In The High Court Of Judicature At Allahabad
Sitting At Lucknow

Neutral Citation No. - 2025:AHC-LKO:31613

Judgment reserved on: 28.04.2025

Judgment delivered on: 27.05.2025

A.F.R.

Court No. - 15

Case :- APPLICATION U/S 482 No. - 12048 of 2023

Applicant :- Sri Sushant Gupta And 5 Others

Opposite Party :- Central Bureau Of Investigation S.C.B. Lko.

Counsel for Applicant :- Rishad Murtaza,Aishwarya Mishra,Arnnav Prakash Tikku,Syed Ali Jafar Rizvi

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Rishad Murtaza and Ms. Aishwarya Mishra Advocates, the learned counsel for the applicant and Sri Anurag Kumar Singh, the learned counsel for the respondent - C.B.I.

2. By means of the instant application filed under Section 482 Cr.P.C. the applicants have assailed the validity of an order dated 28.07.2023 passed by the learned Special Judge, C.B.I.-I, Lucknow in Sessions Case No. 341 of 2022 arising out of RC No.053202150002, under Sections 120-B read with Sections 409, 418, 419, 420, 467, 468, 471, 477 (A) I.P.C. and Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988, Police Station C.B.I. S.C.B., Lucknow, whereby their application for discharge has been rejected.

3. Briefly stated, the facts of the case are that an F.I.R. was lodged on 03.02.2021 against – (1) Kamal Ahsan and (2) Rajesh Kumar, stating that Kamal Ahsan was an employee of Axis Bank and used to handle the bank account of an institution named SHIATS (Sam Higginbottom Institute of Agriculture, Technology and Sciences), and he had made fraudulent transactions of Rs.22,39,64,118/- in connivance with co-accused Rajesh Kumar, who was an Accountant in SHIATS. The co-accused Kamal Ahsan was under suspension since January, 2017. The

F.I.R. alleges commission of offences under Sections 409, 418, 419, 420, 467, 468, 471, 477-A I.P.C. by the accused persons.

4. After investigation the C.B.I. submitted a charge-sheet dated 30.12.2021 against 26 persons, including the applicants, who were posted in Axis Bank in managerial capacities.

5. The learned trial court had taken cognizance of the case by means of an order dated 08.03.2022 and had summoned the applicants for commission of offences under Section 120-B read with Sections 409, 418, 419, 420, 467, 468, 471, 477 A I.P.C. and Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988, Police Station C.B.I./S.C.B. Lucknow.

6. The applicants had challenged the validity of the aforesaid order dated 08.03.2022 by filing an application under Section 482 Cr.P.C. No. 2071 of 2023, which was disposed of by means of an order dated 28.02.2023, passed by this Court by observing that at the time of passing of the order dated 08.03.2022 there was no prosecution sanction in terms of Section 19 of the Prevention of Corruption Act and Section 197 of Cr.P.C. and the order dated 08.03.2022 was bad in law. This court had set aside the order dated 08.03.2022 and directed the learned trial court to pass a fresh order strictly in accordance with law.

7. After passing of the aforesaid order dated 28.02.2023, an order dated 02.02.2022 issued by the President and Head Corporate Affairs of Axis Bank, Mumbai was produced before the trial court which states that the allegations leveled against 20 persons, including the applicants, have been corroborated by the statements recorded under Section 161 Cr.P.C. and the documents collected during investigation of the case. After careful examination and perusal of the documents and statements of the witnesses it has been found that offences u/s 120-B read with 409, 418, 419, 420, 467, 468, 471, 477 (A) IPC and Section 13 (2) read with 13 (1) (d) of PC Act and substantive offence thereof are made out against 20 persons, including the applicants.

8. The sanctioning authority proceeded to state that after fully and carefully examining the documents, copies of the statements of

witnesses under Section 161 Cr.P.C. and other materials placed before him and having applied his mind properly in regard to the said allegations and circumstances of the case, considered that offences u/s 120-B read with 409, 418, 419, 420, 467, 468, 471, 477 (A) I.P.C. and Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1998 and substantive offence thereof are made out against the applicants and other persons and therefore the authority has accorded sanction under Section 19 of Prevention of Corruption Act, 1988 for prosecution of the applicants and other persons 'for the said offences and for any other offence(s) punishable under any other provisions of law in respect of the said acts and for taking cognizance of the said offences by a court of competent jurisdiction'.

