



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP-21876-2017(O&M)
Date of decision: 16.07.2025**

AJAY KUMAR PANDEY

.....Petitioner

VERSUS

UNION OF INDIA AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Puneet Bali, Senior Advocate with
Mr. Aakash Sharma, Advocate for the petitioner.

Mr. Pankaj Gupta, Senior Panel Counsel
for respondents No.1 and 2-Union of India with
Mr. Onkar Krishan, Head Constable, CRPF, NWS, Chandigarh.

Mr. Rahul Dev, Advocate for respondent No.3.

VINOD S. BHARDWAJ, J. (ORAL)

Challenging the order dated 27.07.2010 whereby prosecution sanction had been granted against the petitioner in case FIR No. 193 of 1990 registered under Sections 364, 344 of Ranbir Penal Code (hereinafter referred to as 'RPC'), at Police Station Pattan, District Srinagar, the instant writ petition has been filed. A further challenge has also been raised to the order of 15.02.2011, vide which the sanctioning authority refused to reconsider its earlier decision of 27.07.2010.

**FACTS**

2. Briefly summarized, the facts of the case are that the petitioner joined as Deputy Superintendent of Police (DSP) in the Central Reserve Police Force (hereinafter referred to as 'CRPF') on 11.10.1986. He was posted as a DSP in the 46th Battalion, C.R.P.F. and moved to the Kashmir Valley to counter the escalation of militancy in the valley. The petitioner volunteered to head the Special Task Force of the CRPF, which was engaged in anti-terrorist operations in Baramulla (J&K). The Hizb-ul-Mujahideen outfit had significant influence and was active in the said area. The petitioner survived as many as 14 life attempts on his person, including an attack by a Rocket Launcher during his posting as a Head of the Special Task Force of the CRPF. Be that as it may, the petitioner claims to be a decorated Officer of the CRPF and as a result of his distinguished acts, he was a constant target of the Militant outfits and they planned to eliminate the petitioner by every means possible. In the said process, he was got implicated in two FIR's; While FIR No. 210/1990 was registered against the petitioner under Sections 302/34 of RPC at Police Station Baramulla, FIR No. 193/1990 was registered under Sections 364, 344 RPC at Police Station Pattan, District Srinagar. As far as FIR No. 210 of 1990 is concerned, the Government of India denied grant of sanction to launch prosecution against the petitioner by passing a detailed order on 25.09.2000. The issue is thus confined only to the grant of prosecution sanction in case FIR No. 193 of 1990.

3. As per the brief allegations levelled in the above-said FIR, the complainant, namely Peerzada Gh. Mohd. son of Nabi, resident of Khore Pattan, lodged a complaint, alleging that the CRPF had taken away his son Peer Mohd.



Shafi in illegal custody and that his whereabouts were unknown and he was untraceable. The request was sent by the Govt. of Jammu & Kashmir for grant of sanction to the Ministry of Home Affairs (hereinafter referred to as 'MHA') in the year 2007 i.e. 09.07.2007 after about 17 years of the registration of FIR and a sanction was granted on 27.07.2010 i.e. after 20 years. However, prior thereto, the file was sent for obtaining comments from the CRPF, after holding a Court of Inquiry. The comments were later forwarded by the CRPF along with the report of its Court of Inquiry, in the year 2009, specifically pointing out that the petitioner herein has been named with malicious intent and that the petitioner never conducted any raid on the given date. The aforesaid report was forwarded to the MHA, Government of India. The Desk Officer concurred with the findings recorded by the Court of Inquiry and recommended that no case for grant of prosecution sanction is made out against the officer. Even the Senior Officer(s) upto the level of Joint Secretary, agreed with the report and the recommendations. The matter was however forwarded to the Ministry of Law for its opinion. The Ministry of Law also concurred with the said report and the recommendations made by the officials of the Ministry of Home Affairs and opined that no case for prosecution sanction was made out.

4. The Ministry of Home Affairs, however, wrote a comment that the Court of Inquiry cannot be relied upon since the document in question had been weeded out. He directed that the police investigation and the evidence be examined by a senior officer and for resubmission of the case, yet again. The matter was thereafter forwarded to an officer of the rank of IGP (Operations) of CRPF by the MHA to examine the case diary and the police investigation. The



said Officer went through the entire evidence collected by the Investigating Agencies as well as the proceedings of the Court of Inquiry and concluded that the petitioner had not conducted any raid in the village on that date and therefore no case was made out. The prosecution sanction thus ought to have been denied.

5. The file was resubmitted in the Ministry of Home Affairs with the noting of the IGP (Operations). The Special Secretary (Home) initially recorded that the Officer had gone out for operations on that day, but it could not be proved that the officer had gone to this village for operations and had picked up the missing person. However, the then Home Minister asked for specific recommendations from the Special Secretary (Home). As per the file noting, the then Special Secretary wrote, “as the Officer has not joined the investigation, therefore, he has forfeited his right to present his view point with cogent reasons before the Investigating Officer. Therefore it is a fit case for grant of prosecution sanction subject to the adjudication of Court of Law”. The aforesaid opinion of the Special Secretary was simply approved without any remark notwithstanding that Court of Inquiry into the allegations was already held wherein the petitioner was found innocent and inactive in the area where the incident in question is stated to have taken place and after due consideration of the log books and the movement register of the petitioner. No opportunity was granted to the petitioner before passing the order dated 27.07.2010, granting the prosecution sanction after 20 years from the date of alleged occurrence.

