

- : 1 :-

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 14th OF NOVEMBER 2022

CRIMINAL REVISION No. 923 of 2019

BETWEEN: -

1. JITENDRA S/O SHRI SUNDERLAL JAISWAL, AGED ABOUT 27 YEARS, OCCUPATION: AGRICULTURE HAAT MAIDAN AB ROAD GRAM MANGLIA TEHSIL SANWER, DISTRICT INDORE (MADHYA PRADESH)

2. PRADEEP S/O SHRI ROHINI KUMAR MISHRA, AGED ABOUT 42 YEARS, OCCUPATION: JOURNALISM 12, PRESS COMPLEX, AB ROAD, INDORE (MADHYA PRADESH)

.....PETITIONERS

(*SHRI VIBHOR KHANDELWAL, LEARNED COUNSEL FOR THE PETITIONERS*)

AND

1. M.P. STATE ELECTRONICS DEVELOPMENT CORPORATION LIMITED 147, ZONE NO.1, MP NAGAR BHOPAL (MADHYA PRADESH)

2. SHRI ANURAG SHRIVASTAVA OCCUPATION: FORMER MANAGING DIRECTOR MADHYA PRADESH STATE ELECTRONIC DEVELOPMENT CORPORATION LTD. 147, ZONE NO. 1, M.P. NAGAR, BHOPAL (MADHYA PRADESH)

3. SHRI P.N. DHYANI OCCUPATION: FORMER SENIOR GENERAL MANAGER MADHYA PRADESH STATE ELECTRONIC DEVELOPMENT CORPORATION LTD. 147, ZONE NO. 1, M.P. NAGAR, BHOPAL (MADHYA PRADESH)

4. SHRI K.V. NARAYANA OCCUPATION: FORMER, SENIOR GENERAL MANAGER, MADHYA PRADESH STATE ELECTRONIC DEVELOPMENT CORPORATION LTD., 147, ZONE NO. 1, M.P. NAGAR, BHOPAL (MADHYA PRADESH)

5. SHRI LAXMIKANT TIWARI OCCUPATION: GENERAL MANAGER,

MADHYA PRADESH STATE ELECTRONIC DEVELOPMENT CORPORATION, LTD. 147, ZONE NO. 1, M.P. NAGAR, BHOPAL (MADHYA PRADESH)

6. SHRI HARI RANJAN RAO OCCUPATION: PRESENT MANAGING DIRECTOR MADHYA PRADESH STATE ELECTRONIC DEVELOPMENT CORPORATION LTD. 147, ZONE NO. 1, M.P. NAGAR, BHOPAL (MADHYA PRADESH)

7. SHRI ANURAG JAIN OCCUPATION: SECRETARY, INFORMATION AND TECHNOLOGY DEPARTMENT BHOPAL (MADHYA PRADESH)

8. NETWORK FOR INFORMATION AND COMPUTER TECHNOLOGY, REGISTRATION NO. IND/5696/2001 DATED 31.10.2001, ADD- 403, SHEKHAR PALACE, VIJAY NAGAR, SCHEME NO. 54, INDORE (MADHYA PRADESH)

9. DR. BHARAT AGRAWAL S/O MOHANLAL AGRAWAL OCCUPATION: PRESIDENT NETWORK FOR INFORMATION AND COMPUTER TECHNOLOGY, ADD- DAINIK BHASKAR, 6 DWARKA SADAN, PRESS COMPLEX, M.P. NAGAR, ZONE 1, BHOPAL (MADHYA PRADESH)

10. MUKESH HAJELA S/O DINESH AVTAR HAJELA OCCUPATION: VICE PRESIDENT NETWORK FOR INFORMATION AND COMPUTER TECHNOLOGY, ADD- 450-451, SUN CITY, MAHALAXMI NAGAR, INDORE (MADHYA PRADESH)

11. RAVI SAVALA S/O HARIRAM SAVALA OCCUPATION: TREASURER NETWORK FOR INFORMATION AND COMPUTER TECHNOLOGY, ADD-DAINIK BHASKAR, 6, DWARKA SADAN, PRESS COMPLEX, M.P. NAGAR, ZONE 1, BHOPAL (MADHYA PRADESH)

12. HIMANSHU JHANVER S/O M.L. JHANVER, OCCUPATION: SECRETARY NETWORK FOR INFORMATION AND COMPUTER TECHNOLOGY, ADD-DAINIK BHASKAR, 6, DWARKA SADAN, PRESS COMPLEX, M.P. NAGAR, ZONE 1, BHOPAL (MADHYA PRADESH)

