We propose that the Section may be expanded as follows:-

"561 A. Nothing in this Code shall be deemed to limit or saving of

inherent powers of Criminal Courts, affect the inherent power-

(a) of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice, or (b) of any Criminal Court to make such orders as may be necessary to prevent abuse of its process or otherwise to secure the ends of justice."

17. In the case of ***Ram Lal Yadav*** (supra) the provision of anticipatory bail, under Section 438 Cr.P.C. was not existing, therefore, there was a delima to get the remedy of pre arrest during investigation, then it was clarified by this Court that High Court has no inherent powers, under Section 482 Cr.P.C. to interfere with the arrest of accused persons during the course of investigation, but it was clarified that High Court can always issue a writ of mandamus, under Article 226 of the Constitution restraining the police officer for misusing his legal power in relation to arrest and FIR can be quashed, under Section 482 Cr.P.C., which is covered under the principle laid down by Hon'ble Supreme Court in the Case of ***Bhajan Lal*** (supra) and the present case law laid down by the Hon'ble Supreme Court in the cases as discussed above.

18. In the present case, First Information Report No. 501 of 2019, under Sections 323, 354, 498A, 504 I.P.C. and Section 3/4 of Dowry Prohibition Act, 1961, Police Station Mandion, District Lucknow was lodged on 14.06.2019 by the opposite party No.4 and during the course of investigation, FIR and its consequential proceedings were challenged before this Court, and thereafter, matter was referred to the Mediation and Conciliation Centre of this Court with the consent of counsel for the opposite party No.4 on the first date and it was successfully concluded and presently opposite party No.4 is enjoying her matrimonial life and residing with her husband and children. As in the case of ***Ram Lal Yadav*** (supra), this Court held that Investigating Officer can not be restrained from arresting the accused of a cognizable offence. The Hon'ble Supreme Court in the case of ***Bhajan Lal*** (supra) and ***Ramawatar*** (supra) already held that FIR and its consequential proceedings can be quashed (u/s 482 Cr.P.C.), therefore, this Court is of the view that impugned FIR and its consequential proceedings is liable to be quashed in terms of settlement agreement of parties before Mediation and Conciliation Centre of this Court.

19. For the discussions made above, the present application (u/s 482 Cr.P.C.) is ***allowed*** and First Information Report No.501 of 2019, under Sections 323, 354, 498A, 504 I.P.C. and Section 3/4 of Dowry Prohibition Act, 1961, Police Station Mandion, District Lucknow, is hereby ***quashed.***

20. Office is directed to communicate this order to the Chief Judicial Magistrate, concerned, forthwith.

(2022)01ILR A228
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 17.12.2021

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Application U/S 482/378/407 No. 3274 of 2018
connected with
Application U/S 482/378/407 No. 3015 of 2020
with
Application U/S 482/378/407 No. 2210 of 2018

Giri Raj Sharma ...Applicant
Versus
State of U.P. ...Opposite Party

Counsel for the Applicant:
Nandit Kumar Srivastava, Pranjal Krishna

Counsel for the Opposite Party:
Bireshwar Nath, Anurag Kumar Singh

(A) Criminal Law - The Code of Criminal Procedure, 1973 - Section 482 - Inherent power - Indian Penal Code, 1860 - Sections 120-B, 420, 468 and 471 , The Prevention of Corruption Act, 1860 - Sections 13(2) & 13(1)(d) - once the sanction order is refused, in absence of fresh material, it cannot be reviewed or reconsidered. (Para -47)

Petitioners along with other officials of Airports Authority of India and a private contractor - entered into a criminal conspiracy - committed offence of cheating, forgery and criminal misconduct - caused a huge wrongful loss - competent authority initially did not grant sanction for prosecution - ground - evidence available on record not sufficient to prosecute the officers of AAI - on the direction of Central Vigilance Commission, such sanction for prosecution was granted .(Para - 9, 11,25)

HELD:-Impugned sanction order not a valid order in as much as no fresh material was produced before the sanctioning authority and no further investigation of any kind whatsoever has been carried out by the investigating agency. Hence, the sanction order is unwarranted. Sanctioning authority has got no authority or power to review or reconsider its earlier order whereby he has refused to grant the sanction to prosecute the officers of AAI, the petitioners hereto. Impugned prosecution sanction order,cognizance order and order passed by trial court quash/set aside.(Para - 51,52,53,54)

Petitions allowed. (E-7)

List of Cases cited:-

1. R.S. Nayak Vs A.R. Antulay, AIR 1984 SC 684,

2. Mansukhlal Vithaldas Chauhan Vs St. of Guj., 1997 Cri.L.J. 4059,

3. Gopikant Choudhary Vs St. of Bihar & Ors., (2000) 9 SCC 53,

4. Ramanand Chaudhary Vs St. of Bihar & Ors., (2002) 1 SCC 153,

5. St. of H. P. Vs Nishant Sareen, (2010) 14 SCC 527,

6. St. of Punj. & anr. Vs Mohammed Iqbal Bhatti, [2009 (67) ACC 350] (SC),

7. Suresh Kumar Bhikamchand Jain Vs Pandey Ajay Bhushan & ors., 1998 Cri.L.J. 1242 (SC)

8. Nanjappa Vs St. of Karn., (2015) 14 SCC 186.

9. Vivek Batra Vs U. O I. & Ors., (2017) 1 SCC 69

10. Parkash Singh Badal & anr. Vs St. of Punj. & Ors., (2007) 1 SCC 1

11. Dinesh Kumar Vs Chairman, A. A.I. & Anr., (2012) 1 SCC 532

12. Bachhittar Singh Vs St. of Punj. & anr., AIR 1963 SC 395

13. Romesh Mirakhur Vs St. of Mah., 2017 SCC OnLine Bom 9552

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Nandit Kumar Srivastava, learned Senior Advocate assisted by Sri Pranjal Krishna, Sri Mohammed Amir Naqvi and Sri Ishan Baghel, learned counsel for the petitioners in all the petitions, which are connected as well as Sri Anurag Kumar Singh, learned counsel for the C.B.I.

