A.F.R.
Neutral Citation No. - 2024:AHC-LKO:45312
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Delivered on: 04.07.2024

Court No. - 12
Case :- CRIMINAL REVISION No. - 529 of 2024
Revisionist :- Sanjaya Dikshit
Opposite Party :- Central Bureau Of Investigation (C.B.I)/ Bs And Fc/ New Delhi
Counsel for Revisionist :- Chandra Bhushan Pandey,Asim Kumar Singh
Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Pankaj Bhatia,J.

1. Present revision has been filed challenging the order dated 20.04.2024 passed by learned Special Judge, Anti Corruption, Central Bureau of Investigation (Central) Lucknow in Criminal Case No.01 of 2012 (Union of India through C.B.I. v. Sanjaya Dikshit and ors.) whereby the discharge application preferred by the revisionist came to be dismissed.

2. The facts, in brief, leading to filing of the present revision are as under:

(i) The revisionist joined State Bank of India as a Probationary Officer and subsequently promoted to the post of Deputy General Manager in the year 2008; he joined as Branch Head of the Kanpur Branch on 17.05.2008. The appointing authority of the revisionist is the Executive Committee of the Central Board of the State Bank of India. While the revisionist was working as a Branch Head of the Bank at Kanpur, a First Information Report came to be lodged against the revisionist and 11 other persons on the basis of a complaint dated 13.08.2009 lodged by the General Manager, State Bank of India, Lucknow. After investigation, a charge-sheet came to be filed on 25.03.2011. As regards the revisionist, the allegation against him was that an amount of Rs.6 Lacs was paid by the co-accused to the revisionist as a motive or reward for showing undue favours to accused firm

M/s SRS Investment Company. After the filing of the charge-sheet, the revisionist moved an application seeking discharge under Section 227 of the Cr.P.c. mainly on the ground that no case was made out against the revisionist. He also challenged that there was no sanction for prosecuting the revisionist which was required in pursuance to the mandate of Section 19 of the Prevention of Corruption Act (hereinafter referred to as 'the PC Act'). It has been brought on record that initially the sanction was refused by the Board which is on record as Annexure – 5. In terms of the refusal of sanction by the appointing authority, an opinion was sought from the Central Vigilance Commission (hereinafter referred to as 'the CVC') through communication dated 30.08.2011 (Annexure – 5). Subsequently, when a challenge was made by the revisionist that there is no sanction for prosecution, the CBI which is the prosecuting agency, filed before the trial Court a Sanction Order dated 17.04.2012 according sanction under Section 19 of the PC Act. The said sanction order is on record as Annexure – 6.

(ii) It also bears from record that during trial, the initial refusal to grant sanction in case of the revisionist was sought by the revisionist before the trial Court by moving an appropriate application under Section 91 of the Cr.P.C. which is contained in Annexure – 7. In pursuance to the application filed by the revisionist seeking to bring on record the refusal to Sanction Order dated 30.08.2011, an order came to be passed by the trial Court on 04.01.2012 calling upon the Chief Vigilance Officer, State Bank of India to produce a copy of the letter dated 30.08.2011 before the date fixed.

(iii) It also bears from record that in pursuance to the said order passed by the trial Court, the refusal to sanction order dated 30.08.2011 was produced before the trial Court and is part of

the record. The trial Court vide impugned order dated 20.04.2024 rejected the discharge application filed by the revisionist through an extensive order. In the said order, the trial Court had noticed that the competent authority had given the sanction for prosecution in respect of the revisionist, and based upon the said, the discharge application came to be rejected.

3. While arguing the present revision, Shri Chandra Bhushan Pandey, learned counsel assisted by Shri Asim K. Singh, learned counsel for the revisionist confines his challenge to the impugned order only insofar as it is on the basis of a sanction which, according to the counsel for the revisionist, is not a sanction order prescribed under Section 19 of the PC Act. He has not pressed any other point in the present revision.

4. To buttress his submission, my attention is drawn by the counsel for the revisionist to the order dated 30.08.2011 whereby a communication was addressed to Secretary, Central Vigilance Commission stating that CBI has requested for grant of sanction of prosecution of the officials of the State Bank of India, including the present revisionist. It was further informed that the appointing authority has declined sanction for prosecution for the reasons disclosed. The reasons and the comments of the appointing authority with regard to the revisionist are part of the note appended to the communication dated 30.08.2011 whereby the appointing authority was of the clear view that as there is no criminal act on the part of the revisionist, the Executive Committee of the Central Board have decided to decline the sanction. The record, including the trial Court record which were summoned by this Court, does not indicate or include any response of the CVC. In response to the said communication dated 30.08.2011, however, a fresh sanction order came to be passed in the case of revisionist on 17.04.2012 (Annexure – 6). A perusal of the said sanction order reveals that one Shri A.