6. The petitioner thereafter submitted a request to the competent authority viz. the MHA for reconsideration of its decision; however, the said request was also declined by the competent authority vide its order dated



15.02.2011 notwithstanding the recommendations in favour of the petitioner and without discussing the material. Assailing the said orders, the instant writ petition has been filed.

ARGUMENTS: PETITIONER

7. Learned Senior Counsel appearing on behalf of the petitioner raises the following arguments: -

- i) That the incident in question relates to the year 1990 and on reference of the complaint, a Court of Inquiry was conducted by the 46th Battalion of CRPF in the year 1992. The said Court of Inquiry considered the entire material including the statements recorded by the witnesses, log books, movement register etc. and came to a conclusion that no operation was conducted in the said village by the 46th Battalion CRPF and no person by the name Peer Mohd. Shafi was ever picked up by the said Unit or the Officer. He contends that the area of operation of the 46th Battalion was separate and the area, wherein the incident is stated to have taken place, the 50th Battalion of CRPF had then been posted.
- ii) It is argued that when the matter was sent to the Union Home Ministry, period of nearly 17 years had elapsed from the incident. In the comments sought from the CRPF it was specifically submitted that the case had been registered against a decorated official with mala fide intent and no raid was ever conducted by the petitioner. The officials dealing in the Ministry of Home Affairs concurred with the said comments and made a recommendation in favour of



the petitioner and against the grant of prosecution sanction which such recommendation was approved by the senior officials in the Ministry of Home Affairs. Be that as it may, the matter was referred to the Ministry of Law for its opinion which also agreed with the said opinion. Thus, the material viz. the Court of Inquiry, the comments from the CRPF, the recommendation of the officials of the Ministry of Home Affairs as well as the Ministry of the Law, concurrently recommended against the grant of sanction.

- iii) It is contended by the Counsel that as a period of nearly 20 years had elapsed by the time when the matter was examined in the year 2009-10 and the original Court of Inquiry report had been weeded out, the then Minister recorded a comment discrediting the Court of Inquiry notwithstanding that a certified copy thereof had been sent alongwith the record. Without assigning any reason as to why the findings recorded by Court of Inquiry be not accepted, yet, the matter was sent for seeking fresh opinion based on reconsideration of the entire evidence collected and for re-submission of the report. Even thereafter, the report submitted by the IGP (Operations) supported the claim of the petitioner. Thus, at no point of time, any of the officials, who examined the case at different points in time, found any incriminating material against the petitioner.
- iv) Learned Counsel further contends that this Court had asked for production of the entire investigation record vide order dated 15.07.2019 whereupon the Union of India and the State of Jammu



& Kashmir produced the case diary and the prosecution records in a sealed cover on 18.12.2019. The petitioners were permitted to inspect the said records and it was revealed from the entire chronology, as recorded in the records submitted by the authorities, that the Special Secretary initially concluded that there is no material on record on the basis whereof it can be proved that the petitioner had gone to the place of incident i.e the Village Sheerabad Khore, Pattan, for operations or had picked up the missing person. Notwithstanding the aforesaid conclusion recorded by the Special Secretary, the competent authority viz. the Home Minister still asked for specific recommendations of the Special Secretary whereupon a note was scribbled which has already been extracted above. He submits that the Ministry of Home Affairs simply counter-signed the aforesaid remark recorded by the Special Secretary which reflects that there was no application of mind by the competent authority. The aforesaid conduct on the part of the sanctioning authority, in acting in a ministerial manner, is detrimental to the sacrosanct protection granted to an official against vexatious prosecution.

- v) Counsel further contends that even in the said recommendation, the Special Secretary had merely recorded that the officer never joined investigation, hence, ‘he forfeited his right to present his view point with the cogent reasons before the Investigating Officer, hence, it is a fit case for granting prosecution sanction subject to adjudication of



Court of Law'. It is submitted that there was no discussion of any nature whatsoever with respect to the evidence/documents collected by different agencies viz. the Court of Inquiry as well as the Investigating Officer from the State of Jammu & Kashmir. No dissent note of any nature whatsoever was recorded as to why the recommendations made or the report of the Court of Inquiry ought to be disregarded. Hence, the prosecution sanction has been granted in a ministerial manner and without any application of mind, rendering the said decision liable to be set aside.

- vi) Learned Counsel further draws attention of this Court to the order dated 27.07.2010, under challenge before this Court. The same reads thus:-

“Subject: Accord of sanction for launching prosecution against in FIR No. 193/1990.

I am directed to refer to the Govt. of J&K Home Dept's letter No. Home/44/2003/Pros dated 26.6.2007, on the subject mentioned above.

