

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

WRIT PETITION NO.16978 OF 2022 (GM-RES)
C/W

WRIT PETITION NO.1142 OF 2022 (GM-RES),
WRIT PETITION NO.3171 OF 2022 (GM-RES)

IN WRIT PETITION NO.16978 OF 2022

BETWEEN

GAJARAJA

... PETITIONER

(BY SRI HIREMATH AKKAMAHADEVI, ADVOCATE)

AND

- 1 . STATE OF KARNATAKA
REP. BY CHIEF SECRETARY,
VIDHANA SOUDHA,
DR. B.R. AMBEDKAR VEEDHI,
BENGALURU - 560 001
- 2 . ADDITIONAL DIRECTOR GENERAL POLICE
ANTI CORRUPTION BUREAU (ACB)
NO.49, KHANIJA BHAVAN,
RACE COURSE ROAD,
BENGALURU 01

- 3 . ANTI CORRUPTION BUREAU
BY ITS SUPERINTENDENT OF POLICE,
49, KHANIJA BHAVAN,
RACE COURSE ROAD,
BENGALURU 01

- 4 . THE REGISTRAR LOKAYUKTHA
M.S. BUILDING
BENGALURU - 560 001

... RESPONDENTS

(BY SRI B.J. ROHITH, HCGP FOR R1
SRI B.B. PATIL, ADVOCATE FOR R2 AND R3 / LOKAYUKTHA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE IMPUGNED SANCTION ORDER DTD.5.10.2021 PASSED BY THE R-4 UNDER SECTION 19(1)(b) OF THE PC ACT PERMITTING THE PROSECUTION OF THE IN SO FAR AS PETITIONER CONCERNED FOR ALLEGED OFFENCES PUNISHABLE UNDER SECTION 8, 12 AND 13(1)(C) R/W SECTION 13(2) OF THE PREVENTION OF CORRUPTION ACT 1988 AND R/W SECTIONS 465, 468, 474 AND 120B OF IPC PRODUCED AS ANNEXURE-A AS BAD IN LAW NOT MAINTAINABLE AND ABUSE OF THE PROCESS OF LAW.

IN WRIT PETITION NO.1142 OF 2022

BETWEEN

DR. ANITHA R

R/AT PRINCIPAL QTRS, PTI,
ASHOKA ROAD,
CENTRAL PRISON COMPOUND,
MYSURU-570 007.

... PETITIONER

(BY SRI CHANDRAKANTH R GOULAY, ADVOCATE)

AND

- 1 . THE STATE OF KARNATAKA
REP BY ITS PRINCIPAL SECRETARY TO HOME,
(PRISONS, CINEMA AND AUXILIARY SERVICES)
VIDHANA SOUDHA,
BENGALURU-560001
- 2 . THE DIRECTOR GENERAL OF POLICE
KARNATAKA PRISONS AND CORRECTIONAL
SERVICES,
NO.4 SESHADRI ROAD
BENGALURU - 560 009
- 3 . KARNATAKA LOKAYUKTHA
REPRESENTED BY THE REGISTRAR
M.S. BUILDING
BENGALURU - 560 001

... RESPONDENTS

(BY SRI B.J. ROHITH, HCGP FOR R1 AND R2
SRI B.B. PATIL, ADVOCATE FOR R3/ LOKAYUKTHA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA READ WITH
SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE,
PRAYING TO QUASH THE IMPUGNED ORDER DATED 30.12.2021

AS PER ANNEXURE-L PASSED BY THE R-1 AS ARBITRARY ILLEGAL AND VOID AND ONE WITH A MALAFIDE INTENTION AND OFFENDING ARTICLE 20(1)(2)(3) OF THE CONSTITUTION OF INDIA. GRANT AN INTERIM ORDER TO STAY THE OPERATION AND IMPLEMENTATION OF THE IMPUGNED ORDER DATED 30.12.2021 AS PER ANNEXURE-L PASSED BY THE R-1 AND ALL FURTHER PROCEEDINGS THERETO.

IN WRIT PETITION NO.3171 OF 2022

BETWEEN

KRISHNA KUMAR

PRESENTLY WORKING AS
CHIEF SUPERINTENDENT OF PRISON
BELAGAUM

... PETITIONER

(BY SRI VIKRAM HUILGOL, SENIOR ADVOCATE
FOR SRI PRINCE ISAC, ADVOCATE)

AND

- 1 . STATE OF KARNATAKA
BY ITS CHIEF SECRETARY
VIDHANA SOUDHA,
DR B R AMBEDKAR ROAD,
BANGALORE 560 001
- 2 . THE UNDER SECRETARY TO THE
GOVERNMENT OF KARNATAKA

