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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: .27.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

WP(MD)No.11364 of 2024

and

WMP(MD)Nos.10098 and 25671 of 2024

S.Kannan

... Petitioner

vs.

1. The Principal Secretary to the Government,
Home (Transport-II) Department,
Secretariat, Chennai-600 009.

2.The Director,
Director of Vigilance and Anti-Corruption,
No.293, M.K.N Road, Alandur,
Chennai – 600 016.

3.The Additional Superintendent of Police,
Vigilance and Anti-Corruption Department,
No.1653, A/1, Masilamani Nagar,
Tirunelveli.

4.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Department,
No.1653, A/1 Masilamani Nagar,
Tirunelveli.

5.The Inspector of Police,
Vigilance and Anti-Corruption,
Tirunelveli Detachment.

... Respondents



PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 to 3 to ensure that an opportunity of personal bearing is provided to the petitioner before taking a final decision in terms of Section 19(1)(b) of the Prevention of Corruption Act in connection with the case in Crime No.4 of 2018 on the file of the 5th respondent by considering the petitioner's explanation dated 31.08.2022.

For Petitioner : Mr.R.Shanmugasundaram
Senior Counsel
for Mr.R.Anand

For Respondents : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor.

ORDER

This petition has been filed directing the respondents 1 to 3 to ensure that an opportunity of personal hearing is provided to the petitioner before taking a final decision in terms of Section 19(1)(b) of the Prevention of Corruption Act in connection with the case in Crime No.4 of 2018 on the file of the fifth respondent by considering the petitioner's explanation dated 31.08.2022.

2. The fifth respondent registered a case in Crime No.4 of 2018 against the petitioner for the offences punishable under Sections 13(2) r/w



13(1)(e) of Prevention of Corruption Act, 1988, with a specific allegation that he has amassed wealth disproportionate to his known sources of income.

3. The case of the prosecution is that the petitioner was working as a Motor Vehicle Inspector Grade-I, Unit Office, Ambasamudram, Tirunelveli District. He entered into service on 27.12.2000. The petitioner was found to have accumulated assets in the names of his wife and children, who had no independent sources of income to acquire the assets during the period between 01.01.2010 and 31.12.2013. The total value of the assets as on 31.12.2013 is Rs.33,73,908.82. The total income and expenditure of the accused and his family during the period between 01.01.2010 and 31.12.2013 is Rs.17,52,424/-. Hence, the fifth respondent registered a case in Crime No.4 of 2018 for the offence punishable under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988, against the petitioner. After completion of the investigation, the fifth respondent submitted the records before the first respondent to get sanction to prosecute the petitioner.



4. According to the petitioner, he has not accumulated the assets disproportionate to his known sources of income. Further, he has also furnished a detailed explanation to the first respondent on 31.08.2022. Now, he approached this Court to direct the first respondent to consider the said explanation before according sanction.

5. During the pendency of the present Writ Petition, the first respondent accorded sanction. Therefore, the petitioner filed a amendment petition in WMP(MD)No.25670 of 2024 seeking the following amendment in the prayer portion:-

*“This Court may be pleased to amend the prayer in the main writ petition in W.P.(MD)No.11364 of 2024 as “by directing the respondent No.1 to re-visit the order according sanction for prosecution by granting an opportunity of being heard to the petitioner in this regard before taking a final decision in terms of Section 19(1)(b) of the Prevention of Corruption Act, in connection with the case in Crime No.4 of 2018 on the file of the 5th respondent by considering my explanation dated 31.08.2022” **instead of** “by directing the respondent Nos.1 to 3 to ensure that an opportunity of personal hearing is extended to the petitioner before taking a final decision in terms of Section 19(1)(b) of the Prevention of Corruption Act in connection with the*



case in Crime No.4 of 2018 on the file of the 5th respondent by considering the petitioner's explanation dated 31.08.2022”.

6.1. Mr.R.Shanmugasundaram, the learned senior counsel appearing for the petitioner submitted that the FIR was registered on 09.07.2018. The amendment to the Section 13(1)(e) of the Prevention of Corruption Act, 1988, came into force on 26.07.2018. Therefore, as per the amended provision, an opportunity should be afforded to the accused/officer to furnish explanation and the sanctioning authority is also duty bound to consider the explanation in view of the new provision namely, 7(1)(A) of the Prevention and Corruption Act, which is extracted hereunder:-

“7. In section 13 of the principal Act, for sub-section (1), the following shall be substituted, namely:—

“(1) A public servant is said to commit the offence of criminal misconduct,—

(a) ...