2. Sri Anurag Kumar Singh has produced the original file from Airports

Authorities of India, showing the order dated 28.06.2013 of Sri V.P. Agrawal, the then Chairman of the Authority, the order dated 29.08.2013 of one Ms. Upma Srivastava, the Chief Vigilance Officer and order dated 13.09.2013 of Sri S. Lakra, AM (HR).

3. Since those papers have been provided to Sri Dilip Kumar, who has filed petition bearing U/S 482/378/407 No.2210 of 2018 and learned counsel for the petitioner has provided a photocopy of those papers so the same are taken on record.

4. The aforesaid papers are the same, which are available on the original papers, therefore, the original file has been returned to the counsel for the CBI.

5. By means of leading petition bearing U/S 482/378/407 No.3274 of 2018, the following prayers have been made:-

"WHEREFORE, it is most respectfully prayed that this Hon'ble court may kindly be pleased to hold the Sanction Order dated 01.10.2013 invalid and quash the petitioner's prosecution in the Criminal Case No.06 of 2013 [State Vs. Giriraj Sharma and others] under sections 120-B, 420, 468 and 471 Indian Penal Code 1960 and 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act 1988 before the Ld. Special Judge, C.B.I., Court No.3, Lucknow;

And it is prayed that the cognizance order dated 12.11.2013 as well as the order dated 06.01.2018 may kindly be quashed.

And/ or this Hon'ble Court may further be pleased to pass any other order or orders which this Hon'ble court may deem fit & proper in the interest of justice."

6. By means of petition bearing U/S 482/378/407 No.3015 of 2020, the following prayers have been made:-

"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

a. To quash the prosecution sanction order dated 01.10.2013 (Contained in Annexure No.1 of this petition), passed by Sanctioning Authority, namely, Shri V.P. Agarwal (P.W.-1);

b. To quash the entire proceedings of Criminal Case No. 06 of 2013 (CBI Versus Griraj Sharma & others) pending before the court of Learned Special Judge, CBI, Court No. 3, Lucknow, arising out of R.C. No. 0062011A0013, u/s 120-B, 420, 468, 471 IPC and 13 (2) read with 13 (1) D of Prevention of Corruption Act, P.S.- CBI, ACB, Lucknow, against the petitioner.

c. Issue any other order, order or direction in the nature, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

7. By means of petition bearing U/S 482/378/407 No.2210 of 2018, the following prayers have been made:-

"Wherefore, it is most respectfully prayed that this Hon'ble court may kindly be pleased to stay the order passed by the Learned Special Judge, C.B.I. (IIIrd), Lucknow on dated 06.01.2018 in Case No. 6/2013, R.C. No.13A2011 (CBI Vs Giriraj Sharma & Others) contained as annexure No. 1 with this petition.

It is further prayed that drop the proceedings in connection with petitioner of the Criminal Case No. 06/2013 u/s 120B, 420,471 IPC and 13(2) read with 13(1) d of PC Act, P.S. CBI/ACB, Lucknow pending before Learned Special Judge, C.B.I.

(IIIrd), Lucknow (CBI VS. Giriraj Sharma & Others).

Such any other or direction may also kindly be passed which is deemed fit and proper in the circumstances of the case in favour of the petitioner."

8. Since the questions of law and fact of all the petitions are the same, therefore, with the consent of the parties, all the aforesaid petitions are being decided by a common judgment and order.

9. The fate of the present petitions and the impugned orders is dependent upon the question involved in the matter i.e. (i) as to whether the sanction for prosecution, which has been refused by the competent authority, can be reviewed on the recommendation of the Central Vigilance Commission (hereinafter referred to as "CVC" in short) in terms of Section 197 Cr.P.C.; (ii) as to whether second prosecution sanction on the same material is legally permissible under the law.

10. Facts and circumstances of all the cases are almost identical but the petition bearing U/S 482/378/407 No.3274 of 2018 is being treated as leading petition.

11. Brief facts of the case are that a first information report was registered at Lucknow, Police Station - CBI/ACB with FIR No.RC0062011A00013 on the basis of source information. The FIR was registered against six persons including the petitioners under Sections 120-B, 420, 468 and 471 IPC read with Sections 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1860 and the allegations in nutshel were that the petitioners along with other officials of Airports Authority of India and a private contractor had entered into a criminal conspiracy during the period 2008-2010 and in pursuance of criminal conspiracy committed the offence of cheating, forgery and criminal misconduct and thus caused a huge wrongful loss worth Rs.25,74,065/-.