DEPARTMENT OF HOME
(PRISON AND CINEMA)
VIDHANA SOUDHA,
DR B R AMBEDKAR ROAD,
BANGALORE 560001

- 3 . ADDITIONAL DIRECTOR GENERAL POLICE
ANTI CORRUPTION BUREAU
NO.49 KHANIJA BHAVAN
RACE COURSE ROAD,
BANGALORE 560001
- 4 . ANTI CORRUPTION BUREAU
BY ITS SUPERINTENDENT OF POLICE
NO.49 KHANIJA BHAVAN
RACE COURSE ROAD,
BANGALORE 560001
- 5 . KARNATAKA LOKAYUKTHA
M.S. BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU - 560 001

... RESPONDENTS

(BY SRI B.J. ROHITH, HCGP FOR R1 AND R2
SRI B.B. PATIL, ADVOCATE FOR R3 AND R4 / LOKAYUKTHA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE IMPUGNED ORDER DTD 30.12.2021 PASSED BY THE R-2 UNDER SECTION 19 (1)(b) PERMITTING THE PROSECUTION OF THE PETITIONER FOR ALLEGED OFFENES UNDER SECTION 13(1)(c) AND 13 (2) OF THE PREVENTION OF CORRUPTION ACT READ WITH SECTION 120(B) OF THE INDIAN PENAL CODE, VIDE ANNX-A.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.4.2023 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

WP.No.3171/2022 filed by the accused No.1 and WP.No.1142/2022 by accused No.2 and under Articles 226 and 227 of Constitution of India read with 482 of Cr.P.C for quashing the Sanction order granted by respondent/State vide Government Order No. HD 62 PRE 2017 dated 30.12.2021 permitting the prosecution to initiate proceedings against accused No.1 section 13(1)(C) and 13(1)(2) of Prevention of Corruption Act read with 120 of IPC.

2. WP.No.16978/2022 filed by petitioner accused No.4 for quashing the sanction order dated 05.10.2021 in No.24/Sibbandi/KSISF(ISD)/2021 by the respondent State under Section 8, 12 and 13(1)(c) read with Section 13 (2) of the PC Act, 1988 and Sections 465, 468, 474, 120B of IPC now pending in Special C.C.No.127/2022 on the file of Special Judge, PC Act, CCH 24, Bengaluru.

3. The case of the petitioner in WP.No.16978/2022 is that the petitioner/accused No.4 is presently working as Inspector Police in Karnataka State Industrial Security Force (KSISF), under Internal Security Division (ISD) and he was posted to Central Jail Bengaluru and when he was Sub-Inspector of police and reported duty in Parappana Agrahara Jail on 11.12.2015 he was assigned with incharge of security of the outer perimeter consisting of 7 police Sub Inspectors, 53 male constable and 5 women constables deployed at Bangalore Central Jail by commandant second battalion of the KAS-IAS Officer. The petitioner was deputed for the duty of the main entrance and outer visitors area. On 15.02.2017 the then AIADMK-General Secretary Smt.Sasikala Natarajan and Ilavarasi had surrendered and detained in the jail in disproportionate asset's case after they were convicted by the Hon'ble Supreme Court. On 15.02.2017 an office order was issued by Chief Superintendent of Central Jail, Bengaluru by setting task for the KSISF unit personnel to the above said two convicts. There was high tight

security, no private vehicles were allowed beyond the traffic points and also general public were prevented from entering the jail. The petitioner was discharging duty and the Deputy Inspector General of Police submitted written complaint on 12.07.2017 to the Director General of Police, Prisons (DGP, Prisons) alleging some irregularities in the Central Jail Bangalore. The DIG of police alleged against the DGP prisons. Following the order of DGP, the letter was written to the Principal Secretary (PCAS) to the Government, Home Department, for seeking strict disciplinary action against DIG, prisons. In the meanwhile an anonymous letter bearing no signatures dated 14.7.2017 merely signed by 'Aggrieved Jail Officers and Personnel' was addressed to DGP, Prisons, alleging that that the petitioner was acting as broker in facilitating luxury amenities to Smt.Sasikala Natarajan who was said to be receiving royal treatment inside the jail. It was stated in the said letter that this petitioner was taking MLAs, MPs inside the jail without recording the same in the visitor's register book and were made to contact with Smt.

