

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

WRIT PETITION NO.10479 OF 2020(GM-RES)

BETWEEN

SRI D K SHIVAKUMAR

... PETITIONER

(BY SRI RAJENDRA M S, ADVOCATE)

AND

- 1 . STATE OF KARNATAKA
REP. BY CHIEF SECRETARY
VIDHANA SOUDHA
BENGALURU- 560 001
- 2 . THE UNDER SECRETARY TO GOVERNMENT,
HOME DEPARTMENT (CRIMES),
GOVERNMENT OF KARNATAKA
VIKAS SOUDHA
BENGALURU- 560 001
- 3 . CENTRAL BUREAU OF INVESTIGATION
ANTI CORRUPTION BRANCH
NO.36, BELLARY ROAD
GANGANAGAR
BENGALURU - 560 032
REPRESENTED BY SPP

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R1
R2 SERVED, UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE GOVERNMENT ORDER DATED 25.9.2019 ISSUED BY THE R-2 PRODUCED AT ANNEXURE-K. ISSUE AN ORDER AS TO COST OF THE PETITION. GRANT AN INTERIM ORDER TO STAY THE OPERATION AND FURTHER PROCEEDINGS PURSUANT TO AND ANY ENQUIRY OR INVESTIGATION EMANATING FROM THE GOVERNMENT ORDER DATED 25.9.2019 ISSUED BY THE R-2 ANNEXURE-K.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.4.2023 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This writ petition filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for issue a writ, in the nature of certiorari or any other appropriate writ or order or direction, quashing the Government Order bearing No.E-HD/40/COD/2019 dated 25.09.2019 issued by the 2nd respondent by according sanction for prosecution to the 3rd respondent-CBI to investigate the alleged offences committed by the petitioner under the provision of Prevention of Corruption Act (herein after referred as to 'PC Act').

2. Heard Sri. Udaya Holla, learned Senior Counsel appearing for the petitioner, learned SPP-II appearing for respondent Nos.1 and 2 and Sri P. Prasanna Kumar, learned Special Counsel appearing for respondent No.3.

3. The case of the petitioner is that he is the sitting MLA and the President of the Karnataka Pradesh Congress Party and he is said to be doing various business including mining and real estate development. There was raid conducted by the income tax department officials on 02.08.2017 on the various premises of the petitioner in New Delhi and other places and they collected Rs.8,59,69,100/-. It is alleged that Rs.41.00 lakhs was recovered from the premises of the petitioner. Subsequently, the income tax department officials registered a case by filing a complaint against the petitioner before the Special Court for Economic Offences under the provisions of the Income Tax Act, 1961. Based upon registering the income tax case, the Directorate of Enforcement (hereinafter referred to as 'ED') also

registered a case in No.ECIR/04/HQ/2018 and subsequently, the petitioner was arrested on 03.09.2019. Thereafter, the office of the Special Director of ED issued a letter dated 09.09.2019 to the State Government by acting under Section 66(2) of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PML Act'). The letter has been sent to the Chief Secretary of Government of Karnataka and the Government of Karnataka accorded sanction against the petitioner referring the matter to the CBI for investigating the case for offences punishable under the provisions of PC Act, 2018 vide its order dated 25.09.2019, which is under challenge.

4. The learned Senior counsel appearing for the petitioner has contended that the State Government while passing the impugned order, referring investigation to CBI, has not applied its mind. While passing the said order, the State Government has simply narrated the contents of the letter issued by the ED and referred the case to the CBI and in turn, the CBI registered an FIR against the

petitioner, which is not sustainable under law. Previously, one Shashi Kumar Shivanna filed a writ petition challenging the reference order in W.P. No.8316/2020, which came to be dismissed by the Co-ordinate Bench, on 22.07.2020, on the ground the said person has no *locus standi* and he was not an accused in the offence. Therefore, it is contended that the petitioner, being an accused, has right to challenge the very same order and, therefore, the question of *res-judicata* does not apply as the dispute is between some other persons and not between the petitioner and the respondent.

