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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.355 of 2017

(Order dated 17-5-2017 passed by the Managing Director, Chhattisgarh State Ware Housing Corporation, Raipur)

Order reserved on: 14-3-2018

Order delivered on: 6-4-2018

Dilip Kumar Sharma, S/o Late Shiv Dayal Sharma, Aged about 55 years, Through his Wife Smt. Sudha Sharma, W/o Shri Dilip Kumar Sharma, aged about 50 years, R/o Dunda-K.P.S. Road, Behind Medical Complex, Devpuri, Raipur, P.S. Tikrapara, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Chief Secretary, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)

2. Additional Director General of Police, State Economic Offences Investigation and Anti Corruption Bureau, Raipur, District Raipur (C.G.)

3. Superintendent of Police, Anti Corruption Bureau, Raipur, District Raipur (C.G.)

4. Chhattisgarh State Ware Housing Corporation, Raipur, through Managing Director, Principal Office Udyog Bhawan, 3rd Floor, Ring Road No.1, Raipur, District Raipur (C.G.)

5. Managing Director, Chhattisgarh State Ware Housing Corporation, Raipur, Principal Office Udyog Bhawan, 3rd Floor, Ring Road No.1, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Chandresh Shrivastava, Advocate.
For State/Respondents No.1 to 3: -
Mr. Arun Sao, Deputy Advocate General.
For Respondents No.4 and 5: -
Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The crisp question involved in this matter is, whether the sanctioning

authority has power and jurisdiction to review its order in the matter of sanction under Section 19 of the Prevention of Corruption Act, 1988 (for short, 'the Act of 1988') for offence under Section 13(1)(e) read with Section 13(2) of the Act of 1988 and an order passed refusing sanction to prosecute under Section 19 of the Act of 1988 can be reviewed?

2. The afore-stated question has to be unlocked in the following factual backdrop, which states as follows: -

2.1) The petitioner is a public servant and at the relevant time was working as Branch Manager of Chhattisgarh State Ware Housing Corporation, Branch Balod. As per the regulations applicable, sanctioning authority under Section 19 of the Act of 1988 is Managing Director of the said Corporation.

2.2) In order to charge-sheet the petitioner under Sections 13(1)(e) and 13(2) of the Act of 1988 in Crime No.15/2015, registered at Anti Corruption Bureau, Raipur, sanction for prosecution under Section 19 of the Act of 1988 was sought from the Managing Director, Chhattisgarh State Ware Housing Corporation – respondent No.5 herein by the investigating agency. The said sanctioning authority by its order dated 29-7-2016, finding no case for grant of sanction, rejected the application under Section 19 of the Act of 1988. Thereafter, the Additional Director General, Anti Corruption Bureau, wrote a demi-official letter dated 1-9-2016 to the Chief Secretary for taking appropriate action for grant of sanction against the petitioner. Respondent No.5 – Managing Director / sanctioning authority sought instructions from the Board of Directors of the Chhattisgarh State Ware Housing Corporation. The Board of Directors

examined the matter on 29-7-2016 and respondent No.5 basing its opinion on the same and finding that prima facie case is made out against the petitioner under Sections 13(1)(e) and 13(2) of the Act of 1988, granted sanction for prosecution of the petitioner in Crime No.15/2015 and accordingly, sanction for prosecution of the petitioner was granted under Section 19 of the Act of 1988. The instant petition has been filed questioning the said order of sanction for prosecution stating inter alia that once a decision has been taken not to grant sanction, in absence of fresh material collected, subsequently after the earlier order, the sanctioning authority has no power to review its earlier order declining sanction for prosecution. Therefore, the impugned order deserves to be set aside.

3. Return has been filed by the State/respondents No.1 to 3 as well as by respondents No.4 and 5 opposing the writ petition stating inter alia that previously, the order was passed on incorrect premises, as Crime No.15/2015 relates to Sections 13(1)(e) and 13(2) of the Act of 1988, whereas Crime No.9/2015 relates to Sections 11, 13(1)(d) and 13(2) of the Act of 1988 and also Sections 109, 120-B, 420 and 409 of the IPC, therefore, the Managing Director had committed error which was sought to be rectified subsequently by the sanctioning authority and sanction for prosecution has rightly been granted on 17-5-2017, as such, the writ petition deserves to be dismissed.

4. The Chhattisgarh State Ware Housing Corporation / respondents No.4 and 5 has also filed return stating that the Board of Directors in its meeting dated 6-10-2016 authorised the Managing Director to reconsider / revise the order of sanction already granted.

5. Mr. Chandresh Shrivastava, learned counsel appearing for the petitioner, would make two fold submissions. Firstly, that the order of sanction has been granted against the petitioner by reviewing the earlier order declining to grant sanction, without there being any fresh material brought on record which is in teeth of the provisions contained in Section 19 of the Act of 1988. Secondly, that the order of sanction has been passed pursuant to the direction given by the Additional Director General on 29-8-2016 and also pursuant to the direction given by the Board of Directors whereas, the competent authority to grant sanction is the Managing Director of the Corporation. Therefore, the order impugned deserves to be set aside.