12. On 30.10.2013, the Chargesheet was filed arraying the petitioner and six others as accused, under Sections 120B, 420, 468 and 471 IPC read with Sections 13(2) & 13(1)(d) of the Prevention of Corruption Act 1860. The alleged Sanction of Prosecution vide Sanction Order C140 15/7/12-Disc (Pt.) dated 01.10.2013 was obtained in respect of the petitioner and other accused persons from Mr. Vijay Prakash Agrawal, Chairman, Airports Authority of India.

13. As per learned counsel for the petitioners, after the examination-in-chief of the Sanctioning Authority, namely Mr. Vijay Prakash Agarwal (Prosecution Witness-1), the then Chairman of AAI, when he was subjected to the cross examination, he revealed that at the first instance he had refused to grant sanction for prosecution in respect of the petitioner and the accused persons and it is only after passage of three-four months, on the basis of the advisory report from the Chief Vigilance Commission, he reviewed his sanction rejection order and proceeded to grant sanction for prosecution in respect of the petitioner and other accused persons vide sanction order dated 01.10.2013.

14. On 04.10.2017, an "Application for Holding/Declaring the Prosecution Sanction invalid and Dropping of Applicant's Prosecution for want of valid Prosecution Sanction" was file before the

learned Special Judge, CBI, Count No.3, Lucknow and on 06.01.2018, the learned Special Judge, CB1, Court No.3, Lucknow was pleased to reject the application dated 04.10.2017 filed by the petitioner on the ground that the validity of the Prosecution Sanction would only be decided at the final stage of the trial.

15. In the present case, this Court so as to verify as to whether the competent authority has refused sanction against the petitioners or not has summoned the original file vide order dated 10.11.2021. Such original file was received by the learned counsel for the CBI on 17.11.2021 and the same was shown to the Court on 25.11.2021.

16. There is no dispute on the point that the Chairman of Airports Authority of India (hereinafter referred to as "AAI" for short) is a competent authority to grant sanction for prosecution against the petitioners.

17. So as to understand properly as to whether the Chairman of AAI has granted the sanction or refused the sanction, it would be necessary to reproduce such order herein below, which is the order dated 28.6.2013 of Sri VP Agrawal, the then Chairman of AAI:-

"I have gone through the CBI report as well as the comments made by Member (Plg) on the pre-pages. CBI has sought prosecution sanction against Sh. Giriraj Sharma, the then Senior Manager (Engg.-Civil), Varanasi; Sh. Bhupendra Singh, the then Manager (Engg.-Civil), Varanasi; Sh. Jonas Lal Marandi, the then Manager (Engg.-Civil), Sh. Dilip Kumar, the then Assistant Manager (Engg.-Civil) and Sh. Prabhat Chand Gopalan, the then Junior Executive (Engg.-Civil) and major penalty proceedings against Sh. Pradeep Kumar, the then Jt. GM (Engg.-Civil), Varanasi.

The Investigation carried out by CBI is based on the certain claims of the contractor in respect to cement, recron and bitumen through submission of fake bills during the progress of the work at Varanasi. These bills were accepted and processed by the above named officers. CBI in its report further concluded that the material was not used up to the quantity prescribed under the contract which resulted in inferior quality of work. Accordingly, they finally concluded that the payments were made against the fake bills in connivance with the officers of the AAI and the inferior quality of work was executed which caused loss of revenue to the Authority for Rs.92,63,712.60.

Member (Plg) in his note at pre-page has examined the test report of CRRI, New Delhi in respect of flexural strength of PQC. Report, as analysed in reference to provisions under IS-456-2000, brings out that the flexural strength of concrete is within the parameters of acceptance criteria. Further, Structure Cell of AAI has also carried out PCN evaluation and PCN for extended runway (flexible) and apron/ additional taxiway (rigid) is 89/F/C/W/T and 94/R/C/W/T & 91/R/C/W/T respectively as against design requirement of 68 & 59 for flexible & rigid respectively. Analysis of test reports of PQC cores is available on file at Flag 'A'. Thus it can be concluded that work done at site was not of inferior quality.

In view of the observations Member (Plg.), it appears that quality of work cannot be treated as Inferior which is further substantiated by the test reports and relied upon by the CBI. As such, once quantity of the work is in terms of the

contract and passed in the tests carried out by an independent agency, thus it cannot be assumed that less quantity of material was used. The officers of the AAI were responsible for execution of work as per the standards prescribed in the contract and in case test establishes that the executed work meets the standards provided in the contract, their involvement/ connivance with the contract in any manner cannot or should not be assumed.

The entire investigation is revolving to the genuinity of the bills. The contractor has submitted fake bills which has also been substantiated by the suppliers as well as the other corroborative evidence collected by the CBI, but the said evidence may not be treated sufficient to establish involvement/ connivance of the above named officers of AAI.

The responsibility for execution and completion of the awarded work within a stipulated period lies with the officers of AAI, which includes processing of bills as well as to ensure the quality of work, but the contract agreement does not prescribe any manner, for verification of bills submitted by the contractor. Even the officers responsible for processing of bills cannot assume that the bills submitted by the contractor are fake, as the quantity required for execution of work has been supplied and utilized, which is established from the test reports.

