IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 23rd OF JANUARY, 2024

MISC. CRIMINAL CASE No. 49651 of 2023

BETWEEN:-

SHASHIKANT MISHRA

.....PETITIONER

(BY SHRI ANIL KHARE – SENIOR ADVOCATE WITH SHRI PRIYANK AGRAWAL - ADVOCATE)

AND

UNION OF INDIA THROUGH CENTRAL BUREAU OF INVESTIGATION (ACB) JABALPUR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI VIKRAM SINGH - ADVOCATE)

This petition coming on for admission this day, ***Justice Vinay Saraf*** *passed the following:*

O R D E R

Petitioner, who is facing criminal prosecution in Special Case No. 03/2022, pending before Special Judge, (CBI), Jabalpur for offences punishable under Sections 7, 13 (2) r/w 13(1)(b) of Prevention of Corruption Act, 1988 (hereinafter referred to as "**PC Act**") arising out of charge-sheet dated 15.07.2022 filed in connection with F.I.R. No. RC0092021A0007 registered by Central Bureau of Investigation, (ACB), Jabalpur (for brevity "**CBI**"), has preferred the present petition under

Section 482 of the Code of Criminal Procedure (in short "**Cr.P.C.**") for quashment of charge-sheet and further proceedings solely on the ground that prosecution sanction was rejected twice and thereafter accorded by sanctioning authority based on same material under the advice of Central Vigilance Commission (for brevity "**CVC**"), which cannot be treated as valid sanction and vitiates the charge sheet and trial.

2. With the consent of the parties, the matter was heard finally.

Prosecution Case in Brief:

3. Shri Jitendra Kumar Sahu R/o Village Silondi, Tehsil Dhimarkheda, District Katni (hereinafter referred to as "**Complainant**") approached Inspector CBI, (ACB), Jabalpur and submitted a written complaint addressed to SP on 21.10.2021, wherein he levelled allegation of demanding bribe of Rs. 10,000/- by Mr. Shashikant Mishra, the then Branch Manager of Central Bank of India, Silondi Branch, Tehsil Dhimarkheda, District Katni (in short "**Petitioner**") on 20.10.2021 from his brother Shri Dilip Sahu for processing his application to start a KIOSK (SSP-Small Service Point) of Central Bank of India at village Kachar Gram, which was submitted by Complainant on 05.10.2021. After receipt of complaint, the allegation mentioned in complaint was verified in presence of two independent witnesses and conversation between Petitioner, Complainant and his brother was recorded, transcript was prepared and after due verification and preparation of verification *panchnama*, F.I.R. No. RC0092021A0007 was registered against Petitioner under Section 7 of PC Act.

4. Thereafter, pre-trap proceedings were carried out, memorandums were prepared by Shri R.K. Tank, Trap Laying Officer. Complainant handed over Rs. 10,000/- for the purpose of laying trap and tendering as bribe to Petitioner. Phenolphthalein powder was applied on GC notes

provided by Complainant. During trap, Bribe money was accepted by Petitioner from Complainant Shri Jitendra Kumar Sahu on 21.10.2021 in premises of Central Bank of India, Silondi Branch in presence of trap party and independent witnesses Shiv Prasad Katiya, Senior Wielder and Hariom Sharma, Wielder-I posted in office of SSE-P. Way 'N', West Central Railway, Jabalpur.

5. Petitioner was caught after accepting tainted bribe amount of Rs. 10,000/- from Complainant and during trap proceeding, fingers of right hand and left hand of Petitioner were dipped in solution of sodium carbonate, which turned pink evidencing that Petitioner had accepted tainted currency notes and handled with them. Bribe money was recovered from the pocket of Petitioner, in presence of above independent witnesses on the spot on 21.10.2021. Post trap memorandum, seizure and other documents were prepared. The petitioner was arrested on 21.10.2021 and was produced before the competent Court on 22.10.2021 and later on released on bail by orders of this Court on 01.12.2021. After obtaining chemical examination report from Central Forensic Science, Laboratory, New Delhi and concluding investigation, request letter was submitted by CBI before sanctioning authority to accord the sanction to prosecute Petitioner, which was granted on 28.06.2022 and after receipt of prior prosecution sanction, CBI filed charge-sheet against Petitioner in Court of Special Judge, Jabalpur, which is pending as Special Case No. 03/2022.

Petition in brief:

6. Petitioner preferred present petition under Section 482 of Cr.P.C. for quashment of criminal proceedings solely on the ground that after filing charge sheet by CBI, Special Judge framed charges under Sections 7, 13 (2) read with Section 13(1)(b) of PC Act, 1988 against Petitioner

and thereafter prosecution evidence started and CBI examined sanction authority Shri Smruti Ranjan Das, General Manager, Central Bank of India as PW-1, who deposed before the Court that as Petitioner was working on the post of Branch Manager (Scale-II), he was competent authority for according prosecution sanction being General Manager and he accorded prosecution sanction Ex. P-1 to prosecute Petitioner. During course of cross examination, Shri Smruti Ranjan Das admitted that before granting prosecution sanction through Ex.P-1, earlier twice on 31.12.2021 and 04.04.2022, he denied to grant prosecution sanction and later on 28.06.2022 sanction was granted despite absence of any new material.

7. Based on facts revealed by Smruti Ranjan Das (PW-1) during cross examination, Petitioner filed the present petition on the ground that when earlier on two occasion prosecution sanction was refused by same authority, grant of prosecution sanction on 28.06.2022 despite there being no new material/evidence on record, amounts to misuse of powers and is impermissible under the provisions of PC Act, 1988. Petitioner alleged that sanction is not valid and therefore, proceedings against Petitioner cannot continue in the absence of valid prosecution sanction. It is further alleged in the petition that sanctioning authority can review earlier order but only if any new material is produced before it by investigation agency, however PW-1 admitted that no new material was either collected by investigation agency or was any new material placed before him. It is submitted that sanction has been wrongly given and thus charge sheet along with all consequential proceedings deserve to be set aside by exercise of powers u/s 482 of Cr.P.C. since the instant case is a fit case for exercise of extraordinary inherent jurisdiction enshrined under Section 482 of Cr.P.C. for quashment.

