IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.8357 of 2025

State represented by
The Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
No.26, Haddows Road,
Chennai. ... Petitioner

Vs.

1.Shri S.Durga Prasad

2.The Regional, Provident Fund Commissioner,
Employees Provident Fund Organization Royapettah,
Chennai-600 014. ... Respondents

[R2 Suo-motu impleaded as per the order of this Court dated 04.07.2025 in Crl.O.P.No.8357 of 2025.]

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, to allow this Criminal Original Petition and set aside the impugned order dated 20.07.2022 passed by the XIV Additional Special Court for CBI Cases, Chennai in Crl.M.P.no.2453 of 2022 in C.C.No.6 of 2018.

For Petitioner	:	Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases
For R1	:	Mr.L.Infant Dinesh
For R2	:	Mr.M.Thirunavukarasu, Standing Counsel

ORDER

The petitioner/Central Bureau of Investigation filed this Criminal Original Petition challenging the impugned order dated 20.07.2022 in Crl.M.P.No.2453 of 2022 in C.C.No.6 of 2018 passed by the learned XIV Additional Special Judge for CBI Cases, Chennai.

2.Brief facts of the case is that the 1st respondent/A1 in C.C.No.6 of 2018 filed a petition in Crl.M.P.No.2453 of 2022 in C.C.No.6 of 2018 to direct the EPFO/New Delhi to produce the note order file pertaining to sanction order (Ex.P9). In this case, charge sheet filed by the petitioner against the 1st respondent and his family members arraying them as A1 to A6. The 1st respondent, Regional Provident Fund Commissioner Grade-I, Zonal ACC Office, Bangalore, a public servant during the check period 01.01.2010 to 17.01.2016 acquired disproportionate assets intentionally aided and abetted by his wife, son, father-in-law, mother-in-law and sister to the tune of Rs.4,28,50,092/-. During trial, witnesses examined and documents produced. PW5 is the Central Provident Fund Commissioner, EPFO, New Delhi who authenticated the sanction order (Ex.P9) issued by the Chairman, Central Board of Trustees (CBT), Employees Provident Fund. PW5 examined on 15.03.2022 before the trial Court, at that time, he marked Employees' Provident Fund (Officers and Employees' Conditions of Service) Regulations, 2008 as Ex.P6 confirming that the appointing authority for the 1st respondent is the CBT. The delegation of authority to authenticate the orders of Chairman, CBT, dated 27.03.1996 marked as Ex.P7 and as per authentication, PW5 is the authorized officer. The Employees' Provident Fund Staff (Classification, Control & Appeal) Rules, 1971 marked as Ex.P8. The sanction for prosecution order dated 23.01.2018 marked as Ex.P9. In the cross examination, PW5 confirmed sanction order was issued by the Chairman, CBT and he signed in each page of the sanction order (Ex.P9) following the circular Ex.P7. He further deposed not submitting any note order file to the Court. But confirmed based on the order of the CBT, he communicated the sanction order (Ex.P9). Further deposed that with the help of the office staff, prepared the sanction order (Ex.P9), based on the order of the Chairman, CBT. He further qualifies that the Chairman applied his mind in preparing the sanction order (Ex.P9). Further, with regard to one property in Statement-B and corresponding income in Statement-C, discrepancies questioned. Further, PW5 specifically denied the suggestion that the sanction order was issued without verifying the statements and also denied the suggestion of non-application of mind. At this stage, the 1st respondent filed a petition in Crl.M.P.No.2453 of 2022 in C.C.No.6 of 2018 to summon the note order file allowed by the trial Court by impugned order, dated 20.07.2022. Against which, the petitioner filed the present petition.