Sasikala Natarajan by taking bribe. It is alleged that the Additional Inspector General (AIGP) Prisons who conducted the enquiry on anonymous letter and it has mentioned AIGP, Prisons in (the late Veerabhadra Swamy) in a statement on 22.06.2018 to the Anti-Corruption Bureau (ACB). In pursuant to the letter the government passed an order appointing one Sri.Vinay Kumar on 14.07.2017 a retired IAS officer for enquiring on the letter dated 12.07.2017. On 11.08.2017 the Under Secretary (Admin) to the Excellency the Government for enquired with the matter and report was forwarded on 21.10.2017 stating that there was no adverse finding against this petitioner and the Government letter dated 26.02.2018 accepted the report of Sri.Vinay Kumar where it is stated that there is no financial irregularities and alleged incidents in the matter. The Government passed an order No.HD62PRE 2017 dated 26.2.2018 for handing over the investigation to the ACB against one Sri.H.N.Sathyanarayana Rao former DGP, prisons and the case was registered for the offence punishable under sections 13 (1) (C) and 13 (2) of

PC Act. An FIR has been registered by ACB police against Sri.H.N.Sathyanarayana Rao in Crime No.7/2018 and took up the investigation. After the investigation, the ACB sought sanction to prosecute the offence against the petitioner and sanction order was issued and charge sheet came to be filed on 07.1.2022.. The special case has been registered by the police in Special Case No.127/2020 which is under challenge.

4. The learned counsel for the petitioner/accused No.4 W.P.NO.16978/2022 contended that the sanction order passed by the State Government is arbitrary and illegal. The Enquiry Officer appointed by the State Government not given any specific adverse finding against this petitioner, when the said report has been accepted by the State, the State Government has ordered to initiate proceedings against the DGP, Prisons H.N.Sathyanarayana Rao, but no such order passed by the State Government against this petitioner, but the order of sanction is without looking any material to prosecute the petitioner which is

abuse of process of law. The State has directed the ACB-police to initiate proceedings against H.N.Sathyanarayana Rao but the said Sathyanarayana Rao has been dropped from the charge sheet. The petitioner is neither accused in the FIR nor in the enquiry report, but he has been falsely implicated. The petitioner not committed any offence either under Section 120 B of IPC or any other offences. The complaint is based upon the anonymous letter, that too against some other accused persons not against this petitioner. Even the raid which was conducted by the police, no money was recovered from the possession of this petitioner, either in the house or in his possession. Therefore, invoking provision under sections of PC Act is abuse of process of law. Even otherwise, for grant of sanction to prosecute the offence under section 13 (1) (a) of PC Act cannot be applied to this petitioner as there is no element of demand or acceptance by this petitioner/accused No.2, in the entire material on record. Hence, prayed for quashing the criminal proceedings.

5. The case of the petitioner in WP No.1142/2022 is that the petitioner/accused No.2 was working as Assistant Superintendent of Prisons, Bangalore Central Jail and was kept under suspension on 23.04.2012 along with the then Chief Superintendent of prisons Sri.T.H. Lakshminarayana on certain false allegations. Both of them independently challenged the same before the tribunal in application No.2203/2012 and also to the High Court in Writ Petition No.14759/2012 and 15184/2012, respectively. After arguments, the High Court has allowed the writ petitions and passed an order on 02.07.2012 and the order of suspension was set aside and declared the interlocutory application before the tribunal has become redundant and the High Court has allowed the writ petitions on the ground, that the allegations are baseless. On the basis of the charges FIR was also registered which was challenged before the High Court in CrI.P.Nos.4019/2012 and 3113/2012. Later the petitioner was promoted as Superintendent of Prisons on 10.4.2013, then he was transferred to central prison Bangalore and she was

working from 26.08.2016 to 14.02.2017. The DG and IGP vide letter dated 14.2.2017 posted the petitioner towards security in Central Jail, during that time the convicts i.e., Smt.Sasikala Natarajan and other political parties from Chennai were lodged. The charge of Superintendent of Prisons was taken by the petitioner and handed over to one Sri. K. Suresh on 14.02.2017 and he has relieved from the duties. The respondent restricted the duty of the petitioner as a security to the lady prisoner and that she perfectly discharged her duties and responsibilities and there was no allegation of any kind. The Chief Superintendent of Prisons, at that time incharge was Sri.Krishna Kumar was solely responsible for any illegal actions. The entire episode was monitored by Director General of Prisons through CCTV surveillance and he has not raised his finger towards her at any point of time and now making the allegations that she was facilitating the convict to meet the other persons and also provided the other facility to her. A report became public issue, there were two higher officials H.N.Sathyanarayana Rao, retired

DGP and one Roopa IPS. However, Sri.Krishna Kumar was replaced by this petitioner as incharge Superintendent of Prisons as per the order dated 17.7.2017. However, within few days another notice was issued on 19.07.2017 and he was transferred to Superintendent of Prisons, Dharwad Prisons. The order was premature transfer, therefore she has challenged before the Tribunal by filing application No.4598/2017 which came to be disposed on 14.08.2017 to consider representation, which was not obeyed. The petitioner was subject to repeated harassment, mental torture by the superiors namely Sri.S.T.Somashekhar, the then Chief Superintendent of Prisons and Sri.P.S Ramesh, Superintendent of Prisons and she has given complaint to take action on 16.08.2017. The allegations, if any, for providing additional facilities and undue advantages which were extended to the convicted female prisoner used to be that one Sri.K.Suresh Superintendent of Prison and this petitioner had no role to play in the said allegations. There was dispute between two senior officials Roopa and H.N.Sathyanarayana Rao against each other and report

