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ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.12.2021

BEFORE

THE HON'BLE RAHUL CHATURVEDI, J.

Application U/S 482 No. 18671 of 2021

Dr. Abhai Ranjan ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Sri Atharva Dixit, Sri Syed Imran Ibrahim, Sri Manish Tiwary (Sr. Advocate)

Counsel for the Opposite Parties:
G.A.

(A) Criminal Law - The Code of Criminal Procedure, 1973 - Section 482 - Inherent power - The Prevention of Corruption Act, 1988 - Section 7/13(1)(d) r/w Section 13(2) - Section 19 - Previous sanction necessary for prosecution - difference between *absence of sanction* and *validity of sanction* - issue regarding *absence of sanction* can be raised at the inception by the aggrieved person - where the sanction order exists, the issue regarding its *validity* has to be raised only during course of trial - a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in the ''failure of justice' or has been occasioned thereby.(Para - 26,27)

(B) Criminal Law - The Prevention of Corruption Act, 1988 - Section 19(3) - specific embargo for granting any stay order on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it has resulted into failure of justice - Section 4(4) - Act has given a time bound period to conclude the trial of the case within a period of two years (four years maximum).(Para -32,33)

Quashing of summoning order , impugned charge-sheet and entire proceeding - trap organized against applicant (Mining Inspector) - demanded a bribe - to issue challan to the complainant - enable him to complete his work - trap successful - F.I.R. lodged by Anti-Corruption - applicant caught red handed - Prevention of Corruption Act initiated against him - statements u/s 161 Cr.P.C. of various witnesses and collecting all the relevant material/ documents - charge-sheet - report u/s 173(2) Cr.P.C. filed without any requisite sanction and pending before the State Government - cognizance taken by magistrate .(Para - 1 to 4)

HELD:-Applicant failed to bring on record even a single instance regarding "failure of justice". Not a case of absence of sanction, but in this case sanction has been granted. Authenticity or validity of this sanction could be adjudged either by the Division Bench in writ petition or at the stage of the trial, but there could not be any good reason to stall the proceedings of the case or vitiate the cognizance order in absence of any material on record which may result into "failure of justice" to the applicant . Provisions of Section 4 (4) of the Prevention of Corruption Act has to be kept in mind and suitable endeavour has to be made by the trial court to conclude the trial within the time specified therein.(Para - 33,35)

Application u/s 482 Cr.P.C. dismissed. (E-7)

List of Cases cited:-

1. Nanjappa Vs St. of Karn., AIR 2015 SC 3060

2. Vijay Kumar Janjua Vs St. of Punj. & anr. , CWP No.10055 of 2010 decided on 24.01.2014

3. Dinesh Kumar Vs Chairman, Airport Authority of India & anr., (2011) 4 SCC 402

4. Prakash Singh Badal & anr. Vs St. of Punj. & ors., (2007) 1 SCC

5. C.B.I. Vs Ashok Kumar Aggarwal, (2015) 1 SCC (Cri) 344

6. Town Investments Ltd. Vs Deptt. of Environment, (1977) 1 All ER 813.

7. Girish Kumar Suneja Vs C.B.I. , Criminal Appeal No.1137 of 2017 decided on 13.7.2017

8. St. of Bihar Vs Rajmangal Ram, AIR 2014 SC 1674

9. St. of Mah. Vs Mahesh G. Jain, (2014) 1 SCC (Cri) 515

(Delivered by Hon'ble Rahul Chaturvedi, J.)

1. Heard Shri Manish Tiwary, learned Senior Advocate assisted by Mr. Syed Imran Ibrahim, learned counsel for the applicant and Shri Nishant Singh as well as Mr. Faraz Kazmi, learned counsels appeared for the State. Perused the record.

2. Since only legal point is involved in this case, as such the present application u/s 482 Cr.P.C. is being decided at the threshold stage itself without inviting any counter affidavit.

3. Raising an interesting law point, learned counsel for the applicant has tried to exploit the plenary powers of this Court u/s 482 Cr.P.C. with a prayer "to allow the instant 482 application quashing the summoning order dated 08.4.2021 as well as impugned charge-sheet dated 27.11.2014 and the entire proceeding of Special Case No.12 of 2014 (State vs Dr. Abhai Ranjan), arising out of Case Crime no.455 of 2014, u/s 7/13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, P.S.-Mundha Pandey, District Moradabad, pending before Special Judge (Prevention of Corruption Act), Court No.2, Bareilly" and pending final disposal of the instant 482 application stay further proceeding of the above mentioned case.