Krishna Kumar, Managing Director & Group Executive, National Banking recorded that he was the officer authorized to sign the sanction order on behalf of the authority competent to remove the said Shri Sanjaya Dikshit. The complete extract is recorded hereunder:

> *"AND WHEREAS, 1, (A. Krishna Kumar, Managing Director & Group Executive, National Banking), being the officer authorized to sign this sanction order on behalf of the authority competent to remove the said Shri Sanjaya Dikshit* ***after fully and carefully examining, the material, including the statements of witnesses recorded by the invesigating officer recorded under the provisions of Sec. 161 of Criminal Procedure Code 1973 respectively placed before me, in regard to the said allegations and the circumstances of the case, consider that the said Shri Sanjaya Dikshit should be prosecuted in the court of law for the said offences.***
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> *AND WHEREAS, I, CA. Krishna Kumar, Managing Director & Group Executive, Nation. banking) do hereby accord sanction under section 19 of the Prevention of Corruption Act, 1988 (Act II of 1988) for the prosecution of the said Shri Sanjaya Dikshit for the said offences and any other offence under any other provisions of law in respect of the acts, aforesaid and for taking cognizance of the said offences by the court of competent jurisdiction."*

5. The submission of learned counsel for the revisionist is that the Sanction Order dated 17.04.2012 is not by a competent authority; he further argues that in the entire order dated 17.04.2012, there is no reference to the earlier order refusing to grant sanction by the appointing authority and thus, on these two counts itself, the trial Court ought to have allowed the discharge application as it is well settled in terms of the mandate of Section 19 of The PC Act, that without sanction, the prosecution cannot take place. It is also argued that the reference by the trial Court in the impugned order,that the competent authority has granted sanction for prosecuting the revisionist is wholly without application of mind and without even referring to the earlier refusal order dated 30.08.2011. He places reliance on a judgment of the Supreme Court in the case of ***State of Himachal Pradesh v. Nishant Sareen***[1] and particularly emphasises on Paragraphs – 11, 12, 13, 14 & 15, which are to the following effect:

> ***"11.*** *This Court in Bhatti Case then noticed the opinion of the High Court which was recorded as follows : (SCC p. 96, para 9)*

1 (2010) 14 SCC 527

> *"9. … 'Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the official concerned, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible."*

While affirming the above opinion of the High Court, this Court held in paragraphs 20 and 21 of the Report as under : (Bhatti Case, SCC p. 99)

> *"20. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to."*
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> *"21. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise."*

12. *It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.*

13. *In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course."*

> ***14.*** *Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.*
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> ***15.*** *By way of foot-note,* ***we may observe that the investigating agency might have had legitimate grievance about the order dated November 27, 2007 refusing to grant sanction, and if that were so and no fresh materials were necessary, it ought to have challenged the order of the sanctioning authority but that was not done.*** *The power of the sanctioning authority being not of continuing character could have been exercised only once on the same materials."*

6. He also strongly relies upon the judgment of the Bombay High Court in the case of ***Central Bureau of Investigation v. R. Bhuvaneswari and Anr.***[2] and on the judgment in the case of ***A. Sreenivasa Reddy v. C.B.I.***[3].

7. He lastly argues that in view of the mandate of Section 401 of Cr.P.C., this Court can decide the issue without remanding the matter as while exercising the power of revision, the High Court in its discretion can exercise all the powers conferred on a Court of Appeal.