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to



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his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.—The expression ‘known sources of income’ means income received from any lawful sources.”

6.2. In view of the same, there is no bar to issue the writ of mandamus. To support his contention, he relied upon the following judgments of the Hon'ble Supreme Court:-

i) P.Nallammal And Another Vs. State represented by the Inspector of Police reported in (1999) 6 SCC 559.

ii) State of Maharashtra Vs. Kaliar Koil Subramaniam Ramaswamy reported in (1977) 3 SCC 525.

iii) Sajjan Singh Vs. State of Punjab reported in 1963 Scc OnLine SC 48.

6.3. The learned senior counsel further submitted that even though FIR was registered on 09.07.2018, the amended provision, is applicable to the present case.

7. The learned Additional Public Prosecutor submitted that the new provision is not applicable to the present case since the FIR was registered



much earlier to coming into force of the new provision. Therefore, the Sanctioning Authority need not give an opportunity to the accused/officer before granting sanction. Therefore, he prayed for dismissal of the writ petition with cost.

8. This Court considered the rival submissions made by the learned senior counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

9. Maintainability of the Writ Petition:-

The prayer of the writ petition is to issue a writ of *mandamus* to direct the Sanctioning Authority to give an opportunity to the accused/officer before according sanction, is not legally maintainable. A writ of *mandamus* can be issued by the High Court only when a legal right vests with the writ petitioner and corresponding legal obligation is cast on the sanctioning authority. Sanction is the independent act of sanctioning authority with due application of mind over the material forwarded by the investigating agency and according sanction to prosecute the accused before the Court of law under the penal provision constituting the offence.



It is no longer *res integra* that accord of sanction to prosecute the public servant is only an administrative act. Therefore, there is no need to provide opportunity of hearing to the accused before according sanction. The Hon'ble Supreme Court has reiterated the said principle in the following cases:-

9.1. *Supdt. of Police (C.B.I.) v. Deepak Chowdhary* reported in (1995) 6 SCC 225:

“The grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore, being administrative act the need to provide an opportunity of hearing to the accused before according sanction does not arise. The High Court, therefore, was clearly in error in holding that the order of sanction is vitiated by violation of the principles of natural justice.”



9.2. ***State of M.P. Vs. Krishan Chandra Saksena (Dr)*** reported in

(1996) 11 SCC 439:

6. That even assuming that some aspects were not considered by the sanctioning authority while granting the sanction, like the affidavits filed by staff members of the hospital who were admittedly supporting the respondent, it could not be said that the sanction was invalid. That the respondent was not required to be heard while granting the sanction”

9.3. ***State Anti-Corruption Bureau, Hyderabad v.***

P. Suryaprakasam reported in **1999 SCC (Cri) 373:**

“6. From the impugned judgment, we next find that the High Court took exception to the fact that the respondent's explanation was not properly considered by the State Government in spite of the earlier order of the High Court as quoted above. This finding of the High Court is also against the law laid down by this Court in *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] wherein, in dealing with the question as to whether such an opportunity of giving an explanation and hearing must be granted to the accused and the non-grant of the same would vitiate the order of sanction in a case under Section 5(2) of the Act, this Court observed: (SCC p. 268, para 67)



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“It is equally well settled that before granting sanction the authority or the appropriate Government must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and the appropriate Government would apply their mind to those facts. The order of sanction is only an administrative act and not a quasi-judicial one nor is a lis involved. Therefore, the order of sanction need not contain detailed reasons in support thereof as was contended by Shri Jain. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard. The question of giving an opportunity to the public servant at that stage as was contended for the respondents does not arise.”

“11. In Subramanian Swamy v. Manmohan Singh (2012) 3 SCC 64, the Supreme Court dealing with the provisions of the Prevention of Corruption Act, 1988, regarding opportunity of hearing to be provided before grant of sanction had observed as under :

"44. We may also observe that grant or refusal of sanction is not a quasi judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the competent authority before it takes a decision in the matter. What is required to be seen by the competent authority is whether the facts placed before it which, in a given case, may include the material



collected by the complainant or the investigating agency prima facie disclose commission of an offence by a public servant. If the competent authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the competent authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail appropriate legal remedy."

