

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2022

BEFORE

THE HON'BLE Dr. JUSTICE H.B. PRABHAKARA SASTRY

CRIMINAL REVISION PETITION No.1193 OF 2012

BETWEEN:

George Varghese,

..Petitioner

(By Sri. Kiran S. Javali, Senior counsel for
Sri. Chandrashekara K., Advocate)

AND:

Superintendent of Police,
Central Bureau of Investigation,
Bellary Road,
Bangalore.

.. Respondent

(By Sri. P. Prasanna Kumar, Special Public Prosecutor)

This Criminal Revision Petition is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, praying to call for records in Special C.C.No.72/2007 on the file of XLVI Additional City Civil and Sessions Judge and Special Judge for CBI

Cases, Bangalore, set aside order dated 09-11-2012 and discharge the petitioner in Special C.C.No.72/2007 on the file of XLVI Additional City Civil and Sessions Judge and Special Judge for CBI cases, Bangalore and pass such other order or orders as deemed fit and proper.

This Criminal Revision Petition having been heard through Physical Hearing/Video Conferencing Hearing and reserved on **07-07-2022**, coming on for pronouncement of orders this day, the Court made the following:

ORDER

The present petitioner, who is accused No.1 in Special C.C.No.72/2007, pending in the Court of the XLVI Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore (CCC-47), (hereinafter for brevity referred to as "the Special Court"), for the offences punishable under Section 120B read with Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860 (hereinafter for brevity referred to as "the IPC") and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, (hereinafter for brevity referred to as "the Prevention of Corruption Act") has filed this

revision petition, challenging the rejection of his application filed under Section 227 of the Code of Criminal Procedure, 1973, (hereinafter for brevity referred to as "the Cr.P.C."), by the Special Court, vide its order dated 09-11-2012.

2. The Police Inspector, CBI/SPE, Bangalore, filed charge sheet against few accused persons including the present petitioner (accused No.1) for the alleged offences mentioned above.

3. The summary of the case of the prosecution before the Special Court is that, the present petitioner, who is accused No.1, was the Superintendent of Customs, EOU-IV A Range, Department of Customs, Bangalore, from the date 05-06-2002 to the date 03-02-2003. The accused No.2 - Sri. D.A. Ganesh was working under him as Inspector of Customs from the date 01-01-2003. They had a duty and responsibility to ensure the bonding of the imported raw materials and examining the exports by 100% Export Oriented

Unit coming under their Range. Accused No.4 - M/s. Amisha International represented by Accused No.3 - Sri.D.K. Jain, was one of the 100% Export Oriented Units coming under the EOU-IV Range. The accused No.4 - M/s. Amisha International used to import Raw Mulberry Silk Yarn from China at Chennai Sea Port, without paying customs duty. As per the EOU Scheme, this Company had to export the imported Raw Mulberry Silk Yarn by processing the same into finished goods, i.e. Powder Grade Silk yarn to meet the export obligations.

The accused No.4 - M/s. Amisha International had imported five consignments of Mulberry Raw Silk Yarn from China during the period from the date 21-11-2002 to 09-01-2003 through its Custom House Agent - M/s. Master Stroke Freight Forwarders Private Limited, Chennai, at Chennai Seaport. These imports were bonded at the premises

of accused No.4 and the Company has to export the same by processing into Power Grade Silk Yarn.

That on the date 23-01-2003, the accused No.3 - Sri. D.K. Jain - the Chief Executive Officer of accused No.4, filed a Shipping Bill No.772/2003 along with invoice No.A1/05/02 and packing list for export of 110 bales of Powder Grade Silk Yarn weighing 271 kgs. valued at ₹88,46,209/- kept in the container bearing No.CLHU 262095-4 of M/s. IAL Shipping Line, before accused No.1 (petitioner herein) at his Office for inspection and sealing.

It is the allegation of the prosecution that, accused No.1, i.e. the present petitioner, while functioning as a public servant, in the capacity of the Superintendent of Customs, EOU-IV Range, Department of Customs, Bangalore, during January-2003, entered into a criminal conspiracy with accused No.2 - the Inspector of Customs, EOU-IV Range, Bangalore, and accused No.3 - the Chief Executive Officer of accused No.4

and in furtherance of the criminal conspiracy, cleared the container No.CLHU-262095-4 containing the goods meant for export by accused No.4, without physically verifying the same before sealing the container, which caused wrongful loss to the Government of India, to the tune of ₹26,94,251/- and corresponding wrongful gain to themselves and thus all the accused have committed the offences punishable under Sections 120B read with Sections 420, 467, 468, 471 of the IPC and Sections 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act.