Reply of CBI :

8. CBI opposed the prayer by submitting written reply on 21.12.2023, wherein the details of allegation leveled against Petitioner in charge-sheet were reiterated and it is stated that prosecution sanction was duly granted under Section 19(1)(c) of PC Act by the competent authority. It is further submitted that the petition is based on incorrect submissions and is liable to be dismissed.

9. This Court by order dated 11.01.2024 observed that though prosecuting agency has filed reply, but the same does not answer the query raised by the Court on 14.12.2023, whereby the response of prosecution was sought on the issue of refusal of sanction on earlier two occasions and grant of sanction on third occasion despite there being no new material/evidence.

10. Thereafter, CBI filed a detailed reply on 17.01.2024, wherein it was disclosed that Dy. General Manager (Vigilance), Central Bank of India vide letter CO/VIG/PKS/BHOP/2021-22/6/169 dated 15.01.2022 addressed to SP, CBI, ACB, Jabalpur, informed that competent authority has expressed his inability to accord sanction for prosecution and the matter is referred to Central Vigilance Commission for their advice. It is further stated in the reply that Advisor, Central Vigilance Commission, New Delhi vide letter No.2203/BNK/5 dated 02.02.2022 requested CBI to forward a copy of SP's Report along with LA/DLA comments in the case and in response SP forwarded CBI report to CVC, New Delhi vide letter No. DPJBL/CBI-2021/RC0092021A0007/144 dated 03.02.2022. CBI further stated in reply that Advisor, CVC, New Delhi vide letter No. 2203/BNK/5 dated 28.02.2022 informed that commission has examined the case and in view of the facts of the case, commission is in agreement with CBI and would advise grant of sanction for prosecution against

Petitioner to Central Bank of India. Copies of these correspondence were also annexed with reply as Annexure-A to D. CBI further stated that Shri Smruti Ranjan Das, GM (HRD), Central Bank of India, forwarded sanction for prosecution of Petitioner vide letter dated 18.06.2022, wherein it was mentioned that sanction was denied on earlier two occasions considering the views/comments of field functionaries and their interaction with local persons and same was conveyed to Chief Vigilance Officer vide letter dated 31.12.2021 and 04.04.2022. CBI relied upon Office Order No. 31/5/05 dated 12.05.2005 issued by CVC, wherein it was observed by CVC that competent authority cannot embark upon an inquiry to judge the truth of the allegations by holding a parallel investigation/enquiry by calling for the record/report of his department. Office order dated 12.05.2005 issued by CVC was also annexed with the reply as Annexure-F.

11. It is apt to state here that CBI annexed a copy of Confidential letter No. CO/VIG/PKS/BHOP/2022-23/756 dated 18.06.2022 to reply along with two copies of sanctioned order dated 14.06.2022 as Annexure-E. CBI prayed for dismissal of petition.

Petitioner's arguments:

12. Shri Anil Khare, learned senior counsel appearing on behalf of Petitioner submits that once it is established on record that on earlier two occasions sanction was refused on 31.12.2021 and 04.04.2022 by sanctioning authority, grant of sanction in absence of any new material on third occasion amounts to colorable exercise of powers and sanction was accorded under pressure of CVC. He submits that sanction granted in the present case is illegal & vitiated and consequently the trial is liable to be quashed. Shri Khare has taken us to relevant portions of statement of Shri Shruti Ranjan Das (sanctioning authority) recorded during trial, wherein

he categorically admitted that he refused to grant sanction on 31.12.2021 and 04.04.2022, while later accorded the sanction based on same material. Shri Khare submits that the object underlining Section 19 of PC Act is to ensure that public servant does not suffer harassment on false, frivolous, concocted or unsustainable allegations. He further submits that once the prosecution sanction is found illegal, no purpose will serve in continuing with the trial and therefore, the trial is liable to be quashed.

13. To bolster his arguments, Shri Khare relied on pronouncement of Apex Court in the matter of **Gopikant Choudhary vs. State of Bihar and others, (2009) 9 SCC 53,** wherein Apex Court has held that, if no fresh material was collected after earlier order refusing prosecution sanction, then the subsequent order of grant of sanction would be unjustified and vitiates by non-application of mind. He relied on observations of Apex Court recorded in paragraphs 6 of the judgment, as follows:-

> ***"6****. We find from the file that was produced that there has been no application of mind when the subsequent order was passed in the year 1997. It further appears that between the order refusing to sanction and the order that was passed in 1997, the investigating agency had not collected any fresh materials requiring a fresh look at the earlier order. It is also apparent that the alleged excess amount said to have been paid on account of non-performance of the duty by the appellant is to the tune of Rs. 2750 and, therefore, under the Rules of Business, the file pertaining to sanction would have been finally dealt with by the Law Minister and, in fact, he had done so. In this view of the matter, neither was there any necessity for the authorities concerned to place the file before the Chief Minister nor had the Chief Minister any occasion to reconsider the matter and pass fresh order sanctioning prosecution particularly when taking into account the loss sustained to the exchequer to the tune of Rs. 2750. That apart, the person concerned has already retired in the year 1994 and it is unthinkable that for a loss of Rs. 2750 the State would pursue the proceedings against such person. In this view of the matter, we set*

aside the impugned order of sanction dated 10-12-1997 passed by the Chief Minister for prosecuting the appellant."

14. By referring judgment of Apex Court passed in the matter of **State of Punjab and another vs. Mohammed Iqbal Bhatti, (2009) 17 SCC 92,** petitioner submits that, power once exercised for grant or refusal to grant sanction cannot be exercised once again at a subsequent stage in absence of expressed power of review and once an order refusing to grant sanction was passed, reviewing such an order on the basis of same material would not be appropriate or permissible. Relevant Para 6, 7, 9, 20 & 21 of the judgment are extracted hereinbelow:-

"***6****. 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 authority concerned 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.*

7. 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 evidence must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidence 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) 7 SCC 622 : 1997 SCC (L&S) 1784 : 1997 SCC (Cri) 1120] .) The authority concerned cannot also pass

an order of sanction subject to ratification of a higher authority. [See State v. Dr. R.C. Anand [(2004) 4 SCC 615 : 2004 SCC (Cri) 1380] .]