9.4. In view of the above legal position, the submission of the learned senior counsel to provide an opportunity of hearing before granting sanction by the first respondent is misconceived one and hence, this Court inclines to reject the same. The petitioner has no legal right to hear. It is also not mandatory for the authority to give him audience before accordingly sanction. Therefore, the prayer in the original writ petition as well as the amendment petition in the nature of writ of mandamus to issue a direction to the sanctioning authority to hear the petitioner before according sanction is not legally maintainable and hence, the writ petition is liable to be dismissed.



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10. Applicability of the new provision to the present case:-

The new provision is not applicable to the present case when the FIR was registered on 09.07.2018 much earlier to the introduction of the new provision on 26.07.2018. Investigating Agency, Prosecution Agency and Court have to examine the culpability in the light of the provision of the statute that existed on the date of the registration of the case i.e. Prior to the introduction of the provision unless there is express and explicit reference about the retrospective applicability. The said principle of law has been reiterated by the Hon'ble Supreme Court in following judgments:

State of Telangana v. Managipet, (2019) 19 SCC 87 at page 106:

37. In the present case, the FIR was registered on 9-11-2011 much before the Act was amended in the year 2018. Whether any offence has been committed or not has to be examined in the light of the provisions of the statute as it existed prior to the amendment carried out on 26-7-2018.

10.1. Jagan M. Seshadri v. State of T.N., (2002) 9 SCC 639 at page 642:

7. A bare reading of Section 30(2) of the 1988 Act shows that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act, shall, insofar as it is not inconsistent with the provisions of this Act,



be deemed to have been done or taken under or in pursuance of the corresponding provisions of the Act. It does not substitute Section 13 in place of Section 5 of the 1947 Act. Section 30(2) is applicable “without prejudice to the application of Section 6 of the General Clauses Act, 1897”. In our opinion, the application of Section 13 of the 1988 Act to the fact situation of the present case would offend Section 6 of the General Clauses Act, which, inter alia provides that repeal shall not (i) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or (ii) affect any investigation, legal proceedings or remedy in respect of any such rights, privilege, obligation, penalty, forfeiture or punishment. Section 13, both in the matter of punishment as also by the addition of the Explanation to Section 13(1)(e) is materially different from Section 5 of the 1947 Act. The presumption permitted to be raised under the Explanation to Section 13(1)(e) was not available to be raised under Section 5(1)(e) of the 1947 Act. This difference can have a material bearing on the case.



10.2. *Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC

602 at page 633:

26 (v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

10.3. Therefore, amended provision of the Prevention of Corruption Act 2018, cannot be applied to the petitioner's case in view of section 30(2) of 1988 Act, section 6 of the General Clauses Act. The argument of the learned Senior Counsel to apply the amended provision to the petitioner's case, which was registered on 09.07.2018 much earlier to the date of introduction of new provisions on 26.07.2018 incorporated under the Amended Act 2018, is misconceived one and therefore, this Court holds that Amended New provision has no application to the present case.

11.To consider the further submission of the learned Senior Counsel for the petitioner that the material change in the provision of the 13(1)(e) of the 1988 Act, through the substitution of the new language casts a duty on the sanctioning authority to consider the explanation of the petitioner



before according sanction, this Court inclines to trace the history of the relevant provision relating to the “offence of disproportionate assets”.

1947 Act	1964 Act	1988 Act	2018 Amendment W.e.f. 26.07.2018
Section 5(1)(3) (3) In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption.	Section 5(1)(e) If he or any person on his behalf, is in possession or has, at any time during the period of his office, being in possession for which the public servant cannot satisfactorily account of pecuniary resources or property disproportionate to his known sources of income.	Section 13(1)(e) If he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation- for the purpose of this section, “Known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.	Section 13(1)(b) (1) A public servant is said to commit the offence of criminal misconduct (3) if he intentionally enriches himself illicitly during the period of his office. Explanation 1. A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for. Explanation 2. The expression “known sources of income” means income received from any lawful sources.