3.The learned Senior Counsel/Special Public Prosecutor for CBI Cases appearing for the petitioner submitted that RC.No.06(A)/2016/CBI/ACB/Chennai was registered on 25.02.2016 against the 1st respondent and his family members for offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 (Disproportionate Assets Case). He further submitted that the 1st respondent, a public servant, that during the check period 01.01.2010 to 17.01.2016, acquired assets in his name and in the name of his family members to the tune of Rs.4,28,50,092/-. After completion of investigation, on receipt of sanction order (Ex.P9), charge sheet filed before the trial Court against six persons *viz.,* the 1st respondent/A1, Mathumathi/A2 wife of A1, Shyam Prasad son of A1, M.Malaikani/A4, M.Malika/A5 and Annal/A6. All the accused filed discharge petition before the trial Court in Crl.M.P.No.3520 of 2018 in C.C.No.6 of 2018 and the trial Court by order dated 28.11.2018 allowed the discharge petition of A6 and dismissed the petition against others. Challenging the same, A2 filed revision before this Court in Crl.R.C.No.239 of 2019, finally A2 discharged form the case. Now, the trial is proceeding against A1, A3 to A5. In this case, the Central Provident Fund Commissioner examined as PW5, through him, the sanction order Ex.P9 marked. Thereafter, a petition filed seeking production of note order file pertaining to Ex.P9. The trial Court reproduced the averments and objections raised by the prosecution in the counter, but not considered the same in proper perspective and allowed the prayer of the 1st respondent.

4.The learned Senior Counsel further submitted that as per Ex.P8, the Chairman, CBT is the competent authority to accord sanction for prosecution against the 1st respondent and as per Ex.P7, the Officer of the Additional Provident Fund Commissioner or above can authenticate the order of CBT. PW5 deposed that the competent authority *viz.,* Chairman, CBT perused the entire documents sent by the petitioner, applied its mind and issued order for sanction of prosecution of the 1st respondent. Hence, it is clear from the evidence of PW5 that the Chairman, CBT is the competent authority who applied his mind, accorded sanction through note file, forwarded to PW5 who authenticated the sanction order Ex.P9. The 1st respondent not questioned competency of sanctioning authority or the authenticator/PW5 when PW5 deposed. He simply stated note order file not produced. The note order file is an internal communication of Provident Fund authorities. The 1st respondent not shown any error or omission or questioned the competency of the authority resulting in failure of justice, hence, summoning of note order file not required. Further, the 1st respondent while cross examining the Investigating Officer/PW42 put a question referring to LD114, a letter in which there is a reference seeking return of sanction order dated 21.12.2017. This has been now agitated before this Court. In view of this reference, the note order file gains significance and note file ought to be summoned is the contention of the 1st respondent. The examination of PW42 was on 15.05.2024 much after the impugned order dated 20.07.2022. The Investigating Officer/PW42 in his evidence confirms there is only one sanction order in this case *i.e.,* Ex.P9 and denied the suggestion that there is another sanction order dated 21.12.2017 which is a document considered by the Investigating Officer/PW42 while concluding the charge sheet.

5.The learned Senior Counsel referring to LD114 submitted that LD114 is a letter dated 23.01.2018 wherein it is mentioned that the prosecution sanction order dated 23.01.2018 conveying the sanction of the Chairman, CBT under Section 19(1)(c) of Prevention of Corruption Act, 1988 against the 1st respondent is forwarded in original after making some corrections as pointed out by the CBI by letter dated 21.12.2017. It is further seen from the letter that the prosecution not requested for any change, reconsideration or review of the sanction order which was earlier communicated. Since there was small corrections to be made, which was pointed out. The Chairman, CBT independently applied his mind and accorded sanction and there is no paradoxical shift and no significant change of stand. Now the 1st respondent blowing out of proportion referring to LD114, is not proper.

6.He further submitted that PW5 was not confronted with LD114 and no error or omission or irregularity resulting in failure of justice shown by the 1st respondent. The trial Court in its impugned order observed that note order file is not under CBI and it may be available with EPFO Department and note order file passed by the competent authority is necessary, is without any justification, it further observed that no prejudice would be caused to CBI by producing the note order file, is not proper. Now, the case is of the year 2018 and it is in the final stage, investigating officer/PW42 examined as early as on 15.05.2024, the 1st respondent by citing the impugned order is protracting the trial further and delaying and denying the justice in this case. Hence, he prays for setting aside the impugned order.

