly considering the material and facts of the case, the Disciplinary Authority of the Bank refused to grant sanction for prosecution vide letter/order dated 16/05/2012. Hence, the matter has attained finality since the permission for according sanction has been rejected by the Disciplinary Authority three times and communicated to CBI. However, as per advice of CVC, the

Ministry of Finance had granted sanction for prosecution.

9. The Ld. SPP for CBI has placed reliance upon the observation of Hon'ble Supreme Court in a case of Vivek Batra v/s. U.O.I. & Ors. (Criminal Appeal No. 2491 of 2014 decided on 18/10/2016), wherein the Hon'ble Lordships have observed that no Court shall stay the proceedings under this Act (Code of Criminal Procedure) on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice. Moreover, the Hon'ble Lordships have further observed that perusal of the said record doesn't indicate that any decision was taken by the Competent Authority, at any point of time, not to grant sanction so as to give the decision to grant sanction the colour of a review of any such an earlier order. The opinion of CVC, which was reaffirmed and ultimately prevailed in according the sanction, can not said to be irrelevant for the reason that clause (g) of section 8 of Central Vigilance Commission (CVC) Act, 2003 provides that it is one of the functions of the CVC to tender advice to the Central Government on such matters as may be referred to it by the Government. With due respect to the observations of Hon'ble Supreme Court, it has to be mentioned herein that the said observations are require to be considered with the observations of Hon'ble Supreme Court in the case of State of Himachal Pradesh v/s. Nishant Sareen (Criminal Appeal No. 2353 of 2010 decided on 09/12/2010), wherein the Hon'ble Supreme Court has observed pertaining to the fact situation of that case is concerned, it is not even the case of 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. The Hon'ble Supreme Court has further observed that from the subsequent order in that case dated March 15, 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 the opinion, is clearly impermissible. By way of foot-note, the Hon'ble Lordships have observed that the investigating agency might have had legitimate grievance about the order dated November 27, 2007 refusing to grant sanction and if that were so and

no fresh materials were obtained, it ought to have challenged the order of the sanctioning authority but that was not done. The Hon'ble Lordships have further observed that the power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power u/sec. 19 of the Prevention of Corruption Act, 1988 or u/sec. 197 of the Code of Criminal Procedure 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 authorized 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. In the opinion, a change of opinion per-se on the same materials can not 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 can be 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 course.

10. In the light of above mentioned observations of Hon’ble Supreme Court, it is quite clear from the record of this case that after refusing sanction for three times, the prosecution did not produce any fresh material or new ground to seek sanction for the prosecution of applicant/accused. It has to be remembered that the present applicant/accused is still in service, hence, the prior sanction is essential.

11. In view of above mentioned position of law, it is crystal clear that the reconsideration of sanction order has been passed without application of mind. It has not been granted for any fresh material. Under such circumstances the applicant/accused is require to be discharged from the

case. Therefore, I record my finding to Point No.1 in the negative.

7. Mr. Venegavkar, learned counsel appearing for CBI was at pains to submit that the Competent Authority was not justified in refusing the sanction. Before considering the submissions it needs to be borne in mind about that there being no dispute that on the earlier three occasions the sanction has been refused by the authority competent to grant or refuse such a sanction. Mr. Venegavkar submitted that the CBI requested time and again for sanction as the entire materials were not considered by the sanctioning authority in the proper perspective which was later realised by the Competent Authority upon considering the relevant office memorandum and the relevant provisions of law. My attention is invited to the relevant provisions of the Central Vigilance Commission Act, 2003 (hereafter "C.V.C. Act", for short) more particularly Chapter III which deals with the functions and powers of the Central Vigilance Commission. Mr. Venegavkar relied upon the office memorandum dated 31.01.2012 prescribing the guidelines for checking delay in grant of sanction for prosecution.

