IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 954 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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BHANUBEN MANGABHAI BAGDA & ANR.
Versus
STATE OF GUJARAT

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Appearance:
MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1,2
MR HK PATEL APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 28/03/2024

ORAL JUDGMENT

Order dated 07/05/2019 passed below Exh.41 and Exh.43 in Special 9ACB) Case No.6 of 2015 by the learned 4th Additional Sessions Judge, Junagadh is sought to be challenged in this revision filed under Section 397 read with section 401 of Cr.PC

whereby the discharge application preferred by the petitioners – accused came to be dismissed.

2. The short facts of the case are that present petitioners – org. accused came to be caught red handed while demanding and accepting the bribe amount of Rs.2,50,000/- from the org. complainant and to that effect offence came to be registered under Sections 7, 12, 13(1)d and 13(2) of the Prevention of Corruption Act, 1988 (for short the Act). After registration of the offence, investigation conducted and at the end of the investigation, charge-sheet came to be filed.

2.1 Upon filing of the charge-sheet, the accused preferred discharge application which came to be rejected by the impugned order and thus present revision is preferred to challenge the said order.

3. Heard Mr.Ashish Dagli, learned Advocate for the petitioners-accused and learned APP Mr.H K Patel for respondent – State.

4. Learned Advocate for the petitioners Mr.Dagli would submit that sanction for prosecution granted in the present case is invalid. It is submitted that when the alleged raid took place, both the accused were working in Junagadh District; but later on they got to transferred to some other District. He would further submit that sanction for prosecution is not granted by the Head of the Police Department at Junagadh; but S.P., Panchmahal at Godhra as well as Commissioner of Police, Rajkot City where the accused were serving at the time of filing of the

charge-sheet has granted the sanction.

4.1 Learned Advocate Mr.Dagli would further submit that sanction for prosecution can only be granted by the Head of the Department when the raid was conducted and where the accused was serving. Thus, the sanction for prosecution granted in the charge-sheet is invalid. The learned Sessions Judge has failed to understand this aspect and as such committed serious error in rejecting the application seeking discharge. He would further submit that appropriate sanction for prosecution goes to the root of the case. Since in the present case, there is invalid sanction, it will not permit the learned Court below to take cognizance and to prosecute the accused for the alleged offence.

4.2 Learned Advocate Mr.Dagli would further submit that issue of power to grant sanction for prosecution is also involved in the matter. The learned Sessions Judge has not understood this issue in its proper perspective and committed serious error of law. Learned Advocate Mr.Dagli would further submit that petitioner no.1 was working as Woman PSI, Class-III and petitioner no.2 was working as Unarmed Police Constable, Class – III, in Junagadh Taluka Police Station at the time of alleged raid. Both the petitioners were appointed by SP, Jungadh; but in the case on hand, sanction for prosecution was granted by the SP, Panchmahal at Godhra and Commissioner of Police, Rajkot City. They are not the authority equivalent to the appointing authority. He would submit that in view of Article 311 of the Constitution of India, the person having higher authority to the appointing authority are required to grant permission for prosecution. It was submitted that granting of sanction to

prosecute the accused are serious matter and the sanctioning authority is required to go through the entire material placed before it for its consideration and has to record the subjective satisfaction about necessity of granting the sanction.

4.3 Learned Advocate Mr.Dagli would further submit that Section 19 of the Act start with the non-abstaint clause. Purpose of Section 19 of the Act is to save the government officer from frivolous litigation. He would further submit that in the present case on going through the sanction for prosecution, it prima facie appears that sanctioning authority has not applied its mind; nor has recorded subjective satisfaction before granting the sanction and thus the sanction itself is invalid; however the learned Special Judge did not consider this aspect and committed serious error of law.

4.4 In nutshell, learned Advocate for the petitioner has argued on two aspects. Firstly, the sanction for prosecution is invalid and secondly, that authority which has granted sanction is lacking power.

4.5 Learned Advocate for the petitioners has relied upon the following authorities in support of his submission:

1. AIR 1960 ALL 40 Danpat vs. State
2. 1979 4 SCC 172 Mohd. Iqbal Ahmed Vs. State of A.P.
3. 1993 4 CCR 3288 Gopalbhai Mohanbhai Nagoda Vs. State
4. SCRA NO. 1095 OF 1995 Rajiv Madhav Shanbhag Vs. State of Gujrat.
5. 1998 1 GLH 248 Mansukhlal Vithhaldas Chuahan Vs. State of Gujarat.

