



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S. B. Criminal Miscellaneous Petition No. 3958/2025

Swapan Kumar S/o Late Shri Bijan Kumar Rai, aged 45 years, R/o  
8 Purvanchal School Road, Post Office Harthu, Police Station  
Garfa, 24 South Pargana, Kolkatta, West Bengal.

----Accused Petitioner

Versus

1. The State of Rajasthan represented through Public  
Prosecutor.

...Non-petitioner

2. Maniram @ Manoj S/o Shri Shishupal, aged 42 years, r/o  
Navalgadi, Police Station Nawalgarh, District Jhunjhunu.

....Complainant non-petitioner

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For Petitioner : Mr. A.K. Gupta Senior Advocate  
assisted by Mr. Rinesh Gupta  
Advocate, Mr. Saurabh Pratap Singh  
Chauhan Advocate, Mr. Gaurav  
Sharma Advocate, Mr. Sarwat Alam  
Advocate.

For Respondent No. 1 : Mr. Manvendra Singh Shekhawat,  
Public Prosecutor.

For Respondent No. 2 : Mr. Hem Bhushan Vedi Advocate and  
Mr. Virender Singh Advocate.

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**HON'BLE MR. JUSTICE ANAND SHARMA**

**Judgment**

**REPORTABLE**

**RESERVED ON** :: **30.10.2025**  
**PRONOUNCED ON** :: **04.11.2025**

1. The petitioner has approached this Court by way of the present criminal miscellaneous petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as 'BNSS') seeking quashing of the prosecution sanction order dated 28.01.2025 passed by the Commissioner of Police, Barrackpore, Kolkata in connection with FIR No. 46/2024 registered



at Police Station CPS, Jaipur, District ACB for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter to be referred as 'the Act of 1988').

2. First and foremost submission made by Shri A. K. Gupta, learned Senior Counsel appearing for the petitioner, is that the impugned sanction order suffers from patent illegality for lack of application of mind and non-consideration of material evidence before its issuance. It is contended that the prosecution sanction was granted mechanically, merely on the directions of the investigating officer and the sanctioning authority did not independently evaluate the facts or consult the concerned investigating officer before granting sanction.

3. Shri A.K.Gupta, learned Senior Counsel further submitted that no record such as the FIR, statements of witnesses or other material collected during investigation had been placed before the sanctioning authority. Consequently, the sanctioning authority could not have formed an independent satisfaction as mandated under Section 19 of the Act of 1988. Hence, the prosecution sanction order is *void ab initio* and cannot confer jurisdiction upon the trial court to take cognizance.

4. Learned Senior Counsel pressed his challenge by submitting that order dated 28.01.2025 does not disclose the basis of the sanction or any indication that the sanctioning authority evaluated the available material. The order merely recites that a request was received from the ACB for granting sanction and the sanctioning authority was directed to grant the same. The absence of reference to documentary or oral evidence collected during





investigation plainly reveals that the sanctioning authority acted on extraneous direction rather than an independent comprehension of facts. It was further submitted by Shri Gupta, learned Senior Counsel that the record bears no indication that the complete investigation file or relevant materials were placed before the sanctioning authority prior to issuance of the prosecution sanction. Consequently, the statutory safeguard enshrined under Section 19 of the Act of 1988 stands violated, which is causing serious prejudice and miscarriage of justice to the petitioner.

5. Reliance has been placed by Shri A.K. Gupta, learned Senior Counsel upon several precedents of the Hon'ble Supreme Court, particularly **Anirudhsinhji Karansinhji Jadeja & Another Vs. State of Gujarat (1995) 5 SCC 302**, in order to support his contention that the prosecution sanction granted without consultation with the investigating officer or proper assessment of material reflects non-application of mind. Learned Senior Counsel heavily relied upon Constitutional Bench judgment of the Hon'ble Supreme Court in the case of **Matajog Dobey v. H.C. Bhari, (1955) 2 SCC 388** to press upon his submission that prosecution sanction is not a mere formality, but a safeguard for public servants against frivolous prosecution. Further, reliance was placed by Shri A.K. Gupta, learned Senior Counsel on **Central Bureau of Investigation v. Ashok Kumar Aggarwal, (2014) 14 SCC 295** to contend that prosecution sanction must manifest due deliberation and application of mind on all relevant materials.

