

Court No. - 64**Case :-** APPLICATION U/S 482 No. - 38496 of 2023**Applicant :-** Rajendra Singh Verma**Opposite Party :-** C.B.I**Counsel for Applicant :-** Abhinav Gaur, Sr. Advocate, Vibhu Rai**Counsel for Opposite Party :-** Sanjay Kumar Yadav**Hon'ble Rajeev Misra, J.**

1. Heard Mr. Anoop Trivedi, the learned Senior Counsel assisted by Mr. Abhinav Gaur, the learned counsel for applicant and Mr. Sanjay Kumar Yadav, the learned counsel representing CBI.

2. Perused the record.

3. This application under section 482 Cr.P.C has been filed by charge-sheeted accused Rajendra Singh Verma, challenging the order dated 28.2.2023, passed by Special Judge, CBI Court No.2, Ghaziabad, in Special Case No. 01 of 2017 (CBI Vs. R.S. Verma and Others), under Sections 7 and 13(2) read with Section 13(1)(d) of The Prevention of Corruption Act, 1988, whereby the objections dated 8.2.2023, filed by charge sheeted accused before Court below to the sanction accorded by the alleged competent authority qua the criminal prosecution of the charge sheeted accused, vide order dated 25.2.2017, passed by Director (HR) BSNL, New Delhi (whereby the legality of the sanction order was questioned on the ground of jurisdiction of the authority, which has granted sanction in terms of Section 19 of the Prevention of Corruption Act) has been rejected by Court below.

4. It transpires from record that an F.I.R. dated 18.12.2016 was lodged by the CBI and was registered as Case Crime No. RC1202016A0019 of 2016 under Section 120-B IPC and Section 7 P.C. Act. Police Station- CBI ACB, Ghaziabad, District Ghaziabad. In the aforesaid F.I.R. two persons namely, Ram Vilas Verma, General Manger, BSNL, Bulandshahar and

R.S. Verma, DGM, BSNL, Bulandshahr, UP. have been nominated as named accused.

5. After completion of statutory investigation of aforesaid case crime number in terms of Chapter XII Cr.P.C., Investigating Officer submitted the Police report dated 17.2.2017, before the Special Court, CBI, Ghaziabad, whereby applicant along with co-accused has been charge sheeted under sections 7 and 13(2) read with Section 13(1)(d) Prevention of Corruption Act, 1988 .

6. Upon submission of aforementioned police report, the Special Judge, CBI in exercise of jurisdiction under section 190 (1)(b) Cr.P.C., took cognizance upon aforesaid police-report vide Cognizance Taking Order dated 25.3.2017.

7. Since the charge sheeted accused including the applicant are public servants, therefore, requisite sanction was required under Section 19 of the Prevention of Corruption Act for their criminal prosecution. The same was accorded, vide order dated 25.2.20217, passed by the Director (HR), BSNL, New Delhi. Copy of same is on record at page 53 of the paper book.

8. In view of the requisite sanction qua the criminal prosecution of charge sheeted accused including the applicant having been accorded, there was no impediment in the trial of the charge sheeted accused. Accordingly, the trial Judge proceeded with the trial.

9. However, during the course of trial, charge sheeted accused, filed an application in terms of Section 227 Cr.P.C. claiming discharge in aforementioned Special Case on various grounds. However, none of the grounds raised and urged on behalf of the charge sheeted accused in support of the discharge claimed by them found favour with the Court below. Resultantly, the discharge application filed by charge sheeted accused came to be rejected by Court below, vide order 2.2.2019. Subsequently, vide order dated 7.2.2019, another date was fixed in the

trial.

10. Feeling aggrieved by the above orders dated 2.2.2019 and 7.2.2019, passed by Court below, applicant approached this Court by means of an Application U/s 482 No. 8631 of 2019 (Rajendra Singh Verma Vs. Central Bureau of Investigation). Co-accused Ram Vilash Verma also approached this Court by filing an Application U/s 482 Cr.P.C. No. 11677 of 2019 (Ram Vilash Verma Vs. CBI and Another). Since both the applications arose out of a common order, therefore, they were heard together and dismissed by a common order dated 12.1.2023. For ready reference, the same is reproduced herein below:-

"1. Sri Manish Tiwari, learned Senior Advocate assisted by Sri Namit Srivastava and Sri Anoop Trivedi, learned Senior Counsel assisted by Abhinav Gaur, learned counsels for the applicant, Sri Gyan Prakash Srivastava, learned Deputy Solicitor General assisted by Sri Sanjay Yadav, learned counsel appearing for the CBI and perused the material on record.

2. Present application has been filed against the impugned orders dated 2.2.2019 and 7.2.2019 passed in Special Case No. 1 of 2017, under Sections 120B IPC read with Section 13(2) and 13(1)(d) and Section 7 of Prevention of Corruption Act, P.S. CBI/ACB, District Ghaziabad.

3. The applicant, Ram Vilash Verma was posted on the post of General Manager, Telecom and Sri R.S. Verma, who was posted on the post of Deputy General Manager in BSNL, Bulandshahr. In respect of Ram Vilash Verma, the applicant, this is the second round before this Court. Earlier he had approached before this Court by filing Application U/s 482 No. 23947 of 2018. The said application was rejected by this Court finding that there was enough material against the applicant for having prima-facie case against him.

4. As per the prosecution story, a complaint was made on 13.12.2016 by one Pawan Kumar, proprietor of M/s. Eagle Construction Company regarding demand of illegal gratification by R.S. Verma (DGM) and Ram Vilas Verma, General Manager of BSNL, Telecom, Bulandshahr @ 5% and 3% of the tender amount of Rs. 2,35,13,214/- awarded to the said complainant for seven blocks falling under the jurisdiction of GMTD, Bulandshahr. In the complaint, tenders were invited for laying optical fibre cable under National Optical Fibre Scheme in the seven blocks. The complainant had submitted bids for different blocks mentioned in the first

information report and qualified for technical bids and in financial bid he qualified as L-2 M/s Chaudhary Construction Company through proprietor Ashok Chaudhary as L-1 and as per terms and clause, L-1 was to execute 60% of the work and the remaining 40% work was to be awarded to L-2 for execution at the rate of L-1 bidder. The complainant was offered the contract for different blocks for different amounts as detailed in the FIR which were received by him through e-mail on 1.9.2016 and he submitted his willingness through e-mail on 3.9.2016 in the office of GMTD, Bulandshahr for execution of five works out of six works. When the complainant visited the BSNL office on 8.9.2016 and met the applicant, Ram Vilas Verma, General Manager and R.S. Verma, DGM, the DGM demanded illegal gratification @ 10% of offered tender cost which included the share of General Manager also. The complainant did not agree to pay illegal gratification as demanded. On 15.9.2016, he received six letters through e-mails cancelling the tenders, thereafter he met the DGM to enquire about the said cancellation who stated that the reason of cancellation was that he did not agree to pay 10% of the offered tender value by 14.9.2016, and therefore, the work allotted to him got cancelled.