As such, the above named officers may have processed the bills on confirmation of quality of work and thus may not have verified genuinity of bills which in any case is not mandatory in terms of the contract unless there is any doubt. The investigation carried out and the evidence collected may be treated sufficient to establish that the bills submitted by the contractor were fake but the evidence/ material available on record cannot be treated as sufficient to conclude that execution of work is of inferior quality and this is based on assumption only. However, considering the report, an order has already been issued to recover/ adjust the said amount of Rs.92,63,712.60 which was released to the contractor on the fake bills. An action for debarment of the said contractor from participating in AAI's future tender has also been initiated.

In view of the above, I find that the evidence available on record is not sufficient to establish involvement of above named officers of AAI and the conclusion drawn in this respect needs reconsideration. At the most, as per the available evidence, these officers may be held responsible for negligence as they failed to detect genuinity of bills while processing the payment.

The CBI has recommended major penalty charge-sheet against Sh. Pradeep Kumar, the then Jt. GM (Engg.-Civil) and the Project In charge for Varanasi Project. An action for initiation of major penalty proceedings against him has already been taken, hence it would be more appropriate to initiate departmental action against the above named officers along with Sh. Pradeep Kumar. The Inquiry could be conducted by CDI nominated by CVC to reach on just and fair conclusion.

(V P Agrawal)
Chairman"

18. After perusing the aforesaid order dated 28.6.2013, it is clear that the competent authority was of the firm view that the evidence available on record is not sufficient to grant sanction to prosecute the above named Officers of AAI. Such

authority further observed that at the most, as per the available evidence, these officers may be held responsible for negligence as they failed to detect the genuinity of bills while processing the payment so departmental enquiry can be held against them.

19. On the aforesaid order dated 28.6.2013, the Director, Central Vigilance Commission has written a letter dated 20.8.2013 to the Chief Vigilance Officer of AAI recommending prosecution against the petitioners showing its agreement with CBI.

20. After receiving the letter dated 20.8.2013 of Director, Central Vigilance Commission, the Chief Vigilance Officer of AAI wrote letter to the Chairman apprising the aforesaid letter/advisory seeking sanction against the officers of AAI, vide letter dated 29.8.2013 and on the said letter, the Chairman of AAI has granted sanction for prosecution against the petitioners and formal letter to this effect has been issued on 1.10.2013 which has been enclosed as Annexure No.4 to the petition. The letter of Chief Vigilance Officer dated 29.8.2013 is being reproduced herein below:-

"This case pertains to CBI's recommendations dated 02.03.2013 made on the basis of investigations conducted into alleged acts of Criminal misconduct committed during the execution of project work at LBS Airport, Varanasi for granting prosecution sanction against S/Shri G.R. Sharma, then Sr Manager, Bhupendra Singh, then Manager, J.L. Marandi, then Manager, Dilip Kumar, then AM and P.C. Gopalan, then JE all from Engg-Civil discipline.

2. The matter was put up before the Competent Authority vide note dated 02.04.2013 of the undersigned at page 1-2/N for taking decision for granting prosecution sanction. Chairman vide his note at page 7-8/N had observed that the evidence available on record is not sufficient to establish involvement of these officers as the work done at site was not of inferior quality. Hence, the conclusion drawn by CBI in this respect needs reconsideration and it would be more appropriate to initiate departmental action against these officers.

3 In view of difference in opinion between CBI and Competent Authority, the case was referred to CVC for its advise vide this office letter dated 12.07.2013 in terms of provision contained in Para-10 of Special Chapter on Vigilance Management in PSES & the Role and Functions of the CVC (Copy at page 26-25/c).

4. The Commission vide office Memorandum No. 013/TCA/034-223045 dated 20.08.2013 (Copy at page 28-27/c) has tendered its advice. Observations of the Commission may please be seen at Para-2(a) to (e) of the OM. The Commission in agreement with CBI advises prosecution against the five officers mentioned in Para-1 above. The Commission has also advised to intimate details of action taken against M/s BR Arora & Associates (P) Ltd.

5. In view of Commission's advice, Chairman may please consider granting of prosecution sanction by the Competent Authority against the 5 officers as recommended by CBI in its report. The Commission is being separately informed about the action taken against M/s BR Arora & Associates (P) Ltd.

6. In this regard, it is also pertinent to mention that this case has already crossed the prescribed time limit fixed by the Apex Court in taking decision in such matters, Secretary (Personnel), DOPT had convened a meeting on 24.07.2013 in North Block to review all

such delayed cases and had emphasized to expedite the decision making process within the prescribed time frame. A copy of D.O. letter dated 14.07.2013 of Jt. Director (Policy), CBI, North Block addressed to JS & CVOMOCA is also placed in this file at page-21-19/c for perusal.

(Upma Srivastava)
Chief Vigilance Officer"

21. The order of Chairman on the file granting sanction for prosecution is reproduced herein below:-

"Considering circumstances in totallity prosecution sanction against officers is granted as sought by CBI."

However, formal order to this effect has been issued on 01.10.2013.

22. Sri Anurag Kumar Singh, learned counsel for the CBI has submitted that earlier the competent authority had only given his opinion to the effect that the evidence available on record is not sufficient to establish the involvement of officers of AAI and at the best, the departmental enquiry against such officers may be initiated. As per Sri Anurag Kumar Singh, such opinion may not be treated as an order. The order is as such dated 01.10.2013 whereby the competent authority has granted sanction against the officers as sought by the CBI.