2. The matter has been considered in this Ministry in consultation with CRPF and MOL and with the approval of Union Home Minister it has been decided to grant prosecution sanction against Sh. Ajay Kumar Pandey, the then DySP. CRPF (Now absorbed in Punjab Police) and for adjudication by a court of law.

3. The CD file along with relevant documents is enclosed in original.”



Referring to the above, it is submitted that the communication shows that the matter had been considered by the Ministry in consultation with the CRPF and Ministry of Law and prosecution sanction was granted against the petitioner with the approval of the Union Home Minister. He submits that so far as the CRPF is concerned, the Court of Inquiry conducted by them as well as the comments furnished by them to the Ministry of Home Affairs as also on re-examination of the material pursuant to the directions by the MHA and the report submitted by the ADGP J.C. Dabas (IPS), the CRPF never made any recommendation or recorded any finding against the petitioner or made out any case for grant of prosecution sanction. It is also contended that even the Ministry of Law had accepted the said report and recommended a case against the grant of sanction. Thus, before granting the prosecution sanction, it was essential for the sanctioning authority to have taken into consideration the reasons assigned by the respective agencies, exonerating the petitioner and as to why and under what circumstances the reasons assigned were unsustainable or stood contradicted by the evidence collected by the agencies seeking prosecution of the petitioner. In the absence of any reference to such evidence, the action of the competent authority is rendered non-compliant of the statutory provisions and the order consequently passed deserves to be set aside.



- (vii) It is also argued by the learned Counsel that the Special Secretary (Home) made a recommendation for grant of prosecution sanction by submitting that the 'petitioner did not join the investigation', which finding was factually incorrect even as per the record. As a matter of fact, the statement of the petitioner is available on Page-89 of the case diary file, as per which the petitioner had appeared before the Investigating Officer. The said fact was specifically noted by J.C. Dabas, IPS, Additional Director General of CRPF, then IGP (Operations), in his official noting and comments submitted to the Ministry of Home Affairs. It is submitted that the sole reason assigned by the Special Secretary (Home) for making a recommendation and a case against the petitioner for grant of sanction thus stands belied from the record and it reflects that there was no consultation or consideration or even examination of the record, which was already in possession of the Ministry of Home Affairs at the given point in time.
- (viii) It is further argued that, assuming for the sake of argument and without conceding to the said factual aspects as recorded by the Special Secretary, Home, a mere non-appearance of the petitioner before the Investigating Officer cannot be construed as the charge having been proved against him. It was thus incumbent upon the Special Secretary (Home) to refer to the material available to support the conclusions recorded. It is submitted that the noting as recorded on page 89 of the investigation report even though shows



the presence of the petitioner having joined the investigation, however, not even a single query was put to the petitioner by the Investigating Officer. He was not confronted with any material that may have been collected by the Investigating Agency to substantiate its case and that in the absence of the petitioner having been countered with such adverse material, there was no occasion or reason for the petitioner to submit any response as well.

(ix) Adding further, it is contended that even if the entire version is given some weightage, yet, as per the complaint given by the complainant Peerzada Gh. Mohd. son of Nabi –father of Peer Mohd. Shafi, (the person abducted), the Battalion which allegedly conducted the raid in August, 1990 was accompanied by a large number of female personnel, which gave beatings to the ladies of the house including wife of the complainant. He submits that the 46th company Battalion does not have any lady officers or staff, hence, the version stands countered on the first aspects itself and that the said fact can be duly verified (Counsel for Union of India was asked to confirm the aforesaid fact. Learned Counsel on instructions from Mr. Onkar Krishan, Head Constable, CRPF, NWS, Chandigarh who is present in Court confirms the said claim of no female force in 46th Battalion, from the period 1990 and even till date).

(x) Learned Counsel further contends that the incident in question relates to the year 1990 and already a period of 35 years has elapsed.



The petitioner left CRPF and was absorbed in the Punjab Police and is due to retire within next six months. It is submitted that even though the position in law necessitates that in the event the Court does not agree with the reasons assigned by the sanctioning authority for grant of sanction, it is required to remit the case to the competent authority for reconsideration of the entire material and to pass a fresh order in accordance with law, however, taking into consideration that much water has flown and a period of 35 years has elapsed, the matter ought to be finally decided. He contends that under similar circumstances, the Hon'ble Supreme Court closed the case after it noticed that the order of prosecution sanction suffered from non-appreciation of facts, irregularities and noticing the time lapse of 14 years.

ARGUMENTS: RESPONDENTS

8. Counsel for the respondent-Union of India submits that even though the para-military forces are deputed to bring peace in a disturbed area, yet, under the garb of maintaining law and order, they cannot take law into their own hands and commit atrocities or oppression against the residents. He contends that any such act is a gross misconduct and has to be sternly dealt with. It is contended that in the present set of circumstances, a request was received from the Govt. of Jammu & Kashmir about the disappearance of Peer Mohd. Shaffi son of Peerzada Gh. Mohd. and some of the witnesses named the petitioner. Hence, the case of prosecution sanction was considered by the competent authority i.e. the Home Minister and after taking into consideration the opinions from the CRPF, the evidence collected, the report from the Ministry of Law and noticing that the



possibility of involvement of the petitioner in commission of the aforesaid offence cannot be ruled out, hence, sanction was approved to prosecute the petitioner. He contends that the final determination of the involvement of the petitioner can be done only after the trial has commenced and the petitioner is exonerated.