9. The applicants filed an application for discharge on the ground that no sanction of prosecution has been granted under Section 197 Cr.P.C. and it was granted only under Section 19 of the Prevention of Corruption Act.

10. The learned trial court has rejected the application for discharge by means of the impugned order dated 28.07.2023 holding that the applicants have sought their discharge on the ground of absence of sanction under Section 197 Cr.P.C., whereas a detailed sanction order running through eleven pages is available on the paper book, a perusal whereof establishes that the sanctioning authority has granted sanction for commission of offences under Sections 120-B read with 409, 418, 419, 420, 467, 468, 471, 477-A I.P.C. and Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1998, for which he was the competent authority. The learned trial court has further held that the sanctioning authority has granted sanction by applying his independent mind and the sanction order is not a mere reproduction of the charge-sheet.

11. Initially this application was allowed by means of a judgment and order dated 12.12.2023 passed by this Court after hearing the submissions of the learned Counsel for the applicant as well as the learned Counsel for the respondent – C.B.I., who had advanced his submissions and who had not sought an opportunity to file a counter

affidavit and rightly so, because while deciding the application under Section 482 Cr.P.C., this Court had only taken into consideration the prosecution case and it had not gone into any questions of fact. This Court had held that the prosecution sanction order suffers from the vice of non-application of mind to the facts of the case and the law applicable, which vitiates the sanction order dated 02.02.2023 as also the order dated 28.07.2023 passed by the trial Court rejecting the discharge application. The learned counsel for the respondent had made a request that a liberty be granted to the prosecution to obtain fresh sanction for prosecution of the applicants, which request was accepted and the prosecution was granted liberty to seek a fresh sanction order within a period of one month. The sanctioning authority was directed to pass a fresh order within a period of one month thereafter strictly in accordance with law.

12. The C.B.I. filed S.L.P. (Crl.) No. 9233 of 2024 before the Hon'ble Supreme Court challenging the order dated 12.12.2023 passed by this Court on the ground that the order was passed without giving sufficient time and without giving an opportunity to the C.B.I. for filing a counter affidavit along with the supporting documents. The S.L.P. has been allowed by means of an order dated 22.11.2024 and the matter has been remanded for being decided afresh after the C.B.I. files its counter affidavit.

13. When C.B.I. had not requested for an opportunity to file a counter affidavit when this application was heard and decided earlier on 12.12.2023, , it was not proper on its part to have challenged the order dated 12.12.2023 on the ground that this Court had not granted opportunity to CBI to file a counter affidavit.

14. Although the C.B.I. had sought liberty from the Hon'ble Supreme Court for filing a counter affidavit along with the supporting documents, no document that has been annexed with the counter affidavit filed on 03.01.2015., except a copy of the order dated 22.11.2024 passed by the Hon'ble Supreme Court. The counter affidavit refers to the judgments in the cases of **S.K. Miglani v. State (NCT of Delhi)**, (2019) 6 SCC 111, **A Sreenivasa Reddy Vs.**

Rakesh Sharma and another, (2023) 8 SCC 711, **Ramsagar Pandit v. State of Bihar**, 1960 SCC OnLine Pat 213, **Ramsagar Pandit v. State of Bihar**, 1962 SCC OnLine SC 101, **State of Maharashtra v. Mahesh G. Jain**, (2013) 8 SCC 119, **Vinod Kumar Garg v. State (NCT of Delhi)**, (2020) 2 SCC 88, **State of M.P. v. Virender Kumar Tripathi**, (2009) 15 SCC 533, **Parkash Singh Badal v. State of Punjab**, (2007) 1 SCC 1, **Dinesh Kumar v. Airport Authority of India**, (2012) 1 SCC 532 and **C.S. Krishnamurthy v. State of Karnataka**, (2005) 4 SCC 81.

