



CRM-M-50874-2021 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50874-2021(O&M)

Reserved on : 10.09.2024

Pronounced on : 30.09.2024

Ankur Bansal

...Petitioner

Versus

Central Bureau of Investigation

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms. Isha Goyal, Advocate
for the petitioner.Mr. Deepak Sabherwal, Advocate
for the respondent-CBI.Mr. Manish Bansal, Advocate (*Amicus Curiae*).

KULDEEP TIWARI, J.

1. Through the instant petition, the petitioner has approached this Court, invoking the inherent powers of Section 482 of Cr.P.C., and has sought the relief of quashing, as extracted hereunder :-

- i) FIR No.RCCHJ2019A0010, dated 12.08.2019, under Section 120-B of the IPC, 1860, read with Sections 7, 8 and 12 of Prevention of Corruption Act, 1988 (as amended in 2018), registered at Police Station CBI/ACB/Chandigarh (Annexure P-1), and all consequential proceedings arising therefrom;*
- ii) Challan/Final report dated 31.12.2019, under Section 173 of Cr.P.C., against the petitioner and other co-accused (Annexure P-2);*
- iii) Zimini orders dated 09.01.2020, 27.02.2020 and 21.03.2020 (Annexures P-3 to P-5), passed by the learned trial Court concerned;*



- iv) Sanction for prosecution granted by the competent authority, vide order dated 04.03.2020 (Annexure P-8);*
- v) Order dated 19.10.2021 (Annexure P-11), passed by the learned trial Court concerned, whereby, it dismissed the application seeking discharge and;*
- vi) Order of framing charges, dated 13.03.2023, against the petitioner, passed by the learned trial Court concerned.*

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

2. On asking for the relief (supra), learned counsel for the petitioner submits that :-

- i) the instant FIR was registered in violation of provisions of Section 17-A of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). While elaborating further, reference is made to the provisions of Section 17-A of the Act, (as amended in 2018), it is submitted that the amendment was carried out, prior to the registration of the FIR (supra), therefore, absence of mandatory approval of Section 17-A of the Act, has rendered the FIR (supra), void and illegal, and therefore, required to be quashed. The act of the petitioner is relatable to the action taken by a public servant in discharge of official functions.*
- ii) While referring to the zimini orders dated 09.01.2020, 27.02.2020 and 21.03.2020, she submits that cognizance of offence has been taken by the learned trial Court concerned, without any valid sanction and the same renders the proceedings to be null and void. She further submits that in the instant case, the challan was filed on dated 31.12.2019, without there being a valid sanction, granted by the competent authority, thereby, permitting the learned trial Court concerned, to take any cognizance. However, the learned trial Court, concerned vide impugned orders (supra), has taken the cognizance, which is a clear cut violation of the provisions of the Act of 1988.*



iii) The competent authority concerned, while granting the sanction for prosecution, has passed the order dated 04.03.2020 (Annexure P-8), without application of mind and without considering the material available on record, rather the order (supra), has been passed mechanically. She further argued that the legality of an order granting sanction to prosecution depends upon the proper application of mind by the sanctioning authority, to the facts of the case, and also the material and evidence collected from the Investigating Officer. However, in the instant case, the sanction order itself, does not pass the test of legality, and the cognizance thereof, taken on such illegal order, by the learned trial Court concerned, is also bad in the eyes of law.

FACTS OF THE CASE

3. Before this Court embark upon the submissions made by the learned counsel for the petitioner, it is apt to first deal with the facts of the instant case. An enquiry was conducted by the petitioner, being a Drugs Inspector with the Central Drugs Standard Organization (CDSO), regarding failure of sample of drugs, manufactured by one, M/s Kwaliti Pharmaceuticals Company, and the sample of the said company, failed in the test of quality. The petitioner was in regular and constant touch with the co-accused, seeking undue favour while assuring them that he would ensure the closure of the complaint in exchange of bribe, i.e. Rs.1,00,000/-.

4. As per the allegations, the petitioner was in touch with the co-accused since July, 2019, to settle the matter. Therefore, the Central Bureau of Investigation (CBI), the prosecution agency, legally tapped the mobile phone calls of the present petitioner, and the other co-accused from dated 16.07.2019 to 13.08.2019, under the provisions of the Indian Telegraph



exchanged on dated 13.08.2019, and a trap was subsequently set up on that day, and the petitioner was caught red handed, leading to his immediate arrest.