23. Learned counsels for the petitioners have cited some judgments of the Apex Court in re; **R.S. Nayak vs. A.R. Antulay, AIR 1984 SC 684, Mansukhlal Vithaldas Chauhan vs. State of Gujarat, 1997 Cri.L.J. 4059, Gopikant Choudhary vs. State of Bihar and others, (2000) 9 SCC 53, Ramanand Chaudhary vs. State of Bihar and others, (2002) 1 SCC 153, State of Himachal Pradesh vs. Nishant Sareen, (2010) 14 SCC 527, State of Punjab and another vs. Mohammed Iqbal Bhatti, [2009 (67) ACC 350] (SC), Suresh Kumar Bhikamchand Jain vs. Pandey Ajay Bhushan and others, 1998 Cri.L.J. 1242 (SC) and Nanjappa vs. State of Karnataka, (2015) 14 SCC 186.**

24. The Apex Court in re; **Mansukhlal Vithaldas Chauhan** (supra) has held that validity of sanction depends upon the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation. Paras 18 & 19 of the aforesaid case are being reproduced herein below:-

"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, 1991 Cri LJ 1438: (1991) AIR SCW 1034).

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."

25. In the present case, the competent authority has initially did not grant sanction for prosecution by saying that the evidence available on record is not sufficient to prosecute the officers of AAI. However, on the direction of Central Vigilance Commission, such sanction for prosecution was granted.

26. Sri Nandit Srivastava, learned Senior Advocate, has submitted that when all the material was perused by the competent authority and has found that the sanction for prosecution may not be granted, in the absence of any new material granting sanction for prosecution is illegal and unwarranted.

27. Thereafter, Sri Srivastava has referred the dictum of the Apex Court in re; **State of State of Himachal Pradesh vs. Nishant Sareen** (supra) referring paras-12, 13 & 14 thereof, which are as under:-

"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.

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.

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."

28. On the basis of aforesaid dictum of the Apex Court, Sri Srivastava has submitted that the CBI has concealed this fact before the learned trial court that by means of second prosecution sanction on the same material, the case is being proceeded whereas the second prosecution sanction on the same material and without any further investigation is not permissible under the law.

29. Sri Nandit Srivastava, learned Senior Advocate, has further submitted that while rejecting the application of the petitioner dated 4.10.2017 (Annexure No.6) vide impugned order dated 6.1.2018 (Annexure No.8), learned court below has misinterpreted the dictum of the Apex Court in re; **Vivek Batra vs. Union of India and others, (2017) 1 SCC 69,** inasmuch as the ratio of aforesaid judgment would not be applicable in the present case. In the case of **Vivek Batra** (supra), the competent authority was the Finance Minister, who had granted sanction and in the interregnum period, some official notings were made in the file in question whereby there was difference of opinion amongst officers, who made the notings but ultimately the competent authority i.e. the Finance Minister had granted sanction after applying his mind. However, in the present case, there is no official notings on the file inasmuch as the competent authority had earlier refused to grant sanction for prosecution against the officers of AAI and on the advisory/ recommendation of CVC, he reviewed his earlier decision and granted sanction for prosecution by impugned order dated 1.10.2013. Besides, the observation of learned court below in the impugned order to the effect that as to whether the competent authority had earlier refused the sanction or not would be considered during the course of the trial, is not proper inasmuch as the material available with the learned court below wherein the competent authority has deposed before the trial court to say that he had earlier refused the sanction against the officers of AAI but on the advisory of CVC, though which was not binding upon him, reviewed his earlier decision and granted sanction. Hence, as per Sri Srivastava, there is nothing remain to prove during the course of the trial so far as the validity of sanction is concerned.

30. Therefore, Sri Srivastava has prayed that the instant petition may be allowed and the impugned orders may be quashed/set aside.

31. Sri Ishan Baghel and Sri Mohammed Amir Naqvi, learned counsel for the petitioners in other connected petitions, have adopted aforesaid arguments of Sri Nandit Srivastava, learned Senior Advocate and made same prayer as has been prayed by Sri Srivastava.

32. *Per contra,* Sri Anurag Kumar Singh, learned counsel for the CBI has

placed reliance upon the decision of the Apex Court in re; **Vivek Batra** (supra), which has been referred by the learned court below while rejecting the application of the petitioner dated 4.10.2017 referring paras 12 & 14, which reads as under:-

"12. In view of the law laid down by this Court, as above, we are of the opinion that the sanction cannot be held invalid only for the reason that in the administrative notings different authorities have opined differently before the competent authority took the decision in the matter. It is not a case where the Finance Minister was not the competent authority to grant the sanction. What is required under Section 19 of the Prevention of Corruption Act, 1988 is that for taking the cognizance of an offence, punishable under Sections 7, 10, 11, 13 and 15 of the Act committed by the public servant, sanction is necessary by the Central Government or the State Government, as the case may be, and in the case of a public servant, who is neither employed in connection with affairs of the Union or the State, from the authority competent to remove him. Sub-section (2) of Section 19 of the Act provides that:

"19. (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 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."

14. Having gone through the copy of note-sheets relating to sanction in question placed before us as part of rejoinder-affidavit, it is evident that there had been proper application of mind on the part of the competent authority before the sanction was accorded. Our perusal of the said record does not indicate that any decision was taken by the competent authority, at any point of time, not to grant sanction so as to give the decision to grant sanction the colour of a review of any such earlier order, as has been contended before us. 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 the CVC to tender advice to the Central Government on such matters as may be referred to it by the Government."