has been submitted to the State Government and a case was registered against H.N.Sathyanarayana Rao retired DGP. Based upon the report a charge memo has been issued against the petitioner on 03.04.2018 vide notice number OE-62-PRI-2017. There were six charges alleged in the charge memo, the charge Nos.1 to 5 of the charge was not related to this petitioner, as she was not holding post of Superintendent of Prisons and it was relatable to K.Suresh, who was incharge of Superintendent of Prison. So far as charge No.6 is concerned, it is related to this petitioner, there is no allegation of any deficiency in security provided by the petitioner to the prisoner Smt.Sasikala Natarajan at any point of time. A letter said to be noted by a lady prisoner which was addressed to this Superior Officers and action has been taken in that regard so far as related to providing her medical assistance, cot, clothing etc. On behalf of that, superiors have issued letter with a direction and accordingly facilities were extended to the convict. The petitioner is not responsible for the same. Sri.Krishna Kumar was holding the post of

Chief Superintendent of prisons has to answer the issues. The denial of the promotion against this petitioner on the pretext of enquiry she has faced Departmental Enquiry through DPC proceedings and concluded in her favour long before. The petitioner being aggrieved to the issuance of charge memo dated 03.04.2018 and approached KAT and the tribunal vide order dated 06.01.2020 set aside the order of issuing charge memo dated 03.04.2018 with a direction to consider her promotion. Pursuant to the order of tribunal, the State Government exonerated petitioner from the charges on 04.07.2020.

6. After the contempt, the decision has been taken by Inspector General of Police in the nature of communication dated 23.07.2020 and promotion has been considered. However, once again racked up instance at the very same officials taking undue advantage, an exchange of money by way of corruption, by Sri. H.N.Sathyanarayana Rao and one Smt.D.Roopa IPS officer, the petitioners were unnecessarily dragged into the

matter and filed false complaint against her. The report of Sri.Vinay Kumar has not specifically implicated this petitioner. Once again the State Government accorded the sanction to initiate proceedings against this petitioner for the offences as per provisions of section 19(1)(b) of the PC Act. As per the order dated 30.12.2021 about the report of the IPS Officer-Roopa followed by the appointment of committee which was headed by retired officer Sri.Vinay Kumar and Government has accepted the report and registered FIR against the H.N.Sathyanarayana Rao and for the first time on 14.07.2021 seeking sanction against the petitioner along with Sri.Krishna Kumar. The impugned sanction has been passed on 30.12.2021. Prior to that, a raid was conducted nothing has been recovered in the house of the petitioner. In spite of the same, the proceedings has been initiated against the petitioner, which is under challenge.

7. The petitioner counsel has further contended that ACB registered case against the petitioner in Special Case

No.127/2022 despite informing the said authority, and jurisdiction Court has issued summons to appear. The registration of FIR and charge sheet is blatantly violation of the interim order of this Court. The State Government has closed the proceeding against the petitioner on the same day, when the sanction has been issued by the other side which is against the law. There is nothing evident in the charge sheet for the alleged offences under section 13(1)(2) of PC Act read with 120B of IPC.

8. The learned counsel further contended that the authority who has issued the sanction order is not competent to issue such an order, as there is no offence committed by petitioner under section 13(1)(c) and 13(1)(2) of PC Act. Even 120 B of IPC also not attracted. The order issued by the sanctioning authority is not in public interest. The order has been issued with malafide intention to harass the petitioner. The earlier FIRs were already set aside by the High Court and charge memo has been set aside by Karnataka State Administrative Tribunal

in application No.5760 and 5913 of 2018 which attained the finality. A revengeful argument between the two IPS officers Sri.H.N.Sathyanarayana Rao and Smt.Roopaa which has been concluded by discharging them from the allegations against each other. The order passed by the State Government is mechanical in nature, they have not verified the order of exonerating from the charges and order of the tribunal. None of the allegations found in the charge sheet attracts against petitioner/accused No.2. It is further contended, the case was registered against H.N.Sathyanarayana Rao but he himself was deleted from the charge sheet and lower rank officials are unnecessarily harassed by the State. In spite of tribunal quashing the enquiry and exonerating petitioner from the enquiry, question of granting sanction does not arise. The charges made in the charge sheet is based upon assumption and presumption which is not a ground for initiating proceedings against the petitioner and hence prayed for quashing the sanction order dated 30.12.2021 and also

quashing all the criminal proceedings before the special court.