4. Before critically analyzing the legal controversy involve in the instant case, it is desirable to spell out the brief factual aspects of the matter touching the core issue :-

FACTS OF THE CASE

(A) On behalf of complainant, Muddasir Khan a trap was organized against the applicant, posted as Mining Inspector, who allegedly has demanded a bribe of Rs.25,000/- in order to issue challan to the complainant so as to enable him to complete his work. After the trap was successful, the F.I.R. was lodged by one Ms. Pragya Mishra, Dy. S.P. (Anti-Corruption), Moradabad on 30.9.2014 at 23.45 hours in the night, making a mention that the applicant was caught red handed with 10 x Rs.1000 notes and 30 x Rs.500 notes while taking illegal gratification, as such, proceedings under the Prevention of Corruption Act was initiated against him.

It is relevant to make a mention to the effect that the alleged complaint was made by Mr. Muddasir Khan on 26.9.2014, pursuant to that the aforesaid trap was laid after making a pre-trap enquiry by one Mr. S.N. Tyagi, who has given his report on the same day i.e. 26.9.2014 and the said report was transmitted to D.S.P. on the same date.

(B) After holding an in-depth probe into the matter, recording the statements u/s 161 Cr.P.C. of various witnesses and collecting all the relevant material/ documents and after thrashing it on the anvil of thorough investigation, the Investigating Officer of the case has submitted charge-sheet No.5 of 2014 u/s 7/13(1)(d) r/w Section 13(2) of Prevention of Corruption Act against the applicant on 27.11.2014.

(C) The applicant was languishing in jail in connection with above case and he was released on bail by Co-ordinate Bench of this Court on 31.3.2015

having Crl. Misc. Bail Application No.1572 of 2015.
(D) After the preparation of report u/s 173(2) Cr.P.C. the same was filed without any requisite sanction and the request for the same was pending before the State Government.

5. On these factual aspects of the issue, it was urged by learned counsel for the applicant that as per the provision of Government Order dated 24.12.1992 the proceedings against the Gazetted Officers under Group-B cannot be initiated by Anti Corruption Department. Since the applicant is a Mining Officer and not Mining Inspector, and as such, entire proceeding initiated against him goes hay-wire. Besides this, many other factual drawbacks were pointed out by the applicant in his petition while assailing the charge-sheet as well as cognizance order.

6. It is also submitted by learned counsel for the applicant that the applicant being an upright officer has taken number of administrative steps to curb the illegal mining in discharge of official duty, many dumpers and tractors were seized by him, which has caused cramps to various mining mafias including the complainant. In fact the applicant is now become victim of their nefarious design.

7. Reverting back to the earlier story, that the police after holding in-depth probe into the matter, has submitted charge-sheet on 27.11.2014 u/s 7/13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988. The police authorities on 21.11.2014 and 02.12.2014 wrote letters to the Government of U.P. to accord permission/sanction so as to initiate a criminal prosecution against the applicant, but the same was refused by the Under Secretary, Govt. of U.P. vide letter dated 9.3.2015 (Annexure-21). The officer concerned has pointed out certain vital fallacies and pitfalls in the case-diary and documents collected during investigation, on which, according to the Under Secretary, the possibility of successful prosecution against the applicant is too bleak, and as such, sanction was declined at that juncture i.e. on 9.3.2015.

8. On 01.10.2015, the police official reviewed the entire material once again and thereafter sent yet another letter to accord sanction to prosecute the applicant under above mentioned allegations of corruption. This time too the sanction was turned down by the then Principal Secretary, Department of Mining, Government of U.P., relying upon the earlier order dated 9.3.2015, but this time there was simplicitor refusal without having any observation with regard to sufficiency or insufficiency of the material collected by the Investigating Officer during investigation vide its order dated 21.9.2016 (Annexure-23).