33. Sri Anurag Kumar Singh has submitted that as per the Apex Court in administrative notings, if the different authorities have opined differently, is inconsequential since business of State being complicated it has to be conducted through agency of large number of officials and authorities and ultimate decision to accord sanction was taken by the Finance Minister, who was the competent authority and such authority has accorded sanction after proper application of mind, therefore, the sanction order may not be vitiated. In the same manner, as per Sri Anurag Kumar Singh, the earlier order of the competent authority was not order and it was only an opinion and after due deliberation with the CVC he has passed the order on 1.10.2013, therefore, in view of the dictum of the Apex Court in re; **Vivek Batra** (supra), the order dated 01.10.2013 is a proper order and may not be interfered with under Section 482 Cr.P.C.

34. While referring the decision of the Apex Court in re; **Parkash Singh Badal**

and Another vs. State of Punjab and Others, (2007) 1 SCC 1, he has submitted that the Apex Court is of the view that if the sanction for prosecution order has been passed after applying the judicious mind considering the facts and circumstances, the same may not be interfered with. Sri Anurag Kumar Singh has submitted that the aforesaid view has been taken by the Apex Court in subsequent judgments, one of which is **Dinesh Kumar vs. Chairman, Airport Authority of India and Another, (2012) 1 SCC 532**. Referring the decision of **Dinesh Kumar** (supra), Sri Anurag Kumar Singh has further submitted that the Apex Court has held that the ground of sanction can be raised in the course of trial.

35. While referring the decision of the Constitution Bench of the Apex Court in re; **Bachhittar Singh vs. State of Punjab and Another, AIR 1963 SC 395**, Sri Anurag Kumar Singh has submitted that the Apex Court has held that merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. The order has to be expressed in the name of Governor as required by Clause (1) of Article 166 of the Constitution of India and then, it has to be communicated. Therefore, Sri Singh has requested that the present petitions may be dismissed as there is no infirmity or illegality in the order dated 1.10.2013 granting sanction of prosecution by the competent authority.

36. Heard learned counsel for the parties and pursued the material available on record. The attention of the Court has been drawn towards Annexure No.5 to the petition, which is the statement of PW-1, the sanctioning authority i.e. Vijay Prakash Agrawal recorded before the court concerned. As per Sri Nandit Srivastava, the relevant fact that the competent authority had refused to grant sanction for prosecution against the present petitioners has come into the picture during the course of cross-examining the aforesaid authority i.e. PW-1. Such authority on his cross-examination has categorically admitted that on the basis of documents and report so produced by the CBI, he had refused the sanction to prosecute the petitioners. He had also admitted that after refusing the sanction for prosecution, no new fact or evidence was brought into his notice when he granted sanction for prosecution later on. Relevant typed portion of the statement of PW-1 is being reproduced herein below:-

"यह कहना सही है कि C.B.I. द्वारा भेजे गये दस्तावेज व रिपोर्ट के आधार पर पहली बार मैने अभियोजन स्वीकृत देने से मना कर दिया था। मैने अभियोजन स्वीकृत जारी करने से मना करने की नोटिंग / आदेश अपने तत्कालीन C.B.O. Smt. उपमा श्रीवास्तव को भेजा था। उन्होंने मेरे रिफूजल नोटिंग को C.B.C. को भेजा था।

दोबारा C.B.C. ने अभियोजन देने के लिए कहा इसलिए अभियोजन स्वीकृत दोबारा देखकर जारी किया।

यह कहना सही है कि पहली बार सेन्शन देने से मना करने में और दोबारा सेन्शन जारी करने में कोई नया तथ्य मेरे समक्ष प्रस्तुत नहीं किया गया।"

अभियोजन प्रदान करने की सामग्री वही थी।"

37. On being further asked from PW-1 as to whether the advisory of CVC was

binding upon him inasmuch as the PW-1 had granted sanction for prosecution against the petitioners after refusing the same, PW-1 has categorically submitted that such advisory is not binding upon him. Then a next question was put up from him that if such advisory was not binding upon him, then why he accepted such advisory and granted sanction for prosecution against the petitioners, PW-1 has reiterated that he is a Central Government officer and advisory of CVC is not binding upon him but normally the advisory of CVC is not ignored unless there is any specific reason to that effect. He has further stated that had he not received the advisory of CVC, he would have not granted sanction for prosecution against Sri G.R. Sharma. Relevant typed portion of the statement of PW-1 is being reproduced herein below:-

"स्वीकृत न जारी करके मैं अपने स्तर पर फाइल बन्द कर दी थी। यह कहना सही है कि मैं सेन्ट्रल गवर्नमेंट का कर्मचारी था और सी०बी०सी० की एडवाइजरी की बाद्धता न होने के बावजूद सी०बी०सी० की एडवाइजरी से डिफर नहीं करते हैं जब तक कि कोई विशेष कारण न दें।

यह कहना सही है कि यदि सी०बी०सी० की एडवाइजरी न आती तो मैं इस केस में जी० आर० शर्मा के विरूद्ध अभियोजन स्वीकृत जारी न करता।"

38. As per Sri Nandit Srivastava, as soon as the cross-examination of the competent authority i.e. PW-1 is completed, the present petitioner filed an Application for Holding/Declaring the Prosecution Sanction Invalid and Dropping of Applicant's Prosecution for want of valid Prosecution Sanction, which has been filed as Annexure No.6 to the petition. The aforesaid application of the petitioner was rejected vide order dated 6.1.2018, which is impugned in the leading petition.