5. It is alleged that the complainant expressed his inability to pay, he was suggested to pay @ 5% of the offered tender value to General Manager and 3% of the offered tender value to DGM. In the presence of the complainant, R.S. Verma, DGM persuaded the General Manager that the applicant would be payable @ 5% of offered tender value and pursuant to that General Manager agreed that fresh letters would be issued to him. However the complainant was not willing to pay the illegal gratification amount. On 25.10.2016 again offer was made to him for the said contract and various letters were issued to him and in response to those letters he had given his acceptance on 27.10.2016. The applicant persisted with their demand of illegal gratification and even refused to take bank guarantees for the work which was allotted to the complainant. It was communicated to him that if he did not pay the demanded amount, his remaining tenders would also be cancelled. He received an e-mail regarding cancellation of work on 28.11.2016 from the office of GMTD, verbal direction of General Manager and DGM, had executed approximately work of Rs. 60 lakhs in four blocks till then. Ultimately, the complainant brought to the notice of the higher authority regarding illegal demands and gratification to the applicant and the CBI thereafter laid a track team which was recovered Rs. 10,000/- bribe from the pocket of R.S. Verma (DGM). On 19.12.2016, CBI laid a trap against the applicant in which it failed to trap the applicant since he did not accept any

illegal gratification offered by the complainant. However, from the possession of the co-accused, it was caught red handed accepting Rs. 10,000/-.

6. This Court while rejection the Application under Section 482 No. 23947 of 2018, judgment and order dated 18.7.2018 has held as under:-

"From the perusal of material on record and looking into the facts of this case at this stage, it cannot be said that no offence is made out against the applicant. All the submissions made at Bar relate to the disputed questions of fact which cannot be adjudicated upon by this Court in proceedings under Section 482 Cr.P.C. At this stage, only prima facie case is to be seen in light of the law laid down by Hon'ble Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana and others Vs. Ch. Bhajan Lal and Others, AIR 1992 SC 604, State of Bihar and Another Vs. P.P. Sharma, AIR 1991 SC 1260 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and others AIR 2005 SC 9. The disputed defence of the accused cannot be considered at this stage.

The investigating Officer after having investigated the case had found the involvement of the present accused in this matter. From the contents of the FIR and other evidence on record, it is, prima facie, proved that a cognizable offence is made out against the accused.

The prayer for quashing the proceedings based on the supplementary chargesheet filed in the aforesaid case is hereby refused.

The application lacks merit and is accordingly dismissed."

7. Now, these petitions have filed against the impugned order, whereby the applications for discharge have been rejected. It is settled legal position that at the time of consideration of discharge application / framing of the charge, the only thing which is to be considered by the trial court is to peruse evidence and material and find out whether material and evidence available on record would point out strong motive against the accused for commission of the offence.

8. Sri Manish Tiwari, learned Senior Advocate assisted by Sri Namit Srivastava and Sri Anoop Trivedi, learned Senior Counsel assisted by Abhina Gaur, learned counsels for the applicant have submitted that demand is not proved against the accused and it is settled law for constituting offence under Section 13(2) and 13(1) (d) demand, acceptance and recovery are to be proved. It is further submitted that charges have been framed.

9. On the other hand, Sri Gyan Prakash Srivastava, learned Deputy Solicitor

General assisted by Sri Sanjay Yadav, learned counsel appearing for the CBI has submitted that the voice sample of the two applicants were sent for forensic examination and after examination, their voice has matched with the recorded voice which is part of the case diary.

10. Question whether there was demand bribe or not is a question of fact which can be decided in trial but when the one of the accused has been apprehended with the demanded money, allegedly this Court cannot quash the proceeding on the ground that there is no evidence regarding demand of bribe.

11. In view thereof, the application has no merit, and it is hereby dismissed. "

11. It appears that the order dated 2.2.2019 passed by trial court and the order dated 12.1.2023, passed by this Court were not challenged further. In view of above, the discharge claimed by charge sheeted accused in above noted special trial finally stood negated.

12. It is, however, apposite to mention here that before the claim for discharge was raised by charge sheeted accused, Court below, in exercise of jurisdiction under section 211 Cr.P.C., had already framed charges against charge sheeted accused. However, the claim for discharge raised by charge sheeted accused was rejected by Court below not on the ground of maintainability in view of the law laid down by Apex Court in **Ratilal Bhanji Mithani Vs. State of Maharashtra and Others 1979 (2) SCC 179** but on merits. The charges so framed were denied by charge sheeted accused including applicant who not only pleaded innocence but also demanded trial. Resultantly, the trial procedure commenced.

13. Prosecution in discharge of it's burden to bring home the charges so framed against charge sheeted accused, adduced P.W.1 Sujata T Ray, Director (HR) BSNL, New Delhi. It is this witness, who, vide order dated 25.2.2017, had accorded the requisite sanction as required under Section 19 of the Prevention of Corruption Act qua the criminal prosecution of the charge sheeted accused including the present applicant.