6. 1999 0 AIJEL SC 4559 CBI VS. V.K. SEHGAL.
7. 2002 1 SCC 149 Mahendra Lal Das vs. State of Bihar.
8. 2012 0 AIJEL SC 50956 Rattiram Vs. State of M.P thro' Inspector of Police.

4.6 By making above submissions, learned advocate Mr.Dagli would submit to allow this revision application by quashing and setting aside the impugned order, and to discharge the petitioner from accusation.

5. Learned APP on the other hand referring to Section 19 of the Act, more particularly sub-section (c) of Section 19(1) of the Act would submit that the authority competent to remove the petitioners–accused from his office is authority empowered and authorized to issue sanction for prosecution. He would further submit that in the present case when the charge-sheet was filed, one of the accused was serving in the office of the SP, Panchmahal at Godhra and another was serving at Rajkot and respective head of the office gave the sanction for prosecution being the authority to remove them from service and therefore there is no illegality in granting sanction for prosecution as they are competent authority. Also it is argued that validity of sanction can be examined during trial, it cannot be basis for discharging the accused. He would therefore submit to dismiss this revision application.

6. Having heard the learned Advocates for the parties, at the outset, let refer to Section 19 of the Act.

"19. Previous sanction necessary for prosecution.

(1) No Court shall take cognizance of an offence punishable

under [sections 7, 11, 13 and 15] [Substituted 'sections 7, 10, 11, 13 and 15' by Act No. 16 of 2018, dated 26.7.2018.]alleged to have been committed by a public servant, except with the previous sanction,

(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][Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] 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, or as the case may be, was at the time of commission of the alleged offence employed] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.]in connection with the affairs of a State and is not removable from his office save by or with 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."

7. The question of absence of sanction can be raised at the inception and at the threshold as it goes to the root of the matter. In absence of sanction, no Court can take cognizance of the offence under the Prevention of Corruption Act and therefore question of absence of sanction can be and has to be addressed at the first instance and even before the inception of special case under the Act. But, once the sanction exists, its legality and validity is not to be questioned as it is a matter of trial and can be decided during the trial.

8. The object behind the requirement of grant of sanction to prosecute a public servant need not detain the court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute a honest public servant for acts arising out of due discharge of duty and also to enable him

to efficiently perform his duties cast on him by virtue of his office. If the act complained off under the Prevention of Corruption Act has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bonafide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. However, realising that the dividing line between an act in the discharge of official duty and an act that is not, may, at times, get blurred thereby enabling certain unjustified claims to be raised also on behalf of the public servant so as to derive undue advantage of the requirement of sanction, specific provisions have been incorporated in Section 19(3) of the Prevention of Corruption Act as well as in Section 465 of the Code of Criminal Procedure which, inter alia, make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent court unless in the opinion of the court a failure of justice has been occasioned. This is how the balance is sought to be struck.

9. In ***State of Bihar vs. Rajmangal Ram [2014 (11) SCC 388***, the Hon'ble Supreme Court after examining the purport of Section 19(3) and Section 465 of the Code of Criminal Procedure, in paragraph 7, 8, 10 and 11 held the following:

> "*7. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the*

conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in State by Police Inspector V/s. T. Venkatesh Murthy, (2004) 7 SCC 763 (paras 10 and 11), wherein it has been inter alia observed that,

> *"14. ..Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice."*

8. The above view also found reiteration in Prakash Singh Badal and Another V/s. State of Punjab and Others, (2007) 1 SCC 1 (para 29), wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Prakash Singh Badal (supra) it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in R. Venkatkrishnan V/s. Central Bureau of Investigation, (2009) 11 SCC 737. In fact, a three Judge Bench in State of Madhya Pradesh V/s. Virender Kumar Tripathi, (2009) 15 SCC 533, while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19 (3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report).

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10. 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.

11. The High Court in both the cases had also come to the conclusion that the sanction orders in question were passed mechanically and without consideration of the relevant facts and records. This was treated as an additional ground for interference with the criminal proceedings registered against the respondents. Having perused the relevant part of the orders under challenge we do not think that the High Court was justified in coming to the said findings at the stage when the same were recorded. A more appropriate stage for reaching the said conclusion would have been only after evidence in the cases had been led on the issue in question."

10. In Major ***M. C. Ashish Cinappa vs. Central Bureau of Investigation*** (SLA(CRI) No.2576 of 2019) dated 22/09/2021, the Hon'ble Apex Court has held in second unnumbered paragraph as under:

"The contention urged on behalf of the petitioner is that the rial Court has taken cognizance of the offence without there being valid sanction as per the provision of Section 19 of the Prevention of Corruption Act, 1988.