15. It is relevant to note that Chapter IV of the Allahabad High Court Rules deals with "Affidavits and Oath Commissioners". Rule 8 of the aforesaid Chapter provides as follows: -

> *"8. Affidavits filed or presented in Court:- The provisions of Rules 5,6 and 11 of Chapter IX shall, so far as may be, apply to an affidavit filed or presented in Court. It shall be in the language of the Court and shall bear the general hearing:*
> *"In the High Court of Judicature at Allahabad."*
> *The affidavit and every exhibit annexed thereto shall be marked with the particulars of the case or proceeding in which it is sworn.*
> *The affidavit shall contain no statement which is in the nature of an expression of opinion or argument."*

16. The counter affidavit filed by the C.B.I. does not contain any statement of fact which would be relevant for deciding the application under Section 482 Cr.P.C. Rather it contains arguments in opposition of the application under Section 482 Cr.P.C. Thus the counter affidavit has been drawn against the provisions of Rule 8 of Chapter IV of the Allahabad High Court Rules.

17. The verification clause of the affidavit reads: *"I, the above named, deponent do hereby verify that the contents of Paragraphs 1 to 35 of this counter affidavit are true to my personal knowledge and belief. No part of it is false and nothing material has been concealed in it. So, help me God."*

18. Rule 12 falling in Chapter IV of the Allahabad High Court Rules provides as follows: -

> *"12. Facts to be within the deponent's knowledge or source to be stated :- Except on interlocutory applications, an affidavit shall*

be confined to such fact as the deponent is able of his own knowledge to prove.

On an interlocutory application when a particular fact is not within the deponent's own knowledge, but is based on his belief or information received from others which he believes to be true, the deponent shall use the expression "I am informed and verily believe such information to be true, "or words to that effect, and shall sufficiently describe for the purpose of identification, the person or persons from whom his information was received.

When any fact is stated on the basis of information derived from a document, full particulars of that document shall be stated and the deponent shall verify that he believes such information to be true."

19. The counter affidavit has not been filed as objections against any interlocutory application and, therefore, it ought to have contained averments within the deponent's own knowledge. The deponent has verified the entire contents of the counter affidavit to be "*true to my personal knowledge and belief*" without specifying as to which part of the counter affidavit is true to his knowledge and which part is believed by him to be true, and the deponent has not disclosed the source of his knowledge on which those averments are based which he believes to be true.

20. Rules of the Court are meant to be obeyed by one and all, but when a specialized prosecution agency is a litigant, it is expected that the agency will certainly obey the Rules. The violation of the provisions of the Allahabad High Court Rules by the C.B.I. in preparation of its counter affidavit cannot be appreciated. However, the Courts have to strike a just balance in application of two basic principles of dispensation of justice – the first principle is that where the law prescribes a manner for doing a thing, the thing has to be done in that manner alone or not at all, the second principle is that procedure is the handmaiden of justice. In the present case, issuing a direction to the C.B.I. to file a fresh affidavit in accordance with the provisions of the Allahabad High Court Rules would result in undue delay in disposal of the case and, therefore, I proceed to ignore the defects in the counter affidavit and in the interest of justice I proceed to consider the arguments raised by the C.B.I. in it counter.

21. Sri Rishad Murtaza, the learned counsel for the applicants has submitted that the sanction for prosecution was sought under Section 19 of Prevention of Corruption Act and the sanctioning authority could have granted sanction for the offence under Prevention of Corruption Act only and while granting sanction for prosecution under Section 19 of Prevention of Corruption Act the sanctioning authority could not have granted sanction for prosecution of offences under various sections of the Penal Code. He has further submitted that besides granting sanction for the offences under the Penal Code, the sanctioning authority has gone beyond to the extent of granting sanction of any other offences under any other law, regarding which neither any sanction had been sought nor had the officer any power to accord sanction.

22. Sri. Murtaza has also relied upon the judgments of Hon'ble Apex Court in the case of **A Sreenivasa Reddy Vs. Rakesh Sharma and another**, (2023) 8 SCC 711 and **State of Karnataka v. Ameerjan**: (2007) 11 SCC 273.

23. Per contra, Sri Anurag Kumar Singh, the learned counsel for the respondent-C.B.I. has submitted that the sanctioning authority has granted sanction for commission of offences under the Prevention of Corruption Act after applying its independent mind. As per Sri. Singh, a mere mention of offence under Penal Code besides the offence under Prevention of Corruption Act will not affect the validity of the sanction order so far as it concerns the offences under Prevention of Corruption Act.

24. In **S.K. Miglani v. State (NCT of Delhi)**, (2019) 6 SCC 111, the appellant was a Manager in a nationalised bank who could be removed from his office without the sanction of the Government and, therefore Section 197 Cr.P.C. was not attracted with regard to the appellant.