14. After the statement in chief of this witness was recorded, aforesaid witness was cross-examined on behalf of defence i.e. charge sheeted

accused. During her examination-in-chief, a specific question was posed to her qua the authority/jurisdiction with P.W.1 to accord sanction regarding criminal prosecution of charge sheeted accused including applicant. The same is explicit from the recital occurring at pages 68 and 69 of the paper book and is, accordingly, extracted herein under:

"अभियुक्तगण राजेन्द्र सिंह वर्मा एवं राम विलास वर्मा के विद्वान अधिवक्ता श्री वी० के० शर्मा द्वारा जिरह की गयी ।

मेरा वेतनमान स्वीकृति देते समय और आज भी 90 हजार बेसिक वेतन था । मुझे राजेन्द्र सिंह वर्मा के वेतन का ध्यान नहीं है कि उसका वेतन स्वीकृति देते समय कितना था । राजेन्द्र सिंह वर्मा सीनियर इन्जिनियर जो टाईम स्केल के अधिकारी थे जिस समय स्वीकृति दी गयी थी और वह डी जी एम का पदभार सभाल रहे थे । जिस समय मैंने संस्तुति कर्की उस समय मैं बी एस एन एल में थी और मुझे यह अधिकार था कि मैं सीनियर इन्जिनियर टाईम स्केल के अधिकारी को पदच्युत व नियुक्त कर सकती थी इस समय मैं सीनियर टाईम स्केल की रेंज बताने में असमर्थ हूँ कि वह कहां तक है । मुझे इस वक्त ध्यान नहीं है कि सी०बी०आई के द्वारा संस्तुति आवेदन के साथ मुझे अभियुक्त का पे स्केल संबंधी रिकार्ड भेजा था या नहीं । यह सही है कि बी एस एन एल के कर्मचारी पर भारत संचार लि० कन्डेंक्ट, डिसीप्लीन एवं अपीलेंट रूल 2006 लागू होता है । मुझे याद नहीं कि सीनियर टाईम स्केल 29100 से 54500 तक होता है या नहीं, अगर रूल्स में यह लिखा है तो होगा । मुझे आज याद नहीं है कि स्वीकृति देने की दिनांक को राजेन्द्र सिंह वर्मा का पे स्केल 32900 से लेकर 58000 था या नहीं । स्वीकृति देते समय सभी संबंधित नियमावली का मैंने अवलोकन किया था । यह कहना गलत है कि मैंने स्वीकृति देने से पूर्व सुसंगत नियमों का अवलोकन न किया हो । यह कहना गलत है कि मैं स्वीकृति देने के समय राजेन्द्र सिंह वर्मा को पदच्युत करने के लिए सक्षम अधिकारी न हूँ ।"

15. Since no specific or satisfactory reply came forward from P.W1 in her examination-in-chief before Court below regarding her authority to grant sanction qua the criminal prosecution of the charge sheeted accused, including the applicant under the relevant service rules, therefore, an objection dated 8.2.2023 was filed by the charge sheeted accused before Court below raising their objections to the sanction order dated 28.2.2019 qua the criminal prosecution of charge sheeted accused. The objection so raised was primarily on the ground that under the relevant service rules, the Director (HR), BSNL, New Delhi has no jurisdiction to accord sanction qua the criminal prosecution of applicant and other charge sheeted accused. The authority competent to grant sanction qua the

criminal prosecution of applicant and other charge sheeted accused is the Chief Managing Director, BSNL, New Delhi. Therefore, the objection to the aforementioned sanction order relating to the grant of sanction regarding the criminal prosecution of charge sheeted accused be decided first and only thereafter the trial of charge sheeted accused be proceeded with.

16. Aforementioned application dated 8.2.2023, filed by the charge sheeted accused was opposed by CBI. It, accordingly, filed its counter objections dated 17.2.2023 to the same. Same is on record at page 140 of the paper book. According to the CBI, the objection so filed by charge sheeted accused was said to be misconceived as no definite conclusion could be recorded on the basis of the objections so filed by charge sheeted accused or the examination-in-chief of PW-1 to that effect that Director (HR) BSNL, New Delhi is not the competent authority to grant sanction qua the criminal prosecution of charge sheeted accused. However, perusal of the counter objections filed by CBI will go to show that no specific pleadings has been raised in the said counter objections with reference to the relevant Service Rules/ the jurisdiction of Director (HR) BSNL, New Delhi to accord sanction regarding prosecution of charge sheeted accused.

17. However, upon evaluation and examination of the pleadings raised and the rival submissions urged with regard to the sanction order dated 25.2.2017, passed by Director (HR) BSNL, New Delhi granting sanction in respect of the criminal prosecution of charge sheeted accused including applicant, Court below came to the conclusion that no good ground has emerged, so as to allow the objections raised by the charge sheeted accused against the sanction order dated 25.2.2017. In view of above, court below i.e. Special Judge, CBI Court No.2 Ghaziabad, vide order dated 28.2.2023, rejected the objections raised by charge sheeted accused against the sanction order dated 25.2.2017.

18. Thus, feeling aggrieved by the above order dated 28.2.2023, passed by Court below, applicant, who is a charge sheeted accused, has now

approached this Court by means of present application under section 482 Cr.P.C.

19. Mr. Anoop Trivedi, the learned Senior Counsel for applicant assisted by Mr. Abhinav Gaur submits that it is an undisputed fact that applicant is an employee of Bharat Sanchar Nigam Limited (BSNL). The services of the employees of BSNL are governed by statutory Rules, known as **BSNL, Conduct, Discipline and Appeal Rules, 2006**. With reference to the schedule attached to aforementioned Rules (which is at page 138 of the paper book i.e. Schedule of Appointing, Disciplinary, Appellate and Reviewing Authorities in BSNL for Executives), he submits that the Appointing, Disciplinary, Appellate and Reviewing Authorities, in respect of the employees of BSNL, have been clearly defined. For ready reference, the same is extracted herein below:-

**“SCHEDULE OF APPOINTING, DISCIPLINARY, APPELATE AND REVIEWING
AUTHORITIES IN BSNL FOR EXECUTIVES**

**(FOR ABSORBED GROUP ‘A’ OFFICERS & EQUIVALENT DIRECTLY RECRUITED
EXECUTIVES)**

(A) for Minor Penalty:

Equivalent to Cadre in CDA	Pay Scale In CDA	Corresponding IDA Pay scale	Appointing Authority	Disciplinary Authority	Appellate Authority	Review Authority
JTS	8000-275-13500	13000-350 - 18250	Director	CGM/Sr.DDG /DDG.	Director	CMD
STS	10000-325-15200	14500-350-18700	Director	CGM/Sr.DDG/ DDG.	Director	CMD
JAG	12000-375-16500	16000-400-20800	CMD	CGM(for field unit) /Director (For BSNL CO)	Director(for field unit) /Director (For BSNL CO)	CMD (for field units)/ Board of Directors (for CO)
JAG(NFSG)	14300-400-18300	17500-400-22300	CMD	CGM(for field unit) /Director (For BSNL CO)	Director(for field unit) /Director (For BSNL CO)	CMD (for field units)/ Board of Directors (for CO)
SAG	18400-500-22400	23750-600-28550	CMD	Director	CMD	Board of Directors
HAG	22400-525-24500	25000-650-30200	CMD	Director	CMD	Board of Directors