6. Per contra, Shri Manvendra Singh Shekhawat, learned Public Prosecutor and Shri Hem Bhushan Vedi, learned counsel for





Respondent No. 2-complainant vehemently opposed the petition and submitted that the prosecution sanction was granted by the competent authority after due consideration of records and, therefore, the same cannot be nullified under Section 528 BNSS. It was argued that the issue of validity of prosecution sanction can be examined only during trial as per the settled position of law and at no point of time, the petitioner has raised any such objection before the trial court. It is submitted that during the pendency of the present petition, after framing of charges against the petitioner, trial court has proceeded further and the case is at the stage of recording statements of the prosecution witnesses. Therefore, at this stage, no interference, on the ground of alleged error or validity in granting prosecution sanction, can be made in the instant criminal misc. petition.

7. Shri Shekhawat, learned Public Prosecutor resisted the petition contending that the order of prosecution sanction was issued by the competent authority after considering the complete record of the investigation, including statements, proof of demand, recovery as well as motive. It is argued that objection to the prosecution sanction is unwarranted and uncalled for at this stage and if at all, the petitioner is aggrieved, such objections may be raised during the trial.

8. In support of their submissions, learned Public Prosecutor and learned counsel for Respondent No. 2-complainant have placed reliance on **Central Bureau of Investigation v. Ashok Kumar Aggarwal (supra), State of Maharashtra through Central Bureau of Investigation v. Mahesh G. Jain**





**(2013) 8 SCC 119, State of Chhattisgarh & Another v. Aman Kumar Singh & Others (2023) 6 SCC 559, Dashrath v. State of Maharashtra 2025 SCC OnLine SC 1054, State of Punjab v. Hari Kesh 2025 SCC OnLine SC 49, Dinesh Kumar vs Chairman, Airport Authority of India & Another, (2012) 1 SCC 532 and State Rep. by the Deputy Superintendent of Police, Vigilence & Anti Corruption Chennai City-I Department Vs G.Easwaran, 2025 SCC OnLine SC 643.**

9. As the controversy revolves around Section 19 of the Act of 1988, it would be relevant to refer the same, as under:

**"19. Previous sanction necessary for prosecution.—(1)** No court shall take cognizance of an offence punishable under <sup>2</sup>[sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction <sup>3</sup>[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-

(a) in the case of a person <sup>4</sup>[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 <sup>1</sup>[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.

<sup>2</sup>[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, <sup>3</sup>[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.”*

10. Bare perusal of the aforesaid provision would make it clear that sanction under Section 19 of the Act of 1988 is *sine quo non* for prosecuting any public servant and it provides shield to the honest public officers from vexatious prosecutions. However, at the same time, Section 19(3) and Section 19(4) of the Act of 1988 play critical roles in regulating the process relating to sanctions for prosecuting public servants accused of corruption. Section 19(3) of the Act of 1988 states that the absence, error or irregularity in sanction cannot by itself overturn findings, sentences, or orders passed by a court unless it results in a failure of justice. This provision serves as a significant safeguard against technicalities being used to derail substantive justice. Section 19(3) of the Act of 1988 aims to prevent accused persons from escaping liability merely due to procedural lapses in sanction, thereby promoting effective prosecution while ensuring that only genuine lapses with substantial injustice can attract interference in the proceedings.





11. Section 19(4) of the Act of 1988 restricts the grounds on which proceedings under the Act can be stayed, revised or quashed. It allows only limited scope for interfering in criminal proceedings, particularly where failure of justice has occurred. This ensures trials are concluded efficiently, without undue interference based on interlocutory issues or routine errors in sanction that do not materially affect justice. The provision works as a legislative check against delay tactics or frivolous objections at various stages that may unnecessarily prolong corruption cases and undermine public trust in anti-corruption mechanisms.

12. Conjoint reading of both Sections 19(3) and 19(4) of the Act of 1988 demonstrates the legislative intent to curb procedural and technical objections from stalling corruption trials. By requiring a meaningful demonstration of "failure of justice" to challenge the validity of sanction, the Act of 1988 preserves the integrity of anti-corruption proceedings, ensures public servants are both protected against harassment and held to account for genuine misconduct and reinforces the primacy of substantive justice over procedural loopholes.