7.The learned counsel for the 1st respondent filed counter and submitted that PW5 not disclosed the fact that there were two prosecution orders, first prosecution order dated 21.12.2017 and second prosecution order dated 23.01.2018. In this case, the prosecution produced only one sanction order. PW5 not disclosed the fact that he signed two prosecution orders in his evidence. It is also submitted that it is not known whether the approval of Chairman, CBT was obtained and authenticated by PW5 while issuing both sanction orders. PW5 deposed that the file was submitted to the Chairman, CBT and thereafter, PW5 and his subordinates helped in preparing sanction order (Ex.P9) and he signed the same. In this case, the first sanction order dated 21.12.2017 was sent to the CBI and only after the directions of the Superintendent of CBI, Ex.P9 sanction order dated 23.01.2018 was forwarded to CBI and there is a request by EPFO to return back the previous sanction order dated 21.12.2017, which would clearly confirm that there was two sanction orders in this case. Further, the 1st respondent confirmed the same by confronting LD114 to the Investigating Office/PW42 and he was specifically cross examined in this aspect on 30.05.2024.

8.He further submitted that the sanctioning authority not exercised the power of Ministry of Labour, Government of India. The Employees Provident Fund Organization is not a direct Government department. The Labour Minister is an ex-officio Chairman of CBT and he accorded sanction to prosecute the 1st respondent. It is obligatory on the part of the Chairman, CBT to sign the prosecution sanction order by himself and he cannot sub delegate the power to another officer as in the case of President of India. For this point, the learned counsel for the 1st respondent relied on the decision in ***K.Mony v. Inspector of Police, Kochin*** reported in ***2016 KHC 106***, the High

Court of Kerala held that the prosecution sanction order on behalf of the President of India can be authenticated in other cases, the sanctioning authority himself has to sign the sanction order. He referred to the decision in ***Manish Trivedi v. State of Rajasthan*** reported in ***AIR 2014 SC 648*** and submitted that sanction to prosecute cannot be delegated by the competent authority and further, the sanction cannot be granted on the basis of the report given by some other officer or authority. In the instant case, it is clear that the Chairman, CBT has further delegated his powers to the Central Provident Fund Commissioner/PW5 to prepare and sign the prosecution sanction order.

9.He further submitted that in this case, A1, A3 to A5 not filed any discharge petition and A2 & A6 discharged. PW5 admitted that the sanction order signed by him after due application of mind to the facts. Hence, there cannot be two independent application of mind. In this case, PW5 acted as a sanctioning authority not as an authenticator. The trial Court considering all these facts, thereafter, directed to produce the note order file by order, dated 20.07.2022 in Crl.M.P.No.2453 of 2022. After lapse of more than 1 ½ years, trial Court reminded the prosecution to produce the note order file.

The prosecution preferred the above petition belatedly to deny the 1st respondent's right to show prejudice caused to him and failure of justice. He further submitted that the respondent filed Crl.M.P.No.4464 of 2024 under Section 91 Cr.P.C seeking original letter of LD114 filed by the petitioner along with final report. This petition filed on 03.06.2024, counter filed by the CBI on 07.08.2024 submitting LD114 is a letter dated 23.01.2018 an official communication between Regional Provident Fund Commissioner and Employees Provident Fund Organization, New Delhi and it is only an internal communication. On 18.11.2024, memo filed by the CBI producing the original letter dated 23.01.2018, recording memo and finding that the original document produced, the petition closed.

10.He further submitted that sanction for prosecution under Section 19 of Prevention of Corruption Act is not an empty formality, the sanctioning authority is required to apply his mind on the entire materials and evidence placed before him, on examination and scrutiny, to reach a conclusion fairly, objectively and consistent with public interest whether or not sanction to be granted. He further submitted that even before the trial Court LD114 produced to prove the fact that the competent authority originally issued a sanction order dated 21.12.2017 and again another sanction order dated 23.01.2018 issued on the request of CBI. Hence, it is important to know the reason recorded in the note order file by the competent authority for issuance of another sanction order dated 23.01.2018. In view of the above, the impugned order not to be interfered with. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in ***Mohadeo and others v. Sovan Devi and others*** reported in ***(2023) 10 SCC 807*** wherein it had held that the power of sanctioning authority being not of continuing character could have been exercised only once on the same materials.