9. In WP No.3171/2022, the petitioner is accused No.1 in the charge sheet and it is alleged that based upon the report of one Roopa, IPS officer dated 12.07.2017, regarding some irregularities in the jail the State has appointed one Sri.Vinay Kumar retired IAS officer for enquiring and submitting report. Accordingly, report has been submitted on 26.02.2018 and on the basis of report the State Government directed ACB to register FIR against H.N.Sathyanarayana Rao for the offence punishable under sections 13(1)(c) and 13(2) of PC Act as Sri.H.N.Sathyanarayana Rao said to be received illegal gratification of Rs.2 crores for extending facilities in the jail to one Smt.Sasikala Natarajan a convict of the criminal case. The police have registered FIR and after registering FIR, the police investigated the matter against H.N.Sathyanarayana Rao and report was submitted to Sri.Vinay Kumar and based upon the report a show cause

notice were issued to this petitioner on 03.04.2018 and he has replied. Subsequently, ACB registered FIR and the respondent No.4 accorded sanction against the petitioner. The criminal proceedings against this petitioner is arbitrary and uncalled for and it is abuse of process of law. The petitioner who is highly aggrieved by the impugned order dated 30.12.2021 for initiating proceedings against this petitioner, therefore petitioner prayed for quashing FIR and the very sanction order passed against the petitioner.

10. The learned counsel for petitioner contended the impugned order of sanction is bad in law, there is no ingredients of any offences alleged against this petitioner. The then DG and IGP received Rs.2 crores as bribe for providing facilities to the convicted accused Shashikala and no money has been recovered from this petitioner. There shall be no dishonest and fraudulent misappropriation of any property, but no such allegations made against this petitioner. In the enquiry report of Sri.Vinay Kumar, there is no specific finding against this petitioner for having

committing any offence. Therefore, prayed for quashing the sanction order passed by the State on 30.12.2021.

11. The learned counsel appearing for respondent/the then ACB, present Lokayukta has contended and argued in respect of the petitioner in W.P.No.16978/2022 that some irregularity committed in the present, an independent report has been obtained. The sanction was challenged in this case, where the respondent State has considered all the documents in respect of registering of FIR and based upon the report, the sanction has been granted. Therefore, if any defect in the sanction, that cannot be questioned before the High Court, that has to be considered only in the trial court, as per the judgement of Hon'ble Supreme Court in ***CBI Vs Ashok Kumar Aggarwal*** reported in ***(2014) 14 SCC 295***. Hence prayed for dismissing the petition.

12. As regards to WP No.1142/2022 learned counsel for respondent objected the petition and contended that the sanction has been accorded in accordance with

law, therefore remedies available to the petitioner before the trial court and not in the writ petition or 482 of Cr.P.C. Also contended that there is so many allegations against accused No.1, the enquiry against accused No.1 is still under progress though the enquiry against accused No.2 has been quashed, but fairly admitted there is no enquiry initiated by the State under KCSR rules against accused No.4 that is petitioner in W.P.No.16978/2022.

13. In reply the learned counsel for the petitioner were further contended entire allegation goes against accused H.N.Sathyanarayana Rao who was the Chief Superintendent of prison was being named as accused in FIR. Subsequently, the ACB dropped the charges against him and very recently the coordinate bench of this court quashed proceedings against H.N.Sathyanarayana Rao and absolutely there is no material against petitioner/accused No.4 and accused No.2, as the enquiry against accused No.2 has been quashed by the Karnataka State Administrative Tribunal and no enquiry has been initiated

against accused No.4 and he was not named in the FIR. Hence prayed for quashing the sanction order and the charges against petitioners/accused Nos.1, 2 and 4.

14. Having heard the arguments of learned counsel for parties and counsel for petitioners and the learned HCGP for State and Sri.B.B. Patil, learned counsel for respondent/Lokayukta and perused the records. On perusal of record which reveals that one Smt. D. Roopa an IPS officer made an allegation against previous D.G.P. of prisons Sri. H.N.Sathyanarayana alleging that there was some irregularities in the jail Parappana Agrahara Central jail where it is said to have been given facilities to the convict accused Smt.Sasikala Natarajan and Ilavarasi who were being detained in the Bangalore Jail after their conviction which has been upheld by the Hon'ble Supreme Court. Based upon the report of the said Roopa-IPS officer, on 12.07.2017, the State Government has appointed the IAS officer Sri.Vinay Kumar for conducting an enquiry. Accordingly, the said Sri.Vinay Kumar held an

enquiry and given the report stating that there were some irregularities in the prison and he has recommended for upgrading the jail by tightening the security. Accepting the report the State Government accepted the report on 26.02.2018. It is admitted fact that there is no allegation against this petitioner accused No.4/Gajaraja Makanur and there was no inquiry initiated by the State Government against the petitioner accused No.4. However after the report of the IAS officer Vinay Kumar, the State Government recommended to initiate the FIR against H.N.Sathyanarayana Rao, DGP of Central Prison vide order dated 26.02.2018. Based upon the State Governments recommendation an FIR has been registered against H.N.Sathyanarayana Rao for the offence punishable under sections 13 (1) (c) and 13(2) of PC Act. After the investigation the police have filed charge sheet against other accused persons by dropping H.N.Sathyanarayana Rao who is the prime accused against whom the allegation of Rs.2 crores has been received as bribe and he has been given clean chit by the then ACB