4. After investigation, charge sheet came to be filed before the Special Court. Cognizance was taken and the presence of the accused was secured. When the matter was at the stage of hearing before charge, accused Nos.1 to 3 including the present petitioner who is accused No.1 in the charge sheet, filed applications under Section 227 of the Cr.P.C., seeking their discharge from the case.

5. After hearing both side, the Special Court, by its detailed order dated 09-11-2012, dismissed their applications filed under Section 227 of the Cr.P.C., and held that accused Nos.1 to 3 shall stand trial for the charges levelled against them. Challenging the said order, the accused No.1 has filed this revision petition.

6. The respondent - Central Bureau of Investigation (CBI) is being represented by the learned Special Public Prosecutor.

7. The Special Court's records were called for and the same are placed before this Court.

8. Learned Senior Counsel for the petitioner and learned Special Public Prosecutor for the respondent - CBI are physically appearing in the Court.

9. Heard the arguments from both side and perused the materials placed before this Court including the impugned order passed by the Special Court on the application filed by the accused No.1 under Section 227 of the Cr.P.C.

10. After hearing the learned counsels for the parties, the only point that arise for my consideration in this revision petition is:

Whether the impugned order passed by the Special Court on the application filed under Section 227 of the Cr.P.C., by the petitioner herein (accused No.1), is perverse and erroneous, warranting interference at the hands of this Court?

11. Learned Senior Counsel for the revision petitioner/accused No.1 in his argument, mainly canvassed only one point that, the charge sheet papers would go to show that, the petitioner was working in the Department of Customs, whereas the sanction order which is marked as Ex.P-11 has been passed by the Commissioner of Central Excise. As admitted by PW-3, in her cross-examination, the sanction order at Ex.P-11 was under Section 136 of the Customs Act, 1962 (hereinafter for brevity referred to as "the Customs Act") in which event, as per Section 137 of the Customs Act, cognizance of offence cannot be taken, except

with the previous sanction of the Principal Commissioner of Customs or Commissioner of Customs. In the instant case, since the sanction was not given by the Commissioner of Customs, but has been given by the Commissioner of Excise, the very sanction being an invalid sanction, the cognizance taken without a valid sanction becomes invalid in the eye of law.

12. Learned Special Public Prosecutor for the respondent - CBI, in his argument submitted that, Section 137 of the Customs Act requires sanction by the Principal Commissioner of Customs or Commissioner of Customs only with respect to the offences under Sections 132, 133, 134, 135 or 135-A of the Customs Act, but that condition is not applicable to the offences under the provisions of the Prevention of Corruption Act, as such, the sanction given under Section 19 of the Prevention of Corruption Act by the Commissioner of Excise, who is the removing authority, is a valid sanction in the eye of

law. He further submitted that the petitioner was serving in Excise Department at the relevant point of time. Both Excise Department and Customs Department comes under the same Ministry. As on the date of sanction, it was Excise Commissioner, who had the power to remove the petitioner, but not the Commissioner of Customs.

Subsequently, by producing few documents along with a memo dated 08-06-2022, the learned Special Public Prosecutor for the respondent - CBI submitted that, the Service Record of the petitioner would go to show that, he was appointed by the Commissioner of Central Excise and was later transferred to the Department of Customs and after the present incident, he was again transferred to the Department of Central Excise. Therefore, he comes under the Department of Central Excise, as such, the sanction order passed by the Commissioner of Central Excise, which is at Ex.P-11, is a valid sanction and cannot be found fault with.

13. The first contention of the learned Senior Counsel for the petitioner is that, as on the date of the alleged offences by the petitioner, he was serving in the Customs Department. The sanction order at Ex.P-11 was not issued under Section 137 of the Customs Act, therefore, the cognizance of offence could not have been taken by the Special Court.