(B) For Major Penalty:-

Equivalent to Cadre in CDA	Pay Scale In CDA	Corresponding IDA Pay scale	Appointing Authority	Disciplinary Authority	Appellate Authority	Review Authority
JTS	8000-275-13500	13000-350 - 18250	Director	Director	CMD	Board of Directors
STS	10000-325-15200	14500-350-18700	Director	Director	CMD	Board of Directors

JAG	12000-375-16500	16000-400-20800	CMD	CMD	Board of Directors	Board of Directors
JAG(NFSG)	14300-400-18300	17500-400-22300	CMD	CMD	Board of Directors	Board of Directors
SAG	18400-500-22400	23750-600-28550	CMD	CMD	Board of Directors	Board of Directors
HAG	22400-525-24500	25000-650-30200	CMD	CMD	Board of Directors	Board of Directors

Note: (1) Director means the Functional Director Dealing with the HR of the Company.

(2) All above mentioned officers and their equivalents shall exercise the powers of disciplinary authorities in respect of employees working under them. (includes officers on deputation/deemed deputation).

(3) Where officers of the level indicated in the schedule are not available, then the officers in the higher scale(s)/grade shall exercise these powers in the above schedule.

(4) Where pay scale is not figured in between above range of pay scales in the above schedule, the Disciplinary/Appellate/Reviewing Authorities of next higher pay scale shall be applicable.

(5) The above Disciplinary/Appointing/Appellate/Reviewing Authorities in the case of recently absorbed Group 'A'/ Direct recruited officers shall be exercised as per BSNL Conduct, Discipline and Appeal Rules 2006.

Note:- These Authorities will come in to force with effect from date of absorption/appointment of the officer in the company.”

20. With reference to aforementioned schedule attached to the relevant Service Rules governing the services of applicant, the learned Senior Counsel contends that such employees of BSNL, who are working in the pay scale of Rs. 12,000-375-16500/-, the Appointing Authority as well as Disciplinary Authority is the Chief Managing Director of BSNL. It is further submitted by the learned Senior Counsel that applicant was previously working in the pay scale of Rs. 16000-400-20800 as per the industrial DA pattern pay scale. Subsequently, the pay scale of Rs. 16,000-400-20,800, in which the applicant was working has been revised to pay band of Rs. 32,900-58,000, which fact is evident from the schedule attached to the letter dated 02.01.2017. Since the said letter has material bearing regarding the conduct of BSNL Organization itself regarding the issue raised herein above inasmuch as, the BSNL organization has given information to the CBI regarding the name of competent authority to grant sanction regarding the criminal prosecution of charge sheeted accused contrary to the statutory Service Rules. Therefore, the same is reproduced herein below in it's entirety:-

“MOST URGENT/CONFIDENTIAL

Nol. UPW/CGMT/Confidential/2016-17/

Dated: 02.01.20174

To,

The Head of Branch

CBI, ACB

Anti Corruption Branch,

1st Floor, Room No. 133-139

CGO Complex-1, Kamla Nehru Nagar,

Hapur Chungi, Ghaziabad.

Sub: Investigation of CBI case RC1202016A0019-Reg

Ref: Your No. 4131/RC1202016A0019 dated 28.12.2016

R/Sir,

With reference to your above mentioned letter required information's are as below:

Information in respect to Shri R.V. Verma, GMTD, Bulandshahar.

1. Date of Appointment :21/07/1986
2. Date of Birth : 16/06/1958
3. Date of Superannuation : 30/06/2018
4. Pay Scale and Grade Pay : 37,400-67,000 (GP-10,000), Rs. 1,99,600.00 as per 7th Pay Commission
5. Appointing Authorities as present : President of India
6. Disciplinary authority at present : President of India

Information in respect to Shri R.S. Verma, DGM, Bulandshahar.

1. Date of Appointment : 08/06/1982
2. Date of Birth : 28/11/1960
3. Date of Superannuation : 30/11/2020

4. Pay Scale and Grade Pay : Rs. 32,900-58,000

5. Basic Pay : Rs. 57,400.00

6. Appointing Authorities as present : Director (HR)

7. Disciplinary authority at present : CGMT, UP (West), Meerut for Minor Penalty and Director (HR) for Major Penalty.

With regard,

E4-E5 CSSS/PA/PS

Revised on : 01.08.11

**“SCHEDULE OF APPOINTING, DISCIPLINARY, APPELATE AND REVIEWING
AUTHORITIES IN BSNL FOR EXECUTIVES**

**(FOR ABSORBED GROUP ‘A’ OFFICERS & EQUIVALENT DIRECTLY RECRUITED
EXECUTIVES)**

(A) for Minor Penalty:

Equivalent to Cadre in CDA	Pay Scale In CDA	Corresponding IDA Pay scale	Appointing Authority	Disciplinary Authority	Appellate Authority	Review Authority
JTS	PB-3 15600-39100 GP-5400	24900-50500 (E3)	Director	CGM/Sr.DDG /DDG.	Director	CMD
STS	PB-3 15600-39100 GP-6600	29100-54500 (E4)	Director	CGM/Sr.DDG/ DDG.	Director	CMD
JAG	PB-3 15600-39100 GP-7600	32900-58000 (E5)	CMD	CGM(for field unit) /Director (For BSNL CO)	Director(for field unit) /Director (For BSNL CO)	CMD (for field units)/ Board of Directors (for BSNL CO)
JAG(NFSG)	PB-4 37400-67000 GP-8700	36600-62000 (E6)	CMD	CGM(for field unit) /Director (For BSNL CO)	Director(for field unit) /Director (For BSNL CO)	CMD (for field units)/ Board of Directors (for BSNL CO)
SAG	PB-4 37400-67000 GP-10000	62000-80000	CMD	Director	CMD	Board of Directors
HAG	PB-4 37400-67000 GP-12000	62000-80000*	CMD	Director	CMD	Board of Directors

(B) For Major Penalty:-

Equivalent to Cadre in CDA	Pay Scale In CDA	Corresponding IDA Pay scale	Appointing Authority	Disciplinary Authority	Appellate Authority	Review Authority
JTS	PB-3 15600-39100 GP-5400	24900-50500 (E3)	Director	Director	CMD	Board of Directors
STS	PB-3 15600-39100 GP-6600	29100-54500 (E4)	Director	Director	CMD	Board of Directors
JAG	PB-3 15600-39100 GP-7600	32900-58000 (E5)	CMD	CMD	Board of Directors	Board of Directors

JAG(NFSG)	PB-4 37400-67000 GP-8700	36600-62000 (E6)	CMD	CMD	Board of Directors	Board of Directors
SAG	PB-4 37400-67000 GP-10000	62000-80000	CMD	CMD	Board of Directors	Board of Directors
HAG	PB-4 37400-67000 GP-12000	62000-80000*	CMD	CMD	Board of Directors	Board of Directors

* Under Revision

Note:

(1) Director means the concerned Functional Director of the Company.