On this, it was urged by the learned counsel for the applicant that after turning down the sanction twice, makes it crystal clear that sanctioning authorities did not find anything incriminating against the applicant, upon which the sanction could be accorded and this by itself casts serious doubts over the prosecution story and the alleged material collected in support thereof.

9. It is further submitted by learned counsel for the applicant that the S.P., Anti-Corruption Organization, Lucknow for the third time sought sanction to prosecute the applicant by making a mention that the applicant was caught red handed while taking a bribe of Rs.25,000/- in front of

independent witnesses. The S.P. concerned requested the senior administrative authorities to accord sanction as there is sufficient and confidence generating material collected by the Investigating Officer to launch successful prosecution against the applicant.

10. On this, Shri Manish Tiwary, learned Senior Counsel urged that during this period, there was change in the government and consequently on 22.6.2017 (Annexure-25) the Additional Chief Secretary, Govt. of U.P., Lucknow has accorded permission to initiate the criminal case against the applicant without collecting any new material on record.

11. At the same juncture, it was pointed out by the learned A.G.A. that the applicant has already invoked the writ jurisdiction of this Court by filing Crl. Misc. Writ Petition No.5877 of 2021 in re : Abhai Ranjan vs State of U.P. The prayer sought in the above mentioned writ petition is as follows :

"issue, writ, order, direction in the nature of certiorari quashing the order dated 22.6.2017 (Annexure-25 to the writ petition), passed by Additional Chief Secretary bearing number 677/86-2017-172/2014 arising out of Case Crime No.455 of 2014 under Section 7/13(1)(d) r/w Section 13(2) of P.C. Act, P.S.-Mundha Pandey, Moradabad."

On this writ petition the Division Bench of this Court vide its order dated 20.9.2021 had sought counter affidavit from the Secretary, Government of U.P., Lucknow within ten days and rejoinder affidavit within a week thereafter, fixing 06.10.2021 as the next in the matter. The aforesaid writ petition is still pending, waiting for its final adjudication.

12. Thus, order dated 22.6.2017 whereby sanction was accorded on the third time, is the "focal issue' before this Court in the pending writ petition.

13. It is contended by the learned senior counsel Shri Manish Tiwary that after the submission of charge-sheet on 27.11.2014 and on the strength of sanction accorded on 22.6.2017, the learned Magistrate has taken cognizance on 08.4.2021 and thereafter the trial is galloping with speed whereby the discharge application (Application No.39 Kha) of the applicant was rejected on 8.4.2021 and the next date fixed for framing of the charge.

14. Per contra, Mr. Faraz Kazmi and Mr. Nishant Singh, learned counsels representing the State, have defended the cognizance order by making a mention that the learned Magistrate is fully justified in taking cognizance of the offence. Shri Kazmi states that while taking the cognizance, the only requirement is to look into the case-diary and the material collected during investigation and application of mind by the concerned Magistrate over the material collected during investigation, plus sanction letter accorded by the Governor. Magistrate cannot look into the legality and propriety of the sanctioning letter, and as such, the cognizance order dated 8.4.2021 does not suffer from any legal perversity or flaw.

15. Learned counsel for the applicant did not advance any argument regarding the rejection of discharge application dated 8.4.2021, thus, it would be deemed that he

has nothing to argue assailing the legality of the aforesaid order dated 8.4.2021.

16. After hearing the rival submissions made at the Bar, the Court has got an opportunity to formulate the legal issue, as follows :

17. Carrying the two rejections on the earlier occasions, as contemplated u/s 19 of the P.C. Act, which is sine qua non for any criminal proceedings against the propose offender, the sanction was accorded third time on 22.6.2017, after change in the establishment of the State of U.P. in the year 2017. Without having any new material on record against the applicant, the third sanctioning order is fallacious and untenable in the eyes of law. Thus the sanction order dated 22.6.2017 is now the pivotal issue of the controversy involved. It is urged that till such time i.e. sanctioning order dated 22.6.2017 its sanctity is not established by the legal pronouncement, entire subsequent proceeding is an exercise in futility, and as such, proceedings/prosecution against the applicant should be halted, till the writ petition is decided.