8. Shri Anurag Kumar Singh, learned counsel appearing for the CBI has strongly opposed the revision by arguing that the validity of the sanction or the correctness can be seen only at the time of trial and not at the time of discharge sought. He further argues that the order impugned has not occasioned a failure of justice which is a *sine qua non* for exercising the revisional power and on that count, this Court while exercising its revisional power should not interfere. He further argues that any order of sanction has to be sent to the CVC for its opinion which is duly empowered to exercise the power vested in it by virtue of Section 8(g) of The Central Vigilance Commission Act, 2003 (hereinafter referred to as 'the CVC Act') and thus, it is the final order - which in the present case is the sanction order dated 17.04.2012 -

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2 2024 SCC OnLine Bom 123
3 Writ Petition No.33297 of 2016 decided on 30.10.2018

which has to be taken into consideration to form a view whether the sanction was there or not, and any act done prior to the same, including the sending of a view by the appointing authority to the CVC and the view of the CVC, are steps in process of reaching a final conclusion and cannot be taken into consideration by the trial Court for examining the factum of sanction.

9. He further argues that in terms of the powers conferred under the CVC Act, an office memorandum has been issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training being Office Memorandum No.372/6/2017-AVD-III, Dated 02nd December, 2020, relevant portion of which is to the following effect:

> *"…*
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> *3. Recently, CVC has observed that some Ministries/Department, specifically CPSUs and Public Sector Banks, are not following the said guidelines/instructions in true spirit. Further, in certain cases the Competent Authority formally declined the sanction for prosecution and then referred the matter to the CVC for advice.*
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> *4. As once the Competent Authority takes a decision and communicates it to the CBI, the matter of grant of sanction for prosecution cannot be reviewed, it is important that the requisite consultation with CVC, etc. is completed before the Competent Authority takes a decision in such matters."*

10. Learned counsel for the CBI places reliance on the following judgments:

> ***Dinesh Kumar v. Chairman, Airport Authority of India and Anr.***[4]
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> ***State of Bihar and ors. v. Rajmangal Ram***[5]
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> ***Vivek Batra v. Union of India and Ors.***[6]
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> ***Abhai Ranjan v. State of U.P. & Ors.***[7]

11. He, thus, concludes his argument by arguing that on the point of sanction, the submission of counsel for the revisionist merits rejection and should be rejected.

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4 (2012) 1 SCC 532
5 (2014) 11 SCC 388
6 (2017) 1 SCC 69
7 MANU/UP/2797/2021

12. To appreciate the arguments raised at the Bar, it is essential to note the scheme of the PC Act, particularly Section 19, which is as under:

> ***"19. Previous sanction necessary for prosecution.-*** *(1)* ***No court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant****, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014) -*
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> *(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 and is not removable from his office save by or with the sanction of the Central Government, of that Government;*
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> *(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 and is not removable from his office save by or with the sanction of the State Government, of that Government;*
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> *(c)* ***in the case of any other person, of the authority competent to remove him from his office****:*
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> *Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless -*
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> *(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and*
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> *(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:*
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> *Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:*
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> *Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this*

sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.- For the purposes of sub-section (1), the expression "public servant" includes such person -

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), ***unless in the opinion of that court, a failure of justice has in fact been occasioned*** *thereby;*

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the

court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.--For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

13. On a plain reading of Section 19 of the PC Act, it is clear that the said section was inserted to ensure that there are no unnecessary prosecutions specifically in respect of public servants and thus, the provision for grant of sanction was prescribed. In short there cannot be ant prosecution of any public servant under The PC Act without an order of sanction by the empowered Authority in accordance with law.Section 19(1)(c) which is applicable to the facts of the present case prescribes for a sanction from the authority competent to remove him from his offence which in the present case is the Executive Committee of the Central Board of the State Bank of India.

14. It is clear from the records (communication dated 30.8.2011)that the said Executive Committee of Central Board of the State Bank of India had clearly declined the sanctioned for prosecution in case of the revisionist and the said decision was communicated to the CVC. It appears that the subsequent sanction order dated 17.04.2012 must have been in pursuance to any opinion given by the CVC in pursuance to the communication dated 30.08.2011, however, the same is not on record. The sanction order dated 17.04.2012 is signed by Managing Director & Group Executive (National Banking) Corporate Centre, Mumbai and the perusal of the said order, specifically the portion extracted herein above, demonstrates that the said Shri A. Krishna Kumar claims to be authorized by the authority competent to remove the revisionist. It is also clear that the said person had examined the materials including

the statement of witnesses recorded by the Investigating Officer recorded under Section 161 Cr.P.C. and had also considered the circumstances of the case, and based upon the said observation,(as recorded in the sanction order dated 17.4.12) he proceeded to grant the sanction. Although, it has not been argued before this Court that in terms of the mandate of Section 19(1)(c) of the PC Act, the power of sanction vests only in the authority competent to remove him from the office, and there is no provision to further delegate the power in favour of anyone which appears to be the case in the present case.

