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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 148/2025 & CRL.M.A. 831/2025, CRL.M.A. 832/2025

JAGDISH KUMAR ARORA .....Petitioner

Through: Mr. Madhav Khurana, Senior Advocate with Mr. Debopriyo Moulik and Ms. Shaurya Singh, Advocates.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain, Special Counsel with Mr. Vivek Gurnani, Panel Counsel, Mr. Kartik Sabharwal, Mr. Pranjal Tripathi and Mr. Swadish Vats, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **23.01.2025**

1. The present petition, filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 assails order dated 3rd April, 2024[1] passed by the Special Judge (PC Act) (CBI)-06, Rouse Avenue District Court, New Delhi in CT Case No. 12/ 2024.[2] By the impugned order, the Special Court took cognizance of the offence of money laundering under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002[3] and issued summons to the Petitioner in the said proceedings.

2. Briefly, the facts leading to the filing of the present petition are

[1] "the impugned order"
[2] titled ***Directorate of Enforcement v. Jagdish Kumar Arora & Ors.***
[3] "PMLA"

summarised as follows:

2.1. On 6th July, 2022, the Central Bureau of Investigation,[4] registered RC218202240010 under Sections 120B and 420 of the Indian Penal Code, 1860[5] read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988[6] against officials of Delhi Jal Board.[7] This RC case pertains to alleged irregularities in the award of a tender floated by the DJB to NKG Infrastructure Limited. Among those implicated were officials of DJB, including the Petitioner (then serving as Chief Engineer), officials of NBCC, and representatives of NKG Infrastructure Limited.

2.2. Subsequently, on 28th September, 2022, ECIR/ DLZ0-1/45/2022 was registered by the Directorate of Enforcement[8] under Sections 3 and 4 of Prevention of Money Laundering Act, 2002[9], in relation to the afore-mentioned scheduled offence registered by the CBI. ED alleges that the proceeds of crime arising from the irregularities in the tender process were laundered through various channels. On 31st January, 2024, the Petitioner was arrested in connection with the case and is presently in judicial custody.

2.3. After the completion of investigation, ED filed a prosecution complaint on 28th March, 2024, implicating the Petitioner and others for offences under PMLA. The complaint elaborates on the purported role of the Petitioner in facilitating the alleged laundering of proceeds of crime.

2.4. Pursuant to the prosecution complaint, Special Judge passed the impugned order on 3rd April, 2024, taking cognizance of the offence under

[4] "CBI"
[5] "IPC"
[6] "the PC Act"
[7] "DJB"
[8] "ED"
[9] "PMLA"

Section 3 read with Section 4 of PMLA and issued summons to the accused persons, including the Petitioner. The said proceedings are pending before the Trial Court and are currently at the stage of consideration of charge.

2.5. In the afore-noted proceedings, the Petitioner had filed an application praying for dropping the proceedings, however, Petitioner understood that the request was misconceived and accordingly, withdrew the same on 21st December, 2024.

3. Mr. Madhav Khurana, Senior Counsel for Petitioner, urges that the impugned order is untenable in law as the same has been passed in absence of prior sanction of the Government, as mandated under Section 197(1) of the Code of Criminal Procedure, 1973[10] for prosecution of government officials. Relying on the Supreme Court decision in ***Directorate of Enforcement v. Bibhu Prasad Acharya***[11], he urges that at the time of passing of the impugned order, a sanction under Section 197(1) of Cr.P.C read with Section 65 of PMLA is a pre-condition for prosecuting a public servant. Mr. Khurana emphasizes that the Apex Court has categorically held that Section 197(1) Cr.P.C applies even to complaints made under Section 44 of PMLA. As such, the absence of sanction renders the Court incompetent to take cognizance of the alleged offences, thereby vitiating the impugned order and subsequent proceedings.