(2) All above mentioned officers and their equivalents shall exercise the powers of disciplinary authorities in respect of employees working under them. (includes officers on deputation/deemed deputation).

(3) Where officers of the level indicated in the schedule are not available, then the officers in the higher scale(s)/grade shall exercise these powers in the above schedule.

(4) Where pay scale is not figured in between above range of pay scales in the above schedule, the Disciplinary/Appellate/Reviewing Authorities of next higher pay scale shall be applicable.

(5) The above Disciplinary/Appointing/Appellate/Reviewing Authorities in the case of recently absorbed Group 'A'/ Direct recruited officers shall be exercised as per BSNL Conduct, Discipline and Appeal Rules 2006.

Note:- These Authorities will come in to force with effect from date of absorption/appointment of the officer in the company.”

21. On the above factual and legal premise as well as with reference to the deposition of P.W. 1 Sujata T Ray Director (HR) BSNL, New Delhi, in reply to the question posed to her in her examination-in-chief as noted herein above, the learned Senior Counsel for applicant contends that since the authority, which has accorded sanction qua the criminal prosecution of applicant and other charge sheeted accused i.e. Director (HR) BSNL, New Delhi is not the authority competent to accord sanction under the relevant Service Rules, therefore, the sanction order dated 25.2.2017, passed by Director (HR) BSNL, New Delhi qua the criminal prosecution of charge sheeted accused including the applicant is manifestly illegal being in excess of jurisdiction. Therefore, the trial of applicant and other charge sheeted accused is based upon an illegal sanction order. Consequently, the trial of the applicant and other charge sheeted accused cannot be sustained. As such the order impugned dated 28.2.2023 passed by Court below rejecting the objections raised by the charge sheeted accused to the sanction order dated 25.2.2017, as well as the sanction order dated 25.2.2017 are liable to be set aside/quashed by this Court.

22. It is then contended that Court below, while rejecting the objections dated 8.2.2023, filed by applicant and the other charge sheeted accused qua the sanction order dated 25.2.2017 has not adverted to the aforesaid aspect of the matter nor has it dealt with the same. To the contrary, the Court below has recorded findings to the effect that since the Director (HR) BSNL, New Delhi was competent to accord sanction qua the criminal prosecution of applicant and further take disciplinary action against the applicant, therefore, the order dated 25.02.2017 passed by aforesaid Authority, granting sanction for the criminal prosecution of applicant and other charge sheeted accused, is perfectly just and legal. The aforesaid finding returned by Court below is not preceded by any decision in the impugned order with reference to the relevant Service Rules. As such, the conclusion drawn by court below that there is no illegality in the sanction order dated 25.2.20217 and by the Director (H.R) BSNL New Delhi. The same is no only illegal but perverse inasmuch as, there is no reference of the relevant statutory service rules governing the services of the applicant nor a finding has been returned in the order impugned with reference to the schedule attached to the Service Rules or how the Director (HR) BSNL New Delhi exercised his authority in the matter relating to grant of sanction regarding criminal prosecution of employees in the status and pay-scale of applicant as well as the letter dated 02.01.2017 sent by the Deputy General Manager (HR) Administration, BSNL New Delhi to the CBI.

23. He, therefore, submits that Court below, while passing the order impugned dated 28.2.2023, has failed to consider the aforesaid aspects of the matter, which has vitiated the order impugned. Court below has, thus, not only committed a jurisdictional error in passing the order impugned but has exercised it's jurisdiction with material irregularity, which has vitiated the order impugned warranting interference by this Court.

24. It is lastly contended by the learned counsel for applicant that the sanction order dated 25.02.2017 passed by the Director (HR) BSNL, New

Delhi being illegal and without jurisdiction, has caused serious prejudice to the applicant inasmuch as, the applicant is facing criminal prosecution on the basis of an illegal sanction order. Furthermore, since challenge to the sanction order was laid at the first opportunity i.e. after the examination-in-chief of PW-1 Sujata T Ray, Director (HR), BSNL, was recorded that the objection to the sanction order was filed inasmuch as, it is PW-1, who, vide order dated 25.02.2017, had accorded sanction to the prosecution of charge sheeted accused including applicant. On the above premise, the learned Senior Counsel for applicant contends that rigors of prohibition contained in Sub-Section (3) of Section 19 of The Prevention of Corruption Act restraining the Courts from staying the proceedings or quashing the same on account of error, omission or irregularity shall not come into play in the present case.

25. Mr. Sanjay Kumar Yadav, the learned counsel representing CBI on the other hand has, however, opposed the present application under section 482 Cr.P.C. He submits that applicant has approached the Court below against the sanction order dated 25.2.2017 after expiry of a period of six years from the date of sanction order passed by Director (HR) BSNL, New Delhi, copy of which is on record at page 56 of paper book. He therefore, submits that objections dated 8.2.2023, filed on behalf of charge sheeted accused before Court below to the sanction accorded by the competent authority qua the criminal prosecution of applicant and other charge sheeted accused is hopelessly barred by laches. Since the laches in filing the aforementioned objections have not been sufficiently explained, therefore, the aforesaid objections were itself liable to be rejected on the ground of laches on the part of charge sheeted accused.