25. In **A. Sreenivasa Reddy v. Rakesh Sharma**, (2023) 8 SCC 711, the Hon'ble Supreme Court held that: -

> *"49. It is pertinent to note that the banking sector being governed by Reserve Bank of India and considered as a limb of the State under Article 12 of the Constitution and also by virtue*

of Section 46-A of the Banking Regulation Act, 1949, the appellant herein is deemed to be a "public servant" for the purpose of provisions under the PC Act, 1988. However, the same cannot be extended to IPC. Assuming for a moment that the appellant herein should be considered as a "public servant" for IPC sanction also, the protection available under Section 197CrPC is not available to the appellant herein since, the conditions in-built under Section 197 CrPC are not fulfilled."

26. In **Ramsagar Pandit v. State of Bihar**: 1960 SCC OnLine Pat 213 the Superintendent of Police had sent a letter to the Government requesting for sanction under Sec. 6 of the Prevention of Corruption Act and Sec. 197 of the Criminal Procedure Code for the prosecution of the appellant under S. 5(2) and (3) of Prevention of Corruption Act 1947. Sanction was granted for the offences under clause (2) read with clause (3) of Section 5 of the Prevention of Corruption Act 1947. The trial Court found him guilty and convicted him. The conviction order was challenged inter alia on the ground that sanction was asked for the prosecution of the appellant under Sec. 5(2) and (3) of Act II of 1947 and in fact the Government of Bihar did accord sanction for the prosecution of the appellant under clause (2) read with clause (3) of Sec. 5. Although the facts constituting criminal misconduct were before the sanctioning authority, but the authority limited the sanction to an offence under clause (2) read with clause (3) of S. 5 and did not accord a sanction for prosecution in respect of criminal misconduct specified in the various clauses of sub-section (1) and thus the sanctioning authority refused to give a sanction for prosecution in respect of an allegation constituting criminal misconduct under sub-section (I) of Section 5. Rejecting the contention, Patna High Court held that: -

> ***"43.*** *In view of the principles laid down in these cases, the facts of the present case have to be considered to determine the effect of the sanction. The Superintendent of Police undoubtedly alleged in his letter that the appellant showed undue favours, obtained money by corrupt or illegal means and received a sum of Rs. 400/- as illegal gratification from the proprietor of a firm and these facts were placed before the sanctioning authority. It is true that the sanctioning authority mentioned clause (3) while granting a sanction, but as sub-section (3) does not create a separate offence, it must be deemed to be a surplusage.*

* * *

45. *It was not at all necessary to mention either one clause or the other of sub-section (1) in the sanction. I would, therefore, overrule the contention of the learned counsel for the appellant that the effect of the sanction was to limit the offence committed by the appellant to one under clause (3) only of S. 5. The sanctioning authority, in my opinion, accorded a sanction for the prosecution of the appellant in respect of the offence under sub-section (2) of Sec. 5 and the charge framed is not, in any way, illegal, or in excess of what was sanctioned. The charge was really for criminal misconduct which included habitual acceptance of illegal gratification. The appellant was not prejudiced as he was aware of the misconduct alleged and he filed a fairly long written statement. He led evidence to refute the allegations and he was questioned about the material facts."*

27. Affirming the aforesaid decision, in **Ramsagar Pandit v. State of Bihar**, 1962 SCC OnLine SC 101, the Hon'ble Supreme Court held that: -

"11. *... In the present case all the facts constituting the offence of misconduct with which the appellant was charged were placed before the Government. The second principle, namely, that the facts should be referred to on the face of the sanction and if they do not so appear, the prosecution must prove them by extraneous evidence, is certainly sound having regard to the purpose of the requirements of a sanction. In the present case though the sanction ex facie does not disclose the facts, the documents which are exhibited in the case give all the necessary relevant facts constituting the offence of criminal misconduct. This Court, in Biswabhusan Naik v. State of Orissa [AIR 1954 SC 359] rejected a contention similar to that now raised before us. There the sanction given under Section 6 of the Act referred only to sub-section (2) of Section 5 of the Act and it did not specify which of the four offences mentioned in Section 5(1) was meant. This Court adverting to a similar contention observed "It was evident from the evidence that the facts placed before the Government could only relate to offences under Section 161 of the Indian Penal Code and clause (a) of Section 5(1) of the Prevention of Corruption Act. They could not relate to clause (b) or (c). When the sanction was confined to Section 5(2) it could not, in the circumstances of the case, have related to anything but clause (a) of sub-section (1) of Section 5. Therefore the omission to mention clause (a) in the sanction did not invalidate it."*