14. Undisputedly, the petitioner was serving in the Customs Department, as on the date of the alleged offences. The sanction order which is at Ex.P-11 is issued by the Commissioner of Central Excise, Bangalore-I Commissionerate, C.R. Building, Queen's Road, Bangalore. Admittedly, the sanction has been accorded under Section 19 of the Prevention of Corruption Act. The said fact is clear in the sanction order at Ex.P-11 itself. Section 137 of the Customs Act speaks about the cognizance of offences. Section 137 (1) of the Customs Act, reads as below:

*"137. **Cognizance of Offences.**-(1) No Court shall take cognizance of any offence under section 132,*

section 133, section 134, or Section 135 or Section 135-A, except with the previous sanction of the Principal Commissioner of Customs or Commissioner of Customs."

A reading of the above Section would go to show that, it is the Principal Commissioner of Customs or the Commissioner of Customs, who is the authority to accord sanction. However, the said sanction under Section 137(1) of the Customs Act is required only with respect to those offences under Section 132, Section 133, Section 134, Section 135 or Section 135-A of the Customs Act.

In the case on hand, admittedly, the offences alleged against the present petitioner are punishable under Sections 120B, 420, 467, 468 and 471 of the IPC and under Section 13 (2) read with Section 13 (1)(d) of the Prevention of Corruption Act. Thus, none of the offences under Sections 132, 133, 134, 135 or 135-A of the Customs Act have been alleged against the present petitioner in the instant case. Therefore, the

sanction need not be given under Section 137 of the Customs Act.

15. As observed above, the sanction was accorded under Section 19 of the Prevention of Corruption Act, wherein Section 19(1)(c) reads as below:

"19. Previous sanction necessary for prosecution:

(1) No court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013,-

(a)... ..

(b)... ..

(c)in the case of any other person, of the authority competent to remove him from his office."

Therefore, the sanction given under Section 19(1)(c) for the offence punishable under Section 13 (2) read with Section

13 (1)(d) of the Prevention of Corruption Act, cannot be called as an invalid sanction in the eye of law.

16. The second aspect which the learned Senior Counsel for the petitioner vehemently canvassed was that, the sanctioning authority as shown in Ex.P-11 was not the competent authority to accord sanction, since the petitioner (accused No.1) was serving as on the date of the offences in the Department of Customs, whereas the sanction has been accorded by the Commissioner of Central Excise. Those two Departments having separate Commissionerate and the services of the Officers and the officials in those two Departments cannot be inter-changed, the sanction accorded by the Commissioner of Excise under Ex.P-11 is an invalid sanction.

17. Learned Special Public Prosecutor for the respondent - CBI, in his argument, vehemently submitted that, the petitioner was initially appointed in the Department of Excise,

but as on the date of the alleged offences, he was serving as a Superintendent in the Department of Customs. However, as on the date of sanction, he was sent back to the Department of Excise, as such, it was the Excise Commissioner who had the power/authority to remove the petitioner, thus the sanction has been accorded by the Commissioner of Central Excise.

To support his contention, learned Special Public Prosecutor for respondent - CBI, along with a memo dated 29-06-2022, has produced large number of documents, which are the photocopies of their alleged originals and are said to be the part of the Service Records and few Notifications regarding the transfer and placement of the petitioner, on different dates, during his service.

18. A perusal of the same would go to show that, the petitioner joined as Inspector on the date 30-09-1974 in the Central Excise, Mangluru Divisional Office. He was transferred

to Bangalore Collectorate of Central Excise on the date 21-06-1976. Later, he was transferred to the Additional Collector's Office, Mangaluru, on the date 20-03-1987. There, he was promoted as Superintendent on the date 28-06-1991. He was made over from Customs Division, Mangaluru. Then he was transferred to Belgaum Head Quarters on 02-04-1992. By order dated 13-05-1996, he was posted to Hubballi A Range from Belgaum A Range. Later, under Order dated 07-04-2000, he was transferred from A Range Hubballi Division to Customs, Bangalore. The said order of transfer was made under Annual General Transfers in the grade of Superintendent of Customs and Central Excise, by the Office of the Commissioner of Central Excise, Bangalore-I Commissionerate vide Establishment Order No.29/2000 dated 07-04-2000. Thus, the said order of transfer was an Annual General Transfer in the grade of Superintendents of both Customs and Central Excise done by none else than the Commissioner of Central Excise only.