It is undisputed that cognizance has already been taken and trial is in progress. This Court in Dinesh Kumar v. Chairman, Airport Authority of India and Another (2012) 1 SCC 532 has held that the validity of sanction order can also be raised in the course of trial which reads as under:

> *"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 be have erred in leaving the question of validity of sanction open for consideration by the trial court and giving liberty to the appellant raise to 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 vs. State of Punjab (2007) 1 SCC 1*

and not unjustified."

Since the cognizance has already been taken against the petitioner and the trial is in progress, it is open for the petitioner to raise the question of validity of sanction during the course of trial and the Trial Court is bound to consider the said question at an appropriate stage."

11. The argument to the effect has been canvassed by learned advocate Mr.Dagli that when alleged raid took place, both the petitioners were working in the office of SP, Junagadh and therefore, SP, Junagadh is the only competent authority to grant the sanction for prosecution and thus sanction for prosecution granted by SP, Panchmahal at Godhra and Commissioner of Police, Rajkot is invalid. He would further submit that law requires that the sanction should be granted by the appointing authority or higher officer where the accused were employed on the day of raid. It is also sought to be argued that in the present case sanction for prosecution has been granted by the respective authority where the accused was serving on the day when the charge-sheet was filed and therefore, it was invalid sanction. These argument has no substance in view of the aspect that section 19(1)(c) of the Act empowering the authority to grant the sanction for prosecution which authorized to remove the accused from his office. In the present case, it is not the case of the petitioners that SP, Panchmahal at Godhra or CP, Rajkot had no authority to remove them from the office. Thus, they are competent authority to issue sanction for prosecution. To be noted that accused got to transferred after the alleged raid and when charge-sheet was filed, they were working in the office of SP, Panchmahal at Godhra and Commissioner of Police, Rajkot respectively and therefore they are authorized officer/s to issue

sanction for prosecution.

12. In section 19 of the Act, the Legislature has used the word "Who is employed" which is relatable to the time of holding office. Accordingly, no sanction is required for prosecution of a public servant for abuse of his previous office which he is not holding any more even though he holds another public office at the time of taking cognizance. (Reference Subramanium Swamy vs. Manmohan Singh (2012) 1 SCC 577).

13. In the present case, sanction has been granted by the authority which is competent to remove the petitioners – accused from the office. A strange argument came from the petitioners that sanction for prosecution should be given by the higher authority than the appointing authority of the accused. This is not the requirement of Section 19 of the Act. The validity or illegality of the sanction cannot be a ground in view of Section 19(3) of the Act unless a failure of justice has been occasioned. Section 465 of the code is also applicable to the facts of the present case. In nutshell, since the beginning the petitioners have no case. There is authority for giving sanction for prosecution and it can be examined during the trial; but by no means it is a ground to move the discharge application. No doubt, discharge application is a valuable right of the applicant; but it cannot be moved on frivolous and untenable ground or against the principles of law. Section 19(1)(a) read with Section 19(3) of the Act read with section 465 of the Code takes sufficient care of every contentions raised by learned advocate for the petitioners. This appears to be a designed approach on the part of the petitioners / accused to stall the proceedings under the

Act. The ACB Case is registered in the year 2015 wherein raid was conducted in the year 2014; yet the trial is not commenced. No charge is framed till date which reflects from the report of the trial Court. Thus, it is implies that under the pretext of filing discharge application having no legal or tenable grounds to exists, the petitioners have successfully detained the prosecution for almost 10 years. This is frivolous application and deserves to be condemned by imposing costs.

14. Yet another judgment may also be referred in case of ***Central Bureau Of Investigation (Cbi) Etc. Versus Pramila Virendra Kumar Agarwal [2020 (17) SCC 664]*** wherein the Hon'ble Apex Court has addressed this issue again in paragraph 13 as under:

> *"13. Further the issue relating to validity of the sanction for prosecution could have been considered only during trial since essentially the conclusion reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction being defective. In that regard, the decision in the case of Dinesh Kumar vs. Chairman, Airport Authority of India, (2012) 1 SCC 532 relied upon by the learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The absence of Licenced to : Adv.Urvashi Purohit . Page 5 of 5 sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial. In the instant facts, admittedly there is a sanction though the accused seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial."*

15. The authorities relied upon by the learned advocate for the petitioner would not render any assistance and therefore the

same is not required to be discussed.

16. For the foregoing reasons, the revision must fail and is dismissed with the cost quantified at Rs.10,000/- each to be paid by the each of the petitioners with the Gujarat High Court Advocates Bar Association Library within seven days from today and to produce the copy of receipt thereof.

(J. C. DOSHI,J)

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