5. After conclusion of the enquiry, the final report was prepared by the prosecution on dated 31.12.2019, and the same was submitted before the learned trial Court concerned, on dated 09.01.2020. The sanction order under Section 19 of the Act, by the Directorate General of Health Services, Central Drugs Standard Control Organization, Govt. of India, was accorded, on dated 04.03.2020 (Annexure P-8).

PROCEEDINGS BEFORE THIS COURT

6. A Co-ordinate Bench of this Court, vide order dated 09.12.2021, had issued the notice of motion, in the instant petition, and vide order dated 10.01.2022, the Co-ordinate Bench directed the learned trial Court concerned, to adjourn the case beyond the date fixed by this Court, and vide order dated 03.02.2023, the Co-ordinate Bench clarified that the pendency of the instant petition before this Court, would not be construed as any stay of the proceedings and would not give any ground to the petitioner, seeking adjournment before the learned trial Court, concerned. Furthermore, vide order dated 08.02.2023, the Co-ordinate Bench appointed Mr. Manish Bansal, Advocate, as an *Amicus Curiae*, to assist the Court. The matter was heard by this Court, on dated 10.09.2024.

7. The learned *Amicus Curiae* has opened his arguments, and submits that in the present case, a trap was set following the interception of the calls, which revealed the petitioner's involvement in accepting the bribe, and the petitioner was caught red handed with the bribe money, therefore, the provisions of Section 17-A of the Act, which require prior approval of the competent authority, is not applicable in the instant case, for that learned



Amicus has brought the attention of this Court, towards the proviso attached to Clause (c) of Section 17-A of the Act, and he specifically submits that no such approval is necessary for the cases, involving arrest of a person, on the spot, on the charges of accepting any undue advantage for himself, or any other person. He further placed reliance upon the judgment of Hon'ble Supreme Court, passed in '***Vipin Sahni and another vs. CBI***' (2024) 4 SCR 308.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDET-CBI

8. Learned counsel for the respondent-CBI, has opposed the grant of relief, as asked for, by learned counsel for the petitioner. He has also adopted the submissions made by the learned *Amicus Curiae*. Further, in addition to the submissions made by the learned *Amicus*, while referring to the judgments in '***H.H.B. Gill vs. The King***' AIR 1948 PC 128, '***Parkash Singh Badal vs. State of Punjab***' AIR 2007 SC 1274, '***Kavindra Kyawat vs. State of M.P.***' (Writ Petition No.27734 of 2019), '***Devender Kumar vs. Central Bureau of Investigation***' 2019 (1) Crimes 726, '***Manoj Prasad vs. CBI***' (W.P. (Crl.) 3292 of 2018) and '***Rajendra Prasad @ Dr. Rajender Prasad vs. The State of Bihar and others***' (Criminal Writ Jurisdiction Case No.240 of 2022), he submits that any criminal act, which is performed under the garb of authority, but which in reality, is for the public servants own pleasure or benefit, such misdemeanor on his part is not to be treated as an act in discharge of his official duties.

ANALYSIS

9. It is not in dispute that in the present case, a trap was set for interception of the calls, revealing the petitioner's involvement in accepting a bribe. The petitioner was caught red handed with the bribe money. Therefore,



in view of the proviso, attached with the Section 17-A of the Act, the prior approval of the competent authority is not required. For ready reference, Section 17-A of the Act, is extracted hereunder :-

“17-A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties: No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval -

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.”