5. The learned Senior Counsel has also contended that out of five cases registered against the petitioner by the income tax department officials, the petitioner was discharged in three cases and the same was upheld by the Hon'ble Supreme Court. In one case, the discharge application came to be dismissed, which is stayed by the Hon'ble Supreme Court. This fact has not been considered by the State Government while according sanction. It is

also contended that even if it is an administrative order. The State is required to apply its mind while granting any sanction. Except culling out the letter of the ED, there is no application of mind while referring the matter to the CBI. Therefore, the order under challenge, dated 25.09.2019, is not sustainable under law. Hence, prayed for quashing the same.

6. In support of his arguments, the learned Senior counsel for the petitioner, has relied upon the various judgments, which are as follows:

1. MANUSKHLAL VITHALDAS CHAUHAN VS. STATE OF GUJARAT - 1997 (7) SCC 622;
2. M.P. SPECIAL POLICE ESTABLISHMENT VS. STATE OF M.P. AND OTHERS - 2004(8) SCC 788;
3. ASSISTANT COMMISSIONER, COMMERCIAL TAX DEPARTMENT, WORKS CONTRACT AND LEASING, KOTA VS. SHUKLA AND BROTHERS - 2010 (4) SCC 785;
4. KRANTI ASSOCIATES PRIVATE LIMITED AND ANOTHER VS. MASOOD AHMED KHAN AND OTHERS - 2010 (9) SCC 496;

5. STATE OF WEST BENGAL AND OTHERS VS. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS, WEST BENGAL AND OTHERS - 2010 (3) SCC 571;
6. COMMON CAUSE, A REGISTERED SOCIETY VS. UNION OF INDIA AND OTHERS - 1999 (6) SCC 667;
7. SECRETARY, INOR IRRIGATION AND RURAL ENGINEERING SERVICES, U.P. AND OTHERS. V. SAHNGOO RAM ARYA AND ANOTHER - 2002 (5) SCC 521;
8. PREM CHAND SINGH VS. STATE OF UTTAR PRADESH AND ANOTHER - 2020 (3) SCC 54;
9. T.T. ANTONY VS. STATE OF KERALA AND OTHERS - (2001) 6 SCC 181;
10. SMT. ANDANUR KALAMMA AND OTHERS VS. SMT. GANGAMMA AND OTHERS - 2005 SCC ONLINE KAR 787;
11. ANDANUR KALAMMA AND OTHERS VS. GANGAMMA (DEAD) BY LEGAL REPRESENTATIVES - 2018 (15) SCC 508;
12. SYED MOH. SALIE LABBAI (DEAD) BY L.Rs. AND OTHERS VS. MOHD. HANIFA (DEAD) BY L.Rs. AND OTHERS - 1976 (4) SCC 780;
13. BOOZ ALLEN AND HAMILTON INC. VS. SBI HOME FINANCE LIMITED AND OTHERS - 2011 (5) SCC 532;

14. SATRUCHARLA VIJAYA RAMA RAJU VS. NIMMAKA JAYA RAJU AND OTHERS - 2006 (1) SCC 212;
15. M/S. GOJER BROS. (PVT.) LTD. VS. SHRI RATAN LAL SINGH - 1974 (2) SCC 453;
16. KUNHAYAMMED AND OTHERS VS. STATE OF KERALA AND ANOTHER - 2000 (6) SCC 359;
17. COMMISSIONER OF INCOME TAX, BOMBAY VS. AMRITLAL BHOGILAL AND CO. - AIR 1958 SC 868;
18. COLLECTOR OF CUSTOMS, CALCUTTA VS. EAST INDIA COMMERCIAL CO. LTD., CALCUTTA AND OTHERS - AIR 1963 SC 1124;

7. Per contra, learned SPP-II Mr. Hegde appearing for respondent No.1 has vehemently objected the petition mainly on two grounds, firstly, that the order passed by the State Government under Section 6 of the Delhi Special Police Establishment Act (hereinafter referred to as 'DSPE Act') does not require an order of sanction and it is only a consent given to the CBI to investigate into the matter. Therefore, it is contended that the order is a simple executive order and it does not require a detailed reason for according consent.