18. Shri Faraz Kazmi, learned counsel representing the State, reiterated his earlier submission that no doubt the legality and propriety of the third sanction letter dated 22.6.2017 is under challenge by means of Crl. Misc. Writ Petition 5877 of 2021, still it would not act as embargo in the present proceedings, because while taking cognizance of the offence the Magistrate is required to take cognizance of the offence relying upon the sufficiency or insufficiency of the material collected during investigation, coupled with the sanction letter issued by the Government of U.P. Magistrate is not supposed to give his legal verdict upon the legality and validity of the sanction letter nor he is required to evaluate the sanction and its propriety or its sufficiency or insufficiency.

19. It's true that the writ court is seized with the matter with regard to the legality and propriety of the third sanctioning letter dated 22.6.2017 and it's not proper on my part to express my views over that issue. The Court is required to evaluate (a) as to whether the cognizance order dated 8.4.2021 is legally sustainable and (b) can the Court halt the further proceedings of the present case until the writ is decided ?

LEGAL DISCUSSION

20. The Prevention of Corruption Act was initially enacted in 1947 and later on amended in 1964 based on recommendations of the Santhanam Committee. There are provisions of Chapter-IX of the I.P.C. to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in Criminal Law Amendment Ordinance, 1944 to enable attachment of ill-gotten wealth obtained through corrupt means including transfarees of such wealth. The present bill inter-alia envisages widening the scope of definition of "Public Servant' incorporation of the offences u/s 161 to 165A of the I.P.C., enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the "grant of sanction' for prosecution would be final, if it has already been challenged and the trial has commenced. In order to expedite the proceedings, the provisions for day to day trial of cases and prohibitory provisions with regard to the grant of the stay and exercise of powers of revision on

interlocutory orders have also been included. Thus the objective of present enactment is explicit and unambiguous, to the extent that the present enactment was promulgated for the expeditious disposal of trial, on day to day basis within a specific time frame.

21. Chapter-V of the "Act of 1988' provides sanction for the prosecution and other miscellaneous provisions, in which Section-19 puts an embargo on the prosecution that previous sanction is necessary for the alleged prosecution. Section 19(i) of the Act states that no court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction (save as otherwise provided in the Lokpal and Lokayuktas Act, 2013). It would be apt to recapitulate Section-19 of the Prevention of Corruption Act, herein below :

"19. Previous sanction necessary for prosecution.--

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013] ,--

(a) in the case of a person [who is employed, 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, 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 fo a public servant, prescribe such guidelines as it considers necessary.

Explanation.- For the purpose 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."

22. The scope of sanction to prosecute is to ensure that a public servant may not be harassed or victimized. The sanction is an important attribute which was to be scroopllosly insisted

upon to ensure the fair prosecution. Grant of sanction is a sacrosanct act and is intended to provide a safeguard to a public servant against frivolous and vexatious litigations. Grant of sanction is only an administrative functioning and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence. The satisfaction of the sanctioning authority is essential to validate an order granting sanction. It is incumbent upon the prosecution to prove that a valid sanction has been granted by the sanctioning authority after being satisfied that a case of sanction has been made out. What is required by the learned Magistrate to just see the letter accorded by the sanctioning authority is on record or not? At the stage of cognizance it is beyond the domain and scope of the Magistrate to express or adjudicate the sanction letter. The sanction order may expressly show that the sanctioning authority has perused the material before it and, after consideration of circumstances, has granted sanction for prosecution. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved, that would not vitiate the order of sanction.

23. The adequacy of material placed before the sanctioning authority cannot be gone into by the court, as it does not sit in appeal over the sanction order. An order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity. When there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused. [*State of Maharashtra v. Mahesh G. Jain, (2014) 1 SCC (Crl) 515*].

24. Learned counsel for the applicant relying upon the judgment of Hon'ble Apex Court in the case of ***Nanjappa v. State of Karnataka, AIR 2015 SC 3060,*** has drawn attention of the Court to its para 15, quoted herein below :

"15. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution."

25. On this, it was argued by learned counsel for the applicant that the learned Magistrate has committed serious legal fallacy in taking the cognizance of the offences and accepting the sanction dated 22.6.2017, which in fact sanction was granted by the Govt. of U.P. in its third attempt, and moreover, this precise focal issue is involved in the pending Crl. Misc. Writ Petition No.5877 of 2021, and

therefore, if the trial is allowed to proceed, the entire prosecution against the applicant should be construed as tainted one and deemed to be non-est in the eyes of law.