4. Although the present petition challenges the order of cognizance and the issuance of summons, Mr. Khurana, on instructions, submits that since the case is presently at the stage of framing of charges, the Petitioner is prepared to raise the issues urged herein before the Trial Court. However, he

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[10] "Cr.P.C"
[11] 2024 SCC OnLine SC 3181

expresses apprehension that the Trial Court, in light of the jurisdictional objections raised by ED, may refrain from addressing the question of sanction, given that cognizance has already been taken. To ensure the Petitioner has a meaningful opportunity to argue his case at the appropriate stage, Mr. Khurana seeks this Court's direction for the Trial Court to specifically apply its mind to the question of sanction at the stage of charge. On this issue, Mr. Khurana places reliance on ***B. K. Parchure v. State and Another***,[12] wherein the Court emphasized that jurisdictional issues and questions concerning the validity of sanction can be examined even during the framing of charges.

5. On merits, Mr. Khurana argues that the sanction dated 7th June, 2024 issued by the sanctioning authority against Petitioner,[13] is irrelevant to the PMLA case. He highlights that the said sanction pertains exclusively to offences under Section 120B read with Sections 420, 468, and 471 of IPC and Sections 13(2) and 13(1)(d) of the PC Act. At the time of issuance of the said sanction, the authority had not been presented with any material relating to the offences under Sections 3 and 4 of the PMLA. Therefore, Mr. Khurana argues, the sanction is limited in its scope and cannot be extended to the offences alleged under the PMLA. Any reliance placed on this sanction by ED is, therefore, legally untenable and procedurally irregular.

6. Additionally, Mr. Khurana contends that the expression "*any other offences punishable under other provisions of law*" in paragraph No. 12 of the sanction order must be interpreted narrowly to relate solely to the scheduled offences for which the sanction was granted. He submits that this

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[12] 2022 SCC OnLine Del 2492; (2022) 292 DLT 249

[13] intimated to CBI through covering letter dated 10th June, 2024

phrase cannot be construed to include offences under PMLA, as such an interpretation would contravene the settled principles governing the issuance and scope of sanction. He asserts that the phrase, in its context, authorizes only the Special Judge of the CBI Court to take cognizance of the scheduled offences and does not extend to offences under Sections 3 and 4 of the PMLA, for which an independent sanction would be required.

7. On the other hand, Mr. Zoheb Hossain, Special Counsel for ED, strongly opposes the instant petition. He argues that the sanction granted in relation to the scheduled offence encompasses facts that are intrinsically connected with the alleged acts of "discharge of official duty" forming the basis of PMLA prosecution. According to him, the competent authority, while granting sanction, not only authorized the prosecution for the specific offences under the IPC and the PC Act but also provided a broader sanction for "*any other offences punishable under other provisions of law in respect of the acts aforesaid and for taking cognizance of the said offences by a court of competent jurisdiction*". He asserts that the phrase used in the sanction order is inclusive and extends to offences under the PMLA, particularly since the allegations pertain to proceeds of crime stemming directly from the acts that form the foundation of the scheduled offences.

8. Without prejudice to the above, Mr. Hossain argues that acts alleged against the Petitioner, namely generation and acquisition of proceeds of crime by accepting bribes in exchange for awarding tenders based on fake eligibility certificates and subsequent laundering by investment of those proceeds in various properties, cannot, by their very nature, be considered acts performed in the discharge of official duty. Thus, he argues, no prior sanction under Section 197(1) of Cr.P.C is required for the prosecution in

the present case. Nevertheless, in light of the Supreme Court's decision in ***Bibhu Prasad Acharya*** and as a matter of procedural prudence, Mr. Hossain informs the Court that the ED has, out of abundant caution, sought additional sanction from the competent authority for prosecuting the Petitioner under the PMLA. He clarifies that this step has been taken to preclude any procedural objections that might arise during the trial.

9. Mr. Hossain also asserts that the present case does not involve a complete absence of sanction but rather raises a question regarding the adequacy and validity of the sanction already granted. Mr. Hossain acknowledges that this issue of sufficiency of sanction is a matter that the Trial Court is competent to assess, even at the stage of framing charges. In support of this contention, he places reliance on the judgments of the Supreme Court in ***State of Telangana v. Managipet***[14] and ***Dinesh Kumar v. Chairman, Airport Authority of India and Another***[15].