The second ground on which the learned SPP-II for respondent State, urged that, the Co-ordinate Bench of this Court has already considered the reference order dated 25.09.2019 which was challenged by one Shashi Kumar Shivanna in the writ petition referred supra. The Co-ordinate Bench in the aforesaid writ petition has dealt with the matter in detail and passed an order by rejecting the writ petition filed by the said Shashi Kumar Shivanna. Subsequently, the said person filed a writ appeal before the Division Bench, where the writ appeal was also dismissed and the same was not challenged before the Hon'ble Supreme Court and it has attained the finality. The judgment passed by the Co-ordinate Bench by upheld the order passed by the State Government and not against any person. Therefore, the judgment of the Co-ordinate Bench is '*Judgment In Rem*' and it is binding on all the persons. Therefore, it cannot be questioned since the principles of *res judicata* applies.

8. The learned SPP-II has also contended that even if any error occurs while passing the order of sanction or consent, that cannot be a ground for setting aside the order since there is no prejudice would cause to the petitioner's case and that can be cured under Section 465 of Cr.P.C. It is further contended that unless, it is established that there is failure of justice, the same cannot be questioned.

9. The learned SPP-II has further contended that provisions of Section 6 of the DSPE Act says about two consents, one is general consent and the other is special consent, and it is specifically expressed therein that the case should be referred to the CBI. Though it is mentioned in the order as sanction, but it is only a consent under Section 6 of DSPE Act. Therefore, the learned SPP-II prayed for dismissing the petition.

10. In support of his contentions, the learned SPP-II for the respondent State has relied upon the various judgments:

1. SRI SHASHIKUMAR SHIVANNA VS. GOVERNMENT OF KARNATAKA AND OTHERS - W.P.NO.8316/2020;
2. SRI SHASHIKUMAR SHIVANNA VS. GOVERNMENT OF KARNATAKA - W.A.NO.444 /2020;
3. SRI C.L. PASHUPATHI VS. ENGINEERING-IN-CHIEF (WRO) AND ANOTHER - 2008 SC ONLINE MADRAS 1518;
4. DARYVO AND OTHERS VS. STATE OF UTTAR PRADESH - 1962 1 SCR 574;
5. CENTRAL BANK OF INDIA AND OTHERS VS. DRAGENDRA SINGH JADON - (2022) 8 SCC CASES 378;
6. SRI C. INDERNATH AND OTHERS VS. STATE OF TAMIL NADU AND OTHERS - (2022) 2 WritLR 614;
7. SRI M. BALAKRISHNA REDDY VS. DIRECTOR OF CENTRAL BUREAU OF INVESTIGATION, NEW DELHI (2008) 4 SCC CASES 409;
8. SRI BASAVARAJ SHIVAPPA MUTHAGI VS. STATE OF KARNATAKA - (2021) D SUPREME (KAR) 387 ;
9. PRADEEP S. WODEYAR VS. STATE OF KARNATAKA - 2021 SCC ONLINE SC 1140.

11. Learned Counsel appearing for respondent No.3 has also objected the petition contending that for the

purpose of referring the case for investigation under section 6 of DSPE Act does not require any application of mind and the Coordinate Bench has already dismissed the petition filed by one of the accused which was upheld by the Division Bench of the High Court and therefore, there is no reason to distinguish the said order. The petitioner has no *locus standi* to question as to who should be his investigating agency, he can only challenge the FIR, but not the notification for referring the case for investigation. The learned counsel for respondent No.3 further contended that 90% of investigation has already been completed, lot of materials have been collected against the petitioner. Therefore, at this stage, this Court cannot quash the notification.

12. In support of his case, the learned counsel for respondent No.3 - CBI has relied upon the various judgments, which are as under:

1. DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946 (ACT NO.25 OF 1946)(BARE ACT);

2. KANWAL TANUJ V. STATE OF BIHAR - (2020) 20 SCC 531;
3. CBI AND ANOTHER VS. RAJESH GANDHI AND ANOTHER - (1996) 11 SCC 253
4. M. BALAKRISHNA REDDY VS. CBI, NEW DELHI (2008) 4 SCC 409;
5. NIRMAL SINGH KAHLON V. STATE OF PUNJAB - (2009) 1 SCC 441;
6. NARMADA BAI V. STATE OF GUJARAT - (2011) 5 SCC 79;
7. BASAVARAJ SHIVAPPA MUTTAGI Vs. STATE OF KARNATAKA - WP.NO.51012/2019;
8. SOMASEKAR VS. STATE OF KARNATAKA AND ANOTHER IN SPECIAL LEAVE TO APPEAL (CRIMINAL) NO.9649/2021;
9. S KASI VS. STATE - (2021) 12 SCC 1;
10. STATE OF CHATTISGARH AND ANOTHER VS. AMAN KUMAR SINGH AND OTHERS - SLP(CRL.) NO.1703-1705/2022;
11. STATE OF HARYANA AND OTHERS VS. BHAJAN LAL AND OTHERS 1992 SUPP(1) SCC 335.

13. The learned Senior Counsel for the petitioner, by way of reply, has contended that the very order passed by the State itself shows that it is an order of sanction, but not the consent. The sanction and consent are

synonymous as per Section 470(3) of Cr.P.C. The reasons is the soul of any order either administrative order or other orders. Therefore, without application of mind and without mentioning the reasons, sanction has been accorded, which is not a speaking order and therefore it is not sustainable under law. It is further contended that the State has obtained opinion of the learned Advocate General and, learned Advocate General has not stated anything about the consent and even the State has not obtained any consent of the Speaker while granting permission. Hence, prayed for allowing the petition. It is further contended that the *res-judicata* does not attract as this petitioner was not a party in the earlier case. Hence it is contended that the order of the co-ordinate bench is '*Judgment In Personem*' and not binding on the petitioner. Therefore, it is contended that the petitioner is opposite leader and FIR has been registered based upon the impugned order. Therefore, great prejudice would cause to the petitioner. Hence, prayed for allowing the petition.

14. Having heard the arguments of learned counsel for the parties, perused the records which reveals it is an admitted fact that the petitioner is sitting MLA and the opposite political party leader. There was raid conducted by the income tax authorities and they seized cash from the house of the petitioner and other places. It is also an admitted fact that the IT department filed five cases before the Special Court, out of which three cases were ended in discharge and other cases are pending before the Hon'ble Supreme Court. It is also an admitted fact that the ED written letter the Chief Secretary to the Government of Karnataka by invoking Section 66(2) of PML Act and the Under Secretary to the Government, Home Department (Crimes), issued the impugned order on 25.09.2019, according sanction to CBI for investigation by invoking power under Section 6 of DSPE Act. It is also an admitted fact that one Shashi Kumar Shivanna filed Writ Petition No.8316/2020 challenging the very impugned order dated 25.09.2019, which came to be dismissed on 22.07.2020. It is also an admitted fact that the said Shashi Kumar

Shivanna filed an appeal before the Division Bench in W.A. No.444/2020, wherein the Hon'ble Division Bench dismissed the appeal on 05.02.2021 by granting liberty to approach the appropriate Forum, in case the petitioner is named as an accused in FIR. It is also an admitted fact that after passing of the impugned order by the State Government, the CBI registered an FIR against the petitioner in No.ECIR/04/HQ/2018 which is already challenged before this Court and it is pending for consideration.

15. With these admitted facts, now the contention taken by the respondents, in this case, is mainly on the ground that the Co-ordinate Bench has already dismissed the writ petition referred supra, which was filed challenging the very impugned order and the said order passed in the writ petition was upheld by the Division Bench. Therefore, the judgment has attained finality and the present petition is not maintainable on the ground of principles of *res-judicata*. This is contended by respondent's counsel that

the judgment passed by the Co-ordinate Bench in the aforesaid writ petition is *Judgment In Rem* binding on all the persons. It is also contended that the order passed by the State Government under Section 6 of DSPE Act is only a consent but not sanction, whereas the petitioner disputed the same on the ground that the said order is sanction, which required application of mind, and no principles of *res judicata* applies in this case.