6. Mr. Arun Sao, learned Deputy Advocate General appearing for the State/ respondents No.1 to 3, would submit that the sanctioning authority finding error apparent on the face of record, in the earlier order, rightly accorded sanction against the petitioner under Section 19 of the Act of 1988.

7. Mr. B.D. Guru, learned counsel appearing for respondents No.4 and 5, would submit that the Additional Director General has brought to the notice of the sanctioning authority the error committed by the Managing Director while declining to grant sanction and subsequently, the order of sanction for prosecution has been reviewed and relying upon the material on record, sanction has rightly been granted.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.

9. In order to unlock the question so posed for consideration, it would be appropriate and expedient to notice Section 19 of the Act of 1988 which

provides as under: -

> "**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) xxx xxx xxx
>
> (3) xxx xxx xxx
>
> (4) xxx xxx xxx"

10. The requirement of obtaining sanction is to ensure that no public servant is unnecessarily harassed. Such protection is however not absolute or unqualified – while a public servant should not be subjected to harassment, genuine charges and allegations should be allowed to be examined by court. (See **State through Anti-Corruption Bureau, government of Maharashtra, Bombay v. Krishanchand Khushalchand Jagtian**i[1].)

11. The sanction for prosecution of a public servant is a weapon to ensure discouragement of frivolous and vexatious prosecution. It is safeguard for innocent, not a shield for a guilty. The object underlying Section 19 of the Act of 1988 is to ensure that a public servant does not suffer harassment

1 AIR 1996 SC 1910

on false, frivolous, concocted or unsubstantiated allegations. The exercise of power under Section 19 of the Act of 1988 is not an empty formality since the Government or for that matter the sanctioning authority is required to apply its mind to the entire material and evidence placed before it and on examination thereof reach a conclusion fairly, objectively and consistent with public interest as to whether or not in the facts and circumstances, sanction should be accorded to prosecute the Government servant. (See **Mansukhlal Vithaldas Chauhan v. State of Gujarat**[2].)

12. An order granting or refusing sanction must be preceded by application of mind on the part of appropriate authority on material placed before it. (See **Romesh Lal Jain v. Naginder Singh Rana and others**[3].)

13. While granting sanction, the authority can neither take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. Although the State, in the matter of grant or refusal to grant sanction, exercises statutory jurisdiction, it does not mean that the power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in State may not be necessary as such power is administrative in character.

14. The Supreme Court in the matter of **State of Punjab and another v. Mohammed Iqbal Bhatti**[4] has considered the question whether State has any power of review in the matter of grant of sanction in terms of Section 197 of the Code of Criminal Procedure, 1973 and held as under: -

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2 AIR 1997 SC 3400
3 (2006) 1 SCC 294
4 2010 AIR SCW 1186

> “7. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. [See Mansukhlal Vithaldas Chauhan v. State of Gujarat [(1997) 3 SCC 622] : *(1997 AIR SCW 3478 : AIR 1997 SC 3400)*.”

15. Their Lordships further noticed the opinion of the High Court as under: -

> "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 concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible. The Government is expected to act consciously and cautiously while taking such serious decisions. The perusal of the record shows that pointed queries had been raised to be answered by the Vigilance Bureau but no answer was forthcoming nor any had been submitted subsequently which culminated into passing of the later order dated September 30, 2004. We refrain ourselves from mentioning the queries which had been raised but it would suffice to say that the queries were never answered at the relevant time when the order dated December 15, 2003 had been passed nor the same was ever commented upon as no answers were placed before the competent authority for passing the impugned order dated September 30, 2004."

16. Finally, approving the opinion of the High Court, Their Lordships

observed as under: -

> "22. 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.
>
> 23. 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."

17. Recognising the power of review on the part of sanctioning authority, Their Lordships of the Supreme Court in the matter of **State of Himachal Pradesh v. Nishant Sareen**[5] held 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 a 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

5 (2010) 14 SCC 527 : AIR 2011 SC 404

> 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 a course."

18. Thus, the order passed under Section 19 of the Act of 1988 by the sanctioning authority can be reviewed / reconsidered on the following circumstances: -

    1. Where fresh materials have been collected by the investigating agency and if on that basis, the matter can be reconsidered.

    2. When the authority has failed to take into consideration a relevant fact or took into consideration an irrelevant fact.

19. Thus, it is quite vivid that the order under Section 19 of the Act of 1988 can be reviewed by the sanctioning authority where fresh material has been collected and brought to the notice of the said authority and secondly, when the sanctioning authority has failed to take into consideration relevant facts and took into consideration irrelevant facts while passing order under Section 19 of the Act of 1988.