* * *

16. *That apart, the appellate court could have set aside the conviction if the defect in the charge had occasioned a failure of justice but the appellant did not raise any objection either before*

the Special Judge or in the High Court on the score that the charge was defective and that he was misled in his defence on the ground that no particulars of the persons from whom the bribes were taken were not mentioned. Nor such an objection has been taken in the special leave petition, nor in the statement of the case. This objection is an afterthought and cannot be allowed to be raised at this stage of the proceedings."

28. **Ramsagar Pandit** (Supra) was decided keeping in view the factual background of that case which is in no way similar to the facts of the present case and, therefore, the ratio of **Ramsagar Pandit** (Supra) will not apply to the present case.

29. In **C.S. Krishnamurthy v. State of Karnataka** (2005) 4 SCC 81, it has been held that: -

"9. ... sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order."

30. In **State of Maharashtra v. Mahesh G. Jain**, (2013) 8 SCC 119, the Hon'ble Supreme Court referred to various precedent on the point and culled out the following principles: -

"14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. *The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.*

14.3. *The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.*

14.4. *Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.*

14.5. *The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.*

14.6. *If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.*

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and

vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity*."*

(Emphasis added)

31. In **Vinod Kumar Garg v. State (NCT of Delhi)**, (2020) 2 SCC 88, the Supreme Court quoted with approval the aforesaid principles culled out in **Mahesh G. Jain** (Supra) and further held that: -

> ***"28.*** *...Where the cognizance of the case has already been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. Similar is the position with regard to the validity of the sanction. A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance and for that matter the trial."*

32. In **State of M.P. v. Virender Kumar Tripathi**, (2009) 15 SCC 533, the conviction order was challenged on the ground that the Law Department of the Government had granted sanction for prosecution without taking advice of the Department concerned. The question before the Supreme Court was whether the absence of advice renders the sanction inoperative. The Supreme Court held that: -

> *"8 ...Undisputedly the sanction has been given by the Department of Law and Legislative Affairs. The State Government had granted approval of the prosecution. As noted above, the sanction was granted in the name of the Governor of the State by the Additional Secretary, Department of Law and Legislative Affairs. The advice at the most is an interdepartmental matter.*
>
> ***9.*** *Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of/or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the court a failure of justice has in fact been occasioned thereby.*
>
> ***10.*** *In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established is yet to be reached since the case is at the stage of*

framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was led. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [(2004) 7 SCC 763 : 2004 SCC (Cri) 2140] and in Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] need to be noted. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct."

33. In **Parkash Singh Badal v. State of Punjab**, (2007) 1 SCC 1, the Hon'ble Supreme Court held that "*There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."*

34. In **Dinesh Kumar v. Airport Authority of India**, (2012) 1 SCC 532, the Hon'ble Supreme Court followed the decision in **Parkash Singh Badal** (Supra) and held that: -

***"10.** In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind—a category carved out by this Court in Parkash Singh Badal, the challenge to which can always be raised in the course of trial.*

***11.** In a later decision, in Ameerjan [(2007) 11 SCC 273], this Court had an occasion to consider the earlier decisions of this Court including the decision in Parkash Singh Badal [(2007) 1 SCC 1]. Ameerjan was a case where the trial Judge, on consideration of the entire evidence including the evidence of the 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 PC 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.*

***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 Parkash*

Singh Badal, this Court stated in Ameerjan in para 17 of the Report as follows:

> *"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."*

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."*

35. However, in **State of Karnataka v. Ameerjan**: (2007) 11 SCC 273, the Hon'ble Supreme Court held that: -

> ***"9.*** *We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.*
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> *** * ***
>
> ***16.*** *In Parkash Singh Badal [(2007) 1 SCC 1] the question which arose for consideration before this Court was as to whether an order of sanction is required to be passed in terms of Section 197 of the Code of Criminal Procedure in relation to an accused who has ceased to be a public servant. It was in that context a question arose before this Court as to whether the act alleged to be performed under the colour of office is for the benefit of the officer or for his own pleasure. In the context of question as to whether the public servant concerned should receive continuous protection, it was opined : (SCC p. 25, para 29)*
>
> > *"29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on 'failure of justice' and that too 'in the opinion of the court'. In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the 'failure of justice' is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of*

jurisdiction as observed in para 95 of Narasimha Rao case [P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] . Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary."