9. Counsel appearing on behalf of respondent-State of Jammu & Kashmir contends that some of the witnesses named the petitioner and testified that Peer Mohd. Shafi had been taken away by CRPF. It is argued that the statement of the witnesses reflects involvement of the petitioner in the abduction/taking away of the missing person and a burden thus rests with the petitioner to dispel the suspicion being cast upon him.

COURT QUERY

10. The counsel has, however, been confronted with the following question:

- i) As to whether the Investigating Officer considered the material/evidence collected during the Court of Inquiry and verified the findings recorded thereunder with respect to the movement of the petitioner or not?

11. Counsel for respondent-State Jammu & Kashmir submits that no such exercise was undertaken. He is not in a position to refer to any such evidence.

12. It was also put to the Counsel for the respondent-State Jammu & Kashmir as to whether any verification was conducted by the Investigating Officer as regards deployment of any female staff in the 46th Battalion, he is not



in a position to refer to any material on the basis whereof the aforesaid factual aspect recorded by the complainant and refuted by the petitioner, could be confirmed. Needless to mention that the Union of India has specifically admitted before this Court on instructions from Mr. Onkar Krishan, Head Constable, CRPF, NWS, Chandigarh, that there had been no female deployment in 46th Battalion either in the year 1990 or till date.

13. Counsel has also been asked to refer to the evidence on the basis whereof the identity of the petitioner as the assailant stood established or the material as would show his presence within the area where the incident took place considering that the said area fell within the domain of 50th Battalion of the CRPF and multiple reports recorded that the petitioner was not active in the said area. He is not in a position to refer to any such material but merely reiterates his submission that the truth would come out only when a trial is conducted and the version of the petitioner is tested before the Court of law.

14. I have learned Counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present writ petition.

CONSIDERATION & DECISION

15. Needless to mention that the requirement of obtaining a prosecution sanction has been provided as a shield against vexatious prosecution of Government officials in discharge of their duties diligently. The said protection/cover cannot be taken away in a cavalier or a casual manner. Even though this Court agrees with the Counsel appearing on behalf of the respondent-Union of India that an unbridled power cannot be conferred upon the security



agencies to violate law or become oppressors, under the garb of disturbed circumstances in a locality where they are deputed, however, at the same time, there can be no presumption of excesses having been committed by the forces deployed in a particular area. Once a person is required to be prosecuted on an allegation of having committed an offence, it is essential that such an exercise is undertaken as per the procedure prescribed in law and after taking into consideration the material that would support such a decision and justify prosecution.

16. Before examining the case and its merits, it is essential to outline the necessary pre-requisites for grant of sanction and the limitation on the powers of the Court laid down through judicial pronouncements by the Hon'ble Supreme Court of India.

17. 'Sanction' in legal jurisprudence mandates an independent application of mind by the Competent Authority alone. Once such discretion and its exercise independently is not established, the consequential order would be bad. The validity of a sanction order would depend upon placing of all the relevant material, evidence and documents and the same having been considered by the Authority. Since grant of sanction is not an idle formality or an acrimonious exercise but a solemn act which affords protection to a government servant, exercise of said jurisdiction or authority should reflect non-discriminate, non-partisan ruthless objectivity in dissecting evidence from portrayal of a version, objective scrutiny against sympathy and reasoned decision making which finds support from evidence. The independent decision, free from



extraneous considerations, and on principles as above would be the standard for a considered sanction.

18. It has been held by the Hon'ble Supreme Court that where such independent exercise of discretion is not established, the order of sanction would fail.

19. Reference in support may be made to the judgment of the Hon'ble Supreme Court in the matter of **Mansukhlal Vithaldass Chauhan Versus State of Gujarat** reported as (1997) 7 SCC 622. Relevant paragraphs thereof are extracted as under:

“16. In Basdeo Agarwalla v. Emperor it was pointed out that sanction under the Act is not intended to be, nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. This Court in State through Anti-Corruption Bureau, Govt. of Maharashtra v. Krishanchand Khushalchand Jagtiani while considering the provisions of Section 6 of the Act held that one of the guiding principles for sanctioning authority would be the public interest and, therefore, the protection available under Section 6 cannot be said to be absolute.

17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. (See Mohd. Iqbal Ahmed v. State of A.P.) Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.