***9**. In the aforementioned situation, the High Court, opined: "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 official concerned, 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 30-9-2004. 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 15-12-2003 had been passed nor was the same ever commented upon as no answers were placed before the competent authority for passing the impugned order dated 30-9-2004.*

***20**. 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.*

***21**. 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."*

15. Shri Khare referred the ratio rendered by Apex Court in the matter of **State of Himachal Pradesh vs. Nishant Sareen (2010) 14 SCC 527**, wherein Apex Court held that change of opinion *per se* on the same material cannot be a ground for reviewing or reconsidering the earlier

order refusing to grant sanction. However, in a case where fresh material has been collected by investigating agency after earlier order and placed before the sanctioning authority and on that basis the matter may be reconsidered by the sanctioning authority, otherwise the opinion cannot be changed. Relevant paras are as follows: -

> *"**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.*
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> ***13**. In our opinion, a change of opinion per se on the same 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.*
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> ***14**. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent Order dated 15-3-2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and*

ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.

***15**. By way of footnote, we may observe that the investigating agency might have had legitimate grievance about the Order dated 27-11-2007 refusing to grant sanction, and if that were so and no fresh materials were necessary, it ought to have challenged the order of the sanctioning authority but that was not done. The power of the sanctioning authority being not of continuing character could have been exercised only once on the same materials."*

16. Shri Khare further referred judgment of Apex Court delivered in the matter of **Chittaranjan Das vs. State of Orissa, (2011) 7 SCC 167**, wherein Apex Court held that, when competent authority denied sanction while public servant was in service, subsequently he cannot be prosecuted after retirement despite fact that no sanction is necessary after retirement under PC Act. Relevant paras 14 and 17 are as under: -

*"**14**. We are of the opinion that in a case in which sanction sought for is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of the public servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility.*

***17**. We are further of the opinion that no disputed question being involved, the High Court instead of making observation as to "whether in the present case sanction order is necessary and whether that was refused by the State Government and what would be the consequence thereof" to be decided by the trial court, ought to have decided the issues itself. The facts being not in dispute the High Court erred in not deciding these issues."*

17. Reliance was also placed on the matter of **State of Punjab vs. Labh Singh (2014) 16 SCC 807,** wherein Apex Court expressed the similar view that once the sanction is refused when the public servant was

in service, he cannot be prosecuted later after demitting the office. Para 10 of judgment is relevant and extracted hereinbelow:-

> ***"10**. However as regards charges for the offences punishable under the Penal Code, the High Court was absolutely right in setting aside the order of the Special Judge. Unlike Section 19 of the PC Act, the protection under Section 197 CrPC is available to the public servant concerned even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13-9-2000 and secondly on 24-9-2003, the Court could not have taken cognizance insofar as the offences punishable under the Penal Code are concerned. As laid down by this Court in State of H.P. v. Nishant Sareen [State of H.P. v. Nishant Sareen, (2010) 14 SCC 527 : (2011) 3 SCC (Cri) 836], the recourse in such cases is either to challenge the order of the sanctioning authority or to approach it again if there is any fresh material."*

18. Shri Khare, learned senior counsel on the strength of aforesaid pronouncements of Apex Court, submitted that intervention of CVC in the process of grant of sanction was unwarranted and CBI created pressure upon sanction authority through CVC for granting prosecution sanction, whereas if CBI was dissatisfied with refusal of sanction by sanctioning authority, CBI could have challenged the same before the Competent Court, but with no stretch of imagination, CBI could re-agitate the matter through CVC. He objected to the interference of CVC in the process of grant of prosecution sanction and ultimately issuance of order of sanction as per advice of CVC.

19. Petitioner counsel has drawn attention of this Court towards the sanction order filed by CBI along with charge-sheet dated 28.06.2022, wherein the fact of refusal of sanction earlier on two occasions is not available. However, along with the reply dated 17.01.2024, copy of sanction order filed by CBI before this court as Annexure-C dated 14.06.2022, contains a statement in respect of earlier refusal of sanction on two occasions.

20. He submits that CBI deliberately suppressed the earlier order of sanction dated 14.06.2022 and filed order dated 28.06.2022 with malafide intention to avoid bringing fact of refusal of sanction on earlier two occasions on record. CBI is not fair in the present matter and the conduct of CBI is highly objectionable. Two different sanction orders were prepared on different dates, one is filed along with charge-sheet and another is filed along with reply in the present petition. Based on above arguments, learned senior counsel prays for quashment of the criminal proceedings.

Arguments on behalf of CBI:-

21. Shri Vikram Singh, learned counsel appearing on behalf of Investigating Agency (CBI) opposed the prayer of Petitioner and submits that after conclusion of investigation, request was made to sanctioning authority for according sanction, which was pending and on 15.01.2022 SP, CBI, ACB, Jabalpur received the communication from Dy. General Manager (Vigilance), Central Bank of India informing that competent authority of Bank has expressed his inability to accord sanction for prosecution and the matter has been referred to Central Vigilance Commission for their advice and for the first time CBI received information regarding reference made by Bank to CVC. Thereafter, Central Vigilance Commission, issued office memorandum dated 02.02.2022, whereby CVC demanded copy of SP's report along with LA/DLA comments in the case expeditiously. Upon demand of CVC, SP, CBI, ACB, Jabalpur forwarded CBI report along with final report-II submitted by Branch Law Officer on the subject to CVC. He further submits that matter was not referred by CBI to CVC, and the same was referred by CVO of Bank to CVC for advice. After considering the documents supplied by SP, CBI, ACB, Jabalpur, CVC vide office

memorandum dated 28.02.2022 advised to grant sanction for prosecution against Petitioner being satisfied with the material forwarded to CVC and in furtherance of advice of CVC, the sanction order dated 14.06.2022 was passed.

22. Shri Vikram Singh, further submits that according to office order No. 31/5/05 dated 12.05.2005, CVC issued guidelines to be followed by the authorities competent to accord sanction for prosecution under Section 19 of PC Act. He further relied that according to aforesaid guidelines, that competent authority cannot embark upon an inquiry to judge the truth of the allegations otherwise holding a parallel investigation/enquiry by calling for the record/report of his department. He further submits that as per guidelines in case, the sanctioning authority after consideration of the entire material placed before it, has any doubt on any point, the competent authority may satisfy the doubt with sufficient particular and may request the authority who has sought sanction to clear the doubts.