According to Mr. Venegavkar these are fresh materials as these materials were never brought to the notice of the Competent Authority or considered by it when sanction was earlier refused. Inviting my attention to the decision of the Hon'ble Supreme Court in **Central Bureau of Investigation (CBI) Etc. Vs. Mrs. Pramila Virendra Kumar Agarwal & Anr. Etc.**[1] it is submitted that the issue relating to the validity of the sanction for prosecution could have been considered only during the trial since in the present case, post grant of sanction, the accused are now contending that such a fresh sanction is invalid in view of the earlier refusal of sanction. According to Mr. Venegavkar there is a distinction between absence of sanction and the alleged invalidity on account of non-application of mind. According to learned counsel, the plea of the accused seeking to pick holes in the manner in which the sanction is granted and the claim that the same is defective which is a matter to be considered in the trial. Mr. Venegavkar then relied upon the decision of the Hon'ble Supreme Court in **State By Karnataka Lokayukta Police Station,**

1 Criminal Appeal Nos.1489-1490 of 2019 dated 25.09.2019

Bengaluru vs. M. R. Hiremath[2] to contend that this Court ought to be cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 of the Code of Criminal Procedure (hereafter "Cr.P.C.", for short) and the parameters which govern the exercise of this jurisdiction have found expression in several decisions of the Supreme Court. It is submitted that if the materials on record are taken on its face value the alleged offence though prima facie is squarely made out and hence the trial Court was not justified in discharging the accused. Reliance is then placed on the decision of the Hon'ble Supreme Court in **State of Tamil Nadu By Inspector of Police Vigilance and Anti-Corruption Vs. N. Suresh Rajan and Others**[3] to contend that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. It is submitted

2 Criminal Appeal No.819 of 2019 dated 01.05.2019.
3 (2014) 11 SCC 709

by Mr. Venegavkar that at that stage, the court is not expected to go deep into the probative value of the materials on record. It is therefore submitted that once the sanction has been granted, the appropriate course for the trial Court would have been to test the validity of the sanction during the trial and not at this stage.

8. Learned counsel for respondent No.1 argued in support of the impugned order.

9. I have heard learned counsel at length. There is no dispute that on as many as three occasions the Competent Authority has refused to grant sanction to prosecute the accused as required by Section 19 of the P.C. Act. Upon insistence by CBI, on the forth occasion, the Competent Authority granted the sanction to prosecute the respondent-accused. Admittedly there were no new or fresh materials on the basis of which the Competent Authority granted sanction to prosecute the respondent-accused. I do not find any substance in the submission of Mr. Venegavkar that reference to or non adherence to the C.V.C. Act or the office memorandum prescribing the procedure in respect of grant of sanction would constitute fresh materials warranting a relook by the Competent Authority in the matter where sanction is earlier refused. The order of the Competent Authority was never challenged. The investigating agency wants the Competent Authority to review its order on the basis of the very same materials which in the view of the investigating agency is adequate to grant sanction.

10. A careful perusal of the materials on record in no uncertain terms discloses that there is absolutely no new or fresh materials before the Competent Authority warranting a relook pursuant to the refusal of the sanction on the earlier three occasions. The sanction granted on the fourth occasion after earlier three refusals was only on account of insistence of the investigating agency as it was of the opinion that the materials warranted such sanction be granted.

11. The question is whether in the absence of any new or fresh materials, the Competent Authority can review its earlier decision refusing the grant of sanction. The answer to this question need not detain me much in view of the exhaustive analysis of the subject by the Hon'ble Supreme Court. I may straight away refer to the decision in **State of Himachal Pradesh Vs. Nishant Sareen**[4]. Section 19 of the P.C. Act which arose for consideration has been quoted and thereafter Their Lordships have analysed the provisions in the contextual facts of that case. The object underlying Section 19 has been dealt with. In paragraph 12 Their Lordships have discussed under what circumstances power of review can be exercised. Paragraphs 7 to 12 are relevant which read thus :-

> "7. Section 19 of the 1988 Act reads as follows :
>
> S. 19. Previous sanction necessary for prosecution.-
>
> (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,--
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
>
> (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-

4 2010 (14) SCC 527

section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

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

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

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

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

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

Explanation.-- For the purposes of this section,--

(a) error includes competency of the authority to grant sanction;