police. It is also admitted fact that very recently, the FIR against said Satyanarayana has been quashed by the coordinate bench of this court. On perusal of the record, it is also an admitted fact, the State Government initiated, Departmental Enquiry against accused Nos.1 and 2 one Krishna Kumar and Doctor Anita. The said Doctor Anita was posted as security to the accused Sasikala. The accused Sri.Krishna Kumar who said to be jail Superintendent and during the initiation of Departmental Enquiry, the accused Anita approached the Karnataka Administrative Tribunal, where after verifying the documents, the Administrative Tribunal set aside the order of enquiry and given a clean chit. Subsequently, the State Government dropped the enquiry which was initiated against accused No.2/Anita vide order dated 04.07.2020. However the State Government in the very same order, directed the authorities to continue the enquiry against Krishna Kumar, the petitioner accused No.1, the Chief Superintendent of Central Jail. It is also an admitted fact, on the very same day the State Government given

sanction to the ACB/Lokayuktha police to prosecute the case against all the above said petitioners, which is under challenge. The order of the State dated 30.12.2021 as against No.4 was challenged by the petitioner.

15. It is contended by the learned counsel for the petitioner accused No.4 one Akka Mahadevi advocate, that during the investigation ACB police raided the house of petitioner, they have not find any incriminating material in the house and even there is no demand or acceptance of any bribe and there is no allegation of any bribe as against the petitioner Gajaraja Makanur/the accused No.4. The documents produced by the petitioner has been produced and during the raid which was conducted in the house of this petitioner on 11.08.2021, where it is found, that there were one TV measuring 43 inches purchased in the year 2020 value of Rs.21,000 and an old sofa set has no value and 4 plastic chair value of Rs.2000 were found. Admittedly there were no cash or any gold have been found in the house of the petitioner accused No.4 Gajaraja

Makanur and on considering the entire documents there is no statement or evidence against petitioner accused No.4 to show that he has demanded or accepted any bribe from any of the convicted accused persons or from any person who visited the jail when meeting the convicts. The ACB police not at all collected any incriminating evidence against the accused No.4 for having committed any irregularities or receipt of any bribe by demand or from any corner of the security to show, this petitioner has involved in the demand or acceptance during any official parole to the convicted accused. The State Government also while accepting the report of the Sri. Vinay Kumar, IAS officer and ordered for initiating disciplinary action against the Doctor Anita the accused No.2 and Krishna Kumar the accused No.1 Chief Jail Superintendent but there is no order for enquiry against this petitioner accused No.4 Gajaraja Makanur as the State Government was very much aware that there is no allegation against him. That apart the very complaint is against the H.N.Sathyanarayana Rao former DGP of prison and FIR

also registered against him for having received Rs.2 crores from the convicts and providing facilities. Therefore, when there is no substance in the allegation in the charge sheet and there is no ingredients to attract for any of the provisions of PC Act or IPC against this petitioner accused No.4 for having committed, in order to frame the charges against him. When the State Government not chosen to initiate any disciplinary action against this petitioner and FIR also not ordered against the petitioner, the ACB to the best reasons known to the Investigating officer has dropped the prime accused (DGP-Sathyanarayana Rao) in the charge sheet and obtained permission against this petitioner for filing the charge sheet against this petitioner, even though absolutely there is no material against this petitioner. The state has issued the sanction order simply mentioning 'Final report' of the police and without any discussion or satisfaction and ignoring the earlier government orders for registering FIR against H.N.Sathyanarayana Rao and also ignoring dropping of charge sheet against H.N.Sathyanarayana Rao. Even

though knowing fully there is no departmental enquiry initiated against this petitioner and also nothing has been recovered during the raid at the house of the petitioner giving sanction to prosecute against the accused who is a police sub-inspector was posted for the security, is non application of mind. Hence the same is liable to be quashed.

16. Of course the learned counsel for respondent relied upon judgment of **Ashok Kumar Vs CBI** stated supra where the Hon'ble Supreme Court has held the sanction has been considered at the stage of trial but it is pertinent to note when there is no order for departmental enquiry and there is no allegation of demand and acceptance or conspiracy by this petitioner and the main accused H.N.Sathyanarayana Rao has been dropped by the investigating officer against whom the allegation of Rs. 2 crores has been made in the charge sheet as per the recommendation of the State, but without any documents, the police requested the State for according sanction and

the State Government not analysed or verified any documents to show there was any specific allegation against this petitioner for having committed any of the offence but blindly granted sanction under section under sections 13(1)(C) and 13(1)(2) of the PC Act by filing their charge sheet vide order dated 05.10.2021 is abuse of process of law and without application of mind and liable to be set aside.