23. Respondent relied on the order delivered by the coordinate Bench of this Court in **W.P. No.17044 of 2021 (Anil Kumar Bhargav vs. Special Police Establishment, Lokayukta and others) dated 12.07.2022**, whereby the petition filed by accused challenging the prosecution sanction despite refusal on earlier occasion on the same material was dismissed after considering the pronouncement of Mansukh Lal, Gopikant Choudhary (supra), Nishan Sareen (supra) and Mohammed Iqbal Bhatti (supra) by observing that no illegality is committed in grant of sanction for prosecution.

24. Shri Vikram Singh relied on the pronouncement of Apex Court in the matter of **Vijay Raj Mohan vs. CBI (Anti Corruption Branch), (2023) 1 SCC 329**. Relevant paragraph nos. 37 and 38 relied by him are extracted as under: -

> ***"37****. Accountability, as a principle of administrative law, when applied to the issue that we are dealing with, translates in this manner. Responsibility for grant of sanction for prosecution of a public servant under Section 19 of the PC Act is always vested in the appointing authority. Identification of appointing authority is always clear and straightforward. The 2018 Amendment specifically obligates the appointing authority to convey the decision within three months and to provide for the reasons to be recorded in writing for the extended period of one month. This amendment, in fact, evidences legislative incorporation of answerability, the second constituent of accountability. For enforceability, Parliament has expressly empowered the Central Vigilance Commission under Section 8(1)(f) of the CVC Act to review the progress of the applications pending with the competent authorities, and this function must take within its sweep the power to deal with the consequences of failure of the competent authority to comply with its statutory duty. This power and responsibility of CVC is clear from the provisions of the statute and decipherable from functions entrusted to it.*
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> ***38****. In conclusion, we hold that upon expiry of the three months and the additional one-month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the concerned writ court. They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears. This is especially crucial if the nongrant of sanction is withheld without reason, resulting in the stifling of a genuine case of corruption. Simultaneously, the CVC shall enquire into the matter in the exercise of its powers under Section 8(1)(e) and (f) and take such corrective action as it is empowered under the CVC Act."*

25. Learned Counsel for investigation agency further relied on judgment of Apex Court delivered in the matter of **State of Karnataka**

vs. S. Subbegowda, 2023 SCC Online SC 911 and prays for dismissal of petition. The relevant paras are extracted as under:-

> *"**14**. In the instant case, the Special Judge proceeded with the trial, on the second application for discharge filed by the respondent having not been pressed for by him. The Special Judge, while dismissing the third application filed by the respondent seeking discharge after examination of 17 witnesses by the prosecution, specifically held that the sanction accorded by the government which was a superior authority to the Karnataka Water Supply Board, of which the respondent was an employee, was proper and valid. Such findings recorded by the Special Judge could not have been and should not have been reversed or altered by the High Court in the petition filed by the respondent challenging the said order of the Special Judge, in view of the specific bar contained in sub-section (3) of Section 19, and that too without recording any opinion as to how a failure of justice had in fact been occasioned to the respondent-accused as contemplated in the said sub-section (3). As a matter of fact, neither the respondent had pleaded nor the High Court opined whether any failure of justice had occasioned to the respondent, on account of error if any, occurred in granting the sanction by the authority.*
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> ***15**. As a matter of fact, such an interlocutory application seeking discharge in the midst of trial would also not be maintainable. Once the cognizance was taken by the Special Judge and the charge was framed against the accused, the trial could neither have been stayed nor scuttled in the midst of it in view of Section 19(3) of the said Act. In the instant case, though the issue of validity of sanction was raised at the earlier point of time, the same was not pressed for. The only stage open to the respondent-accused in that situation was to raise the said issue at the final arguments in the trial in accordance with law.*
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> ***16**. In that view of the matter, the impugned order passed by the High Court is set aside. It will be open for the respondent to raise the issue of validity of sanction if he desires to do so, in accordance with law at the final stage of arguments in the trial. Special Judge is directed to proceed with the trial from the stage it had stopped, in accordance with the law and as expeditiously as possible."*

26. Learned counsel for CBI submits that involvement of CVC in the process of grant of sanction is only advisory in nature and the same is

thus permissible and no illegality has been committed by sanctioning authority in according sanction to prosecute petitioner. He further submits that validity of sanction cannot be decided midst of trial and petitioner may raise all the objections at the time of final hearing of the case. He prays for dismissal of the petition.

Consideration & Conclusion: -

27. Sanction to prosecute is an important matter, it constitutes a condition precedent for institution of prosecution and government as absolute discretion to grant or withhold sanction. Government can refuse sanction on any ground, but the discretion should be exercised based on relevant facts, material and evidence produced before sanctioning authority by due application of mind. Since the validity of grant of sanction or refusal of sanction depends upon the applicability of mind applied by the sanctioning authority, it necessarily followed that mind of sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should not be affected by any extraneous consideration. Apex Court in the matter of ***Mansukhlal Vithaldas Chauhan v. State of Gujarat (1997) 7 SCC 622,*** has observed that, sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is safeguard for the innocent, but not a shield for the guilty. The sanction authority must apply its mind and discretion should be exercised based on material produced before it. The relevant paras 18 and 19 are extracted here as under: -

> "***18***. *The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the*

sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also Jaswant Singh v. State of Punjab [AIR 1958 SC 124 : 1958 SCR 762] and State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : 1991 Cri LJ 1438] .)

***19**. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the 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*."