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

8. The object underlying Section 19 is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations. The

exercise of power under Section 19 is not an empty formality since the Government or for that matter the sanctioning authority is supposed to apply its mind to the entire material and evidence placed before it and on examination thereof reach conclusion fairly, objectively and consistent with public interest as to whether or not in the facts and circumstances sanction be accorded to prosecute the public servant. In Mansukhlal Vithaldas Chauhan vs. State of Gujarat (1997) 7 SCC 622, this Court observed, 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. Section 19 or for that matter Section 197 of Code of Criminal Procedure, 1973 (for short, `the Code') does not make any express provision regarding review or reconsideration of the matter by the sanctioning authority once such power has been exercised.

9. In Gopikant Choudhary v. State of Bihar and Ors. (2000) 9 SCC 53, initially the concerned Minister refused to accord sanction to prosecute the public servant therein and an order was passed to that effect. Subsequently, after retirement of the public servant, the matter was taken up by the Chief Minister and he granted sanction for prosecution of the concerned public servant. The question that arose for consideration before this Court was the correctness of the order passed by the Chief Minister. This Court set aside the order of the Chief Minister granting sanction to prosecute the public servant, inter alia, on the ground that the Chief Minister did not have any occasion to reconsider the matter and pass fresh order sanctioning the prosecution.

10. In Romesh Lal Jain v. Naginder Singh Rana & Ors. (2006) 1 SCC 294, it was held by this Court that an order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority. If the complainant or accused can demonstrate such an order granting or refusing sanction to be suffering from non-application of mind, the same may be called in question before the competent court of law.

11. Recently, in the case of State of Punjab and Anr. v. Mohammed Iqbal Bhatti JT 2009 (13) SC 180, this Court had an occasion to consider the question whether the State has any power of review in the matter of grant of sanction

in terms of Section 197 of the Code. This Court observed as under:

> "7. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered."

<u>This Court then noticed the opinion of the High Court which was recorded as follows :</u>

> "<u>Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible.</u>"

<u>While affirming the above opinion of the High Court, this</u>

Court held in paragraphs 22 and 23 of the Report as under :

> "22. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to"
>
> "23. 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."

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 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. 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 course."

(emphasis supplied by me)

12. Present is not a case where fresh materials have been collected and were placed before the sanctioning authority for reconsideration. The sanction was earlier refused on three occasions by the Competent Authority. The Competent Authority having declined the sanction to prosecute these accused, reviewing such an order on the basis of the same materials only because the investigating agency has its own view of the materials cannot be a reason to review the sanction earlier refused. No circumstances exists for sustaining the order reviewed even within the limited permissible parameters laid down by the Supreme Court in the exercise of power of review or reconsideration of the sanction earlier refused.

13. It is not the case of the applicant-CBI that the authority which had refused the sanction was not competent or did not have jurisdiction to refuse such a sanction. The order of refusal of sanction was not challenged before the competent forum. Only because of the insistence of CBI, the Competent Authority reconsidered its earlier refusal and granted the sanction. This is not a case where fresh materials were placed before the sanctioning authority. I am satisfied that there were no fresh materials produced before the Competent Authority for reconsideration.

14. The contention of Mr. Venegavkar that the Competent Authority can reconsider the matter in the light of the provisions of the C.V.C. Act and the office memorandum referred to hereinbefore is completely devoid of merit as these cannot be said to be a fresh materials. The enactment and the office memorandum lay down the procedure for the exercise of powers and functions by the CVC. So far as the decision relied upon by Mr. Venegavkar in **Central Bureau of Investigation (CBI) Etc.** (supra) is concerned, the Hon'ble Supreme Court in paragraph 13 observed thus :-

> "13. Further the issue relating to validity of the sanction for prosecution could have been considered only during

> trial since essentially the conclusion reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction being defective. In that regard, the decision in the case of Dinesh Kumar vs. Chairman, Airport Authority of India, (2012) 1 SCC 532 relied upon by the learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial. In the instant facts, admittedly there is a sanction though the accused seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial."