16. Having heard the arguments of learned counsel for the parties and on perusal of the records, the points that arise for consideration are:

(i) *Whether the impugned order passed by the State dated 25.09.2019 under Section 6 of the Delhi Special Police Establishment Act, 1946 was sanction or a consent ?*

(ii) *Whether the order passed by the Co-ordinate Bench in W.P.No.8316/2020(S-RES) applies the principles of res judicata ?"*

17. The learned Senior counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme

Court while arguing the matter that the order under challenge was a sanction order without application of mind. The learned counsel relied upon the judgment of Hon'ble Supreme Court in the case of ***Mansukhlal Vithaldas Chauhan vs. State of Gujarat*** reported in **(1997) 7 SCC 622**, where the Hon'ble Supreme Court has held at paragraph No.19 that the sanctioning authority was unable to apply its independent mind for any reasons or what so ever or pass an obligation or compulsion or constraint to grant sanction, the order will be bad for the reason that the discretion of the authority not to sanction was taken away and it was compelled to act mechanically to sanction the prosecution. The another judgment in the case of ***M.P.Special Police Establishment vs. State of M.P. and Others*** reported in **(2004) 8 SCC 788**, it has held though the power to grant sanction is administrative power, the same will stand vitiated if there is manifest error or excise of power are arbitrary or non application of mind. The Hon'ble Supreme Court has also held in the case of ***Assistant Commissioner, Commercial Tax***

Department, Works Contract and Leasing, Kota vs. Shukla and Brothers reported in **(2010) 4 SCC 785**, even in the administrative order, the authorities shall record reasons by speaking order. The same view was taken in the case of **Kranti Associates Private Limited and Another vs. Masood Ahmed Khan and Others** reported in (2010) 9 SCC 496. On perusal of the judgment of the Hon'ble Supreme Court, it is well settled that while granting sanction, the authority should apply its mind by giving reason and a speaking order is a must and non application of mind without looking to the document if any sanction is accorded that will not be sustainable under the law. Even for an administrative order, a speaking order or reason is required.

18. On the other hand, the learned SPP-II has contended that the impugned order of the State was only a simple executive order for giving consent under Section 6 of the DSPE Act. In support of his contention, he has relied upon the judgment of the Madras High Court in the

case of ***Dr.C.Indernath and Others vs. State of Tamil Nadu and Others*** reported in **(2022) 2 WritLR 614**, where the Madras High Court while dealing with the similar situation where the matter was referred to the CBI for investigation was held at paragraph No.49 of the judgment as under:

"49. The Hon'ble Supreme Court in the case of Fertico Marketing and Investment Private Limited and others vs. Central Bureau of Investigation and another [2021 (2) SCC 525], held that though the Central Government to extend the powers and jurisdiction of Members of the DSPE beyond the Union Territories to a State, the same is not permissible unless a State grants its consent for such an extension within the area of the State concerned under Section 6 of DSPE Act. Obviously, the provisions are in tune with the federal character of the Constitution, which has been held to be one of the basic structures of the Constitution. As could be seen from Article 226 of the Constitution of India, Schedule VII, List II - State List (1) public order and (2) police are listed, which are within the powers of the State. In this case, admittedly, the first respondent or the sixth respondent have no objection for conducting investigation by the CBI. The petitioners are named

accused in RC 0322020A0023, have no say who should investigate the offences against them. The decision to investigate or the decision on the agency does not violate principles of natural justice. Nor is there any provision in law under which, while granting consent or extending the powers or jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. It is only a consent. It is seen that, in this case, if at all there is any objection with regard to conduct of investigation, the same has to be raised by the State Government of Tamil Nadu and not the petitioners."

19. The Hon'ble Supreme Court in the case of ***M.Balakrishna Reddy vs. Director, CBI, New Delhi*** reported in **(2008) 4 SCC 409** at head note A, paragraph Nos.44 and 71 has held as under:

"Head Note A: *Police - CBI - Exercise of powers and jurisdiction by CBI in a State - Consent of State Government under S. 6, Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) - Manner of giving - Particular form, if any - Such consent, held, need not be*

given in any particular form - Whether the consent was or was not given, depends on the facts of each case and no rule of universal application can be laid down in that regard - Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) - Ss. 6, 5 and 3 - Public Accountability and Vigilance - Vigilance authorities - CBI"