10. The proviso to Section 17-A of the Act, clearly stipulates that no prior approval is required, in case, where a person is caught from the spot, accepting or attempting to accept, any undue advantage, either for himself, or for others. This Court lend vigour to the above observations from the judgment rendered by the Hon'ble Supreme Court in '**Central Bureau of Investigation vs. Santosh Karnani and another**', Law Finder Doc ID **2195939**, wherein, the Hon'ble Supreme Court observed that prior approval or sanction to the investigating officer, in a trap case, would defeat the very purpose of the trap and investigation, which is not the underlying intention of the legislature. The relevant extract of the said judgment, reads as under :-

“33. The contention that prior approval of investigation, as mandated under Section 17A of Prevention of Corruption Act, has not been obtained and thus, the proceedings initiated against Respondent No. 1 stand vitiated, has no legal or factual basis. Section 17A merely contemplates that police officers shall not conduct any enquiry, inquiry or investigation into any offence alleged to have been committed by a public servant where the alleged offence is relatable to any recommendation made or decision taken in discharge of official functions or duties, without the previous approval of the competent authority. The first proviso to the section states that such approval is not necessary in cases involving arrest of the person on the spot on the charges of accepting undue advantage.

34. As may be seen, the first proviso to Section 17A refers to cases wherein a public servant is charged with acceptance of an undue advantage or attempt thereof. A prior approval or sanction to investigate such an officer in a trap case is likely to defeat the very purpose of trap and the investigation, which is not the underlying intention of the legislature. The investigation against Respondent No.1, being an accused of demanding a bribe, did not



require any previous approval of the Central Government. That apart, the accusation against Respondent No.1 does not revolve around any recommendations made or decisions taken by him in his quasi-judicial or administrative capacity.”

11. Further, the Kerala High Court in ***‘Jayaprakash and others vs. The State of Kerala and others’*** ***Law Finder Doc ID 1921254***, while interpreting the scope of Section 17-A of the Act, has held that the sanction of *ibid* section does not require, to a case involving arrest of a person on the spot, on the charge of accepting, or attempting to accept any undue advantage for himself, or for any other person. It was further held by the Kerala High Court, that the bar contained under Section 17-A of the Act, does not apply to an investigation conducted into all or any of the offence under the Act, allegedly committed by a public servant. The relevant paragraphs of the said judgment are extracted hereinafter :-

“18. A close scrutiny of the provisions contained in Section 17A of the Act would reveal the following: The bar under Section 17A of the Act operates against a police officer (2) It prohibits a police officer from conducting any enquiry or inquiry or investigation, into any offence alleged to have been committed by a public servant under the Act without the previous approval of the prescribed authority (3) The bar under the provision operates or applies only when the offence allegedly committed by a public servant under the Act relates to any recommendation made or decision taken by such public servant in discharge of his official functions or duties (4) The authority competent to grant previous approval for enquiry or inquiry or investigation is the Central Government in the case of a person employed in connection with the affairs of the Union (5) The authority



competent to grant previous approval for enquiry or inquiry or investigation is the State Government in the case of a person employed in connection with the affairs of a State (6) The authority competent to grant previous approval for enquiry or inquiry or investigation in the case of any other person is the authority competent to remove the public servant from his office (7) The provision also applies in case of a retired public servant. The previous approval envisaged under Section 17A of the Act is necessary even if the public servant has ceased to hold his office (8) Section 17A of the Act does not apply to cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person (9) The time which shall be taken by the authority concerned to convey its decision on granting of approval is three months (10) The authority may, for reasons to be recorded in writing, extend the above time by a further period of one month.

19. The object of Section 17A of the Act is to protect public servants from malicious, vexatious and baseless prosecution. It cannot be considered as a protective shield for corrupt public servants. A public servant cannot be left to be under constant apprehension that bona fide decisions taken by him would be open to enquiry, inquiry or investigation on the basis of frivolous and false complaints made against him. If every decision taken by a public servant is viewed with suspicion, the public administration will come to a grinding halt as the persons responsible for taking decisions would lose their enthusiasm. Section 17A of the Act intends to avoid such a situation.

20. The requirement of seeking previous approval presupposes that the offence under the Act allegedly committed by the public servant is relatable to any recommendation made or decision taken by him in discharge of his official functions or duties. The bar under



Section 17A of the Act does not apply to investigation conducted into all or every offence under the Act allegedly committed by a public servant. The bar under the provision operates or applies only when the offence allegedly committed by a public servant under the Act relates to any recommendation made or decision taken by such public servant in discharge of his official functions or duties.”