39. Sri Nandit Srivastava has submitted that in view of the trite law that in case there is no fresh material or evidence with the prosecution or there was any cogent and relevant material with the prosecution but could not be put forth before the sanctioning authority thereby he refused the sanction for prosecution, on the basis of same material, the competent authority may not be permissible to review or reconsider the matter again granting sanction for prosecution. In the present case, the competent authority i.e. PW-1 had deposed before the court concerned to the effect that he had refused the sanction for prosecution in the issue in question and when he reviewed its refusal order, there was no fresh material or evidence put forth before him and he granted sanction only on the basis of advisory of the CVC, which was admittedly not binding upon him. He has also deposed that had such advisory of CVC been not received by him, he would have not granted sanction for prosecution in the issue in question. While rejecting the aforesaid application of the petitioner, the learned court below vide impugned order dated 6.1.2018 has observed on the basis of decision of the Apex Court in re; **Vivek Batra** (supra) that the question as to whether the competent authority has refused the sanction or not would be considered and established during the course of the trial and such ground of the petitioners would be decided before taking final decision in the issue, therefore, the judgment of the court, if any, shall be dependent upon the adjudication regarding the competence of the authority as to whether he had reviewed its earlier decision or he had granted sanction for prosecution vide subsequent order.

40. The Constitution Bench of the Apex Court in re; **R.S. Nayak** (supra) has categorically observed in para-19 that the existence thus of a valid sanction is a pre-requisite to the taking of cognizance of the enumerated offences alleged to have been committed by a public servant. The bar is to the taking of cognizance of the offence by the court. Therefore, when the court is called upon to take cognizance of such offences, it must enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to have been committed by him as public servant. Further, a trial without valid sanction has been held to be a trial without jurisdiction by the court.

41. In the same judgment vide para-23, the Apex Court has held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before granting sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirement must, therefore, be strictly complied with before any prosecution could be launched against the public servants.

42. The Apex Court in re; **Nanjappa** (supra) vide para 22, 26 & 27 has held as under:-

"22. ...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 the 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.

26. In State of Goa v. Babu Thomas, (2005) 8 SCC 130, also this Court after holding the order of sanction to be invalid, relegated the parties to a position, where the competent authority could issue a proper order sanctioning prosecution, having regard to the nature of the allegations made against the accused in that case.

27. The High Court has not, in our opinion, correctly appreciated the legal position regarding the need for sanction or the effect of its invalidity. It has simply glossed over the subject, by holding that the question should have been raised at an earlier stage. The High Court did not, it appears, realise that the issue was not being raised before it for the first time but had been successfully urged before the trial court."

43. Now, I will deal the submission of Sri Anurag Kumar Singh, learned counsel for the CBI, which has been made referring the decision of the Apex Court in re; **Bachhittar Singh** (supra) to the effect that merely writing something on the file does not amount to an order. I have perused the order dated 28.6.2013 of the competent authority i.e. Chairman, AAI wherein he has categorically indicated that he does not find any evidence on record, which is sufficient to grant the sanction for prosecution against the officers of AAI, however, the departmental enquiry can be conducted against such officers by the enquiry officer so nominated by the CVC to reach on just and fair conclusion. This order may not be treated, in any manner, as official notings, to the contrary, it is an unambiguous opinion of the competent authority given after applying the judicious

mind and perusing the material available on record, so it would be treated as an order.

44. In the case of **Vivek Batra** (supra), the Apex Court vide para-9 has considered that in that case, the competent authority is Finance Minister. Before the competent authority grants sanction in that case, there are some official notings as per the business of the State. For the convenience, para-9 is being reproduced herein below:-

*"9. There is no dispute that for an IRS officer cadre, controlling authority is the Finance Minister of the Government of India. In **Bachhittar Singh** v. State of Punjab, 1962 Supp (3) SCR 713, the Constitution Bench of this Court has held that the business of the State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities."*

45. The Apex Court in re; **Vivek Batra** (supra) has also considered the fact that after some official notings wherein there was some difference of opinion but finally the Finance Minister has granted sanction for prosecution after applying his mind, therefore, such sanction for prosecution is perfectly valid. In the present case, it is admitted at the Bar that the competent authority is Chairman, AAI, who had refused the sanction for prosecution on 28.6.2013 but on the advisory/recommendation of CVC, he reviewed his earlier decision and granted sanction on the file and formal order to that effect has been issued on 01.10.2013 (Annexure No.4).

46. Since the impugned order dated 01.10.2013 is subsequent order as considered above, and by means of this order, the competent authority has reviewed its earlier decision on the same material and without any further investigation, therefore, the same is not permissible under the law in view of the decision of the Apex Court in re; **Nishant Sareen** (supra). At this juncture, I am considering one judgment of the Bombay High Court in re; **Romesh Mirakhur vs. State of Maharashtra, 2017 SCC OnLine Bom 9552**, wherein the Bombay High Court while considering the judgments of **Nishant Sareen** (supra), **Vivek Batra** (supra), **Bachhittar Singh** (supra) etc. has observed in para 25 as under:-

"25. Perusal of the above observations, makes it clear that mere 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, it is permissible in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority. It is clear from the ratio of this decision that once the sanction order is refused, in the absence of fresh materials, it cannot be reviewed or reconsidered. In our considered opinion, this decision does not come to the rescue of the petition inasmuch as we have held that there is only one sanction order and the earlier documents, on which, the petitioner has heavily relied upon are merely tentative views or department notings."