15. The subsequent sanction order dated 17.04.2012 based upon which the Revisionist is proposed to be prosecuted, is admittedly by an officer claiming to be a delegatee of the appointing authority and not by the appointing authority/authority specified under section 19(1)(c) of the PC Act . The delegation of powers by a person empowered is neither permissible under The PC Act nor can be done by the authority empowered as the same would violate the well settled principles *"Delegatee non potest delegare*".

16. The said sanction order dated 17.04.2012 *prima-facie* does not even disclose any application of mind while granting the sanction insofar as it records that it has carefully examined the material, including the submissions, however, there is no reference whatsoever to the earlier refusal of sanction order dated 30.08.2011 whereby the appointing authority had specifically refused the sanction for prosecuting the revisionist. There is no mention whatsoever of any opinion/advice received by the CVC under Section 8(1)(g) of the CVC Act, based upon which the sanction for prosecution is founded, thus, on the face of it, the sanction was clearly without any application of mind and by an authority which is claiming itself the delegatee of the appointing authority without there being any provision of delegation of the authority prescribed under the PC Act.

17. To analyze the judgments placed by the learned counsel(s), it is important to refer to the judgment of the Supreme Court in the case of ***Nishant Sareen (supra)*** wherein the Supreme Court after analyzing the scheme of Section 19 of the PC Act recorded the underlying object of Section 19 as under:

> ***"7.*** *The object underlying Section 19 is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations. The exercise of power under Section 19 is not an empty formality since the Government or for that matter the sanctioning authority is supposed to apply its mind to the entire material and evidence placed before it and on examination thereof reach conclusion fairly, objectively and consistent with public interest as to whether or not in the facts and circumstances sanction be accorded to prosecute the public servant. In Mansukhlal Vithaldas Chauhan vs. State of Gujarat, this Court observed: (SCC p.631, para 17)*
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> > *"17. … 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'.*
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> ***8.*** *Section 19 or for that matter Section 197 of Code of Criminal Procedure, 1973 (for short, `the Code') does not make any express provision regarding review or reconsideration of the matter by the sanctioning authority once such power has been exercised. In Gopikant Choudhary v. State of Bihar and Ors., initially the Minister concerned refused to accord sanction to prosecute the public servant therein and an order was passed to that effect. Subsequently, after retirement of the public servant, the matter was taken up by the Chief Minister and he granted sanction for prosecution of the public servant concerned. The question that arose for consideration before this Court was the correctness of the order passed by the Chief Minister. This Court set aside the order of the Chief Minister granting sanction to prosecute the public servant, inter alia, on the ground that the Chief Minister did not have any occasion to reconsider the matter and pass fresh order sanctioning the prosecution.*
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> ***9.*** *In Romesh Lal Jain v. Naginder Singh Rana & Ors. , it was held by this Court that : (SCC p. 303 para 14)*
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> > *"14. … an order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority. If the complainant or accused can demonstrate such an order granting or refusing sanction to be suffering from nonapplication of mind, the same may be called in question before the competent court of law."*

And ultimately concluded as under:

> ***"12.*** *It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.*
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> ***13.*** *In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course."*

18. In the next judgment cited by learned counsel for the revisionist i.e. ***R. Bhuvaneswari (supra)***, the High Court of Bombay was hearing a matter arising out of an order of discharge allowed by the trial Court. In the said case, on three different occasions, the sanction was refused by the appointing authority and was sent for opinion to the CVC and ultimately, on the basis of the views expressed by the CVC, a sanction order came to be passed. The said manner of exercise was not accepted by the trial Court and the said view was affirmed in the revision.