12. Similar view was taken by the Himachal Pradesh High Court in **‘Abhishek Sharma vs. State of H.P.’ Law Finder Doc ID 2222463**, wherein, it was observed that a prior approval, as envisaged under Section 17-A of the Act, is required only when the alleged offence is relatable to a decision taken, or recommendation made by a public servant, in discharge of its official functions or duties, with a rider that no such approval shall be necessary for a case involving arrest of a person, on the spot, on the charges of accepting, or attempting to accept the bribe. The relevant portion of the judgment is reproduced hereunder:-

*“Section 17A of the Act was inserted by way of amendment of the Act in the year 2018. The purpose behind enactment of Section 17A of the Act is to give protection to public servants from the threat of malicious inquiry/investigation for taking honest decisions. The aim of the provision is to ensure that honest public servants are not subjected to frivolous complaints and to make available a screening mechanism for them. [Re: **Venugopal V Vs. State of Kerala decided on 08.09.2021 (CRL. MC No. 3765 of 2021)**].*

In (2012) 3 SCC 64 Subramanian Swamy Vs. Dr. Manmohan Singh and another, it was held that procedural provisions relating to sanction must be construed in such a manner as to advance the causes of.



honesty, justice and good governance as opposed to escalation of corruption.

*In **Shankara Bhat Vs. State of Kerala (CRL.MC No. 7542 of 2018)**, decided on 27.08.2021, the question that arose for consideration before the High Court was whether previous approval from the competent authority needed to be obtained for every enquiry, inquiry or investigation, into every offence committed by a public servant. Whether the provision was an omnibus, all pervasive pre-requisite for every enquiry or inquiry or investigation into every act done by the public servant in discharge of his official function. The Court held as under :-*

“19. Section 17A PC Act has to be analysed in the above background. The most crucial part of section 17A provides that previous approval is required in relation to enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act "where the alleged offence is relatable to any recommendation made or decision taken by such public servant". It seems that the above part of the section is the most crucial part of the section, since it imposes a rider on the otherwise absolute power under section 17A that enquiry, inquiry or investigation into every act needed prior approval. It is clear that it is not that every offence alleged to have been committed by the public servant under the Act that needed prior approval. Prior approval under section 17A was required only where the alleged offence was relatable to "any recommendation made or decision taken by the public servant". This seems to be the heart and soul of the above section. It is clear that the Parliament has consciously used the above words. If the intention of the Parliament was to impose a pre condition that every enquiry, inquiry or investigation into every allegation of offence against a public servant required prior sanction, the words "where the alleged offence is relatable to any recommendation



made or decision taken by the public servant" ought not have been there. If the above words are omitted, it would have meant that no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act in discharge of his official function or duties without the previous approval of the competent authority. In other words, if the intention of the statute was to cover every enquiry, investigation or inquiry, the words "where alleged offence is relatable to any recommendation made or decision taken by the public servant" were unnecessary, since even without those words it would have conveyed the intention. Hence, it is clear that the intention of the Parliament was not to insist for previous approval in relation to enquiry, inquiry or investigation only in relation to every offence committed by the public servant.

20-21. xxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxx

22. The object of the Prevention of Corruption Act is to protect honest and upright public officers and to ensure that they are unnecessarily not dragged into litigation. It is also intended to ensure that the officers are insulated and protected against unnecessary litigation. Such a protection enable the officers to take prompt and bold decisions on files and the administrative machinery will move forward. Otherwise the officers would be reluctant to make any official recommendation or to take any decision on files, apprehending false accusation of corruption. In this context, it has to be noted that scope of section 17A is specifically confined to "any recommendation made or decision taken by public servant" which alone falls within the protection under section 17A. Definitely, the case of offences like misappropriation of funds, fraud, falsification of accounts, criminal breach of trust, conspiracy , etc. cannot be covered by the protection under section 17A. Definitely, they do not involve any decision or



recommendation at all. Such acts cannot be considered as one done in discharge of his official functions and duties as contemplated under section 17A. Hence, it cannot, by any stretch of imagination, be held that investigation into any of the offences as mentioned above also needs prior approval, under section 17A. Such an interpretation alone can be in consonance with the section as interpreted by the various decisions. In other words, the scope of section 17A is only confined to investigation, inquiry or enquiry into any offence which is relatable to any decision taken or recommendation made by the authority. This purposive interpretation seems to be in consonance with the scope of section 17A.