15. The decision in **Central Bureau of Investigation (CBI) Etc.** (supra) is distinguishable on the facts as present is not a case regarding invalidity on account of non-application of mind or the accused are picking holes the manner in which the sanction is granted or claim that the same is defective which obviously are matters to be considered in the trial. The present is a case where thrice the sanction was refused by the Competent Authority and for the fourth time on the same materials, on the insistence of CBI the earlier refusal of sanction is sought to be reviewed in the absence of any fresh materials.

16. What are parameters which govern the exercise of jurisdiction by the Court in the matter of discharge is authoritatively laid down by the Supreme Court in **State By Karnataka Lokayukta Police Station, Bengaluru** (supra). In paragraph 23 Their Lordships held thus :-

> "23. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 of the Cr.P.C. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In the State of Tamil Nadu v N. Suresh Rajan, adverting to the earlier decisions on the subject; this Court held :
>
> > "29…At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

17. The Supreme Court has thus settled the proposition as regards the parameters which governs the exercise of an application for discharge. The present is not a case where the accused is calling upon the trial Court to go deep into the matter and hold the materials would not warrant a conviction. The consideration by the trial Court is not on the merits of the matter but on the ground that the sanction once refused cannot be reviewed in the manner as done by the Competent Authority. The decision in **State By Karnataka Lokayukta Police Station, Bengaluru** (supra) is therefore distinguishable on the facts.

18. Again in **State of Tamil Nadu By Inspector of Police Vigilance and Anti-Corruption** (supra) in paragraphs 29 and 30 the Supreme Court held that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. Paragraphs 29 and 30 read thus :-

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

30. Reference in this connection can be made to a recent decision of this Court in Sheoraj Singh Ahlawat v. State of U.P., in which, after analysing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi) : (Sheoraj Singh Ahlawat case, SCC p. 482, para 15)

> "15. '11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for

> convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify framing of charge against the accused in respect of the commission of that offence.' (Onkar Nath case, SCC p. 565, para 11)"

19. In my view, the decision in **State of Tamil Nadu By Inspector of Police Vigilance and Anti-Corruption** (supra) is distinguishable having regard to the nature of issue involved in the present case.

20. Though learned counsel for the respondent submitted that the decision of this Court in respect of co-accused - **Sudarshan Kumar Abrol and Anr. vs. Union of India & Anr.**[5] would cover the facts of the present case, I am not inclined to completely rely upon such decision as the same was rendered in the fact situation where the concerned officials had since superannuated from the service of the bank and hence there was no requirement of sanction for prosecution of the retired officers. Thus, the decision in **Sudarshan Kumar Abrol** (supra) though upheld by the Hon'ble Supreme Court was rendered in a slightly different fact situation and hence I am not placing reliance on such

5 Criminal Revision Application No.619 of 2018

decision.

21. For all the aforesaid reasons, I do not find any error warranting interference in the order passed by the trial Court discharging the respondent-R. Bhuvaneswari.

22. Criminal Revision Application No.297 of 2023 is therefore rejected. Criminal Application is also disposed of.

WRIT PETITION NO.4812 OF 2022 WITH WRIT PETITION NO.4811 OF 2022

23. The Petitioners are similarly situated as the co-accused in the aforesaid Criminal Revision Application. While rejecting the discharge applications of the petitioners the trial Court proceeded on the footing that there were fresh materials and therefore the Competent Authority was empowered to review the earlier decision refusing the sanction. As discussed in the aforesaid decision in Criminal Revision Application No.297 of 2023 filed by the CBI, there were no fresh materials placed for consideration before the Competent Authority when the sanction was granted on the fourth occasion having earlier refused sanction on as many as three occasions. For the same reasons as in the Criminal

Revision Application No.297 of 2023 filed by the CBI, the present Writ Petitions must succeed.

24. Writ Petitions are accordingly allowed in terms of prayer clause (a) therein.

25. Writ Petitions are disposed of.

(M. S. KARNIK, J.)