28. It is trite law that no Court can take cognizance against a public servant without there being a valid sanction for prosecution by competent authority as mandated under Section 19 of PC Act and the exercise of power under Section 19 is not an empty formality since the sanctioning authority is supposed to apply its mind to the entire material and evidence placed before it and on examination thereof reach the conclusion fairly, objectively and consistent with public interest as to whether or not in the facts and circumstances sanction be accorded to prosecute the public servant. Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty. Provisions of Section 19 of PC Act are as under: -

"1**9. 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 (1 of 2014)]—*

(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] 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] 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:

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the Complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, 14 endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression "public servant" includes such person—

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

***(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."

29. One of the questions involved in the present matter is whether sanctioning authority could accord sanction as per advice of CVC on third occasion despite refusing to grant twice based on same material. Vehemently argued by Shri Anil Khare learned senior counsel appearing for petitioner criticizing the involvement of CVC in the process of grant of sanction and therefore, it is essential to consider the authority of CVC to advice sanctioning authority in arriving at a decision. Central Government through a resolution of 1997 constituted a body under Ministry of Home Affairs known as CVC. Supreme Court in the matter of **Vineet Narain and others vs. Union of India and others, (1998) 1 SCC 226** directed to grant statutory status to CVC for the purpose of superintendence over the functionaries of Delhi Special Police Investigation, Central Bureau of Investigation etc. The directions issued by Supreme Court, are extracted herein below:-

"58*. As a result of the aforesaid discussion, we hereby direct as under:*

I. Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC)

1. The Central Vigilance Commission (CVC) shall be given statutory status.

2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.

3. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for over viewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which charge-sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.

4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.

5. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.

6. Recommendations for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.

8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to

take up a more important assignment, should have the approval of the Selection Committee.

9. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

10. Selection/extension of tenure of officers up to the level of Joint Director (JD) shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers up to the level of Joint Director shall be with final approval of this Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.

11. Proposals for improvement of infrastructure, methods of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the Revenue, Banking and Security sectors should be inducted into the CBI.

12. The CBI Manual based on statutory provisions of the CrPC provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

13. The Director, CBI shall be responsible for ensuring the filing of charge-sheets in courts within the stipulated time-limits, and the matter should be kept under constant review by the Director, CBI.

14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

> *15. Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.*
> *16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency."*

30. The aforesaid directions resulted in promulgation of Ordinance for giving statutory status to CVC and eventually in 2003, the Parliament enacted the Central Vigilance Commission Act, 2003 (hereinafter referred regard to as "**the Act, 2003**"). The powers of CVC and the role of CVC in advising the sanctioning authority was considered by Supreme Court in the matter of **Vijay Raj Mohan (supra).** Relevant paragraphs are extracted as under:-

> ***"17****. The decision in Mansukhlal [Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 7 SCC 622 : 1997 SCC (Cri) 1120 : 1997 SCC (L&S) 1784] was rendered in the year 1997, when the legislative changes to the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), were not made. Further, the decision was prior to the enactment of the CVC Act and also the amendments to the PC Act. The submission of Shri Jethmalani therefore overlooks the march of law, which we have endeavoured to explain hereinunder.*
> ***18****. Sanction for prosecution of an employee of the Union under the PC Act would involve invocation of specific provisions of CrPC, the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as "the DSPE Act"), the PC Act, and the CVC Act, all of which constitute a unified scheme. The legal regime that encompasses the abovereferred statutes for matters concerning preliminary inquiry, investigation, sanction, and prosecution are well integrated and can be recounted as under:*
> *18.1. Section 197CrPC provides a mandatory requirement of sanction for the prosecution of Judges, Magistrates, and public servants. While interpreting this provision, this Court has identified two principles, which are that, (a) there must be relevant material placed before the sanctioning authority before it takes a decision; and (b) the decision of the sanctioning authority must itself indicate that it had applied its mind before granting sanction*

[State of Punjab v. Mohd. Iqbal Bhatti, (2009) 17 SCC 92 : (2011) 1 SCC (Cri) 949; Romesh Lal Jain v. Naginder Singh Rana, (2006) 1 SCC 294 : (2006) 2 SCC (Cri) 593.] . It is in this context that the judgment of this Court in Mansukhlal [Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 7 SCC 622 : 1997 SCC (Cri) 1120 : 1997 SCC (L&S) 1784] must be understood [Section 197CrPC].

18.2. Section 19 of the PC Act also provides for a requirement of sanction before prosecution. The requirement of law for having relevant material placed before the sanctioning authority, as well as the independent application of mind by the said authority, applies with equal vigour to sanction under the PC Act [State (Anti-Corruption Branch) v. R.C. Anand, (2004) 4 SCC 615 : 2004 SCC (Cri) 1380; C.S. Krishnamurthy v. State of Karnataka, (2005) 4 SCC 81 : 2005 SCC (Cri) 923; State of Karnataka v. Ameerjan, (2007) 11 SCC 273 : (2008) 1 SCC (Cri) 130; CBI v. Ashok Kumar Aggarwal, (2014) 14 SCC 295 : (2015) 1 SCC (Cri) 344 : (2015) 3 SCC (L&S) 475. In fact in Vivek Batra v. Union of India, (2017) 1 SCC 69 : (2017) 1 SCC (Cri) 219 : (2017) 1 SCC (L&S) 84 this Court has held that : (Vivek Batra case, SCC p. 74, para 14)

"14. ... The opinion of CVC, which was reaffirmed and ultimately prevailed in according the sanction, cannot be said to be irrelevant for the reason that clause (g) of Section 8(1) of the Central Vigilance Commission Act, 2003 provides that it is one of the functions of CVC to tender advice to the Central Government on such matters as may be referred to it by the Government."] [Section 19, the PC Act].

18.3. For the purpose of assisting the sanctioning authority in arriving at a decision, the Government, through a 1997 Resolution, constituted a body under the Ministry of Home Affairs referred to as CVC. An Independent Review Committee (IRC), constituted by the Government of India, also suggested conferring statutory status to CVC. This recommendation became compelling after the decision of this Court in Vineet Narain [Vineet Narain v. Union of India, (1998) 1 SCC 226 : 1998 SCC (Cri) 307] . These directions resulted in the promulgation of three Ordinances for giving statutory status to CVC, and eventually, in 2003, Parliament enacted the CVC Act.

18.4. The Preamble to the CVC Act states that the Commission is constituted to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988. Section 8 of the CVC Act evidences the interplay of powers and duties of the three agencies, being the

sanctioning authority (Union Government), the prosecuting agency (CBI), and the advisory body (CVC), all subserving the same public interest of ensuring integrity in governance. The following provisions evidence the same.

18.5. CVC shall exercise superintendence over CBI in relation to the investigation of offences under the PC Act [Section 8(1)(a), the CVC Act]. CVC shall also give directions to CBI in the discharge of its functions under Section 4(1) of the DSPE Act [Section 8(1)(b), the CVC Act].