17. As regards the petitioner accused No.2 in Writ Petition No.1142/2022, the contention of the learned counsel for the petitioner is that the State Government has accepted the report of Sri. Vinay Kumar, I.A.S. officer and there is no allegation against the petitioner in the report of the I.A.S. officer and there was no recovery from the petitioner except an allegation that she allowed the convict prisoner by providing some facilities to the convict prisoner. It is further contended that as per the directions issued by the higher officer, the petitioner was bound to obey the order of the higher officer. In this regard, it is

also contended that the departmental enquiry has been initiated against the petitioner accused No.2 and accused No.1-Krishna Kumar. Sixth charge was against the petitioner-Dr.Anitha mentioned in the charge memo, wherein all other five charges related Krishna Kumar accused No.1 and only one charge against the petitioner-Dr.Anitha and against the said charge, she approached the Karnataka State Administrative Tribunal (KSAT) by filing in application No.5760 and 5193/2018. The KSAT by issued order dated 06.01.2020 set aside the order of enquiry against the petitioner -Dr Anitha by giving clean chit to her and also directed the State to give promotion to her. Subsequently, the State Government dropped the proceedings against the petitioner-Dr.Anitha by an order dated 04.07.2020 in No.HD 52 PRE 18, Bengaluru. It is stated in the order of the State Government that as per the order of the KSAT in application No.5760 and 5193/2018, initiation of proceedings and departmental enquiry ordered by the State against Dr.Anitha the accused No.2 has been set aside and the departmental

enquiry was dropped and the enquiry officer was permitted to proceed against five charges alleged against accused No.1-Krishna Kumar. Thereafter, State Government passed the impugned order on 30.12.2021, on the request of police, according sanction for prosecuting against the petitioner accused No.2 - Dr.Anitha under Section 120B of IPC and Section 13(1)(c) read with 13(2) of Prevention of Corruption Act.

18. Perusal of the sanction order dated 13.12.2021, it is stated that accused No.1-Krishna Kumar, who was the Chief Jail Superintendent, has passed an order by appointing the present petitioner accused No.2 -Dr.Anitha by posting her as personal security to the convict and the Additional Assistant Superintendent, one S. Kumar was taken care of the visitors. The allegation against the petitioner-Dr.Anitha is that she was posted as escort to the convict Sasikala, though there was no threat to the convict. It is pertinent to note that it is an order passed by accused No.1-Krishna Kumar, Chief Jail Superintendent,

and as per instruction of accused No.1, the petitioner accused No.2 - Dr.Anitha acted and obeyed the command. However, the allegation made against the petitioner accused No.2-Dr. Anitha was set aside by the KSAT in the application filed by her and she was exonerated of the charges. Based upon the same, the State Government dropped charges against the petitioner-Dr. Anitha on 04.07.2020. Once again, while passing the impugned order of sanction, the very sanctioning authority, i.e. the Under Secretary to Home Department (Prison and Cinema) has not considered the earlier order dated 4.7.2020 of the Under Secretary to Home Department (Prison and Cinema) passed by dropping enquiry against the petitioner accused No.2-Dr. Anitha. It is ignorance of the order passed by the same Under Secretary of the same department. Of course, the earlier Under Secretary was Smt. M.R. Shobha, who dropped the enquiry and disciplinary action against the petitioner/accused No.2-Dr.Anitha as per the order of the KSAT, but by executing the order dated 04.07.2020 HD52 PRE 2018, Bangalore of same Under Secretary the order

KSAT granting sanction of the very same department by Under Secretary, by ignoring the court order which has attained finality and dropped the departmental enquiry, and hence the question of prosecuting the petitioner for the very same allegation without any material for demand or acceptance of any bribe or conspiracy with other accused initiating proceedings and conducting trial is abuse of process of law. When the very same Under Secretary to State Government, on one hand, has dropped the enquiry and same Under Secretary to State Government, on the other hand, accorded sanctioning for prosecution, which is abuse of process of law and hence, order of sanction was non application of mind as held by the Hon'ble Supreme Court in the case of ***State of Karnataka Vs Ameerjan reported (2007) 11 SCC 273***. Therefore, when the main accused H.N. Sathyanarayana Rao, who is said to be obtained Rs.2.00 crores as bribe from the convict prisoner and granted facilities, has been dropped from the charges, but for the reasons best known to the investigation officer and ACB, implicated the staff and this petitioner-Dr.Anitha,

who only acted on the command of the higher officer Chief Jail Superintendent the accused No.1. Though the enquiry was set aside by the Tribunal and dropped by the State Government, once again granting sanction for initiation of proceedings against the petitioner-Dr.Anitha, on the same allegation, is nothing but abuse of process of law. There is no reason for making allegation against the petitioner- Dr.Anitha in the charge sheet by the police. Therefore, granting sanction for prosecution dated 30.12.2021 against the petitioner accused No.2 - Dr.Anitha under Section 19 of the PC Act, is liable to be set aside.