26. It is next contended by the learned counsel for CBI that applicant had earlier approached this Court by means of an Application under section 482 Cr.P.C. No. 87631 of 2021 (Rajendra Singh Verma Vs. CBI). This application was filed challenging the order dated 2.2.2019, passed by Court below rejecting the discharge application filed by applicant seeking

his discharge in aforementioned special case. On the above premise, he, thus, contends that it was open to the applicant to challenge the sanction order dated 25.2.2017, passed by Director (HR) BSNL, New Delhi, whereby requisite sanction in terms of Section 197 Cr.P.C./ Section 19 of Prevention of Corruption Act was accorded for the criminal prosecution of charge sheeted accused including the applicant. The grounds raised before Court below by means of the objections dated 8.2.2023, were available at the time of filing of aforementioned application. However, irrespective of above, no challenge was laid to the sanction order 28.2.2017, passed by Director (HR) BSNL, New Delhi. It is, thus, urged that charge sheeted accused/applicant has adopted a novel method for hampering the course of trial. As such, no interference is warranted by this Court in present application under section 482 Cr.P.C.

27. Even otherwise, the Court below has dealt with the objection dated 8.2.2023 filed by charge sheeted accused to the sanction order 28.2.20217 in the light of the material on record. The conclusion drawn by Court below that there is no merit in the objection dated 28.2.2023 is based upon cogent findings of fact which cannot be said to be illegal/perverse or erroneous.

28. Learned Deputy Solicitor General of India with reference to Section 19 and particularly Sub-Section (3) of Section 19 of The Prevention of Corruption Act contends that irrespective of the arguments raised by the learned Senior counsel in support of this application but without admission, since there is nothing to establish that failure of justice has occurred on account of irregularity in the grant of sanction, therefore, the present application is liable to be dismissed on the aforesaid ground also.

29. Having heard Mr. Anoop Trivedi, the learned Senior Counsel assisted by Mr. Abhinav Gaur, the learned counsel for applicant, Mr. Sanjay Kumar Yadav, the learned counsel for CBI and upon perusal of record this Court finds that it is an undisputed fact that applicant is a named and charge sheeted accused. It is also an undisputed fact that applicant is an

employee of BSNL. Since BSNL is a Public Sector Undertaking of the Government of India. Consequently applicant is a public servant. In view of above, sanction as required under section 197 Cr.P.C./Section 19 of the Prevention of Corruption Act for criminal prosecution of Government servants is mandatorily required in respect of present applicant also. Such sanction has to be accorded before the trial proceeds against such a charge sheeted accused. It is also an undisputed fact that requisite sanction qua the prosecution of the applicant and other charge sheeted accused namely, Ram Vilash Verma was accorded by Director (HR) BSNL, New Delhi, vide sanction order dated 28.2.20219, copy of which is on record at page 57 of the paper book. Subsequent to the aforementioned sanction order passed by Director (HR) BSNL, New Delhi, the trial of applicant and other charge sheeted co-accused commenced before Court below. The authority, who had granted sanction qua the criminal prosecution of applicant and other charge sheeted accused i.e. Sujata T. Ray, Director (HR) BSNL, New Delhi, deposed before Court below as P.W.1. This witness on a specific question put to him on behalf of defence i.e. charge sheeted accused during course of her examination-in-chief before Court below, could not justify the grant of sanction order dated 5.2.2017 to be within jurisdiction as per the provisions of relevant service Rules. The same has been duly reproduced herein above. It is on account of above that charge sheeted accused filed an objection dated 8.2.2023, before Court below, raising their objections to the sanction accorded by the alleged competent authority qua the criminal prosecution of charge sheeted accused before the trial court itself. Court below has rejected the same on the basis of irrelevant findings and not on the issue as to whether under the relevant Service Rules Director (HR) BSNL, New Delhi is the Authority competent to grant sanction nor has the Court below returned a finding that sanction was accorded on account of delegation of powers of Chief Managing Director, BSNL, New Delhi in favour of Director (HR) BSNL, New Delhi.

30. In view of the discussion made above, this Court finds that the following three questions arise for determination in this application under section 482 Cr.P.C.:

(i) Whether the Director (HR) BSNL, New Delhi, is the competent authority under the relevant service rules to accord the requisite sanction in terms of Section 197 Cr.P.C./ Section 19 Prevention of Corruption Act qua the criminal prosecution of charge sheeted accused including the applicant?

(ii) At what stage can an accused lay a challenge to the sanction order passed by the Competent Authority?

(iii). Whether any failure of justice has occurred on account of an illegal sanction order?

31. So far as question no. 1 is concerned, the competence of the Director (HR) BSNL, New Delhi to accord sanction in terms of Section 19 of The Prevention of Corruption Act to the criminal prosecution of charge sheeted accused including present applicant has been dealt with at length and in detail with reference to the provisions contained in the relevant Service Rules namely **BSNL, Conduct, Discipline and Appeal Rules, 2006** in paragraphs 19, 20, 21 and 22 of this judgment. On the basis of above, it can be safely concluded that the authority competent to grant sanction in terms of Section 19 of the Prevention of Corruption Act for the prosecution of charge sheeted accused including applicant is the Chief Managing Director (BSNL), New Delhi. As such, the sanction order dated 25.02.2017 passed by the Director (HR) BSNL, New Delhi is not only illegal but also in excess of jurisdiction.

32. With regard to question no. 2, it may be mentioned here that sanction order passed by the Competent Authority qua the criminal prosecution of a Government Servant is not immuned from challenge. However, the challenge to the sanction order has to be laid before the Court concerned in view of the law laid down by Apex Court in *Dinesh Kumar vs*

Chairman Airport Auth. Of India & Anr, (2012) 1 SCC 532.

33. In the present case, the challenge to the sanction order has been laid only after the cross examination of P.W.1 i.e. Sujat T Ray, Director (HR) BSNL, New Delhi, who had passed the order dated 25.2.2017, according to sanction to the criminal prosecution of applicant and other co-accused. Considering the facts and circumstances of the case, as noted herein above, it cannot be said that the application/objections dated 8.2.2023 filed by charge sheeted accused to the sanction order dated 25.2.2017 are barred by laches. Moreover, it is by now well settled that the issue of jurisdiction can be raised at any stage of the proceedings. Since the sanction order passed qua the criminal prosecution of applicant and other co-accused is manifestly without jurisdiction, therefore, the prosecution of applicant and other co-accused on the basis of an illegal sanction order cannot be allowed to be sustained on the ground of laches or the ground that a period of six years has rolled by since the date of the sanction order.