26. Mr. Faraz Kazmi, learned counsel representing the State, has drawn attention of the Court to Section 19(3) of the Act and produced a judgment decided by the High Court of Punjab and Haryana at Chandigarh in the case of ***Vijay Kumar Janjua vs. State of Punjab and another in CWP No.10055 of 2010 decided on 24.01.2014.*** In this judgment, reliance has been placed on a judgment of Hon'ble Apex Court in the case of ***Dinesh Kumar v. Chairman, Airport Authority of India and another, (2011) 4 SCC 402*** where after referring the judgment of ***Prakash Singh Badal and another v. State of Punjab and others, (2007) 1 SCC,*** it has been opined that there is difference between absence of sanction and validity of sanction. The issue regarding absence of sanction can be raised at the inception by the aggrieved person, however, where the sanction order exists, the issue regarding its validity has to be raised only during course of trial. Relevant paragraphs of Dinesh Kumar's case *(supra)* are being extracted herein below :

"10. The provisions contained in Section 19(1),(2),(3) and (4) of the P.C. Act came up for consideration before this Court in Parkash Singh Badal and another5. In paras 47 and 48 of the judgment, the Court held as follows:

"47: The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard.

48: The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."

11. While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in Parkash Singh Badal expressed in no uncertain terms that the absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in Parkash Singh Badal, this Court referred to invalidity of sanction on account of non- application of mind. In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind - a category carved out by this Court in Parkash Singh Badal, the challenge to which can always be raised in the course of trial."

27. In the case of ***C.B.I. v. Ashok Kumar Aggarwal, (2015) 1 SCC (Cri) 344,***

the Hon'ble Supreme Court further clarified that Section 19(3) of the 1988 Act puts a complete embargo on the court to grant stay of trial/proceedings. The court must examine as to whether the issue raised regarding tainted sanction has resulted into "failure of justice"? It is actually "failure of justice" in the true sense and import or whether it is only a camouflage argument. The expression "failure of justice" is an extremely pliable or facile an expression which can be made to fit into any case. The court must endeavour to find out the truth. There would be "failure of justice" not only by unjust conviction but also by acquittal of the guilty as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be over emphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under Indian Criminal Jurisprudence. "Prejudice' is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under legal jurisprudence, the accused can seek relief from the Court. The "failure of justice' would be relatable to error, omission or irregularity in the grant of sanction. However, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in the "failure of justice' or has been occasioned thereby. As mentioned above, the Court has dealt with the concept of "failure of justice' in an elaborate way in the light of the observations made in case of C.B.I. vs. Ashok Kumar Aggarwal *(supra)*. In continuation of the same the expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in ***Town Investments Ltd. v. Deptt. of Environment, (1977) 1 All ER 813.***

28. In a recent judgment the Hon'ble Apex Court in the case of ***Girish Kumar Suneja vs C.B.I.*** in Criminal Appeal No.1137 of 2017 decided on 13.7.2017, it has been held that :

"64. A reading of Section 19(3) of the PC Act indicates that it deals with three situations: (i) Sub-clause (a) deals a situation where a final judgment and sentence has been delivered by the Special Judge. We are not concerned with this situation. (ii) Sub-clause (b) deals with a stay of proceedings under the PC Act in the event of any error, omission or irregularity in the grant of sanction by the concerned authority to prosecute the accused person. It is made clear that no court shall grant a stay of proceedings on such a ground except if the court is satisfied that the error, omission or irregularity has resulted in a failure of justice - then and only then can the court grant a stay of proceedings under the PC Act. (iii) Sub-clause (c) provides for a blanket prohibition against a stay of proceedings under the PC Act even if there is a failure of justice [subject of course to sub-clause (b)]. It mandates that no court shall stay proceedings "on any other ground" that is to say any ground other than a ground relatable to the error, omission or irregularity in the sanction resulting in a failure of justice.