19. As regards the petitioner-accused No.1 Krishna Kumar in W.P. No.3171/2022 it is borne out from the record that sanction has been accorded by the Under Secretary to the State Government, Home Department (Prison and Cinema) against him. The enquiry against petitioner-Krishna Kumar is still under progress. There were five charges issued against petitioner-Krishna Kumar in the charge memo, but he has not questioned the charge

memo or the charges in the departmental enquiry ordered by the State Government. Even the State Government, while dropping the enquiry against accused No.2 - Dr. Anitha on 04.07.2020, has categorically stated that the enquiry against the petitioner-Krishna Kumar shall be proceeded. Admittedly, the petitioner-Krishna Kumar is Chief Jail Superintendent. As per the documents, the said accused-Dr.Anitha was transferred and one Suresh Kumar was posted as in charge in her place. By the time, the said accused-Dr.Anitha filed an application for retention at Bengaluru, she was already transferred to Dharwad and no order was passed by the State Government and the departmental enquiry against petitioner-Krishna Kumar is still pending. As held above, it is an admitted fact that the main allegation against H.N. Suryanarayana Rao, DGP (Prison), that he has demanded and received Rs.2.00 crores and given protection to the convict prisoner has been dropped from the charge sheet and even though FIR has been filed and the Co-ordinate Bench in W.P. No.10042/2018 has quashed the FIR and has stated that

when police dropped the charges against him, the proceedings becomes infructuous and writ petition was dismissed. Now the departmental enquiry is under progress and still, no report has been submitted by the enquiry officer against the petitioner accused No.1 - Krishna Kumar. The police though filed charge sheet, there is no specific allegation against petitioner-Krishna Kumar regarding any bribe or its acceptance. On the other hand, there was an allegation of irregularity committed by the petitioner-Krishna Kumar that he ordered for providing high security to the convict prisoner and he ordered to give protection to convict prisoner and therefore, the jail superintendent was given as security, even though there was no threat to the life of convict prisoner. However, there is no direct allegation against the petitioner-Krishna Kumar for having acceptance or demand of any bribe. The enquiry is yet not completed and he was not held guilty. Such being the case, when the same allegation was made against the co-accused Dr Anitha, the State Government has dropped the proceedings against her as

per the directions of KSAT, but continued the proceed against this petitioner.

20. Learned counsel for the petitioner has relied up[on the judgment of the **Hon'ble Supreme Court in *State of Karnataka Vs Ameerjan reported (2007) 11 SCC 273* wherein the Hon'ble Supreme Court at para 10** of the said judgment has held as under:

10. *For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima*

facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced.

21. Perusal of the order of according sanction would indicate that the sanctioning authority has just mentioned the submission of report by the police seeking permission and not consider the dropping of proceedings against the co-accused No.2 - Dr.Anitha and non application of mind is very much available on record. The learned counsel for respondent has also contended that the sanction shall be challenged only before trial Court. However, the very basis for filing charge sheet is given importance. There was some irregularity committed by the Chief Jail

Superintendent in the jail and there was no application of mind by the Under Secretary to Government as there is no specific allegation made against the petitioner that he has either demanded or accepted the bribe from any of the prisoners. The main accused Satyanarayana has been dropped from the charge sheet which was not considered by the Under Secretary to Government while according sanction. Therefore, the sanction order dated 30.12.2021 passed by the respondent No.2-by the Under Secretary to Government, Department of Home (Prison and Cinema), against the petitioner-Krishna Kumar - accused No.1, is liable to be set aside.

Accordingly, I pass the following order:

Writ petition No.16978/2022 filed by the petitioner-accused No.4 is **allowed**. the criminal proceedings against him in Spl. CC No.127/2022 on the file of the Special Judge, is hereby quashed.

Writ petition No.1142/2022 filed by the petitioner-accused No.2 is **allowed**. The order of sanction as well as initiation of criminal proceedings against her in Spl. CC No.127/2022 on the file of the Special Judge, is hereby quashed.

Writ petition No.3171/2022 filed by the accused No.1. is **allowed**. The order of sanction dated 31.12.2021 HD 62 P R E 2017 is hereby set aside.

However, liberty is granted to the sanctioning authority for reconsideration of sanction, as against accused No.1 by application of mind and pass an appropriate order in accordance with law.

Sd/-
JUDGE

CS/AKV