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

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

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33. *The High Court put the Secretary in a piquant situation. While the Act gave him the discretion to sanction or not to sanction the prosecution of the appellant, the judgment gave him no choice except to sanction the prosecution as any other decision would have exposed him to an action in contempt for not obeying the mandamus issued by the High Court. The High Court assumed the role of the sanctioning authority, considered the whole matter, formed an opinion that it was a fit case in which sanction should be granted and because it itself could not grant sanction under Section 6 of the Act, it directed the Secretary to sanction the prosecution so that the sanction order may be treated to be an order passed by the Secretary and not that of the High Court. This is a classic case where a brand name is changed to give a new colour to the package without changing the contents thereof. In these circumstances, the sanction order cannot but be held to be wholly erroneous having been passed mechanically at the instance of the High Court.*

34. *Learned counsel for the State of Gujarat contended that the judgment passed by the High Court cannot be questioned in these proceedings as it had become final. This contention is wholly devoid of substance. The appellant has questioned the legality of "sanction" on many grounds one of which is that the sanctioning authority did not apply its own mind and acted at the behest of the High Court which had issued a mandamus to sanction the prosecution. On a consideration of the whole matter, we are of the positive opinion that the sanctioning authority, in the instant case, was left with no choice except to sanction the prosecution and in passing the order of sanction, it acted mechanically in obedience to the mandamus issued by the High Court by putting the signature on a pro forma drawn up by the office.*



Since the correctness and validity of the "sanction order" was assailed before us, we had necessarily to consider the High Court's judgment and its impact on the "sanction". The so-called finality cannot shut out the scrutiny of the judgment in terms of actus curiae neminem gravabit as the order of the Gujarat High Court in directing the sanction to be granted, besides being erroneous, was harmful to the interest of the appellant, who had a right, a valuable right, of fair trial at every stage, from the initiation till the conclusion of the proceedings.

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39. Normally when the sanction order is held to be bad, the case is remitted back to the authority for reconsideration of the matter and to pass a fresh order of sanction in accordance with law. But in the instant case, the incident is of 1983 and, therefore, after a lapse of fourteen years, it will not, in our opinion, be fair and just to direct that the proceedings may again be initiated from the stage of sanction so as to expose the appellant to another innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution which, as part of right to life, philosophises early end of criminal proceedings through a speedy trial.”

20. The Hon’ble Supreme Court emphasized the need to examine the entire material and recording of its own satisfaction by the Competent Authority, also in the matter of **Adambhai Sulemanbhai Ajmeri Versus State of Gujarat** reported as **(2014) 7 SCC 716**. Relevant extract thereof reads thus:

“75. It has been held by this Court that all the relevant documents required for granting sanction shall be presented



*before the sanctioning authority so that the sanction can be granted on the basis of relevant material information and documents collected during the course of investigation with respect to the crime. In the case of **Rambhai Nathabhai Gadhvi & Ors. v. State of Gujarat, (1997) 7 SCC 744**, this Court, while examining a similar sanction Order as provided under Section 15 of TADA (repealed), has held as under:*

"8. Taking cognizance is the act which the Designated Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for the former. Sanction contemplated in the sub-section is the permission to prosecute a particular person for the offence or offences under TADA. We must bear in mind that sanction is not granted to the Designated Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial against the persons arraigned in the report. Thus a valid sanction is sine qua non for enabling the prosecuting agency to approach the court in order to enable the court to take cognizance of the offence under TADA as disclosed in the report. The corollary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction.



9. In this case the prosecution relies on Ext. 63, an order Issued by the Director General of Police, Ahmedabad, on 3-9-1993, as the sanction under Section 20-A(2) of TADA. We are reproducing Ext. 63 below:

"Sr. No. J-1/1909/1/Khamballa 55/93

Director General of Police, Dated 3-9-1993

Gujarat State,

Ahmedabad.

Perused: (1) FIR in respect of offence Registered No. 55/93 at Khamballa Police Station 25(1)(b) (a)(b) of Arms Act and Sections 3, 4 and 5 of the TADA.

(2) Application sent by DSP Jamnagar vide his letter No. RB/D/122/1993/1820 dated 9-8-1993.

Having considered the FIR in respect of offence Registered No. 55/93 at Khambalia Police Station District Jamnagar under Section 25(1)(b)(a)(b) of Arms Act and Sections 3, 4 and 5 of TADA and letter No. RB/D/122/1993/1820 of DSP dated 9-8-1993 seeking permission to apply the provisions of TADA carefully, I A.K. Tandon, Director General of Police, Gujarat State, Ahmedabad under the powers conferred under the amended provisions of TADA (1993) Section 20-A(2) give permission to add Sections 3, 4 and 5 of TADA.

A.K. Tandon

Director General of Police

Ahmedabad

Gujarat



10. Apparently Ext. 63 makes reference only to two documents which alone were available for the Director General of Police to consider whether sanction should be accorded or not. One is the FIR in this case and the other is the letter sent by the Superintendent seeking permission or sanction. No doubt in that letter to the Director General of Police the Superintendent of Police had narrated the facts of the case. But we may observe that he did not send any other document relating to the investigation or copy thereof along with the application. Nor did the Director General of Police call for any document for his perusal. All that the DGP had before him to consider the question of granting sanction to prosecute were the copy of the FIR and the application containing some skeleton facts. There is nothing on record to show that the Director General of Police called the Superintendent of Police at least for a discussion with him."