19. It is also essential to notice the judgment cited by learned counsel for the CBI, particularly in the case of ***Rajmangal Ram (supra)*** wherein it was held that the error, omission or irregularity should be coupled with failure of justice. Paragraph – 9 of the said judgment reads as under:

> ***"9.*** *In the instant cases the High Court had interdicted the criminal proceedings on the ground that the Law Department was not the competent authority to accord sanction for the prosecution of the respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High Court."*

20. It is also essential to note the judgment of the Supreme Court in the case of ***Dinesh Kumar (supra)*** wherein the Supreme Court noticed the earlier judgments of the Supreme Court in the case of ***State of Karnataka v. Ameerjan***[8] and ***Parkash Singh Badal v. State of Punjab***[9] to the following effect:

> ***"11.*** *In a later decision, in the case of Ameerjan, this Court had an occasion to consider the earlier decisions of this Court including the decision in the case of Parkash Singh Badal. Ameerjan was a case where the Trial Judge, on consideration of the entire evidence including the evidence of sanctioning authority, held that the accused Ameerjan was guilty of commission of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act. However, the High Court overturned the judgment of the Trial Court and held that the order of sanction was illegal and the judgment of conviction could not be sustained.*
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> ***12.*** *Dealing with the situation of the case wherein the High Court reversed the judgment of the conviction of the accused on the ground of invalidity of sanction order, with reference to the case of Parkash Singh Badal, this Court stated in Ameerjan in para 17 of the Report as follows: (SCC p. 280)*
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> > *"17. Parkash Singh Badal, therefore, is not an authority for the proposition that even when an order of sanction is held to be wholly invalid inter alia on the premise that the order is a nullity having been suffering from the vice of total non-application of mind. We, therefore, are of the opinion that the said decision cannot be said to have any application in the instant case."*
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> ***13.*** *In our view, having regard to the facts of the present case, now since cognizance has already been taken against the appellant by the Trial Judge, the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the Trial Court and giving liberty to the appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of this Court in Parkash Singh Badal and not unjustified."*

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8 (2007) 11 SCC 273
9 (2007) 1 SCC 1

21. The emphasis of Shri Anurag Kumar Singh, learned counsel for the CBI, is on the observation made in Paragraph – 13 of ***Dinesh Kumar's (supra)*** judgment, as extracted above, however, the Supreme Court itself had observed that having regard to the facts of the present case, since the cognizance has already been taken against the appellant by the trial judge, the High Court cannot be said to have erred in leaving the question of validity of sanction opened for consideration by the trial Court during the trial.

22. In the other judgment cited by Shri Anurag Kumar Singh in the case of ***Vivek Batra (supra)***, *prima-facie,* there is no issue akin to the issue in the present revision, decided in the said judgment.

23. The judgment of the Supreme Court in the case of ***Vijay Rajmohan v. State Represented by the Inspector of Police, CBI, ACB, Chennai, Tamil Nadu***[10] - although not cited by any of the parties - is an important judgment which deals with the issues as raised in the present revision; the Supreme Court framed two questions of law in Paragraph – 2 to the following effect:

> *"2. Two important questions of law arise for consideration in this appeal. The first question is whether an order of the Appointing Authority granting sanction for prosecution of a public servant under Section 19 of the Prevention of Corruption Act, 1988, would be rendered illegal on the ground of acting as per dictation if it consults the Central Vigilance Commission for its decision. The second question is whether the period of three months (extendable by one more month for legal consultation) for the Appointing Authority to decide upon a request for sanction is mandatory or not. The further question in this context, is whether the criminal proceedings can be quashed if the decision is not taken within the mandatory period."*

24. We are not concerned in the present case with regard to the second question framed by the Supreme Court, however, the first question completely arises in the present case.

25. The Supreme Court noticed the scheme of the Act and the legislative changes made in the CVC Act; the Supreme Court also noticed that the five legislations on the subject of corruption, operate

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10 Criminal Appeal No.001746 of 2022 decided on 11.10.2022

as integrated scheme. The observations of the Supreme Court are as under:

> *"18. It is evident from the above referred formulation that the position of law and the legal regime obtained by virtue of the five legislations on the subject of corruption, operates as integrated scheme. The five legislations being the Cr.P.C, DSPE Act, PC Act, CVC Act, and Lokpal Act, must be read together to enable the authorities to sub-serve the common purpose and objectives underlying these legislations. The Central Vigilance Commission, constituted under the CVC Act is specifically entrusted with the duty and function of providing expert advice on the subject. It may be necessary for the appointing authority to call for and seek the opinion of the CVC before it takes any decision on the request for sanction for prosecution. The statutory scheme under which the appointing authority could call for, seek and consider the advice of the CVC can neither be termed as acting under dictation nor a factor which could be referred to as an irrelevant consideration. The opinion of the CVC is only advisory. It is nevertheless a valuable input in the decision-making process of the appointing authority. The final decision of the appointing authority must be of its own by application of independent mind. The issue is, therefore, answered by holding that there is no illegality in the action of the appointing authority, the DoPT, if it calls for, refers, and considers the opinion of the Central Vigilance Commission before it takes its final decision on the request for sanction for prosecuting a public servant."*