20. Taking note of the aforesaid grounds for reviewing/reconsidering the order under Section 19 of the Act of 1988, reverting to the facts of the present case, it is quite vivid that in the present case, the sanctioning authority while rejecting the application under Section 19 of the Act in its order dated 29-7-2016 apart from other grounds, merely impressed with the fact that the sanction is being sought for the petitioner to prosecute him twice for the offence committed once which is not permissible, whereas it was

subsequently brought to his notice that Crime No.9/2015 relates to commission of offence under Sections 109, 120-B, 420 and 409 of the IPC and Sections 11, 13(1)(d) and 13(2) of the Act of 1988 i.e. a public servant is said to have committed the offence of criminal misconduct by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest, whereas Section 13(1)(e) of the Act of 1988 provides that a public servant is said to have committed the offence of criminal misconduct if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. The said facts having been brought to the notice of the sanctioning authority, the sanctioning authority has omitted to consider relevant facts and impressed with the non-existent facts and finding that Crime No.9/2015 relates to criminal misconduct under Section 13(1)(d) of the Act of 1988 whereas, Crime No.15/2015 relates to Section 13(1)(e) of the Act i.e. possession of property disproportionate to known sources of income which the Government servant cannot account satisfactorily. The sanctioning authority decided to grant sanction for prosecution against the petitioner under Sections 13(1)(e) and 13(2) of the Act of 1988 finding prima facie case for grant of sanction for prosecution under Section 19 of the Act of 1988 which in the considered opinion of this Court is strictly in

accordance with law, as the relevant fact was omitted to be considered and the earlier order declining sanction was reviewed on the ground of declining sanction by omitting to consider the relevant fact. In the aforesaid order of the sanctioning authority, I do not find any jurisdictional error. The learned sanctioning authority is absolutely justified in holding that case for grant of sanction under Section 19 of the Act of 1988 is made out.

21. There is one more reason for upholding the order passed by the sanctioning authority.

22. Sub-sections (3)(a) and (4) of Section 19 of the Act of 1988 provide as under: -

> (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) xxx xxx xxx
>
> (c) xxx xxx xxx
>
> (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."

23. At this stage, it would be appropriate to notice the decision of the Supreme Court in the matter of **State by Police Inspector v. T. Venkatesh Murthy**[6]. In this case before the Supreme Court, sanction was granted by the Superintending Engineer of the Karnataka State Electricity Board. The trial Court held that competent authority for according sanction could not be the Superintending Engineer and, therefore, the accused was entitled to discharge at that stage for want of sanction by a competent authority. The order was eventually challenged before the Supreme Court after the High Court dismissed the revision petition. While interpreting sub-sections (3) and (4) of Section 19 of the Act of 1988, the Supreme Court held as under:-

> "7. A combined reading of sub-sections (3) and (4) make the position clear that notwithstanding anything contained in the Code no finding, sentence and 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.
>
> 8. Clause (b) of sub-section (3) is also relevant. It shows that no court shall stay the proceedings under the 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.
>
> 9. Sub-section (4) postulates that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in the 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.
>
> 10. Explanation appended to the Section is also of

6 (2004) 7 SCC 763

> significance. It provides, that for the purpose of Section 19, error includes competency of the authority to grant sanction.
>
> 11. The expression "failure of justice" is too pliable or facile an expression, which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in *Town Investments Ltd. v. Deptt. of Environment*[7]). The criminal court, particularly the superior court, should make a close examination to ascertain whether there was really a failure of justice or it is only a camouflage. (See *Shamnsaheb M. Multtani v. State of Karnataka*[8].)"

24. Thus, from the aforesaid authoritative pronouncement of the Supreme Court, it is quite vivid that the courts are not supposed to quash the proceeding under the Act of 1988 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. Therefore, the overriding principle which permeates the judgment is that unless there is failure of justice on account of error, omission or irregularity in grant of sanction for prosecution, the proceedings under the Act of 1988 could not be vitiated.

25. In the instant case, neither it has been pleaded nor it has been demonstrated that the order granting sanction has resulted into failure of justice as it has clearly been held that the power of review can be exercised when irrelevant consideration has been taken into account in the earlier order and relevant consideration has been ignored while passing the order. I do not find any error of jurisdiction in the impugned order. The sanctioning authority is justified in granting sanction for prosecution against the petitioner under Section 19 of the Act of 1988 for his prosecution under Sections 13(1)(e) and 13(2) of the Act of 1988.

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7 (1977) 1 All ER 813 : 1978 AC 359 : (1977) 2 WLR 450 (HL)
8 2001 (2) SCC 577 : 2001 SCC (Cri) 358

26. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.355 of 2017

Dilip Kumar Sharma

Versus

State of Chhattisgarh and others

Head Note

Sanctioning authority under Section 19 of the Prevention of Corruption Act, 1988 has power and jurisdiction to review its order where fresh materials are brought or where he has failed to take into consideration a relevant fact.

भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 19 के अन्तर्गत मंजूरी प्राधिकारी के पास अपने आदेश का पुनर्विलोकन करने की शक्ति तथा क्षेत्राधिकार है जहॉ नई सामग्रियॉ प्रस्तुत की गई हों अथवा सुसंगत तथ्य को ध्यान में न रखा जा सका हो।