12. According to the senior counsel, in the Act 1947, the corresponding provision namely, 5(1)(3) of the Act 1947 it is rule of evidence. Further under section 5(1)(3) of the Act 1947, only in the pending case for offence under section 5(1)(a) to (d), the prosecution would have been initiated. Thereafter, 5(1)(e) was incorporated in the year 1964 on the basis of the recommendation of Santhanam Committee. As per the amended provision, the prosecution would have been initiated independently under section 5(1)(e) r/w 5(1)(3) of the 1947 Act. The said 5(1)(e) culminated into 13(1) (e) of Prevention of Corruption Act with explanation clause. The language in 13(e) and 5(1)(e) are same and only addition in 13(1)(e) is explanation and meaning of known source of income. As per the law laid down by the Hon'ble Supreme Court in the case of *State of Maharashtra V. Kaliar Koil Subramaniam Ramaswamy* reported in *1977 (3) SCC 525* and in the case of *M. Krishna Reddy Vs. State Dy. Superintendent of Police* reported in *1992 (4) SCC 45*, mere acquisition or possession of the property does not constitute offence. Only in the case of failure to “satisfactorily account” of such possession constitutes the offence. But, in view of the explanation under section 1988 Act, when conspicuously absent in the old Act, 1947, under Section 5(1) (e) of the Act, the sanctioning authority need not give opportunity of



hearing to the accused officer. Therefore Hon'ble Constitution bench in

Veerasamy case interpreted Section 5(1)(e) of the Act 1947, where the explanation was not incorporated. Therefore, it was not mandatory under the Act 1947, to give opportunity of hearing before according sanction. The further substitution of the provision of Section 13(1)(e) with different language mandates the opportunity of hearing before according sanction. According to learned Senior counsel appearing for petitioner, the specific word “**intentionally enriches himself illicitly**” and deletion of the 2nd part of explanation clause to the section 13(1)(e) of the 1988 Act, *i.e.* “*such receipt has been intimated in accordance with provision of the any law, rules or orders for the time being applicable to a public servant*” casts a duty on the sanctioning authority to afford opportunity of hearing before according sanction. This court is unable to accept the said argument of the learned Senior Counsel and in the considered opinion of this Court, the same is misconceived one on the following reasons:-

12.1. Firstly the amended Act has no application to the petitioner case as already observed by this Court in earlier paragraph that the FIR was registered on 09.07.2018 much prior to the amendment brought on 26.07.2018.



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12.2. Secondly the sanction is administrative act. No way either in the prevention of Corruption Act 1988 or in the vigilance manual it is stated that accused officer should be heard before according sanction. Further more even the amended provisions no way alludes that the public servant is to be heard before according sanction.

12.3. Even the amended provision of 2018 can not dilute the onus on the accused officer to prove his lawful source of income once the prosecution proved the assets of the accused officer and his relative is disproportionate to the known source of prosecution. The only difference in the amendment to the explanation is that the language “such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant” is absent. As already stated this will not dilute the onus on the accused.

13. This court also called the file from the sanctioning authority. The explanation sought to be perused by the sanctioning authority is also



submitted to the investigating officer and the investigating officer submitted the said statement containing the explanation of the accused officer to the sanctioning authority. The sanctioning authority also perused the same and thereafter accorded sanction and the same is revealed from the following discussion in the sanctioning authority:

*“AND WHEREAS, the Government of Tamil Nadu, being the authority competent to remove the above said accused officer Thiru. S.Kannan, Regional Transport Officer, Sankarankoil, formerly Motor Vehicles Inspector, Grade-I, Regional Transport Office, Tenkasi, from his office, after fully and carefully examining the incriminating documents and materials as well as the report of the Director of Vigilance and Anti-Corruption, Chennai, Statement of witnesses, “**statement of accused**”, copy of the First Information Report, records pertaining to this case such as Statements-I to VII evaluated by the Investigating Officer and other records placed before the Government with regard to the said allegations and circumstances of the case is fully satisfied that it is necessary in the interest of justice to prosecute the said accused officer-1 Thiru.S.Kannan, Regional Transport Officer, Sankarankoil, formerly Motor Vehicles Inspector, Grade-I, Regional Transport Office, Tenkasi in the court of law for the above said offences.”*



14. Therefore, this Court is not inclined to accept the argument of the learned senior counsel for the petitioner. Hence, the petition is liable to be dismissed.

15. The remaining question of *application of mind on the part of the Sanctioning Authority* is a disputed question of fact. Therefore, the petitioner is at liberty to raise all the points with regard to the non-application of mind and question the validity of sanction before the trial Court during the course of trial. The learned trial Judge is hereby directed to consider the same without influencing the order passed by this Court in this case.

16. Accordingly, this Writ Petition stands dismissed with the above observation. There shall be no order as to costs. Consequently, the connected writ miscellaneous petitions are closed.

27.01.2025

NCC : Yes/No
Index : Yes/No
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To

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Home (Transport-II) Department,
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5. The Inspector of Police,
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6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.,

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