(emphasis laid by this Court)

It was further held by this Court in the case of Anirudhsinhji Karansinhji Jadeja and another versus State of Gujarat, (1995) 5 SCC 302, as under:

" 15. The aforesaid is however not all. Even if it be accepted that as an additional safeguard against arbitrary exercise of the drastic provisions, the State Government had provided by administrative instructions an additional safeguard whereunder the DSP was required to obtain the sanction/consent of the State Government, we are of the view that in the present case the same was given by the State Government without proper application of mind. We have taken this view because the sanction/consent was given by the Government merely on the basis of the fax



message dated 17-3-1995 of the DSP. The reason for our saying so is that though there is no record a fax message of Deputy Director General of Police also, which is dated 18-3-1995, the sanction/consent order has mentioned above the fax message of the DSP only. Now, no doubt the message of the DSP is quite exhaustive, as would appear from that message which has been quoted above in full, we are inclined to think that before agreeing to the use of harsh provisions of TADA against the appellants, the Government ought to have taken some steps to satisfy itself whether what had been stated by the DSP was borne out by the records, which apparently had not been called for in the present case, as the sanction/consent was given post-haste on 18-3-1995, i.e., the very next day of the message of the DSP. It seems the DSP emphasised the political angle in the first two paragraphs of his message. The dispute or motive stated was that the Darbars were annoyed because they were refused loan and not because of any political rivalry. In the third paragraph there is reference to statements of accused after arrest which would ordinarily be inadmissible in evidence. Reference to avoid incident of the past does not provide any nexus. The State Government gave the sanction without even discussing the matter with the investigating officer and without assessing the situation independently. All these show lack of proper and due application of mind by the State Government while giving sanction/consent."

(emphasis laid by this Court)



It was the Deputy Secretary, Law and Order, Mr. J.R Rajput who had signed the document of sanction issued in the name of the Governor (Ex.498). However, he was not examined by the Court. On the other hand, PW-88, the Principal Secretary was examined. Therefore, we intend to examine the statement of PW-88, since he formed the only link in the Home Ministry of State of Gujarat and could enlighten us with the facts and information which were taken into consideration by him while granting sanction.

While deposing before the Special Court (POTA), PW-88 stated that he had not discussed anything with the Home Minister regarding the grant of sanction and the Minister had simply signed the proposed note as a mark of approval. PW-88 further stated that he had not discussed anything with the I.O. about granting sanction in the present case. However, the Special Court (POTA) erroneously justified the granting of sanction on the ground that the learned counsel for A-2 and A-4 before the Special Court (POTA), Mr. R.K. Shah, did not insist on examination of the internal note and at no stage was such a request made in writing.”

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“77. However, the present case does not show that the sanctioning authority had applied its mind to the satisfaction as to whether the present case required granting of sanction. The prosecution had failed to prove that the sanction was granted by the Government either on the basis of an informed decision or on the basis of an independent analysis of fact on consultation with the Investigating Officer. This would go to show



clear non-application of mind by the Home Minister in granting sanction. Therefore, the sanction is void on the ground of non-application of mind and is not a legal and valid sanction under Section 50 of POTA.”

21. Impeaching the tendency of sub-delegation by the Sanctioning Authority, the Hon’ble Supreme Court in the matter of **Anirudhsinhji Karansinhji Jadeja and Another Versus State of Gujarat** reported as (1995) 5 SCC 302 held that exercise of discretion with instruction from other person amounts to failure to exercise discretion at all. The relevant part thereof reads thus:

“14. The present was thus a clear case of exercise of power on the basis of external dictation. That the dictation came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA in exercise of his discretion.

15. The aforesaid is however not all. Even if it be accepted that as an additional safeguard against arbitrary exercise of the drastic provisions, the State Government had provided by administrative instructions an additional safeguard whereunder the DSP was required to obtain the sanction/consent of the State Government, we are of the view that in the present case the same was given by the State Government without proper application of mind. We have taken this view because the sanction/consent was given by the Government merely on the basis of the fax message dated 17-3-1995 of the DSP. The reason for



our saying so is that though there is no record a fax message of Deputy Director General of Police also, which is dated 18-3-1995, the sanction/consent order has mentioned above the fax message of the DSP only. Now, no doubt the message of the DSP is quite exhaustive, as would appear from that message which has been quoted above in full, we are inclined to think that before agreeing to the use of harsh provisions of TADA against the appellants, the Government ought to have taken some steps to satisfy itself whether what had been stated by the DSP was borne out by the records, which apparently had not been called for in the present case, as the sanction/consent was given post-haste on 18-3-1995, i.e., the very next day of the message of the DSP. It seems the DSP emphasised the political angle in the first two paragraphs of his message. The dispute or motive stated was that the Darbars were annoyed because they were refused loan and not because of any political rivalry. In the third paragraph there is reference to statements of accused after arrest which would ordinarily be inadmissible in evidence. Reference to avoid incident of the past does not provide any nexus. The State Government gave the sanction without even discussing the matter with the investigating officer and without assessing the situation independently. All these show lack of proper and due application of mind by the State Government while giving sanction/consent.

