

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE**

**PRESENT:  
THE HON'BLE JUSTICE UDAY KUMAR**

**CRR 87 of 2020**

**Central Bureau of Investigation  
-Vs-  
Chandra Nath Kayal**

For the Petitioner : Mr. Anirban Mitra  
Mr. Amit Halder

Hearing concluded on : 02.01.2026

Judgment on : 16.01.2026

**UDAY KUMAR, J.: –**

1. The Central Bureau of Investigation (CBI), as petitioner, has invoked the revisional jurisdiction of this Court under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, assailing the order of discharge dated April 5, 2019, passed by the Learned Judge, Calcutta 3rd Special Court (CBI Designated) in Special Case No. 05/13. By the impugned order, the Learned Special Judge discharged the opposite party, Shri Chandra Nath Kayal, an Income Tax Officer, from charges under the Prevention of Corruption Act, 1988 (PC Act), on the ground of an invalid sanction and the legal impossibility of its rectification.
2. The prosecution case originated from a successful trap operation conducted on May 2, 2012, following a complaint that the opposite party had demanded a bribe of ₹2,000/- for processing a tax refund. Upon completion of the

investigation, a charge-sheet was filed under Sections 7 and 13(2) read with 13(1)(d) of the PC Act.

3. The material facts, which remain uncontroverted, are that the opposite party was appointed as an Income Tax Officer by the Chief Commissioner of Income Tax (CCIT) on April 23, 2010. However, the mandatory sanction for prosecution was accorded by the Commissioner of Income Tax (CIT) on July 11, 2012. After the trial had partially commenced, the opposite party moved an application for discharge, asserting that the CIT, being subordinate to the appointing authority (CCIT), was incompetent to grant sanction. The Special Court concurred, holding the sanction to be invalid, and discharged the accused.
4. Mr. Anirban Mitra, Learned Counsel for the CBI, submitted that the CIT was competent to sanction, placing reliance on departmental notification GSR-977(E). He further argued that even if the sanction were invalid, the prosecution ought to have been granted liberty to obtain a fresh one, citing *Nanjappa vs. State of Karnataka (2015) 14 SCC 186*. He maintained that the withdrawal of general consent by the State of West Bengal on November 16, 2018, would not affect this case as it was registered prior to said withdrawal.
5. Conversely, the Learned Counsel for the opposite party argues that the sanction violates the constitutional mandate of Article 311(1) and Section 19(1)(c) of the PC Act, as a subordinate authority granted it. He further contends that the withdrawal of general consent under Section 6 of the DSPE Act creates an absolute bar to any fresh exercise of jurisdiction by the CBI, rendering the defect incurable.

6. The requirement of a valid sanction is not a mere procedural formality; it is a jurisdictional prerequisite. Section 19(1)(c) of the PC Act stipulates that sanction must be granted by the authority "competent to remove" the public servant. This statutory mandate is anchored in the constitutional safeguard of Article 311(1), which prohibits removal by an authority subordinate to the appointing authority. Applying this principle, the CCIT is the appointing authority.
7. Applying this principle, the CIT is undeniably subordinate to the CCIT. It is settled law, as held in *Mahesh Prasad vs. State of U.P.* (AIR 1955 SC 70), that a sanction granted by a subordinate authority suffers from a fundamental jurisdictional defect. Departmental circulars or notifications cannot override or dilute this constitutional mandate. Thus, the initial sanction was void ab initio.
8. The second, and more intricate, issue is the denial of liberty to obtain a fresh sanction. While the curative principle in *Nanjappa* (supra) is generally available, it is constrained here by a superior legal impediment: the withdrawal of general consent by the State of West Bengal under Section 6 of the DSPE Act.
9. The CBI's reliance on *Kazi Lhendup Dorji vs. CBI* (1994 Supp (2) SCC 116) is misplaced. That protection applies to "pending investigations." In this matter, the investigation was concluded and the trial had commenced before the consent was withdrawn. Obtaining a fresh sanction is not a ministerial act; it involves a fresh application of mind by a competent authority, constituting a substantive, new exercise of jurisdiction. Since the State has divested the CBI of its power to undertake any new exercise of jurisdiction within its territory

for concluded cases, this Court cannot authorize an act that is statutorily forbidden.

**10.** Discussion on the finality of this jurisdictional defect must necessarily account for the interplay between administrative competence and federalist constraints. The distinct legal pillars supporting the dismissal of this revision are founded upon a two-fold realization:

- a. Firstly, that a sanction granted by an authority subordinate to the appointing authority is not a mere technical irregularity but a fundamental jurisdictional defect, striking at the very root of the prosecution's authority in violation of the constitutional protection under Article 311(1).
- b. Secondly, and perhaps more critically, while a defective sanction is generally curable under the curative principle of *Nanjappa*, it becomes incurable in the face of a subsequent statutory embargo. The withdrawal of general consent under Section 6 of the DSPE Act acts as a jurisdictional curtain; it precludes the agency from undertaking the substantive exercise of power required to re-initiate the sanctioning process. To hold otherwise would be to permit the agency to perform an act of substantive jurisdiction—namely, the fresh application of mind for a new sanction—at a time when it has been statutorily divested of the authority to do so within the territory of the State.

**11.** In view of the aforesaid, this Court finds no infirmity in the order of the Learned Special Judge. The discharge is a logical and legally necessary consequence of the failure of the prosecution to meet its jurisdictional prerequisites.

**12.** Accordingly, it is ordered:

- i. CRR No. 87 of 2020 is hereby dismissed.
- ii. The order dated April 5, 2019, passed by the Learned Special Judge, discharging the opposite party, Shri Chandra Nath Kayal, is upheld and confirmed.
- iii. The criminal proceedings in Special Case No. 05/13 stand terminated definitively.
- iv. There shall be no order as to costs.
- v. Any application, if any, is also disposed of.
- vi. Interim orders, if any, stands vacated.
- vii. Let the records of the Special Court be transmitted back forthwith.
- viii. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all necessary formalities.

**(Uday Kumar, J.)**