A copy of the said order (dated 07-04-2000), which is placed for perusal by this Court goes to show that, both the Central Excise and Customs were coming under the Department of Revenue, which was under the Ministry of Finance. Thus, it is not the Commissioner of Customs, who has passed that order, but it was the Commissioner of Central Excise. Later, by the order dated 30-04-2002 passed by the Additional Commissioner of Customs, Head quarters, Bangalore, which was in pursuance of the Establishment Order dated 19-04-2002 of the Commissioner of Central Excise, Bangalore -I Commissionerate, the petitioner was transferred from Customs Go-down, Bangalore to Customs Division, Bangalore. Thus, under the Establishment Order passed by the Commissioner of Central Excise, the Additional Commissioner of Customs effected the said transfer. Therefore, the Commissioner of Central Excise was, throughout, been the Controlling Authority of the present petitioner.

Later, the petitioner, by the order dated 04-02-2003, was transferred from the Customs Division, Bangalore, to Customs Headquarters, Bangalore. Thereafter under the Order dated 27-11-2003, from the Office of the Commissioner of Central Excise, Bangalore-I, under the signature of the Additional Commissioner (P & V), vide Establishment Order dated 27-11-2003, the petitioner was transferred from Bangalore Customs Head quarters to Mysore Central Excise. By the order dated 05-05-2006, again passed by the Commissioner of Central Excise, Bangalore-I Commissionerate, the petitioner was transferred from Mysore Central Excise to Bangalore Central Excise Zone. Later, on the date 28-02-2011, after attaining the age of superannuation, the petitioner retired from the services of the Department of Central Excise only. Thus, as on the date of the sanction order at Ex.P-11, which is dated 26-03-2007, he was serving in the Department of Excise and the Commissioner of Central Excise, who accorded the sanction was the authority who was

empowered to remove him from the services. As such, the argument of the learned Senior Counsel for the petitioner that, the sanctioning order is not passed by the competent authority, is not acceptable.

19. Though the learned Senior Counsel for the petitioner contends that, the Department of Excise and Department of Customs have got separate Commissionerate, as such, their internal transfers from one Department to another Department is not valid, but the same is not the question involved in this petition. However, the fact remains that the petitioner had joined the services in the year 1974 in the Department of Central Excise and retired from the Department of Central Excise in the year 2011, though in between, he was transferred or made to work as Superintendent of Customs, but he did not challenge the said assignment or deputation or transfer by whatever name that may be called. It is only when the question of sanction to prosecute him under the

provisions of the Prevention of Corruption Act has arisen, he cannot forward the said contention that the Customs Department has got a separate Commissionerate. Still, the fact remains that, as on the date of according sanction, undisputedly, the petitioner was working in the Department of Excise only. In spite of the same, if it is the contention of the petitioner that the sanction order is not in accordance with law, then, it is not the question of 'no sanction' but it is a sanction with some irregularity. The said question of alleged irregularity in the sanction would be a subject matter of adjudication, provided the same is raised by the accused No.1/petitioner at the appropriate point of time in the Special Court.

The said view has been taken by the Hon'ble Apex Court in the case of **Central Bureau of Investigation and others Vs. Pramila Virendra Kumar Agarwal** reported in **(2020) 17 Supreme Court Cases 664**, by referring to its previous judgment in the case of **Dinesh Kumar Vs. Airport Authority**

of India reported in **(2012) 1 Supreme Court Cases 532**, wherein it is held that there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial.

It further observed in the same paragraph that, in that case facts, admittedly there was a sanction though the accused sought to pick holes in the manner the sanction was granted and to claim that the same is defective which could be a matter to be considered in the trial.

20. Thus, the argument of the learned Senior Counsel for the petitioner that, there is no proper sanction to prosecute the petitioner for the alleged offences, is not acceptable. Therefore, I am of the view that the impugned order passed by the Special Court does not warrant any interference at the hands of this Court.

Accordingly, I proceed to pass the following:

ORDER

[i] The Criminal Revision Petition stands **dismissed;**

In view of the fact that the alleged offences are said to have taken place in the year 2003, the early disposal of the matter, not later than four months from today, by the Special Court, is appreciated.

Registry to transmit a copy of this order along with the Special Court's records to the Special Court, immediately.

**Sd/-
JUDGE**

BMV*