*23. An identical view was taken by a single judge of Delhi High Court in **Devendra Kumar v. CBI & others (W.P.(Criminal) No. 3247/2018** and connected matters). In that, the scope of section 17A PC Act was under consideration. The complainant alleged that he was being harassed by the investigating officer and that the investigation officer demanded huge amount from him for not charging a case against him. On the question whether the prosecution of the police officer required sanction, it was held by the Delhi High Court that the alleged promise to the complainant to ultimately give him relief cannot be said to be one done in discharge of the official function or duties of the public servant. It was held that the bar to enquiry or inquiry or investigation under Section 17A of the PC Act is apropos such alleged offence as may be relatable to any recommendation made or decision taken by a public servant in discharge of his official function or duties. In the present case, there was no recommendation or decision on record by public servant in discharge of his official functions. It was only such acts done in discharge of the official functions that would have become the subject matter for seeking approval of the employer. It was held*



that a public servant cannot possibly be left to be under constant apprehension that bona fide decisions taken by him would be open to enquiry, inquiry or investigation on the complaint of a stranger. Section 17A, as it reads, and the legislative intent can only be to protect a public servant in the bona fide discharge of official functions or duties. However, when the act of a public servant is ex facie criminal or constitutes an offence, prior approval of the Government would not be necessary, it was held.”

A reading of Section 17A makes it evident that prior approval for conducting any enquiry, inquiry or investigation against public servant is required only when the offence alleged is relatable to a decision taken or recommendation made by the public servant in discharge of his official functions or duties with the rider that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person. Section 17A of the Act has to be interpreted in a meaningful manner that bolsters the fight against corruption and at the same time protects honest officials.”

13. The Hon’ble Supreme Court in **‘Parkash Singh Badal vs. State of Punjab’ AIR 2007 SC 1274**, has held as under :-

“The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant’s own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity.”



14. Upon touchstone of the above proposition of law, and in view of the facts of the present case, this Court can safely conclude that pre sanction of Section 17-A of the Act, is not required.

15. The second issue, as raised by the learned counsel for the petitioner is that the sanction, as required under Section 19 of the Act, was not a valid sanction. Even, the Magistrate concerned, has taken the cognizance of the offence, prior to the sanction accorded by the competent authority.

16. This Court has considered the submissions made by the learned counsel for the petitioner, and found no merit.

17. In the instant case, the CBI, after conducting investigation, presented the challan, on dated 31.12.2019. The sanction was obtained by the CBI, on dated 04.03.2020. Therefore, there is no illegality, as valid sanction is available on the record, in judicial file of the learned trial Court, concerned. This Court, has also examined the sanction accorded by the competent authority and found no illegality therein. The sanction was granted after considering the material supplied by the prosecution agency, and there is no illegality in the same, which calls for any interference by this Court. The delay, if any, occurred in non-granting of sanction, would not give any right to the petitioner, to seek quashing of a criminal proceedings against him.

18. This Court find strength by the judgment passed by the Hon'ble Supreme Court in '***Vijay Rajmohan vs. State represented by the Inspector of Police, CBI, ACB, Chennai, Tamil Nadu***' 2022 LiveLaw (SC) 832. The relevant paragraphs are extracted hereinafter :-

"37. In conclusion, we hold that upon expiry of the three months and the additional one- month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the concerned writ court.



They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears. This is especially crucial if the nongrant of sanction is withheld without reason, resulting in the stifling of a genuine case of corruption. Simultaneously, the CVC shall enquire into the matter in the exercise of its powers under Section 8(1)(e) and (f) and take such corrective action as it is empowered under the CVC Act.

38. The second issue is answered by holding that the period of three months, extended by one more month for legal consultation, is mandatory. The consequence of non-compliance with this mandatory requirement shall not be quashing of the criminal proceeding for that very reason. The competent authority shall be Accountable for the delay and be subject to judicial review and administrative action by the CVC under Section 8(1)(f) of the CVC Act.”

DECISION

19. In view of the above discussion, this Court does not find any merit in the instant case. Accordingly, the instant petition is **dismissed**.
20. Pending applications, if any, stands disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

Pronounced on : September 30th, 2024
Manpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No