"44. *Though the Court was not directly deciding the question whether a letter could be treated as valid consent, but whether separate consent was required for every individual member of the Delhi Police Establishment or general consent was enough. The Court nonetheless held the consent valid as general consent was all that was required by law. Though it did not remark on the form in which such consent should be given i.e. the letter, was correct or not, the fact that it could find nothing wrong with the consent raises a strong presumption in favour of the argument that a letter can be a means of granting consent by the State Government under Section 6."*

"71. *A closer scrutiny of the relevant provisions of the Delhi Act also add credence to*

the view which we are inclined to take. Section 3 refers to "notification" and requires the Central Government to issue notification specifying offences or class of offences to be investigated by Special Police Establishment. Section 5 uses the term "order" and enables the Central Government to extend powers and jurisdiction of Special Police Establishment to other areas not covered by the Act. Section 6 which speaks of consent of the State Government for the exercise of powers and jurisdiction of the Special Establishment neither refers to "notification" nor "order". It merely requires consent of the State Government for the application of the Delhi Act. Parliament, in our considered opinion, advisedly and deliberately did not specify the mode, method or manner for granting consent though in two preceding sections such mode was provided. If it intended that such consent should be in a particular form, it would certainly have provided the form as it was aware of different forms of exercise of power. It, therefore, depends on the facts of each case whether the consent required by Section 6 of the Delhi Act has or has not been given by the

State Government and no rule of universal application can be laid down."

20. The learned SPP - II has also relied upon the judgment of the Division Bench of this Court in the case of ***Sri.Basavaraj Shivappa Muttagi vs. State of Karnataka, through Additional Chief Secretary, Home Department*** reported in **2021 0 Supreme(Kar) 387** and has held at paragraph No.29 of the judgment which is as under:

"129. The parameters for exercise of both the distinct powers of Government and Courts are naturally different and it is always possible and permissible, that even after the constitutional court declines to exercise its extraordinary judicial power holding that the case does not involve circumstances which are rare or exceptional, the State Government can exercise its ordinary executive powers under section 6 of the Delhi Special Police Establishment Act, 1946 in granting consent and the Central Government can, thereafter exercise its power by accepting the

investigation entrusted to it by the State Government. The said process is uninhibited by the high prerogative judicial powers of entrustment of inquiry to CBI. The same is independent and does not have any fetters with regard to whether extraordinary judicial powers are not exercised as the constitutional court did not find the matter to be extraordinary and containing such facts which justify exercise of jurisdiction which is to be exercised "cautiously, sparingly and under certain circumstances only". The power of the State Government therefore is not curtailed by such high standards."

The said judgment of the Division Bench of this Court has been upheld by the Hon'ble Supreme Court in SLP 9649/2021.

21. In view of the judgments of the Hon'ble Supreme Court, Division Bench of the High Court and order passed by the Madras High Court, I am of the view, the impugned order dated 25.09.2019 passed by the State was nothing but a consent given by the State under

Section 6 of the DSPE Act and it is not a sanction as required under either Sections 19 or 17 of the Prevention of Corruption Act.

22. Though in the impugned order it was mentioned as sanction was accorded but literally it is only a consent and it is not a sanction and it is only a simple executive order by giving consent to the CBI for investigating the matter as against the petitioner. It is also revealed by the opinion given by the Advocate General that the Advocate General has categorically stated that no sanction is required under Section 17(A) or 19 of the P.C. Act. It is also brought to the notice of the Court by the learned Senior counsel for the petitioner that the Co-ordinate Bench while passing the order in the Writ Petition, though it was stated that it was an administrative order in its order, but it is not an administrative order but it is only a simple executive order and it need not require any detailed order for application of mind and even otherwise, the authority i.e., Under Secretary has considered the

letter sent by the Directorate of Enforcement Department and passed the order. Even Section 6 of the DSPE Act says that it is only a consent of the State Government for investigation by the Central Police. Such being the case, the contention of the learned counsel for the petitioner cannot be acceptable that there is no application of mind while passing the impugned order. Therefore, on that ground, the impugned order cannot be quashed.

23. Re. point No.2: The order passed by the Coordinate Bench is the '*Judgment in Rem*' which is binding on all the persons including this Court and principles of *res judicata* applies.