18.6. CVC shall inquire on a reference made to it by the Central Government (DoPT) about an alleged offence committed by a public servant under the PC Act [Section 8(1)(c), the CVC Act]. CVC shall also inquire into any complaint against a public servant alleged to have committed an offence under the PC Act [Section 8(1)(d), the CVC Act].

18.7. CVC shall review the progress of the investigation by CBI for offences under the PC Act [Section 8(1)(e), the CVC Act].

18.8. CVC shall tender advice to the Central Government on such matters as may be referred to it [Section 8(1)(g), the CVC Act].

18.9. CVC shall exercise limited superintendence over vigilance administration of various Ministries of the Central Government [Section 8(1)(h), the CVC Act].

18.10. The Lokpal and Lokayuktas Act, 2013 (hereinafter referred to as "the Lokpal Act"), enacted to subserve the same purpose of maintaining integrity concerning certain public functionaries, makes further amendments to the four statutes we have dealt with hereinabove, further integrating them with each other. The Lokpal Act amended Section 8 and also inserted Sections 8-A and 8-B to the CVC Act [Sections 8-A and 8-B of the CVC Act].

18.11. After a preliminary inquiry relating to corruption of public servants belonging to Group C or Group D, if CVC comes to a prima facie opinion of violation of conduct rules relating to corruption under the PC Act, CVC shall (a) direct CBI to investigate, or (b) initiate disciplinary proceedings; or (c) close these proceedings and proceed under the Lokpal Act [Section 8-A(1), the CVC Act]. If CVC decides to direct an agency (including CBI) to investigate, it can direct an expeditious investigation within a time-frame, and CBI shall submit an investigation report to CVC within that time-frame [Sections 8-B(1) and 8-B(2), the CVC Act]. On consideration of the report, CVC may decide to (a) file a charge-sheet or closure report; or (b) initiate departmental proceedings [Section 8-B (3), the CVC Act].

18.12. In furtherance of a decision to direct prosecution, CVC exercises its powers under Section 8 to review the progress of applications pending with competent authorities for sanction of prosecution under the PC Act. [Section 8(1)(f), the CVC Act]
18.13. The appropriate Government or the competent authority is obligated, under the 2018 Amendment to the PC Act, to endeavour to convey the decision on the proposal for sanction within three months with an extended period of one more month when legal consultation is required. For this purpose, guidelines may be prescribed. CVC has, in fact, issued necessary guidelines in furtherance of this duty. [Proviso to Section 19(1) of the PC Act]"

31. In the above conspectus following legal position emerges: -

31.1 Section 19 of PC Act forbids taking of cognizance by the court against a public servant except with the previous sanction of an authority competent to grant such sanction.

31.2 Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is safeguard for the innocent, but not a shield for the guilty.

31.3 Sanctioning authority must apply its mind and discretion should be exercised based on material produced before it.

31.4 Sanctioning authority cannot embark upon an inquiry to judge the truth of the allegations otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.

31.5 Once sanction is refused by competent authority, reviewing such an order based on same material would not be appropriate or permissible.

31.6 CVC Act, 2003 was promulgated as per the directions of Supreme Court to give CVC statutory status for the purpose of superintendence over the functionaries of Delhi Special Police Investigation, Central Bureau of Investigation etc.

31.7 The opinion of CVC, which was considered in according the sanction, cannot be said to be irrelevant since clause (g) of Section 8(1) of the Central Vigilance Commission Act, 2003 provides that it is one of the functions of CVC to tender advice to the Central Government and its instrumentalities.

31.8 Section 8(1)(f), the CVC Act authorizes CVC to exercise its powers to review the progress of applications pending with competent authorities for sanction of prosecution under the PC Act.

31.9 Objection to sanction order should have been raised at any earlier stage in the proceedings preferably before commencement of trial.

31.10 Section 19(3) of PC Act postulates a prohibition against a higher court to interfere in midst of trial on the ground that sanction order suffers from an error, omission or irregularity, unless a case of failure of justice has occurred by reason of such error, omission or irregularity.

32. Coming to the facts of the present case, this is not a matter wherein prosecution was lodged without any sanction, or the sanction was granted by any incompetent authority. In the present matter, sanction was earlier refused and later granted as per the advice of CVC. It is well settled that the adequacy of material placed before sanctioning authority cannot be gone into by the Court as it does not sit in an appeal, and if valid sanction order is there on application of mind and passed pursuant to material placed in and after consideration of the circular, the Court is not required to consider the technicalities in amid of trial. In the present matter, trial is going on, prosecution is producing witnesses and at this stage, based on deposition of one witness, the present petition has been preferred for appreciation of his deposition, which is not permissible.

33. In latest judgment, Apex Court in the matter of **State of Karnataka vs. S. Subbegowda, 2023 SCC OnLine SC 911** has held that, in view of specific bar of sub section 3 of Section 19 and that too without any material to demonstrate how failure of justice has occasioned to the accused as contemplated in the said sub Section 3, in the midst of trial, it would not be permissible to close the proceeding and the only stage available to the accused in that situation is to raise the said issue at the time of final arguments in trial, in accordance with law. Similar view was taken by Supreme Court in the matters of **Dinesh Kumar v. Chairman, Airport Authority of India (2012) 1 SCC 532; CBI v. Ashok Kumar Aggrawal (2014) 14 SCC 295 and Nanjappa vs. State of Karnataka (2015) 14 SCC 186.**

34. Correspondence filed along with reply of CBI reflects that CVO referred the matter to CVC and did not forward the said refusal order to CBI. It is also evident that CBI did not agitate the matter before CVC and simply complied with the directions. CVC guidelines which are binding on all the department of Central Government and Government instrumentalities, including Bank and Insurance Company etc. and according to the guidelines issued by CVC time to time, if the sanctioning authority is not in consonance with the opinion of investigating agency, the sanctioning authority cannot straightway refuse the sanction and the sanctioning authority is under obligation to forward the matter to CVC through CVO. CVC issued Office order No. 31/5/05 dated 12.05.2005, which prohibits the sanctioning authority from considering the extraneous material which was not collected by the investigating agency. CVC further explained these guidelines vide Office order no. 23/06/06 dated 23.06.2006, wherein the procedure was laid down in case of difference of opinion between Anti-Corruption Bureau and Central Government

Authorities regarding sanction of prosecution of Central Government Officials. The mechanism was provided to resolve such difference of opinion by CVC. It is apt to reproduce the office order, which is as under:-

No 006/DSP/002
Government of India
Central Vigilance Commission
***

Satarkta Bhawan, Block-A GPO
Complex, INA New Delhi-110023
Dated the 23 June, 2006

Office Order No.23/6/06

Subject:- Difference of opinion between State Anti Corruption Bureaus and Central Government authorities regarding sanction of prosecution of Central Government officials-reg.