10. Furthermore, Mr. Hossain submits that, should the Court deem it appropriate to remand the matter to the Trial Court, the Trial Court can independently assess whether sanction under Section 197(1) of Cr.P.C. is necessary in the present case and whether the sanction order relied upon by the ED is adequate. He reiterates that, in the ED's view, the existing sanction is both valid and sufficient to sustain the prosecution under the PMLA. He, however, contends that even if the sanction is found to be deficient in any respect, such a defect would not warrant the discharge of the accused but would instead constitute a curable defect. He urges that the Trial Court, in such a scenario, should grant the ED an opportunity to obtain a

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[14] (2019) 19 SCC 87
[15] (2012) 1 SCC 532

supplementary sanction to address any perceived deficiency, thereby ensuring that procedural requirements do not derail the prosecution.

11. The Court has considered the aforenoted contentions. In ***Bibhu Prasad Acharya***, the Supreme Court while relying upon its earlier decision in ***Prakash Singh Badal v. State of Punjab***,[16] reiterated that the issue of sanction under Section 197 is not confined to being determined at the initial stages of the proceedings. The relevant observations made in ***Prakash Singh Badal*** reads as under:

> *"38. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage."*

12. Furthermore, in ***Bibhu Prasad Acharya***, the Supreme Court extensively discussed the principles laid down in ***P.K. Pradhan v. State of Sikkim***[17] where the scope and applicability of Section 197 of the Cr.P.C were clarified. For ease of reference, the relevant portions are extracted below:

> *"5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty".*

[16] (2007) 1 SCC 1
[17] (2001) 6 SCC 704

The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. ***There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation***

xx ... xx ... xx

"15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. ***It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.***"

[Emphasis Supplied]

13. From the above, it is evident that the determination of whether

sanction is necessary under Section 197 of the Cr.P.C depends on whether the alleged acts bear a reasonable connection to the discharge of official duty. Moreover, as established by the Supreme Court, the issue of sanction can be raised at any stage of the proceedings—be it at the time of cognizance, framing of charges, during the trial, or even after conviction.

14. In the present case, the question revolves around the validity and sufficiency of the sanction relied upon by ED. While ED asserts that the existing sanction encompasses all relevant offences, including those under the PMLA, the Petitioner disputes its applicability to the PMLA offences, contending that it is irregular and insufficient. In the opinion of the Court, this contention necessitates examination by the Trial Court, which is empowered to evaluate the validity of the sanction and determine whether it satisfies the requirements under Section 197 of the Cr.P.C and the relevant provisions of PMLA.

15. At this juncture, it is apposite to examine Section 197(1) of Cr.P.C, which reads as follows:

> *"197. Prosecution of Judges and public servants.—*
> *(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—*
> *(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*
> *(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government*
> *[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State,*

clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]
[Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, 3[section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).]"

16. Section 197(1) unequivocally precludes the Court from taking cognizance of certain offences against public servants without prior sanction, where the alleged acts were committed in the discharge or purported discharge of their official duties. In the present case, cognizance has already been taken and summons have been issued to the Petitioner under Sections 3 and 4 of the PMLA. While the Petitioner contends that the absence of sanction vitiates the cognizance, the judicial precedents discussed above, particularly ***Bibhu Prasad Acharya*** and ***Prakash Singh Badal***, make it abundantly clear that the issue of sanction is not bound by procedural timelines and may be raised at any stage of the proceedings, including post-cognizance, during the framing of charges, or even after conviction. Both counsel for the parties are *ad idem* on the legal proposition that the question of sanction can be effectively raised and adjudicated at the stage of framing charges. It would, therefore, be appropriate to leave the resolution of these contentious issues to the Trial Court.

17. For the foregoing reasons, this Court refrains from expressing any opinion on the merits of the contentions raised by either side. The Trial Court is directed to consider all issues pertaining to the validity and sufficiency of the sanction at the stage of charge.

18. In the event the Trial Court concludes that a sanction is necessary and/or the sanction relied upon by ED is not valid, it shall pass appropriate orders in accordance with law, including, if warranted, the discharge of the accused. However, in such a scenario, as held in ***Bibhu Prasad Acharya***, ED may be afforded an opportunity to obtain the requisite sanction before proceeding further.

19. It is clarified that the Court has not commented on the merits of the case. All rights and contentions of parties are left open for adjudication by the Trial Court.

20. With the above directions, the present petition, along with pending applications, is disposed of.

SANJEEV NARULA, J

JANUARY 23, 2025
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