47. As per Bombay High Court, only one sanction order was issued by the competent authority and others are departmental notings, therefore, despite the contention of the petitioner of that petition having carried weight to the effect that once a sanction order is refused, in absence

of fresh material, it cannot be reviewed or reconsidered, no relief was granted to the petitioner of that petition. However, the law is trite on the point that once the sanction order is refused, in absence of fresh material, it cannot be reviewed or reconsidered.

48. The Apex Court in re; **Gopikant Choudhary** (supra) has observed in para-5 that it is contended on behalf of the appellant that no fresh materials were collected subsequent to the earlier order refusing to sanction prosecution and the appropriate authority having applied its mind and having passed the said order, the subsequent order was wholly uncalled for and unjustified. Further in para-6, the Apex Court has observed that there has been no application of mind when the subsequent order was passed in 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.

49. The Apex Court in re; **Mohammed Iqbal Bhatti** (supra) has observed in para-22 that 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.

50. It appears that the competent authority considered the recommendation/advisory of the CVC which was not binding upon him. It would be apt to quote the observation of Lord Denning as under:-

"If the decision-making body is influenced by considerations which ought not influence it; or fails to take into account matters which it ought to take into account, the Court will interfere: see, Padfield v. Minister of Agriculture, Fisheries and Food, 1968 AC 997."

51. Therefore, in view of the above, I find that the impugned sanction order dated 1.10.2013 is not a valid order inasmuch as no fresh material was produced before the sanctioning authority and no further investigation of any kind whatsoever has been carried out by the investigating agency. Hence, the sanction order dated 1.10.2013 is unwarranted. The sanctioning authority has got no authority or power to review or reconsider its earlier order whereby he has refused to grant the sanction to prosecute the officers of AAI, the petitioners hereto.

52. Since the prosecution sanction order dated 1.10.2013 has not been issued properly, in conformity with the settled proposition of law, the cognizance order dated 12.11.2013 is also not sustainable in the eyes of law.

53. The order of the learned trial court dated 6.1.2018 whereby the application of the petitioner (Giri Raj Sharma) dated 4.10.2017 i.e. "Application for Holding/Declaring the Prosecution Sanction Invalid and Dropping of Applicant's Prosecution for Want of Valid Prosecution Sanction" has been rejected is also not proper, rather the same is

unwarranted and uncalled for inasmuch as the reasons so assigned vide order dated 6.1.2018 are not proper and justifiable.

54. Accordingly, I hereby quash/ set aside the impugned prosecution sanction order dated 1.10.2013.

55. I also hereby quash/ set aside the cognizance order dated 12.11.2013 and the order dated 6.1.2018 passed by the learned trial court.

56. I am not interfering with the charge sheet, therefore, it is open for the prosecution/investigating agency i.e. Central Bureau of Investigation to take appropriate steps in the issue in question, which are permissible under the law.

57. In view of the aforesaid terms, the petitions are **allowed.**

58. No order as to costs.

(2022)01ILR A244
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 17.12.2021

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Application U/S 482/378/407 No. 4542 of 2021
with
Application U/S 482/378/407 No. 4525 of 2021
with
Application U/S 482/378/407 No. 4539 of 2021

Shamshad Ahmad ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Vikas Vikram Singh, Adeel Ahmad, Akram Azad, Yash Bharadwaj

Counsel for the Opposite Parties:
G.A.

(A) Criminal Law - The Code of Criminal Procedure, 1973 - Section 482 - Inherent power - Sectio 220 - Trial for more than one offence , Indian Penal Code, 1860 - Sections 147, 148, 149, 332, 336, 307, 353, 341, 427, 188 & 120-B - Public Property (prevention of Damage) Act, 1985 - Section 3/4, Criminal Law (Amendment) Act, 1932 - Section 7 - Test of sameness - where there is proximity of time, or place or unity of purposes and design or continuity of action in respect of series of acts, the safe inference may be drawn that they form part of the same transactions - Merely because two separate complaints had been lodged, did not mean that they could not be clubbed together and one charge-sheet could not be filed. (Para -20,)

There are three FIRs - date of incidence same - Time of incidence different - protesters were opposing the implementation of CAA and NRC. - In all the three FIRs, the sections of I.P.C. are almost same except one or two charges - in first two FIRs Section 3/4 of Act, 1985 and Section 7 of Act, 1932 are involved - in third FIR Section 7 of Act, 1932 is not involved - In all the three FIRs, the complainants are Officers/ Officials of Police Station - three separate chargesheet filed. (Para - 32)

HELD:- Merely because three separate FIRs have been filed do not mean that they could not be clubbed together and one charge-sheet could not be filed. Direction issued for clubbing all the three Charge-sheets together in as much as the occurrence indicated in the second and third FIR is prima-facie appearing as a fall out of the first occurrence indicated in the first FIR. Cognizance order quashed. petitioner is directed to appear/ surrender before the learned court below and may file bail application. (Para - 34,37,40)

Three Petitions disposed of finally. (E-7)

List of Cases cited:-