The Commission has noted certain instances where the competent authority in the concerned Central Government organization has declined the request of the State ACB for sanction of prosecution against certain central government officials in cases investigated by the concerned State ACB. The Commission has felt that there is a need to establish a mechanism to resolve such differences of opinion between the State ACBs and the Central Government Authorities.

2. In this connection, it may be mentioned that such a mechanism is provided in para 11.2 of Chapter VII of Vigilance Manual (Vol 1) in respect of cases investigated by the Central Bureau of Investigation. The relevant provisions are extracted below:

(a) In the case of government servants, the competent authority may refer the case to its Administrative Ministry/Department which may after considering the matter, either direct that prosecution should be sanctioned by the competent authority or by an authority higher to the competent authority, or in support of the view of the competent authority, forward the case to the Central Vigilance Commission along with its own comments and all relevant material for resolving the difference of opinion between the competent authority and the overline CRI If the Commission advice grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to DOPT for a final decision.

(b) In the case of public servants other than government servants (i.e. employees of local bodies, autonomous bodies, public sector organizations, nationalized banks, insurance companies etc.) the

competent authority may communicate its views to the Chief Executive of the Organization who may either direct that sanction for prosecution should be given, or in support of the views of the competent authority have the case forwarded to the Central Vigilance Commission for resolving the difference of opinion between the competent authority and the CBI

3. The Commission has, decided that the same procedure by followed in respect of difference of opinion on action to be taken on the recommendations of the State Anti Corruption Bureaus also, in respect of cases investigated by them. Such cases should be dealt with as provided above, and if the difference of opinion persists, the case should be referred to the Commission, irrespective of the level of the official involved whether he is under the normal advisory jurisdiction of the Commission or not.

4. All CVOs may note for strict compliance.

(V. Kannan)
Director

Chief Secretaries of all States
All Chief Vigilance Officers
D/o Personnel & Training, North Block, New Delhi
All State Vigilance Commissioners

35. In the absence of availability of the copies of so-called refusal dated 31.12.2021 and 04.04.2022, it is not clear that whether the sanction was refused or the comments for refusal of sanction were forwarded by sanctioning authority to CVO of Bank. Letter dated 15.01.2022 filed by CBI along with reply dated 17.01.2024 is material, which shows that Dy. General Manager (Vigilance), Central Bank of India intimated SP, CBI, ACB, Jabalpur that the competent authority of bank has expressed his inability to accord sanction for prosecution and the matter has been referred to Central Vigilance Commission for their advice. Under these circumstances, prima facie these two orders cannot be construed as final decision of refusal to grant sanction.

36. Until and unless the refusal is communicated to the investigating agency, the inability to grant sanction may be treated as internal comments or opinion. It is not a case wherein clinching evidence is

available on record that on earlier occasions the refusal of sanction was communicated to investigating agency and the investigating agency based on same material once again reagitated the matter before concerning department. In the matter of **Romesh Mirakhur v. State of Maharashtra and others reported in 2017 SCC online Bom 9552** the Division Bench of High Court of Bombay examined the confidential correspondence between CVC and sanctioning authority. In the said matter, similar issue was involved and the petition was preferred under Section 482 of Cr.P.C. r/w Article 226 of Constitution of India for quashment of criminal case on the ground that competent authority refused sanction to prosecute on three occasion despite that on the 4th occasion the competent authority granted sanction to prosecute the Petitioner therein on the basis of same material, which amounts to review or reconsideration in the absence of change in circumstances/material. The Division Bench after considering the judgment of Apex Court delivered in the matter of Nishan Sareen (supra) and after considering the role of CVC in the process of grant of sanction has held that the earlier opinion could not be considered as refusal order and there is only one sanction order, which was passed after consultation with CVC and declined to interfere in the matter. The similar position is available in the present matter and it can be safely construed that the earlier refusal were only opinion and cannot be considered as refusal order and there is only one sanction order, which was passed after consultation with CVC and impugned here in the present petition.

37. Co-ordinate Bench of this court in the matter of **G. N. Singh vs. State of M.P. and others 2017 SCC online MP 880** had taken similar view that the sanction cannot be held invalid, only since in the administrative noting's different authorities have opined differently

before the competent authority finally took the decision in the matter and order was dispatched. Relevant paras of the judgment are extracted hereinbelow as follows :-

> ***"7****. The main plank of attack of Shri Khare is that once a decision was taken to not prosecute the petitioner, respondents cannot take a somersault and granted sanction. It amounts to a review of an earlier decision without there being any fresh material. Having taken a decision not to accord sanction for prosecution, it was not open to the respondents to review the earlier decision i.e. not to prosecute the petitioner. In the alternative, his submission was that there was no application of mind to all relevant facts and material to accord sanction. In support of his contention, counsel relied on the decision of the Supreme Court reported in State of Himachal Pradesh Vs. Nishant Sareen (2010) 14 SCC 527.*
>
> ***8****. Learned counsels appearing for the respondents resisted the submissions of Shri Khare and submitted that earlier no formal order was passed refusing sanction. They contended that in a democratic set-up files move from one rung of the ladder to a higher rung in the order of hierarchy and each level officer has to give his input before file moves forward. It is well established working procedure of the Executive Branch of the Government. It was further submitted that no formal order was ever issued refusing to grant sanction for prosecution. They further submitted in the present case that procedure for according of sanction as laid down in the General Administrative Department of Government in the circular dated 5.9.2014 was followed. This fact is not disputed by the petitioner in pleadings and his counsel during the course of arguments. Learned counsel appearing for respondents further submitted that the Law Department after examination and consideration of entire material, deferred with opinion of Administrative Department submitted the matter to the Administrative Department for its decision along with the its opinion with reasons. Thereafter the matter was placed before the Chief Minister, who being incharge Minister of the Department, agreed with the opinion of the Law Department, as a result, the order granting permission for the prosecution of the petitioner was issued under Section 19 of the Prevention of Corruption Act, 1988 which is the subject of the present writ petition as also connected writ petition.*
>
> ***10.*** *To appreciate the rival contention, it would be appropriate to keep in mind undisputed fact that the G.A.D circular dated*