65. A conjoint reading of sub-clause (b) and sub-clause (c) of Section

19(3) of the PC Act makes it is clear that a stay of proceedings could be granted only and only if there is an error, omission or irregularity in the sanction granted for a prosecution and that error, omission or irregularity has resulted in a failure of justice. There is no other situation that is Crl. Appeal Nos._____/2017 etc. (@ SLP (Crl.) Nos. 9503/2016 etc.) contemplated for the grant of a stay of proceedings under the PC Act on any other ground whatsoever, even if there is a failure of justice. Clause (c) additionally mandates a prohibition on the exercise of revision jurisdiction in respect of any interlocutory order passed in any trial such as those that we have already referred to. In our opinion, the provisions of clauses (b) and (c) of Section 19(3) of the PC Act read together are quite clear and do not admit of any ambiguity or the need for any further interpretation.

66. Sub-section (4) of Section 19 of the PC Act is also important in this context inasmuch as the time lapse in challenging an error, omission or irregularity in the sanction resulting in a failure of justice is of considerable significance. Unless the challenge is made at the initial stages of a trial and within a reasonable period of time, the court would not be obliged to consider the absence of, or any error, omission or irregularity in the sanction for prosecution. Therefore, it is not as if the accused can, after an unreasonable delay, raise an issue about the sanction; but if that accused does so, the court may not decide that issue both at the appellate stage as well as for the purposes of stay of the proceedings."

29. In yet another judgment in the case of ***State of Bihar vs. Rajmangal Ram, AIR 2014 SC 1674***, the Hon'ble Apex Court has observed that in a situation where any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a "failure of justice' has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a "failure of justice' has also been occasioned.

30. In the entire submission Shri Tiwari, learned Senior Advocate has hammered his submission that since the subject matter of the third sanction dated 22.6.2017 is on target of Crl. Misc. Writ Petition No.5877 of 2021, and yet to see its final day and on the other hand if the trial is permitted to proceed, a serious prejudice would be caused to the applicant. Not a single word was whispered by him as to what would amount the "failure of justice' to the applicant, if the trial is permitted to proceed. In the recent judgment in the case of ***State of Maharashtra vs Mahesh G. Jain (2014) 1 SCC (Cri) 515***, the Division Bench of this Hon'ble Apex Court while dealing with such issues, has opined :

"In these kind of matters there has to be reflection of promptitude, abhorrence for procrastination, real understanding of the law and to further remain alive to differentiate between hyper-technical contentions and the acceptable legal proponements. While sanctity attached to an order of sanction should never be forgotten but simultaneously the rampant competition in the society has to be kept in view. The Court is concious of the fact that how frequent adjournments

are sought in a maladroit manner to linger the trial and how at every stage ingenious efforts are made to assail every interim order. It is the duty of the Court that the matters are appropriately delt with on the proper understanding of the law. Minor irregularities or technicalities are not to be given Everestine Status. It should be borne in mind that historically corruption is a disquiet disease for healthy governance. It has potentiality to stifle the progress of a civilized society. It ushers in an atmosphere of distrust. Corruption fundamentally is perversion and infectious and an individual perversity can become a social evil."

31. The Court has occasion to peruse Section 4(4) of the Prevention of Corruption Act, 1988 which reads thus :

"(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years:

Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate."

32. Coupled with the provisions of Section 19(3) of the Act where there is specific embargo for granting any stay order on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it has resulted into failure of justice.

33. Learned counsel for the applicant has miserably failed to bring on record even a single instance regarding "failure of justice" having been occasioned to the appellant. It is not a case of absence of sanction, but in this case sanction has been granted vide order dated 22.6.2017 and same is subject matter of challenge in writ jurisdiction. The authenticity or validity of this sanction could be adjudged either by the Division Bench in writ petition or at the stage of the trial, but there could not be any good reason to stall the proceedings of the case or vitiate the cognizance order in absence of any material on record which may result into "failure of justice" to the applicant. More particularly, when the legislature in its wisdom by its Section 4(4) of the Act has given a time bound period to conclude the trial of the case within a period of two years (four years maximum), stay of the proceedings would amount a luxury in favour of applicant.