13. The foundational argument of the petitioner is the allegation that the prosecution sanction order was passed mechanically, without due application of mind. It is contended that since the sanctioning authority failed to consider the material documents and evidence gathered during investigation, the prosecution sanction has rendered as void and illegal.

14. Having considered the record and submissions of the learned counsel for the parties, it emerged that the trial court has





already taken cognizance of the offence on 22.05.2025 and thereafter, during the pendency of the petition, charges have been framed against the petitioner and the case is at the stage of recording of statements of prosecution witnesses. Learned Senior Counsel appearing for the petitioner has also not disputed that the question of validity of sanction for prosecution order has not been raised by the accused petitioner at any stage before the trial court.

15. Learned Senior Counsel appearing for the petitioner, while referring the judgment of **Matajog Dobey (supra.)** emphasised that question of grant of prosecution sanction can be raised at any stage. Meticulous examination of the above Constitutional Bench judgment of the Hon'ble Supreme Court would reveal that the Hon'ble Apex Court has held that the object of prior sanction is to afford protection to honest officers from vexatious prosecution by ensuring consideration by a responsible authority. However, as a matter of fact, it is significant to point out that in the case of **Matajog Dobey (supra)**, the Hon'ble Supreme Court was considering a case where no sanction whatsoever was procured by the prosecuting agency for prosecuting a public servant. Para 6, 13 and 19 of the above judgment are relevant, which are as under:-

*"6. The two complaints were sent over for judicial inquiry to two different Magistrates. On 21-2-1951, the Magistrate held on Agarwala's complaint that a prima facie case had been made out under Section 323 against all the four accused and under Section 342 against the two policemen. On this report, summonses were directed to issue under Section 323 against all the accused. On 1-5-1951, two prosecution witnesses were examined in chief and the case stood adjourned to 22-5-1951. It was on this latter date that the 1st accused Bhari filed a petition, taking the objection of want of sanction under Section 197 of the Criminal Procedure Code. The objection was upheld and all the accused discharged on 31-5-1951. Nandram Agarwala went up to the High Court in revision, but the order of the Presidency Magistrate was affirmed.*





**13.** *The minor contentions may be disposed of at the outset. Even if there was anything sound and substantial in the constitutional point about the vires of Section 5(1) of the Act, we declined to go into it as it was not raised before the High Court or in the grounds of the petition for special leave to appeal. Article 14 does not render Section 197 of the Criminal Procedure Code ultra vires as the discrimination is based upon a rational classification. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that Section 197 of the Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction. If the Government gives sanction against one public servant but declines to do so against another, then the Government servant against whom sanction is given may possibly complain of discrimination. But the petitioners who are complainants cannot be heard to say so, for there is no discrimination as against any complainant. It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official. Further, we are not now concerned with any such question. We have merely to see whether the court could take cognizance of the case without previous sanction and for this purpose the court has to find out if the act complained against was committed by the accused while acting or purporting to act in the discharge of official duty. Once this is settled, the case proceeds or is thrown out. Whether sanction is to be accorded or not is a matter for the Government to consider. The absolute power to accord or withhold sanction conferred on the Government is irrelevant and foreign to the duty cast on the court, which is the ascertainment of the true nature of the act.*

**19.** *Is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained? At first sight, it seems as though there is some support for this view in Hori Ram case<sup>2</sup> Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 : (1939) 1 FCR 159 and also in Sarjoo Prasad v. King Emperor<sup>7</sup> 1945 SCC OnLine FC 10 : (1945) 7 FCR 227. Sulaiman, J. in Hori Ram case<sup>2</sup> says that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution. Varadachariar, J. also states that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceeding. But a careful perusal of the later parts of their judgments shows that they did not intend to lay down any such proposition. Sulaiman, J. refers (FCR at p. 179) to the prosecution case as disclosed by the complaint or the police report and he winds up the discussion in these words: (Hori Ram case<sup>2</sup> SCC OnLine FC)*

*"... Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will*





*have to be dropped and the complaint dismissed on that ground."*

*The other learned Judge also states at: (Hori Ram case<sup>2</sup> SCC OnLine FC)*

*"... At this stage we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him "in the execution of his duty"."*

*It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."*

16. Thus, the observation given by the Hon'ble Supreme Court in para 19 of the judgment of **Matajog Dobey (supra)** that the question can be raised at any stage, is required to be understood in the facts and circumstances of that case where no sanction whatsoever was obtained. Fulcrum of the Constitutional Bench's judgment is that the prosecution sanction is mandatory to prosecute public servants in relation to any offence committed by them while discharging their duties and in case, no such sanction has been obtained by the prosecution agency, then such question of want of sanction can be raised at any time. Whereas, facts of instant case are totally different and admittedly, sanction for prosecution of petitioner was there on record even before taking cognizance and the petitioner has rather raised question of validity of such sanction order in the instant petition, therefore, the observations given by the Hon'ble Supreme Court in the case of **Matajog Dobey (supra)** are not at all attracted in the present matter.