5.9.2014 filed as Annexure R-2 along with the additional reply of respondent No. 1 lays down the uniform procedure to be adopted for grant of sanction for prosecution a of public servant. For the purpose of the case at hand, it is pertinent to point out that as per procedure when there is a difference of opinion between the administrative and the law department in the matter of grant of sanction, the administrative department would prepare précis to be submitted to the Cabinet through GAD. Great emphasis was laid by learned senior counsel on that précis and note sheet to contend once the administrative department passed an order refusing to grant sanction, then the review was not possible in the light of the opinion of the Law Department. To buttress his submission, he heavily relied upon decision of the Supreme Court in the case of the State of Himachal Pradesh Vs. Nishant Sareen (2010) 14 SCC 527. We are not impressed with the contention. A careful reading of the decision shows that competent authority-Principal Secretary (Health) earlier passed an order refusing to grant sanction. Vigilance Department took up the matter again with the competent authority. The competent authority yielded and accorded sanction without there being no new/fresh material. Their Lordships while accepting the proposition that the matter of sanction is purely an administrative function, but having exercised that power, review was impermissible unless subsequent to refusal new or fresh material is unearthed. In our considered opinion said decision of the Supreme Court does not come to the rescue of the petition because no formal order duly authenticated in terms of Rules of Business framed by the government was ever issued. Administrative notes on file by no stretch of imagination be termed as a formal order refusing Sanction by the State Government.

***18**. In this view of legal position, we find difficult to agree with the submissions of the learned counsel for the petitioner that Government has reviewed the earlier order. As stated above, there was no earlier order, except notes on the file and the Government was free to take decision one way or another. On this score no fault can be found with the order granting sanction. So far as connected writ petition is concerned, the only additional ground is taken that the State Government has not followed the circular no.08/05/15 dated 25.05.2015 issued by the Central Vigilance Commission. Suffice it to say that petitioner is a State Government employee and the circular issued by the Central Vigilance Commission does not apply to the State employee hence, this ground is of no avail."*

38. It is a little surprising that the sanctioning authority turned a Nelson's eye towards the glaring fact of petitioner having been trapped accepting bribe leading to a prima facie case of commission of offences punishable under the P.C. Act. With this allegation supported by prima facie material, the sanctioning authority was duty bound to grant sanction. Not having done so, the sanctioning authority abdicated it's statutory duty. There can be only two reasons why sanctioning authority declined sanction earlier; (1) Sanctioning Authority failed to understand the legal provisions, (2) Sanctioning Authority intended to favour the petitioner.

To prevent the above two contingencies from scuttling a genuine prosecution, supervisory powers have been conferred on CVC under the CVC Act, 2003 to inter alia advice and counsel the sanctioning authority from going astray from the path set by the object behind u/S. 19 of P.C. Act, which is not only to protect public servant from malicious, false and motivated prosecution, but also to prevent the guilty from slipping out of the net.

39. According to investigation agency, the petitioner was caught red handed despite sanctioning authority refused to accord sanction twice in a trap case. In reply to the query of this Court CBI filed certain documents including sanction order dated 14.06.2022, which contains the reason for refusal to grant sanction earlier on two occasions and reflects that earlier sanction was not granted considering the views/comments of field functionaries & their interaction with local persons. The relevant portion of sanction order dated 14.06.2022 is as under :-

> ***"Earlier the permission for prosecution of Shri Shashikant Mishra was denied considering the views/comments of filed functionaries and their interaction with local persons and the same was conveyed to Chief Vigilance Officer vide our letter dated 31.12.2021 and 4.4.2022".***

Meaning thereby, the sanction was earlier refused based on separate inquiry conducted by the sanctioning authority through field functionaries, which is not permissible under law. Sanctioning authority had no power to call or consider the views or comments of field functionaries and/or their interaction with local persons. Sanctioning authority acted beyond its scope and denied the sanction. Order passed on 31.12.2021 and 04.04.2022 cannot be accepted as valid orders and thus are *non-est* in the eye of law. It is also not clear whether this denial was communicated to CBI or not, because as per sanctioning authority himself the same was communicated to CVO of the Bank.

40. In the given facts when the earlier orders refusing grant of sanction were passed based on extraneous material, the same were not based on the same material and therefore the pronouncement of Apex Court in matter of **Nishan Sareen (supra), Mohammed Iqbal Bhatti (supra), Chittaranjan Das (supra), Labh Singh (supra) and Gopikant Choudhary (supra)** are not helpful to the petitioner being founded on distinct facts. In those cases, the sanctioning authority, while considering the same material and evidence placed before him, changed his mind, whereas the facts of the case at hand are irrelevant consideration of facts by the sanctioning authority. In none of the above cases the issue of passing earlier refusal order on the basis of extraneous material was involved. In view of the above disclosure of sanctioning authority recorded in order dated 14.06.2022, it cannot be accepted that the earlier refusal orders were based on same material. However, the petitioner still may prove this fact during trial by cogent and reliable evidence.

41. Taking the totality of the facts and circumstances into consideration, we find that there is only one sanction order, which is

impugned in this petition. The contention of the petitioner that earlier twice sanction was refused cannot be accepted as the earlier orders were based on the extraneous material and, therefore, on the basis of earlier orders, the validity of the impugned sanction order cannot be questioned at this stage, however, the petitioner will be at liberty to assail the impugned sanction order during trial and the trial court will decide the same at appropriate stage without being influenced by the instant order.

42. The petition is devoid of any merit and consequently admission is declined, same is accordingly, dismissed.

(SHEEL NAGU)
JUDGE

(VINAY SARAF)
JUDGE

Irf.