34. At this stage, it is useful to refer to the judgment of Supreme Court in **Mohd. Iqbal Ahmad Vs. State of Andhra Pradesh, (1979) 4 SCC 172**, wherein following has been observed in paragraph 3 of the report regarding the fate of the prosecution, where the sanction order is illegal:-

"A perusal by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab-initio"

35. Similarly, in **Dinesh Kumar (Supra)**, the Bench has dealt with the issue regarding challenge to the sanction order and also the grounds on which a sanction order can be challenged. The Bench, after detailed discussion, has, ultimately, delineated its view as follows in paragraph 10 of the report:-

"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 authorized 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."

36. In **Ashok Kumar Aggarwal Vs. Central Bureau Investigation, (2014) 14 SCC 295**, the Court dealt with the parameters regarding grant of sanction which must be satisfied before passing an order granting sanction for criminal prosecution of an accused. Paragraph 17 of the report throws light on the issue in hand, wherein Court has held that the competent Authority cannot even delegate it's power to some other officer or authority. The said observation has material bearing on the issue involved in present application also. In view of above, paragraph 17 of the report is reproduced herein under:-

"17. In view of the above, we do not find force in the submissions advanced by Shri Viswanathan, learned ASG that the competent authority can delegate its power to some other officer or authority, or the Hon'ble Minister could grant sanction even on the basis of the report of the SP. The ratio of the judgment relied upon for this purpose, in A. Sanjeevi Naidu V. Sate of Madra, is not applicable as in the case of grant of sanction, the statutory authority has to apply its mind and take a decision whether to grant sanction or not."

37. It is, thus, evident that as per the provision contained in **BSNL, Conduct, Discipline and Appeal Rules, 2006**, the Director (HR) BSNL, New Delhi was not competent to grant sanction in terms of Section 19 of the Prevention of Corruption Act qua the criminal prosecution of charge sheeted accused including applicant. As such, the impugned sanction order dated 25.02.2017 is not only illegal but also in excess of jurisdiction. Once the sanction order cannot be sustained, the consequential proceedings also cannot be sustained.

38. Having answered questions nos. 1 and 2 that have arisen in present application, the Court is now required to deal with the effect of Sub-Section (3) of Section 19 of The Prevention of Corruption Act upon the

sanction order dated 25.02.2017. Only after this Court has dealt with the same, conclusion can be drawn about the ultimate fate of the sanction order dated 25.02.2017.

39. Before proceeding to do so, it shall be useful to refer the provisions of Section 19 of The Prevention of Corruption Act. Accordingly, the same is reproduced herein below:-

“19. Previous sanction necessary for prosecution.— (1) No court shall take cognizance of an offence punishable under ²⁷[sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction ²⁸[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]—

(a) in the case of a person ²⁹[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 ⁴[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.

³¹[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 of a public servant, prescribe such guidelines as it considers necessary.

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

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

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

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when

the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

STATE AMENDMENTS

Uttar Pradesh.-- In its application to the State of Uttar Pradesh, in Section 19, in sub-section (1), after clause (c), the following clause shall be inserted, namely:-

“(d) Notwithstanding anything contained in clause (c), the State Government may, where it considers necessary so to do, require the authority referred to

in clause (c), to give previous sanction within the period of specified in this behalf and if the said authority fails to give the previous sanction within the period, the previous sanction may be given by the State Government.

Explanation.-- (1) For the purpose of this clause "authority" does not include any authority under the control of the Central Government.

(2) For removal of doubts it is hereby declared that the power of the State Government under this clause may be exercised also in a case where the authority referred to in clause (c) has earlier refused to give the previous sanction."

40. The effect of Section 19(3) of The Prevention of Corruption Act has been considered by the Supreme Court in the case of **Nanjappa Vs. State of Karnataka, (2015) 14 SCC 186** and **State of Karnataka, Lokayukta Police Vs. S. Subbegowda, 2023 SCC OnLine SC 911**. Since there is no congruence of opinion in the aforesaid judgments, therefore, the observations made by the Apex Court in aforementioned judgments qua the effect of Section 19(3) of the Prevention of Corruption Act in respect of the orders passed by the Trial Court during the pendency of trial are required to be dealt with.

41. The Apex Court in the case of **Nanjappa Vs. State of Karnataka, (2015) 14 SCC 186**, while considering the provisions of Section 19 of The Prevention of Corruption Act, dealt with the effect of an invalid sanction. Upon consideration of previous case law on the aforesaid issue in paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, the Bench, ultimately, delineated it's view in paragraphs 22 and 23. For ready reference, paragraphs 22 and 23 of the report are, accordingly, reproduced herein below:-

"22. 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.

23. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to [Section 19](#), which starts with a non-obstante clause. Also relevant to the same aspect would be [Section 465](#) of the Cr.P.C. which we have extracted earlier.”

42. Having answered the fate of the prosecution on account of an invalid sanction, the Bench, thereafter, proceeded to consider the effect of the rigours laid down in Sub-Section (3) of Section 19 of the Prevention of Corruption Act on the power of Superior Court to set aside an order passed by the trial Court in proceedings under the Prevention of Corruption Act.

43. Aforesaid issue has been succinctly dealt with by the Bench in paragraphs 23.1, 23.2, 23.3, 23.4, 23.5, 24, 25, 26 and 27. For ready reference the same are reproduced herein under:-

“23.1. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of [Section 19\(3\)](#), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to [Section 4](#), “error includes competence of the authority to grant sanction”. The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny.

23.2. A careful reading of sub-section (3) to [Section 19](#) would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal,

confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section(3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.3. Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.

23.4. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub- sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused.

23.5. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision.

24. In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. The trial Court held that the authority who had issued the sanction was not competent to do

so, a fact which has not been disputed before the High Court or before us. The only error which the trial Court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case. As observed by this Court in Baij Nath Prasad Tripathi's case (supra), the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent Court was bound to be invalid and non-est in law.

25. To the same effect is the decision of this Court in [Mohammad Safi vs. The State of West Bengal](#) (AIR 1966 SC 69). This Court observed:

7. "As regards the second contention of Mr. Mukherjee it is necessary to point out that a criminal court is precluded from determining the case before it in which a charge has been framed otherwise than by making an order of acquittal or conviction only where the charge was framed by a court competent to frame it and by a court competent to try the case and make a valid order of acquittal or conviction. No doubt, here the charge was framed by Mr. Ganguly but on his own view he was not competent to take cognizance of the offence and, therefore, incompetent to frame a charge. For this reason the mere fact that a charge had been framed in this case does not help the appellant.