17. Another judgment cited by learned Senior Counsel appearing for the petitioner in the case of **Anirudhsinhji Karansinhji Jadeja & Another (supra)** is also not applicable in the instant case, for the reason that in the said case, the Hon'ble Supreme Court was considering a case, where power conferred upon one authority under statute was exercised by the another authority. In that case, sanction for prosecution was required to be accorded by the DSP, but he did not exercise his jurisdiction and abdicated his powers to another authority. Under such circumstances, the Hon'ble Supreme Court observed as under:

*"8. In the instant case, a specific point has been taken in the special leave petition that prior approval, as required by Section 20-A(1) of TADA, was not taken. This section was introduced to safeguard the citizens from vexatious prosecution under TADA. The Designated Court had failed to appreciate that the DSP had not given prior approval and the case of the appellants under TADA was, therefore, non est.*

*9. This ground appears to be of substance. The DSP did not exercise the jurisdiction vested in him under Section 20-A(1). On the contrary, he abdicated his jurisdiction and referred the matter to the Additional Chief Secretary, Home Department, on 17-3-1995, requesting for permission to invoke the provisions of Sections 3 and 5 of TADA by sending a report for this purpose as under:*

.....  
.....

*10. The Deputy Director General of Police and the Additional Director General of Police also sent fax messages to the Chief Secretary on 18-3-1995, requesting him to grant the prayer of the DSP and permit him to proceed under TADA. On 18-3-1995, the Additional Chief Secretary, Home Department, gave sanction/consent to apply provisions of TADA; and the District Superintendent of Police, Rajkot Rural, was informed accordingly. There is nothing in the Act to suggest that the Additional Chief Secretary has to grant permission to the District Police Superintendent for proceeding under TADA.*

*11. The case against the appellants originally was registered on 19-3-1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20-A(1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some*





*higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20-A(1) was not exercised by the DSP at all."*

18. In the present case, question of competence of the authority, who issued the order of sanction for prosecution or even any issue of abdication of power is not under consideration. Hence, the observations given by the Hon'ble Supreme Court in para 15 of the judgment in the case of **Anirudhsinghi Karansinhji Jadeja (supra)** would not be attracted in the present matter.

19. The Hon'ble Supreme Court in **Central Bureau of Investigation v. Ashok Kumar Aggarwal (supra)** held that challenge to the prosecution sanction should ordinarily be raised at the stage of trial. Following paras of the above judgment being relevant, are quoted below:-

*"18. This Court in Ashok Tshering Bhutia v. State of Sikkim<sup>14</sup> (2011) 4 SCC 402 : (2011) 2 SCC (Cri) 258 : (2011) 2 SCC (L&S) 697, while dealing with the issue whether invalid sanction goes to the root of jurisdiction of the Court which would vitiate the trial and conviction, held (SCC p. 411, para 25) that in the absence of anything to show that any defect or irregularity therein caused a failure of justice, the contention was without any substance. (emphasis supplied) The failure of justice would be relatable to error, omission or irregularity in the grant of sanction. However, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice or has been occasioned thereby.*

*19. The court must examine whether the issue raised regarding failure of justice is actually a failure of justice in the true sense or whether it is only a camouflage argument. The expression "failure of justice" is an extremely pliable or facile an expression which can be made to fit into any case. The court must endeavour to find out the truth. There would be "failure of justice" not only by unjust conviction but also by acquittal of the guilty as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be overemphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence. "Prejudice" is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused*