26. The Supreme Court in the facts of the said case, after examining the records recorded as under;

> *"19. Returning to the case facts, we have examined the correspondence and the long-drawn communications between the CBI, the DoPT, and the CVC. We found that the inquiry made by the appointing authority, the DoPT, was only for soliciting further information, and particularly the opinion given by CVC is also advisory. The sanction order of the DoPT dated 24.07.2017 is an independent decision of the department that was taken based on the material before it. Under these circumstances, we are not inclined to accept the first submission made on behalf of the Appellant that the order of sanction suffers from illegality due to non-application of mind or acting under dictation."*

27. Thus, from the law as explained after considering the five legislations and holding them to be operating as an integrated scheme, the Supreme Court clearly held that the power of the CVC is only an advisory power, however, it is a valuable input in the decision making process of the appointing authority; the final decision is to be that of the appointing authority after application of independent mind and the

order of sanction should not suffer from illegality due to non-application of mind or acting under dictation.

28. Thus on analysis of the precedents referred above and on interpretation of the Section 19 of The PC Act what can be culled is as under:

> 28.1. No authority can initiate prosecution of the officers covered under the PC Act unless a sanction is granted by the appointing authority or the Authority empowered to remove the public servant,as the case may be.
>
> 28.2. The sanction should be granted/refused by the competent authority after application of mind and after considering the advice given by the CVC.
>
> 28.3. The role of CVC as prescribed under the CVC Act is only advisory and merits consideration by the competent Authority but does not have any binding effect.
>
> 28.4. The Authority empowered to grant /refuse sanction under Section 19 (1) of the PC Act alone can consider granting/refusing to grant sanction and is not empowered to delegate the powers vested in it.
>
> 28.5. An order granting sanction/refusing to grant sanction by any authority not empowered under Section 19(1) of The PC Act is a nullity being without jurisdiction.
>
> 28.6. Initiating prosecution on the foundation of an invalid/*non est* sanction order will be in the teeth of restrictions imposed under Section 19 of The PC Act and would clearly occasion failure of justice.

29. In the present case, the sanction order, based upon the which the CBI intends to proceed against the revisionist, is the sanction order

dated 17.04.2012, which, as already discussed above, is by an authority not empowered and thus without jurisdiction, it also suffers from the vice of non-application of mind insofar as it does not consider the earlier refusal of sanction order dated 30.08.2011 passed by the competent authority i.e. the Executive Committee of the Central Board. The sanction order dated 17.04.2012 also does not consider any input/opinion expressed by the CVC (if any) with regard to sanction for prosecuting the revisionist. The said order is also by a person who claims to be a delegatee of the appointing authority, whereas there is no power of delegation which vests either in the appointing authority to delegate its power or otherwise by virtue of the PC Act and thus without jurisdiction.

30. The rejection of the discharge application filed by the revisionist by observing and founding the same on the sanction order dated 17.04.2012 has clearly occasioned the failure of justice as now the revisionist is to be tried on the foundation of a sanction order which is without jurisdiction and suffers from the vices, as recorded above. Thus, based upon the sanction order dated 17.04.2012, the revisionist cannot be prosecuted. The discharge application filed by the revisionist ought to have been allowed and was wrongly rejected by the trial Court by means of the impugned order.

31. In view of the aforesaid discussion, the present criminal revision is ***allowed.***

32. Impugned Order dated 20.04.2024 passed in Criminal Case No.01 of 2012 (Union of India through C.B.I. v. Sanjaya Dikshit and ors.) is hereby quashed and the discharge application filed by the revisionist is allowed only on the ground that there was no valid sanction for prosecuting the revisionist.

33. I have not remanded the matter in view of the fact that I had called for the entire trial Court record by means of an order dated 16.05.2024 and 21.05.2024 and there is no material to be re-

appreciated apart from the findings recorded above for which the matter should be remanded.

34. The original record be transmitted back to the Court concerned at the earliest.

35. This Court records its appreciation for the assistance provided by Ms. Rajshree Lakshmi, Research Associate/Law Clerk in deciding the case.

Order Date :- 04.07.2024 **[Pankaj Bhatia, J.]**

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