***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.*

***18.** We may notice that in Sankaran Moitra v. Sadhna Das [(2006) 4 SCC 584] the majority, albeit in the context of Section 197 of the Code of Criminal Procedure, opined :*

*"22. Learned counsel for the complainant argued that want of sanction under Section 197(1) of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. We are not in a position to accept this submission. Section 197(1), its opening words and the object sought to be achieved by it, and the decisions of this Court earlier cited, clearly indicate **that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. We cannot therefore accede to the request to postpone a decision on this question**."*

(Emphasis added)

36. In **C.S. Krishnamurthy v. State of Karnataka**, (2005) 4 SCC 81, it was held that: -

***"9.** ... the ratio is sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. In the present case, the sanction order speaks for itself that the incumbent has to account for the assets disproportionate to his known source of income. That is contained in the sanction order itself. More so, as pointed out, the sanctioning authority has come in the witness box as Witness 40 and has deposed about his application of mind and after going through the report of the Superintendent of*

Police, CBI and after discussing the matter with his Legal Department, he accorded sanction. It is not a case that the sanction is lacking in the present case. The view taken by the Additional Sessions Judge is not correct and the view taken by learned Single Judge of the High Court is justified."

37. **C.S. Krishnamurthy** (Supra) was also decided keeping in view the peculiar facts of the case that the sanction order was a speaking order and the sanctioning authority had come in the witness box and had deposed about his application of mind and after going through the report of the Superintendent of Police, CBI and after discussing the matter with his Legal Department, he had accorded sanction, which facts are in no manner similar to the facts of the instant case and, therefore, the ratio laid down in **C.S. Krishnamurthy** (Supra) will not apply to the facts of the present case.

38. Besides the aforesaid cases mentioned in the counter affidavit, the learned Counsel for the C.B.I. has also relied upon the judgments in the cases of **Girish Kumar Suneja v. CBI**: (2017) 14 SCC 809 and **CBI v. Ashok Kumar Aggarwal**: (2014) 14 SCC 295.

39. In **Girish Kumar Suneja** (Supra), the Hon'ble Supreme Court interpreted Section 19(3)(*c*) of the Prevention of Corruption Act, 1988. Section 19 of the Act reads as follows: -

*"**19. Previous sanction necessary for prosecution**.—(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 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—*
(a) in the case of a person who is 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;
(b) in the case of a person who is 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;
(c) in the case of any other person, of the authority competent to remove him from his office.
(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."

The Hon'ble Supreme Court held that: -

***"66.** Sub-section (4) of Section 19 of the PC Act is also important in this context inasmuch as the time lapse in challenging an error, omission or irregularity in the sanction resulting in a failure of justice is of considerable significance. Unless the challenge is made at the initial stages of a trial and within a reasonable period of time, the court would not be obliged to consider the absence of, or any error, omission or irregularity in the sanction for prosecution. Therefore, it is not as if the accused can, after an unreasonable delay, raise an issue about the sanction; but if that accused does so, the court may not decide that issue both at the appellate stage as well as for the purposes of stay of the proceedings.*

* * *

***77.** An allegation of "failure of justice" is a very strong allegation and use of an equally strong expression and cannot be equated with a miscarriage of justice or a violation of law or an irregularity in procedure—it is much more. If the expression is to be understood as in common parlance, the result would be that*

seldom would a trial reach a conclusion since an irregularity could take place at any stage, inadmissible evidence could be erroneously admitted, an adjournment wrongly declined, etc. To conclude, therefore, Section 19(3)(c) of the PC Act must be given a very restricted interpretation and we cannot accept the overbroad interpretation canvassed by the learned counsel for the appellants."