22. Besides, it has also been held that the burden lies on the prosecution to establish that adequate material for grant of sanction was made available to the Authority. In every individual case, the Court has to find out whether there is



an independent application of mind by the Competent Authority or not, to the material placed before it. Reference in this regard has to be made to the judgment of the Hon'ble Supreme Court in the matter of **C.B.I Versus Ashok Kumar Aggarwal** reported as **(2014) 14 SCC 295**. Relevant extract thereof reads thus:

“13. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

14. It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.



15. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge-sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter alia on the ground that the order suffers from the vice of total non-application of mind. (Vide Gokulchand Dwarkadas Morarka v. R.6; Jaswant Singh v. State of Punjab, Mohd. Iqbal Ahmed v. State of A.P.8, State v. Krishanchand Khushalchand Jagtiani, State of Punjab v. Mohd. Iqbal Bhatti 10, Satyavir Singh Rathi, ACP v. State and State of Maharashtra v. Mahesh G. Jain 12.)

16. In view of the above, the legal propositions can be summarised as under:

16.1. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in



favour of the accused and on the basis of which, the competent authority may refuse sanction.

16.2. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

16.5. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.”

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20. Be that as it may, in State of T.N. v. M.M. Rajendran this Court dealt with a case under the provisions of the 1988 Act, wherein the prosecuting agency had submitted a very detailed report before the sanctioning authority and on consideration of the same, the competent authority had accorded the sanction. This Court found that though the report was a detailed one, however, such report could not be held to be the complete records required to be considered for sanction on application of mind to the relevant material on record and thereby quashed the sanction.



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26. *Before proceeding further, it may be pertinent to note that the sanction order speaks of consideration of the entire material including the case diaries and documents collected during the course of investigation and statements recorded under Section 161 CrPC and statements recorded by the Magistrate under Section 164 CrPC. The learned Special Judge dealt with the issue in its order and brushed aside the same observing that the same may be factually incorrect, and there was a letter on record showing the true picture that the relevant documents had not been sent to the sanctioning authority. However, it is open to the prosecution during the course of trial to examine the sanctioning authority where such a discrepancy can be explained. The learned Special Judge has wrongly labelled such a fact which goes to the root of jurisdiction and clearly shows that the extent to which there could be application of mind was a mere discrepancy.”*

23. It is evident from above that the complete and conscious scrutiny of the evidence and record has to be done by the Authority itself and not by any other person on his/her behalf. Besides, the order should also make it evident that the authority applied its own mind to all the relevant facts.

24. Further the delay in seeking a grant of sanction has been recognized as a futility of the entire exercise in the matter of **Mahendra Lal Das Versus State of Bihar** reported as **(2002) 1 SCC 149**. Relevant part thereof reads thus:

“5. It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any



limit of time. This Court in Abdul Rehman Antulay v. R.S. Nayak while interpreting the scope of Article 21 of the Constitution held that every citizen has a right to speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and retrial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a preservative proof of prejudice.

6. In this case the prosecution has miserably failed to explain the delay of more than 13 years by now, in granting the sanction for prosecution of the appellant-accused of possessing disproportionate wealth of about Rs 50,600. The authorities of the respondent State also appear to be not satisfied about the merits of the case and were convinced that despite granting of sanction the trial would be a mere formality and an exercise in futility.

7. In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when when delay



is found to have been caused during the investigation, inquiry or trial, the appropriate authorities concerned are under an obligation to find out and deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case. The appellant has submitted that due to registration of the case and pendency of the investigation he lost his chance of promotion to the post of - Chief Engineer. It is common knowledge that promotions are withheld when proceedings with respect to allegations of corruption are pending against the incumbent. The appellant has further alleged that he has been deprived of the love, affection and the society of his children who were residing in a foreign country as on account of the pendency of the investigation he could not afford to leave the country.

8. This Court in Ramanand Chaudhary v. State of Bihar quashed the investigation against the accused on account of not granting the sanction for more than 13 years. The facts of the present case are almost identical. No useful purpose would be served to put the appellant at trial at this belated Stage.

9. Keeping in view the peculiar facts and circumstances of the case, we - are inclined to quash the proceedings against the appellant as permitting further prosecution would be a travesty of justice and a mere ritual or formality so far as the prosecution agency is concerned, and unnecessary burden as regards the courts.”



25. It is in light of the aforesaid settled parameters that the order of sanction granted by the Home Minister needs to be tested. The prime question to be determined would be:

- (a) Whether the Competent Authority applied its own independent mind to the order granting sanction? and
- (b) Whether the sanction order reflects consideration of the material and evidence and as to whether the conclusions drawn are supported from the same?

26. Adverting to the first question, the sequence of facts shows that the file was put up before the Home Minister on three occasions and the order on each time was:

- i) First: File sent to Senior Officer to inquire into the material and evidence collected by CRPF & State of Jammu & Kashmir and to submit report;
- ii) Second: The matter sent back to the Home Secretary to record his recommendation; and
- iii) Third: Recommendation of Home Secretary is approved.

27. At none of the stages, there is any noting or reason recorded by the Ministry of Home Affairs which reflects non-consideration of any material, documents or evidence. Finally, when the sanction was granted, it was a mere ministerial approval of a recommendation of the Home Secretary, which reflects no consideration by the Authority on its own.