11.This Court by order dated 18.07.2025 directed the note order file from the EPFO to be produced before this Court and thereafter, the Court can decide whether the copies should be furnished to the 1st respondent or not. This Court by order dated 04.07.2025 impleaded the Regional, Provident Fund Commissioner as 2nd respondent.

12.The learned counsel for the 2nd respondent produced the sanction order along with copy of FIR No.0274 dated 14.12.2019 registered by R.K.Puruam Police, South West Delhi to show that, on 06.12.2019, a fire had broken out at office building of Provident Fund Commissioner, New Delhi. He further submitted that during fire, several files have been burnt got damaged and the files which sought to be produced, is not available at the Vigilance Head Office. He further submitted that two cases registered against the 1st respondent one is RC 02(A)/2016 and present case in RC 06(A)/2016. Some old files relating to case in RC 02(A)/2016 could be traced and in respect of RC 06(A)/2016 only photocopy of the sanction order dated 23.01.2018 could be traced and physical copy relating to RC 06(A)/2016 is not traceable.

13.This Court considered the rival submissions and perused the materials available on record.

14.In this case, the 1st respondent is a public servant, Regional Provident Fund Commissioner Grade-I, Zonal ACC Office, Bangalore. The sanctioning order (Ex.P9) is dated 23.01.2018 which contains 16 sheets giving details about the check period; disproportionate assets calculated by the prosecution; the 1st respondent acquiring properties in his name and in the name of his family members, the details given in Statement-A, Statement-B, Statement-C and Statement-D and finally computed the disproportionate assets referring to statements and arrived that the 1st respondent acquired the disproportionate assets in his name and his family members to the tune of Rs.4,28,50,092/-. During 2018, PW5 was the Central Provident Fund Commissioner, EPFO, New Delhi, he was examined on 15.03.2022 and cross examined on the same day, through him, Ex.P6 Employees' Provident Fund (Officers and Employees' Conditions of Service) Regulations, 2008; Ex.P7 the delegation of authority to authenticate the order of Chairman, CBT, dated 27.03.1996; Ex.P8 Employees' Provident Fund Staff (Classification, Control & Appeal) Rules, 1971 and Ex.P9 Sanctioning Order dated 23.01.2018 marked. PW5 singed the sanction order (Ex.P9) as Authenticator and he was questioned with regard to discrepancy of one property and also his competence in signing the sanction order (Ex.P9).

15.In the sanction order (Ex.P9), in paragraph Nos.10 to 12, it is recorded as follows:

> "*10.AND WHEREAS, the Chairman, Central Board of Trustees, Employees' Provident Fund, being the Authority*

Competent to remove Shri S. Durga Prasad, Regional Provident Fund Commissioner Gr-1, Zonal ACC Office, Bengaluru, from the Office, after thoroughly and carefully examining the materials and evidences placed before him including the statements recorded under section 161 of the Criminal Procedure Code and documents which are relevant to the said allegations and circumstances and after applying his mind, considers that the said Shri S. Durga Prasad, Regional Provident Fund Commissioner Gr-l should be prosecuted in the Court of Law for the said offences and has accordingly granted his approval for the same.

11.AND, WHEREAS, the Central Board of Trustees, EPF in its 142t meeting held at New Delhi on 28.11.1995 conveyed its approval that the orders of the Chairman, CBT, EPF in disciplinary matters including other matters be authenticated by an Officer equivalent to the rank of Addl. Central Provident Fund Commissioner or above dealing with such matters. A copy of the letter No. P-IV/1(15)/95 dated 27.03.1996 in this regard is enclosed.

12.NOW, THEREFORE, sanction of Chairman, CBT, EPF is hereby conveyed under Section 19(1)(c) of the Prevention of Corruption Act, 1988 for the prosecution of said Shri S. Durga Prasad, Regional Provident Fund Commissioner Gr-1, Zonal ACC Office, Bengaluru, Employees' Provident Fund Organization before the court of law for the said offences *and any other offences punishable under the provisions of law in respect of the acts aforesaid and for taking cognizance of the said offences by the Court of Competent Jurisdiction*."