40. In **CBI v. Ashok Kumar Aggarwal** (Supra), it was held that: -

"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. [AIR 1948 PC 82]; Jaswant Singh v. State of Punjab [AIR 1958 SC 124], Mohd. Iqbal Ahmed v. State of A.P. [(1979) 4 SCC 172, State v. Krishanchand Khushalchand Jagtiani [(1996) 4 SCC 472], State of Punjab v. Mohd. Iqbal Bhatti [(2009) 17 SCC 92], Satyavir Singh Rathi, ACP v. State [(2011) 6 SCC 1] and State of Maharashtra v. Mahesh G. Jain [(2013) 8 SCC 119] .)*

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.*

*** * ***

58. *The most relevant issue involved herein is as at what stage the validity of sanction order can be raised. The issue is no more res integra. In Dinesh Kumar v. Airport Authority of India this Court dealt with the issue and placing reliance upon the judgment in Parkash Singh Badal v. State of Punjab, came to the conclusion as under: (Dinesh Kumar case, SCC para 13)*

> *"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 ...."*
>
> *(emphasis supplied)*

59. *Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pre-trial stage."*

41. The applicants were working in Axis Bank, which is not even a nationalized Bank, and it is not disputed that the applicants were not holding a post where they could not be removed from service except by or with the sanction of the government. In this view of the matter the provisions of Section 197 are not attracted to the case of the applicants. The prosecution sanction order dated 02.02.2022 issued by the President and Head Corporate Affairs of Axis Bank, Mumbai, states that the allegations leveled against 20 persons, including the

applicants, have been corroborated by the statements recorded under Section 161 Cr.P.C. and the documents collected during investigation of the case. After careful examination and perusal of the documents and statements of the witnesses it has been found that offences u/s 120-B read with 409, 418, 419, 420, 467, 468, 471, 477 (A) IPC and Section 13 (2) read with 13 (1) (d) of PC Act and substantive offence thereof are made out against 20 persons, including the applicants. The sanctioning authority proceeded to state that after fully and carefully examining the documents, copies of the statements of witnesses under Section 161 Cr.P.C. and other materials placed before him and having applied his mind properly in regard to the said allegations and circumstances of the case, considered that offences u/s 120-B read with 409, 418, 419, 420, 467, 468, 471, 477 (A) I.P.C. and Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1998 and substantive offence thereof are made out against the applicants and other persons and therefore the authority has accorded sanction under Section 19 of Prevention of Corruption Act, 1988 for prosecution of the applicants and other persons 'for the said offences and for any other offence(s) punishable under any other provisions of law in respect of the said acts and for taking cognizance of the said offences by a court of competent jurisdiction'.

42. The learned trial court has rejected the discharge application for the reason that sanction order is very detailed and it runs into eleven pages showing that sanction for prosecution under Section 120-B read with 409, 418, 419, 420, 467, 468, 471, 477 (A) I.P.C. and Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1998 has been granted by the authority which was competent for granting sanction for prosecution of the aforesaid offences.

43. While recording the aforesaid reason, the learned trial court failed to appreciate that neither any sanction had been sought for prosecution of the applicants for the offences under Penal Code nor was the authority competent to grant sanction for prosecution of the offences under the Penal Code. The sanction of prosecution "*for the said offences and for any other offence(s) punishable under any other*

provisions of law in respect of the said acts" for which no sanction was obtained, indicates a total non-application of mind to the facts of the case and the law applicable. It indicates that the sanctioning authority has acted as a mere rubber stamp. Non-application of mind by the sanctioning authority vitiates the sanction order dated 02.02.2023 as also the order dated 28.07.2023 passed by the trial Court rejecting the discharge application.

44. The order of sanction after a proper application of mind to the relevant facts and circumstances of the case and the material on record is a prerequisite for prosecution of a public servant, as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants. This safeguard cannot be dealt with in a casual and mechanical manner.

45. In view of the aforesaid discussions, the application under Section 482 Cr.P.C. stands ***allowed***. The sanction order dated 02.02.2023 and the order dated 28.07.2023 passed by the learned Special Judge, C.B.I.-I, Lucknow in Sessions Case No. 341 of 2022 arising out of RC No.053202150002, under Sections 120-B read with Sections 409, 418, 419, 420, 467, 468, 471, 477 (A) I.P.C. and Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988, Police Station C.B.I. S.C.B., Lucknow, whereby their application for discharge has been rejected, are quashed and the discharge application of the applicants is allowed for the aforesaid defect in the sanction order dated 02.02.2023.

(Subhash Vidyarthi, J.)

Order Date: 27.05.2025
-Amit K-