is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under legal jurisprudence, the accused can seek relief from the court. (Vide *Nageshwar Shri Krishna Ghobe v. State of Maharashtra*<sup>15</sup> (1973) 4 SCC 23 : 1973 SCC (Cri) 664 : AIR 1973 SC 165, *Shamnsaheb M. Multtani v. State of Karnataka*<sup>16</sup> (2001) 2 SCC 577 : 2001 SCC (Cri) 358, *State v. T. Venkatesh Murthy*<sup>17</sup> (2004) 7 SCC 763 : 2004 SCC (Cri) 2140, *Rafiq Ahmad v. State of U.P.*<sup>18</sup> (2011) 8 SCC 300 : (2011) 3 SCC (Cri) 498, *Rattiram v. State of M.P.*<sup>19</sup> (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481, *Bhimanna v. State of Karnataka*<sup>20</sup> (2012) 9 SCC 650 : (2012) 3 SCC (Cri) 1210, *Darbara Singh v. State of Punjab*<sup>21</sup> (2012) 10 SCC 476 : (2013) 1 SCC (Cri) 1037 : AIR 2013 SC 840 and *Union of India v. Ajeet Singh*<sup>22</sup> (2013) 4 SCC 186 : (2013) 2 SCC (Cri) 347 : (2013) 2 SCC (L&S) 321)

**29.** The High Court further held : (*Ashok Kumar Aggarwal case*<sup>1</sup> *Ashok Kumar Aggarwal v. CBI*, (2008) 61 AIC 570 (Del), AIC p. 578, paras 31-33)

"31. In the present case, petitioner has raised objections to the validity of sanction at the very initial stage i.e. even before arguments on charge could be advanced. However, the trial court has not recorded any finding in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19 of the Act, that non-production of the relevant material before the sanctioning authority at the time of grant of sanction 'has not resulted in a failure of justice'.

32. Under these circumstances, it would be appropriate to require the trial court to record the findings in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19 of the Act.

33. Hence, the impugned order, passed by the learned Special Judge is set aside and the matter is remanded back to the trial court with direction to record a finding in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19 of the Act. The trial court, if it deems fit, for this purpose, can examine the sanctioning authority as a witness even before charge, keeping in view the provisions of Section 311 CrPC."

**30.** The aforesaid concluding paragraphs of the judgment of the High Court give rise to questions as to what is the proper stage to examine the issue of sanction; as well as relating to the applicability of the provisions of Section 19(3)(b) and 19(4) of the 1988 Act.

**58.** The most relevant issue involved herein is as at what stage the validity of sanction order can be raised. The issue is no more *res integra*. In *Dinesh Kumar v. Airport Authority of India*<sup>37</sup> (2012) 1 SCC 532 : (2012) 1 SCC (Cri) 509 : (2012) 2 SCC (L&S) 532 : AIR 2012 SC 858, this Court dealt with the issue and placing reliance upon the judgment in *Parkash Singh Badal v. State of Punjab*<sup>38</sup> (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274], came to the conclusion as under : (*Dinesh Kumar case*<sup>37</sup>, SCC p. 536, para 13)

"13. In our view, having regard to the facts of the present case, now since cognizance has already been taken against the appellant by the trial Judge, the High





*Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the trial court and giving liberty to the appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of this Court in Parkash Singh Badal<sup>38</sup>...." (emphasis supplied)*

**59.** *Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pre-trial stage."*

20. In the case of **State of Bihar & Others v. Rajmangal Ram, (2014) 11 SCC 388**, while referring the earlier judgments, the Hon'ble Supreme Court observed that any error or omission in grant of sanction is a procedural error and would not cause any failure of justice. Even otherwise, in the present matter, the petitioner has utterly failed to make out any case of failure of justice while alleging the irregularities in order of prosecution sanction.

21. Similarly, in **State Rep. by the Deputy Superintendent of Police, Vigilance & Anti Corruption Chennai City-I Department Vs G.Easwaran (supra.)**, the Hon'ble Supreme Court clarified that the sanction's validity can be tested during trial when the original file is produced. Following paras of the above judgment, being relevant, are reproduced as under:

**"12.** *Learned counsel for the State submits that the conclusions drawn by the High Court about the impossibility of granting sanction on 08.07.2013 when the government received the request only on 20.12.2013, was not raised at any point of time, neither in the discharge application before the Special Judge nor before the High Court in revision petition. He further submits that the argument is not even mentioned in the quashing petition under Section 482 Cr.P.C. filed before the High Court. He also submits that this question was not put to LW-1, whose statement is the sheet anchor for the High Court to question the validity of the sanction. The State also explained the actual position in the Special Leave Petition. It is explained that the misconception about the dates arose because of a typographical mistake of mentioning the letter requesting sanction as 20.12.2013, instead of the*





correct date being 20.02.2013. This is typically the problem that would arise when the High Court seeks to interdict proceedings and quash the criminal case before the relevant material to support the case of the prosecution is brought on record.<sup>11</sup> Findings regarding the legality, validity, or delay in grant of sanction were premature. Validity of the sanction is an issue that must be examined during the course of the trial. In *Dinesh Kumar v. Chairman, Airport Authority of India*<sup>12</sup> (2012) 1 SCC 532, this principle is reiterated as follows:

**"10.** In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind—a category carved out by this Court in *Parkash Singh Badal*<sup>13</sup> (2007) 1 SCC 1, the challenge to which can always be raised in the course of trial."

(emphasis supplied)

**13.** Similar view was taken in *Director, Central Bureau of Investigation v. Ashok Kumar Aswal*<sup>14</sup> (2015) 16 SCC 163, where it was held that:

**"15.** All the above apart, time and again, this Court has laid down that the validity of a sanction order, if one exists, has to be tested on the touchstone of the prejudice to the accused which is essentially a question of fact and, therefore, should be left to be determined in the course of the trial and not in the exercise of jurisdiction either under Section 482 of the Criminal Procedure Code, 1973 or in a proceeding under Articles 226/227 of the Constitution."

(emphasis supplied)

**14.** Thus, there is no doubt that the High Court committed an error in quashing the prosecution on the ground that the sanction to prosecute is illegal and invalid. In conclusion, we find that the objections raised in the revision petition against the Special Court's order dismissing the discharge application were identical to the grounds raised in the petition under Section 482 Cr.P.C., from which the present appeal arises. Second, apart from being congruent and overlapping, the respondent could not demonstrate any material change in facts and circumstances between the dismissal of the revision petition by the High Court and the filing of the quashing petition under Section 482 Cr.P.C. Third, the validity of the sanction can always be examined during the course of the trial and the problems due to the typographical error as alleged by the State could have been explained by producing the file at the time of trial. Fourth, it is settled that a mere delay in the grant of sanction for prosecuting a public authority is not a ground to quash a criminal case."

22. A perusal of the impugned order dated 28.01.2025 shows that the authority recorded that after assessment of material aspects, sanction to prosecute was accorded. The order, though





concise, cannot be branded mechanical merely for brevity when there is nothing to indicate mala fide or complete absence of material consideration.

23. As held in **State of Karnataka Lokayukta Police v. S. Subbegowda, 2023 SCC OnLine SC 911**, procedural irregularities or administrative omissions in sanction do not vitiate prosecution unless they result in failure of justice. Section 19(3) of the Act of 1988 is explicit that no finding or order shall be reversed on the ground of any error, omission or irregularity in sanction unless it has resulted in a failure of justice.

24. In the present case, the petitioner has not demonstrated any prejudice, failure or miscarriage of justice caused by alleged irregularity in the order of prosecution sanction. The plea of non-application of mind, being essentially factual, requires trial-level scrutiny rather than exercise of inherent powers.

25. It is equally pertinent to highlight that the offence alleged pertains to demand and acceptance of illegal gratification during official duty, substantiated through trap proceedings and digital recordings. The presumption under Section 20 of the Act of 1988 operates once demand and acceptance are proved, and therefore, prematurely quashing the prosecution sanction would not be in consonance with public policy or the object of anti-corruption law.

26. Notably, in the case of **Neeharika Infrastructure Private Limited v. State of Maharashtra & Others (2021) 19 SCC 401** and **Skoda Auto Volkswagen (India) Private Limited v. State of Uttar Pradesh & Others (2021) 5 SCC 795**, Hon'ble





Supreme Court has cautioned that the inherent powers should be exercised sparingly and only in exceptional circumstances where abuse of process of law is apparent and manifest. The present case does not satisfy the test laid down by the Hon'ble Supreme Court in the above judgments.

27. In the case of **Dashrath v. State of Maharashtra (supra)**, the Hon'ble Supreme Court has clarified that not every irregularity or error in a sanction order automatically invalidates prosecution and the key test for seeking interference is that whether there was a "failure of justice" or not.