16.It is seen that Ex.P6 is the Employees' Provident Fund (Officers and Employees' Condition of Service) Regulations, 2008 wherein it is mentioned that the appointing authority is the CBT. From the Employees' Provident Fund Staff (Classification Control and Appeal) Rules, 1971 (Ex.P8), it is clear that the appointing authority had accorded sanction and PW5 is empowered to authenticate the order and he is an authenticator for sanction order (Ex.P9).

17.The Hon'ble Apex Court in the cases of ***Mohd. Iqbai. Ahmed v. State of Andhra Pradesh*** reported in ***1979 Crl.J. 633 (SC)*** and ***State of Rajasthan v. Dr.A.K.Dutta*** reported in ***AIR 1981 SC*** had held that the requirement of proving the sanction can be done in any two ways- either by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or by adducing evidence aliunde to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it. Further, it had held that if the sanction order is speaking order, then the matter ends there; otherwise evidence should be adduced to prove that the sanctioning authority had perused the material before according sanction and the sanction order may not be in a particular form. In the case of ***Babarali Ahmedali Sayed v. State of Gujarat*** reported in ***1991 Crl.L.J 1269 (Guj)***, the Hon'ble Apex Court held that if facts appear on the face of sanction then there is no question of proving it by leading evidence of authority who has accorded sanction to prosecute. Only in case of facts are not appearing on the face of the sanction then it can be proved by the independent evidence that sanction was accorded after those facts have been placed before the sanctioning authority. In the case of ***State v. K.Narashimhachary*** reported in ***2006 Crl.L.J. 518 SC***, the Hon'ble Apex Court had held that the prosecution sanction order being a public document, there may not be a need to summon sanctioning authority as prosecution witness as prosecution witness provided the prosecution proves that all the relevant material was placed before the sanctioning authority and the sanction was accorded thereafter.

18.From the above decisions of the Hon'ble Apex Court, it is clear that the sanction is accorded by the competent authority contains the facts constituting the offence and the grounds of satisfaction, then there is no further requirement to interfere with. In this case, on perusal of the sanction order (Ex.P9) which contains 16 sheets, it is explicit that all required details and facts were placed before the sanctioning authority and the satisfaction arrived on independent application of mind.

19.The note file order is only an internal communication. PW5, sanctioning authority was not confronted with LD114. Now the original letter of LD114 produced. On perusal of LD114, it is seen that there was no suppression or distortion. Added to it, there is no dispute with regard to according of sanction to prosecute the 1st respondent. It is further seen that the CBI pointed out only with regard to certain corrections in the sanction order and by this correction, there was no change of status in according sanction for prosecution, thereby, causing prejudice to the 1st respondent or failure of justice. The 2nd respondent confirms by producing documents to show a fire accident on 06.12.2019 in the building of Provident Fund Commissioner, New Delhi happened, due to which, several files have been burnt got damaged and physical file related to the case in RC.No.06(A)/2016/CBI/ACB/Chennai is not traceable.

20.In view of the above, this Court finds that there is no proper justification in the impugned order directing the petitioner to produce the note order file to the 1st respondent. Hence, the impugned order dated 20.07.2022 in Crl.M.P.No.2453 of 2022 in C.C.No.6 of 2018 passed by the learned XIV Additional Special Judge for CBI Cases, Chennai is hereby set aside.

21.In the result, this Criminal Original Petition stands allowed.

10.11.2025

Index:Yes/No
Speaking Order/Non-Speaking Order
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To

1.The XIV Additional Special Judge for CBI Cases,
Chennai.

2.The Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
No.26, Haddows Road,
Chennai.

3.The Regional, Provident Fund Commissioner,
Employees Provident Fund Organization Royapettah,
Chennai-600 014.

4.The Special Public Prosecutor for CBI Cases,
Madras High Court.

M.NIRMAL KUMAR, J.

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