24. In this regard, the learned SPP - II and the CBI counsel brought to the notice of this Court that the Coordinate Bench dealt with the matter in detail by raising three points for consideration and finally dismissed the petition filed by the one Shashikumar Shivanna in W.P.No.8316/2020.

25. For the convenience, the point raised by the Co-ordinate Bench at paragraph No.13 of the order is read as under:

"13. Having heard the learned Senior Counsel representing the petitioner and the learned Advocate General and the learned counsel for the respondent No.3, the following points would arise for determination:

a) Whether the petitioner has the locus standi to challenge the consent granted by the respondent No.1 under Section 6 of the DSPE Act, 1946 ?

b) Whether consent granted under Section 6 of the DSPE Act, 1946 is akin to a sanction contemplated under Section 17A or Section 19 of the Prevention of Corruption Act, 1988 or under Section 197 of the Criminal Procedure Code, 1973 ?

c) Whether in the facts and circumstances of this case, whether the respondent No.1 was required to apply its mind ? If yes then whether the respondent No.1 has applied its mind before granting consent under Section 6 of the DSPE Act, 1946?"

26. The Co-ordinate Bench finally while considering point No.(c) has taken the view that there is no requirement of application of mind while granting the consent. Ultimately, the petition was dismissed. The same was challenged before the Division Bench in W.A.444/2020 which came to be dismissed on 05.02.2021. Admittedly, the said order of the Co-ordinate Bench attained finality and no appeal was filed by the said Shashi Kumar Shivanna. Of course, the present petitioner was not a party to the said proceedings in W.P.8316/2020 and the Co-ordinate Bench also stated that the said Shashi Kumar Shivanna has no *locus standi* to challenge the order. However, the Co-ordinate Bench while dealing with the matter where the said Shashi Kumar Shivanna challenged the very order dated 25.09.2019 for referring the matter to the CBI, but the Co-ordinate Bench has categorically held and given finding on the reference to the CBI in the impugned order where the application of mind is not required while giving consent under Section 6 of the DSPE

Act. Therefore, it cannot be said that the finding of the Co-ordinate Bench is only on the petition filed by the Shashi Kumar Shivanna, but it was on the issue of reference of the case to the CBI for investigation against this petitioner for the provisions of P.C. Act. Therefore, I am of the view that the judgment of the Co-ordinate Bench was '*Judgment In Rem*', it was binding on this petitioner and also other persons as the issue of reference under the impugned order has been upheld by the Co-ordinate Bench. Therefore, the contention of the petitioner counsel cannot be acceptable that the judgment should be between the same parties, but it was an identical dispute on the same subject matter which was dealt with by the Co-ordinate Bench. Therefore, the doctrine of the *res judicata* applies to this case and also the order of the Co-ordinate Bench is binding on this petitioner. Therefore, the judgments relied by the counsel for the petitioner is not applicable to the case on hand in view of my findings at point No.1.

27. That apart, the CBI after registering the case, they said to be collected huge evidence and 90% of the investigation is said to be completed and as argued by the learned SPP-II, if any flaw in the order of sanction or consent, the investigation cannot be vitiated that it is curable defect under Section 465 of Cr.P.C.

28. Though the learned Senior counsel for the petitioner has contended that the consent and sanction is one and the same as per Section 470(3) of Cr.P.C., but the said provision is to attract only limitation point for taking cognizance and a final report. Therefore, it cannot be said that the consent and sanction are one and the same. It is all together different.

29. In view of the above findings especially in point No.1, the impugned order passed by the State under Section 6 of the DSPE Act is only a formal consent and it is not a sanction which requires a detailed order and as stated by the Hon'ble Supreme Court, there is no

prescribed form to accord consent under Section 6 of the DSPE Act and the Co-ordinate Bench has already decided the issue of referring the case to CBI which was upheld by the Division Bench. Such being the case, I am of the view, there is no reason for this Court to distinguish or take divergent opinion in respect of the order passed by the Co-ordinate Bench in W.P.8316/2020(S-RES). Hence, the petition is devoid of merits and liable to be dismissed.

30. Accordingly, the writ petition filed by the petitioner is hereby ***dismissed***.

**Sd/-
JUDGE**

CS/GBB