

**Court No. - 9**

**Case :-** MISC. BENCH No. - 3290 of 2021

**Petitioner :-** Jitendra Katiyar

**Respondent :-** State Of U.P.Thru.Addl.Chief  
Secy.Appoint.&Personnel,Lko&Ors

**Counsel for Petitioner :-** Nadeem Murtaza,Anjani Kumar  
Mishra,Shubham Tripathi

**Counsel for Respondent :-** G.A.,Shiv P. Shukla

**Hon'ble Ramesh Sinha,J.**

**Hon'ble Rajeev Singh,J.**

Heard Shri I.B. Singh, learned Senior Advocate assisted by Shri Anjani Kumar Mishra, learned counsel for the petitioner, Shri V.K. Shahi, learned Additional Advocate General assisted by Shri Anurag Verma, learned A.G.A. for the State (respondent Nos.1 & 2) and Shri Shiv P. Shukla, learned counsel for C.B.I. (respondent Nos.4 & 5).

2. The present petition has been filed by the petitioner, seeking quashing of the impugned sanction order dated 23.12.2020 passed by the respondent No.2 whereby, prosecution sanction has been granted under Section 197 of Cr.P.C r/w Section 19 of P.C. Act against the petitioner in R.C. No.0062010A0027 registered at Police Station Anti Corruption Bureau, Lucknow, C.B.I., under Sections 120-B, 409, 420, 468, 471, 477-A, 201, 411 I.P.C. & Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, with a further prayer of stay of arrest in the aforesaid case.

3. Learned counsel for the petitioner has vehemently argued that the impugned sanction order dated 23.12.2020, which has been passed by the respondent No.2 itself shows that though, the prosecution sanction has been granted against the petitioner for his prosecution under the offences in question, without the material evidences available on record. He has also drawn

attention of this Court towards, the para No.2 of the said order, by which it is apparent that the respondent No.2 had asked for documentary evidences for grant of prosecution against the petitioner, but the same was not supplied to him and the para No.3 of the said order, in which it is stated that said documents were not supplied to him and only a report was supplied to him by the C.B.I., which cause to show that there was no cogent material available before the authority concerned for consideration of grant of prosecution of the petitioner in the present case.

4. Learned counsel for the petitioner has also relied on the Circular No.08/05/15 dated 25.05.2019 issued by Central Vigilance Commission, New Delhi and submitted that as per the aforesaid circular, for grant of sanction of prosecution, entire relevant materials shall be placed before the authority concerned by the Investigating Agency and the authority shall apply its mind on the same for grant of sanction of prosecution.

5. Learned Additional Advocate General as well as learned counsel for the C.B.I. has submitted that at the time of passing the impugned sanction order dated 23.12.2020, entire material collected during the investigation was placed before the respondent No.2 and they further submitted that in the said order, due to inadvertent mistake, wrong fact was mentioned that only report submitted by the C.B.I. was available. Learned counsel for the C.B.I. has also submitted that an application has been moved before the authority concerned for necessary correction in the said order.

6. Considering the arguments of learned counsel for the parties, we find that the learned Additional Government Advocate and learned counsel for the C.B.I. failed to fortify their arguments as the impugned sanction order does not reflect so and it is also

evident that the Central Vigilance Commission, New Delhi under Section 8(1)(f) of the C.V.C. Act issued a circular No.08/05/15 dated 25.05.2015 and directed that the order of sanction should make it evident that the authority had been aware of all the relevant facts/materials and has applied its mind to all the relevant materials, and the **Hon'ble Supreme Court** in the case of **Mohinder Singh Gill vs. Chief Election Commissioner** reported in **1978 (1) SCC 405** also held that every order must stand on its own leg. The aforesaid circular No.08/05/15 passed by C.V.C., New Delhi is as under:-

**"CIRCULAR No.08/05/15 dated 25.05.2015**

*Sub: Guidelines to be followed by the administrative authorities competent to accord sanction for prosecution u/s.19 of the PC Act — 1988 - Hon'ble Supreme Court Judgment in Criminal Appeal No. 1838 of 2013 reg.*

*Ref: CVC Office Order No.31/5/05 dated 12.05.2005*

*CVC Circular No.07/03/12 dated 28.03.2012*

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*The Commission has been emphasising the need for quick and expeditious decisions on requests of sanction for prosecution received from CBI/other investigating agencies under the PC Act, 1988 and also to strictly adhere to the time limit of three months for grant or otherwise of sanction for prosecution laid down by the Hon'ble Supreme Court in Vineet Narain & Ors. Vs. Union of India (AIR 1998 SC 889).Despite these instructions and close monitoring of such pending matters: the Commission has been concerned with the serious delays persisting in processing requests for sanction for prosecution by the Competent Authorities.*

*2. The Commission had earlier vide its Office Order No. 31/5/05 dt. 12/05/2005 brought to the notice of all competent authorities guidelines to be followed by the sanctioning authorities. Subsequently, the Apex Court in the matter of Dr.Subramanian Swamy Vs. Dr.Manmohan Singh & another (Civil Appeal No. 1193 of 2012) referred to the above guidelines of CVC, and observed that, the aforementioned guidelines are in conformity with the law laid down by this Court that while considering the issue regarding grant or refusal of sanction, the only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The Competent Authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true". Thereafter, the Commission vide circular No.07/03/12 dated 28/03/2012 reiterated its guidelines dated 12/05/2005 and advised all concerned Competent Authorities to adhere to the time*

limits for processing requests for prosecution sanction under Section 19 of PC Act as laid down by the Apex Court in letter and spirit.

3. The Hon'ble Supreme Court has recently in Criminal Appeal No. 1838 of 2013 in the matter of CBI Vs. Ashok Kumar Aggarwal, in para 7 of the judgment observed that "there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. Sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the Government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty".

4. In para 8 of the above judgment, the Court has issued guidelines to be followed with complete strictness by the Competent Authorities while considering grant of sanction as below:-

a). The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction,

b). The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

c). The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

d). The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

e). In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

5. The Commission, would therefore, in terms of its powers and functions under Section 8(1) (f) of the CVC Act, 2003 direct all administrative authorities to scrupulously follow the guidelines contained in para 2 (i) to (vii) of Commission's circular No 31/5/05 dated 12/05/2005 and the recent explicit guidelines laid down for compliance by the Hon'ble Supreme Court at para 4 above, while considering and deciding requests for sanction for prosecution. Since non-compliance of the above guidelines vitiates the sanction for prosecution, therefore, competent sanctioning authorities should discharge their obligations with complete strictness and

would be held responsible for any deviation / non-adherence and issues questioning the validity of sanction arising at a later stage in matters of sanction for prosecution.

(J Vinod Kumar)

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It is also evident that at the time of passing of the impugned sanction order, entire material evidences collected by the C.B.I. was not produced before the authority concerned and only report submitted by the C.B.I. was available to him, and the submissions of learned counsel for the respondents is that the entire material was placed before the authority concerned cannot be justified in the eyes of law, hence, the impugned sanction order dated 23.12.2020 is hereby quashed with liberty to the respondent No.2 to pass fresh order in accordance with the law, within a period of two weeks from the date of production of certified copy of this order.

7. In the view of the above, the present petition is **disposed of**.

(Rajeev Singh,J.) (Ramesh Sinha,J.)

**Order Date :-** 9.2.2021

S. Shivhare