13. JITENDRA CHOUDHARY S/O BABULAL CHOUDHARY OCCUPATION: JOINT SECRETARY, NETWORK FOR INFORMATION AND COMPUTER TECHNOLOGY, ADD-418-418A SUN CITY MAHALAXMI NAGAR, INDORE (MADHYA PRADESH)

14. P.G. MISHRA S/O GOPAL KRISHNA MISHRA OCCUPATION: EXECUTIVE MEMBER NETWORK FOR INFORMATION AND COMPUTER TECHNOLOGY, ADD- DAINIK BHASKAR, 6, DWARKA SADAN, PRESS COMPLEX, M.P. NAGAR, ZONE 1, BHOPAL (MADHYA PRADESH)

15. MAHENDRA GUPTA S/O MANOHARLAL GUPTA OCCUPATION: EXECUTIVE MEMBER NETWORK FOR INFORMATION AND COMPUTER TECHNOLOGY, ADD- 47, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)

16. MAYA CHOUDHARY W/O JITENDRA CHOUDHARY OCCUPATION:

- MEMBER, NETWORK FOR INFORMATION AND INFORMATION TECHNOLOGY, ADD-418-418A, SUN CITY, MAHALAXMI NAGAR, INDORE (MADHYA PRADESH)
- SONIYA HAZELA W/O MUKESH HAJELA OCCUPATION: MEMBER NETWORK FOR INFORMATION AND COMPUTER, TECHNOLOGY, ADD-450-451, SUN CITY, MAHALAXMI NAGAR, INDORE (MADHYA PRADESH)
17. ARVIND CHOUDHARY S/O BABULAL CHOUDHARY OCCUPATION: MEMBER NETWORK FOR INFORMATION AND COMPUTER TECHNOLOGY, ADD- VILLAGE SIROLIYA, DEWAS (M.P.)
18. WRITERS & PUBLISHERS LIMITED, ADDRESS- 4/54, PRESS COMPLEX, A. B. ROAD, INDORE
19. RAMESH CHANDRA AGRAWAL S/O DWARKA PRASAD AGRAWAL OCCUPATION: DIRECTOR, WRITERS AND PUBLISHERS LTD. AGRAWAL BHAWAN, SULTANIYA ROAD, BHOPAL (M.P.) OFFICE ADD-/4/54, PRESS COMPLEX, AB ROAD, INDORE (MADHYA PRADESH)
20. SHRI VIVEK JAIN OCCUPATION: ASSTT. MANAGER, WRITERS AND PUBLISHERS LIMITED, ADD- 4/54, PRESS COMPLEX, AB ROAD, INDORE (MADHYA PRADESH)
- 21.

.....RESPONDENTS

(SHRI ASHISH GUPTA, LEARNED COUNSEL FOR THE RESPONDENT [R-7].

MS. DARSHANA BAGHEL, LEARNED COUNSEL FOR THE RESPONDENT [R-1].

SHRI ANSHUMAN SINGH, LEARNED COUNSEL FOR THE RESPONDENTS.

This revision coming on for orders this day, JUSTICE VIVEK RUSIA passed the following:

ORDER

The petitioners have filed the present Revision Petition under Section 397 read with Section 401 of Cr.P.C. against the order dated 05.01.2019 passed by the learned Special Judge (Prevention of Corruption Act, 1998), whereby an interlocutory application filed by these petitioners has been dismissed.

The facts of the case, in short, are as under: -

[2] The petitioners have filed a private complaint under Section 200 of Cr.P.C. on 22.06.2012 in the court of Special Judge (the PC Act) for alleged offences punishable under Section 13 of the

Prevention of Corruption Act, 1988 (hereinafter will be referred to as " PC Act, 1988" for convenience) and section 107, 109, 415, 420 and 120-B of IPC. Respondents No. 2 to 7 are public servants and respondents No. 8 to 21 are private persons arrayed as accused in the complaint. Along with the complaint, an application under Section 156(3) of Cr.P.C. was also filed. The petitioners have alleged that for the implementation 'Common Services Center Scheme", respondents No.2 to 7 abused their official position and, in connivance with other private persons i.e. respondents No.8 to 21, illegally secured Rs.25 Crores from unemployed youths of this State. Vide order dated 03.07.2012, the learned Special Judge has dismissed the application filed under Section 156 (3) of Cr.P.C. Thereafter petitioners being the complainants have examined themselves and 11 other witnesses under Section 200 of Cr.P.C. Since 2012, the complaint has been pending awaiting the sanction for prosecution by the Government as contemplated under Section 19 of the PC Act, 1988.