28. The same cannot be perceived as a lawful discharge of a statutory duty cast upon the authority to safeguard the officials against vexatious and spiteful prosecution by vested interests. The Ministry of Home Affairs, in sub-delegating its own discretion, to be exercised by Home Secretary, in his recommendation, actually abdicated its own responsibility. There being no application of mind to any of the facts, material, evidence or documents, the order in question is neither by the Competent Authority nor can it be said to satisfy the test of a 'considered decision'. The petition thus deserves to succeed on the said sole ground alone.

29. However, since the issue has been argued on merits with respect to the legality of the order as well, hence, the said aspects need to be dealt with by this Court.

30. A perusal of the office noting and the manner in which the prosecution sanction has been granted in the present case coupled with the reasons assigned, establish the following:-

- i) That even though there is a reference to the consideration of the report of the Ministry of Home Affairs as well as the Ministry of Law, however, no points for not accepting or of dissent, have been recorded by the competent authority. The reports and the opinions of different officials/authorities have been completely disregarded and discredited for no cogent reasons. In the absence of referring to any material, on the basis whereof the conclusions were drawn by the Court of Inquiry and the evidence collected, the competent authority



would have no basis to record its disagreement with the conclusions. In an objective decision-making, the competent authority is required to refer to the relevant material and assign its reasons for its disagreement. Since neither dissent is recorded nor the credibility of the evidence impeached, the conclusion recorded would be deemed to be arbitrary and unsustainable.

- ii) It is also evident that the prosecution sanction has been granted only on a one line note that was appended by the Special Secretary (Home) wherein the Special Secretary has recorded that since the petitioner did not join the investigation in the case, hence, prosecution sanction ought to be granted. A mere approval of the aforesaid note by the Authority only reflects that there has been no application of mind by the competent authority. Besides, the findings recorded or the reason assigned in the said note by the then Special Secretary (Home) that the petitioner did not join the investigation is itself dispelled by the evidence and the case file i.e. page No. 89 referred to in the reports/comments furnished by J.C. Dabas, IPS, the then ADGP, CRPF.
- iii) Besides, it has been stated in the order that reference has been made to the report/comments of the CRPF and Ministry of Law, which such reports viz. the Court of Inquiry and other documents support innocence and non-involvement of the



petitioner and recommended against the grant of prosecution sanction. No reasons have been assigned by the respondents as to why the said recommendations or the conclusions drawn by the Court of Inquiry, as well as the ADGP on sifting through the material collected by the State of Jammu & Kashmir as well as the CRPF, during the Court of Inquiry, were false and ought to be disregarded.

31. Besides, there is no cogent and objective material that could be referred to by the respondent-State showing *prima facie* involvement of the petitioner in the incident in question. The argument at best could only lead to an inference that the missing person was taken away by the CRPF, however, to draw an inference that the petitioner was the person who had taken away the person is completely in different domain. The case in hand does not relate to grant of prosecution sanction by the CRPF but relates to an allegation of an offence being committed against a specific person. The burden thus lies heavily and exclusively upon the prosecuting agency to justify its request for seeking prosecution sanction by referring to the evidence and not merely probabilities.

32. The submission of the respondents that the final truth can only be determined after the petitioner has faced the criminal trial cannot be accepted as a valid argument. The statutory provision is a protection extended to a person against vexatious prosecution. The very object of the said provision would stand defeated, in case the interpretation as propagated by the respondents is accepted and every person is compelled to undergo the rigors of a criminal trial for the acts/omissions undertaken by him during the discharge of his official duties. The



acceptance of the argument would render the provision otiose and the officials/employees defenseless and remediless against any vexatious or malicious prosecution by mischievous elements.

33. While not disputing the general position in law that in the event of the Court disagreeing with the prosecution sanction order, the case needs to be remitted to the competent authority for a fresh consideration, however, this Court is also cognizant of the fact that the incident in question took place in the year 1990. The prosecution sanction was granted for the first time in the year 2010 and as on the date when the matter is being examined, a period of 35 years has already elapsed. Remanding the case for reconsideration for grant of prosecution sanction would itself be a travesty of justice and would amount to keeping a person in a continuous state of suspense and limbo. Speedy determination of proceedings is mandated under Article 21 of the Constitution of India. The circumstances in the present case also reflect that the initial consideration for grant of sanction itself was after a period of 20 years when much water had flown. The Hon'ble Supreme Court quashed the FIR's where sanction order was being sought for after a period of 13/15 years in the matter of **Mahendra Lal Das and Mansukhlal Vithaldas Chauhan** (*supra*). The case in hand would be covered by the above judgments.

34. Consequently, the instant writ petition is allowed and the order dated 27.07.2010, granting prosecution sanction against the petitioner in case FIR No. 193 of 1990 under Sections 364 and 344 of the Ranbir Penal Code and the order dated 15.02.2011 dismissing the application to reconsider are set aside.



35. For the reasons assigned above and noticing the period during which this issue has remained pending i.e. 35 years, the case against the petitioner arising out of case FIR No. 193 of 1990 is ordered to be closed.

36. All the pending miscellaneous application(s), if any, are also disposed of.

JULY 16, 2025
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No