28. In the case of **State of Punjab v. Hari Kesh (supra)**, there was a quashing petition of a sanction order under Section 19 of the Act of 1988. While taking note of the fact that the trial had already commenced and several witnesses had been examined, the Hon'ble Supreme Court held that the High Court should not have entertained a petition to quash the sanction order and proceedings at that stage when the trial had progressed. The Apex Court emphasised that under Section 19(3) & (4) of the Act of 1988, the higher courts cannot interfere unless failure of justice is shown. It was also clarified that while sanction is mandatory, an invalid sanction may render the trial void/non-est, but only if the defect leads to failure of justice. Following paras of the above judgment, being relevant, are reproduced as under:

*"7. In our opinion, the judgment in the case of S. Subbegowda (supra) clinches the issue, in which, this Court in the similar facts and circumstances, after considering the provisions contained in Section 19 of the Act, has held as under:—*

*"11. The combined reading of sub-section (3) and (4) of Section 19 makes it clear that notwithstanding anything contained in the Code, no finding, sentence or order*





passed by the 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 the Court, a failure of justice has in fact been occasioned thereby. sub-section (4) further postulates that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in the sanction has occasioned, or resulted in 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. The explanation to sub-section (4) further provides that for the purpose of Section 19, error includes "competency of the authority to grant sanction". Thus, it is clear from the language employed in sub-section (3) of Section 19 that the said sub-section has application to the proceedings before the Court in appeal, confirmation or revision, and not to the proceedings before the Special Judge. The said sub-section (3) clearly forbids the court in appeal, confirmation or revision, the interference with the order passed by the Special Judge on the ground that the sanction was bad, save and except in cases where the appellate or revisional court finds that the failure of justice had occurred by such invalidity."

12. & 13.....

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.

**8.** In the instant case, it appears that the petition for quashing of Sanction Order was filed by the respondent after the trial court framed the charge and commenced the trial, rather after the prosecution examined five witnesses. It is pertinent to note that whether the Sanction has been granted by the competent authority or not, would be a matter of evidence. Further, as per the Explanation to sub-section (4), for the purpose of Section 19, error includes "competency of the authority to grant Sanction." Therefore, in view of the settled legal position, the High Court should not have quashed the Sanction Order and the consequent proceedings, unless it was satisfied that the failure of justice had occurred by such error





*or irregularity or invalidity. There is not a whisper in the impugned order about any failure of justice having occurred on account of the impugned Sanction Order. The High Court also should not have entertained the petition for quashing the Sanction Order when the prosecution had already examined seven witnesses."*

29. Thus, it can be deduced from the above discussion that if trial has progressed significantly, this Court would be reluctant to quash proceedings simply on sanction grounds without proof of prejudice. It is well settled that the validity or propriety of an order of prosecution sanction can be raised and examined during trial. Sections 19(3) and 19(4) of the Act of 1988 clearly stipulate that any error, omission, or irregularity in sanction does not ipso facto vitiate the proceedings unless it has resulted in failure of justice. The legislative intent embodied in these provisions is to prevent the derailment of trial proceedings on hyper-technical grounds and to ensure that minor irregularities in the grant of prosecution sanction do not defeat the substantive cause of justice.

30. In the present case, the petitioner has not demonstrated any failure of justice occasioned by the alleged irregularity in prosecution sanction order. The prosecution sanction order ex-facie discloses application of mind by the competent authority on relevant materials and no palpable illegality or total absence of sanction is there, which could be inferred as falling within the category of failure of justice. Once the trial has progressed substantially and after framing charges, it is at the stage of prosecution evidence, interference at this stage would not only be contrary to the scheme of law, but would also frustrate the object of expeditious adjudication of cases under the Prevention of Corruption Act, 1988.





31. Consequently, this Court finds no ground to interfere with the impugned prosecution sanction order or subsequent proceedings under Section 528 BNSS. Accordingly, the criminal miscellaneous petition filed by the petitioner, being devoid of any substance and merit, is hereby dismissed.

32. However, the petitioner shall be at liberty to raise all his legal objections before the trial court at the appropriate stage.

33. It is also clarified that any of the observations made in this judgment are solely for the purpose of deciding the instant petition under Section 528 BNSS and shall not influence the pending trial against the petitioner.

34. Pending applications, if any, also stand dismissed.

(ANAND SHARMA),J

MANOJ NARWANI