8. In addition to the competent of the court, s. 403 of the Code speaks of there having been a trial and the trial having ended in an acquittal. From what we have said above, it will be clear that the fact that all the witnesses for the prosecution as well as for the defence had been examined before Mr. Ganguly and the further fact that the appellant was also examined under s. 342 cannot in law be deemed to be a trial at all. It would be only repetition to say that for proceedings to amount to a trial they must be held before a court which is in fact competent to hold them and which is not of opinion that it has no jurisdiction to hold them. A fortiori it would also follow that the ultimate order made by it by whatever name it is characterised cannot in law operate as an acquittal. In the Privy Council case it was interpreted by Sir John Beaumont who delivered the opinion of the Board to be an order of discharge. It is unnecessary for us to say whether such an order amounts to an order of discharge in the absence of any express provision governing the matter in the Code or it does not amount to an order of discharge. It is sufficient to say that it does not amount to an order of acquittal as contemplated by s. 403(1) and since the proceedings before the Special Judge ended with that order it would be enough to look upon it merely as an order putting a stop to the proceedings. For these reasons we hold that the trial and eventual conviction of the appellant by Mr. Bhattacharjee were valid in law and dismiss the appeal."

26. In *Babu Thomas* (supra) 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 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.”

44. It is thus apparent that where the sanction order is invalid and the said issue has been raised during the pendency of trial then in that eventuality the prohibition contained in Sub-Section (3) of Section 19 of PC Act restraining the Superior Courts from interference with an order passed by the Court in proceedings under the Prevention of Corruption Act, does not come into play.

45. However, in a subsequent judgment i.e. **State of Karnataka, Lokayukta Police Vs. S. Subbegowda, 2023 SCC OnLine SC 911**, the Bench has taken a different view than what was taken earlier in the case of **Nanjappa (Supra)**. The Bench referred to paragraphs 23.1, 23.2, 23.3, 23.4 and 23.5 of the judgment in **Nanjappa (Supra)**, the provisions contained in Section 465 Cr.P.C. and thereafter, expressed its views. For ready reference, Section 465 Cr.P.C. is reproduced herein below:-

“465. Finding or sentence when reversible by reason of error, omission or irregularity

465(1). Subject to the provisions hereinbefore contained, on finding sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

465(2). In determining whether any error, omission or irregularity in any

proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”

46. The Bench, thereafter, considered the import of Section 465 Cr.P.C. in paragraphs 13 of the report, which is extracted herein under:-

“13. In [State of M.P. vs. Bhooraji and Others](#)², this Court had an occasion to deal with the various aspects contained in [Section 465](#) of CrPC more particularly to deal with the expression “A failure of justice has in fact been occasioned” as contained therein. Since, the provisions contained in [Section 19\(3\)](#) of the Prevention of Corruption 2 (2001) 7 SCC 679 Act and in [Section 465\(1\)](#) of CrPC are pari materia, the observations made in [the said decision](#) would be relevant.

“14. We have to examine Section 465(1) of the Code in the above context. It is extracted below:

“465. (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.”

15. A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned “a failure of justice” the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.

16. What is meant by “a failure of justice” occasioned on account of such error, omission or irregularity? This Court has observed in [Shamnsaheb M. Multtani v. State of Karnataka](#) [(2001) 2 SCC 577: 2001 SCC (Cri) 358] thus: (SCC p. 585, para 23)

“23. We often hear about ‘failure of justice’ and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or

facile an expression which could be fitted in any situation of a case. 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 the Environment [(1977) 1 All ER 813 : 1978 AC 359 : (1977) 2 WLR 450 (HL)]). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.”

47. On the above premise, the Bench ultimately in paragraph 14, opined that the High Court has set aside the order passed by the Special Judge without adverting to the bar contained in Sub-Section (3) of Section 19 of PC Act. For ready reference, paragraph 14 of the report is reproduced herein below:-

“14. In the instant case, the Special Judge proceeded with the trial, on the second application for discharge filed by the respondent having not been pressed for by him. The Special Judge, while dismissing the third application filed by the respondent seeking discharge after examination of 17 witnesses by the prosecution, specifically held that the sanction accorded by the government which was a superior authority to the Karnataka Water Supply Board, of which the respondent was an employee, was proper and valid. Such findings recorded by the Special Judge could not have been and should not have been reversed or altered by the High Court in the petition filed by the respondent challenging the said order of the Special Judge, in view of the specific bar contained in sub-section (3) of Section 19, and that too without recording any opinion as to how a failure of justice had in fact been occasioned to the respondent-accused as contemplated in the said sub-section (3). As a matter of fact, neither the respondent had pleaded nor the High Court opined whether any failure of justice had occasioned to the respondent, on account of error if any, occurred in granting the sanction by the authority.”

48. In the case in hand, this Court finds that sanction accorded qua the criminal prosecution of applicant and other charge sheeted accused in terms of Section 19 of The Prevention of Corruption Act is illegal and without jurisdiction. What follows from above, has already been dealt with by the Bench in the case of **Nanjappa (Supra)**, wherein the Court held that the trial of an accused on the basis of invalid sanction is non-est in the eyes of law and therefore, shall not forbid second trial for the same offences upon grant of a valid sanction for such a prosecution (paragraph 22 of the judgment in **Nanjappa (Supra)**). The aforesaid proposition laid down by the Bench itself answers the effect of Section 465(2) Cr.P.C. and

also the rigors laid down in Sub-Section (3) of Section 19 of The Prevention of Corruption Act. As such, this Court has no hesitation to conclude that since the trial of applicant has commenced on the basis of an invalid sanction, the same has caused a failure of justice.

49. In view of the discussion made above, the present application succeeds and is liable to be allowed.

50. It is, accordingly, **allowed**.

51. The impugned order dated 28.2.2023, passed by Special Judge, CBI Court No.2, Ghaziabad, in Special Case No. 01 of 2017 (CBI Vs. R.S. Verma and Others) as well as the sanction order dated 25.2.2017, passed by Director (HR) BSNL, New Delhi insofar as it relates to the applicant, is, hereby, set aside. The applicant shall be discharged at this stage by the Trial Court. The prosecution of applicant shall commence before Court below only after proper sanction is accorded by the competent authority to the criminal prosecution of applicant in terms of the relevant Service Rules mentioned above.

52. Considering the facts and circumstances of the case, the cost is made easy.

Order Date :- 8.7.2024
Arshad