34. Admittedly, this F.I.R. is of 2014 and the charge sheet was submitted on 27.11.2014, meaning thereby, about seven years have already been elapsed and only charges have been framed as yet. Under the circumstances, I am not inclined to exercise my inherent powers u/s 482 of Cr.P.C. to quash the summoning order or charge-sheet or the entire proceeding of Special Case No.12 of 2014 (State vs Dr. Abhai Ranjan), arising out of Case Crime No.455 of 2014, u/s 7/13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, P.S.-Mundha Pandey, District Moradabad, pending

before Special Judge (Prevention of Corruption Act), Court No.2, Bareilly.

35. It is expected from the court concerned that the provisions of Section 4 (4) of the Prevention of Corruption Act has to be kept in mind and suitable endeavour has to be made by the trial court to conclude the trial within the time specified therein.

36. The application stands DISMISSED being devoid of merit.

37. The Registrar (Compliance) is directed to transmit the copy of this order to the trial court concerned within a week positively.

(2022)01ILR A274
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.12.2021

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ C No. 2582 of 2014

Manager L.I.C. of India, Basti ...Petitioner
Versus
Permanent Lok Adalat, Basti & Anr. ...Respondents

Counsel for the Petitioner:
Sri Manish Goyal, Ms. Anjali Goklani

Counsel for the Respondents:
Sri Uma Nath Pandey, Sri S.R. Dubey, Sri Manan Kumar Chaubey

क. विधिक सेवा प्राधिकरण अधिनियम, 1987 – धारा 22ग, उपधारा (3) व (4) – स्थायी लोक अदालत का क्षेत्राधिकार – बिना सौहार्द्रपूर्ण समझौते का प्रयास किए निर्णय लिया गया – पंचाट में समझौता के प्रयास के संबंध में कोई उल्लेख नहीं – पंचाट/विनि चय की वैधानिकता को चुनौती दी गई – अभिनिर्धारित किया गया, स्थायी लोक अदालत को सर्वप्रथम पक्षकारों को सौहार्द्रपूर्ण समझौते पर पहुंचाने के लिए अपनी बुद्धिमत्ता, ज्ञान व अनुभव का उपयोग करके प्रयास करना चाहिए, जो उसका सर्वप्रथम कर्तव्य है। इस प्रयास में असफल होने के उपरान्त ही विवाद का विनि चय करना चाहिए – हाईकोर्ट ने आक्षेपित पंचाट को अवैध एवं दूशित घोशित करते हुए निरस्त किया। {पैरा 6 (ज), 6(झ) एवं 7}

ख. विधिक सेवा प्राधिकरण अधिनियम, 1987 – धारा 20 व 22ग – लोक अदालत व स्थायी लोक अदालत की निर्णय प्रक्रिया में बुनियादी अन्तर – स्थायी लोक अदालत का क्षेत्राधिकार – अभिनिर्धारित किया गया, जहां लोक अदालत पक्षकारों के बीच समझौता या परिनिर्धारण करने का प्रयास करेगा और यदि ऐसा न हो पाये तो वाद विधि के अनुसार निपटाने के लिए लौटा दिया जाएगा, परन्तु अधिनियम की धारा 22ग के अनुसार स्थायी लोक अदालत मामलों का संज्ञान लेने के उपरान्त सर्वप्रथम पक्षकारों के बीच सुलह कार्यवाही करेगी और स्वतंत्र और निश्पक्ष रीति से सौहार्दपूर्ण समझौते पर पहुंचने के लिए, पक्षकारों के प्रयास में सहायता करेगी। यदि पक्षकार किसी करार पर पहुंचने में असफल रहते हैं और यदि विवाद किसी अपराध से संबंधित नहीं है, उस द ा में ही स्थायी लोक अदालत विवाद का विनि चय कर सकती है। {पैरा 6 (ख)}

रिट याचिका आंकि रूप से स्वीकृत. (E-1)

<u>उल्लेखित पूर्व निर्णयों की सूची:–</u>

1. उत्तर प्रदे ा राज्य बनाम श्रीमती कामिनी देवी व अन्य; 2017 (9) ए.डी.जे. 44

2. रिट सी नं0 – 34170 वर्श 2012; ने ानल इं योरेन्स कं0 लि0 बनाम स्थाई लोक अदालत निर्णय तिथि 02.05.2014

3. लाइफ इं योरेन्स कॉरपोरे ान ऑफ इंडिया बनाम सैयद जैइघम व अन्य ; 2015 (8) ए.डी.जे. 668

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)