[3] The petitioners moved an application on 02.11.2012 seeking exemption from obtaining sanction for prosecution but the same came to be dismissed on 09.11.2012. Thereafter, the petitioners tried to get over the requirement of sanction for prosecution by moving an application on 03.08.2016 that the requirement of sanction be relaxed at least against the private accused persons i.e., respondent No.8 to 21. The learned Special judge rejected the said application vide order dated 06.09.2016.

[4] The petitioners again filed an application on 22.12.2017 contending that due to a change in their official position by way of transfer to another department, no sanction is required in respect of

the prosecution of respondents No.2 to 7. Vide order dated 22.01.2018, learned Special Judge dismissed the application. Being dissatisfied with the above rejection the petitioners filed the Criminal Revision Before this court. Vide order dated 27.03.2018 this court set aside the impugned order and remitted the matter back to the learned special judge for passing fresh order. Meanwhile, the Central Government has amended the sanction under Section 19 of the PC Act, w.e.f. 26.07.2018. Vide order dated 05.01.2019, learned Special Judge has dismissed the application in view of the amended provision of sanction 19 of the PC Act, hence, this petition before this Court.

Submission of counsel for the petitioners

[5] Learned counsel argues that the learned Special judge has wrongly dismissed the application without considering the effect of the amendments brought in sanction under Section 19 of the PC Act and the law laid down by the Apex Court in the case of ***Abhay Singh Chautala Vs. Central Bureau of Investigation (2011) 7 SCC 141***. Learned counsel further submits that the status of respondent No.2 to 7 have been changed by their transfer from an earlier department, where they said to have committed the offence by way of transfer to another Government department or corporation, hence, they are no more in the said post, therefore, now no sanction is required, thus impugned order be set aside and the Special Judge be directed to take cognizance against the respondent Nos. 2 to 7 without insisting for the sanction. In support of his contention, learned counsel for the petitioners has placed heavy reliance on the judgment passed by Apex Court in the case of the State of ***Rajasthan Vs. Tejmal Choudhary (Criminal Appeal***

No.1649/2021 and Criminal Appeal No.1648/2021) was decided on 16.12.2021.

Submission of counsel for the respondents

[6] Learned counsels for the respondents contend the aforesaid prayer by submitting that still the respondent No.2 to 7 are holding the post from which they are not removable from their office save by or with the sanction of the Central Government or State Government as the case may be, therefore, the previous sanction is mandatory before their prosecution under Section 19 of the PC Act. The learned Special Judge has not committed any error of law while dismissing the application which is nothing but a misuse of the process of law again and again by filing applications of similar nature.

Appreciation of the submissions and our conclusion.

For ready reference section 19 of the PC Act is reproduced below:-

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

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office:

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of

the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution 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) the 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."

[7] Section 19 of the PC Act says that no court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 against a public servant *firstly* in case of a person who is employed *secondly* at the time of the commission of the alleged offence employed in connection with the affairs of Union/State and is not removable from his office save by with the sanction of Central or the State Government as the case may be. The key condition is that such a person must be employed in connection with affairs of the Central/State and removable from the office by or with the sanction of the Central or State Government. This key condition applies to the person who is or was posted as a public servant. By way of explanation, the work " public servant" used in sub-section (1) of Section 19 of the PC Act includes such accused who has ceased to hold the office during which the offence is alleged to have been committed or is holding an office other than the office during which the offence is alleged to have been committed.

[7] The core requirement of the section is that accused should be a public servant whether he is holding the office or ceased to have been holding the office or holding the office another office is not the relevant consideration and over and above, but he is liable to be removed from the office by or with the sanction of the Central Government or State Government as the case may be. It is not the case of the petitioners that respondents No. 2 to 7 on their transfer have ceased to be public servants. Admittedly, they are still public servants falling under sub-clause (a) and (b) of Sub-Section (1) of Section 19 of the PC Act, hence their transfer to the other office of the department or corporation will not make any difference.

[8] In the case of **Abhay Singh Chautala (supra)**, the Apex Court has considered the provision of Section 19 in respect of Public separately and held in para 48 of the judgment that the word accused used in clauses (a), (b) and (c) of Section 19 (1) means who is employed either with the State Government or with the Central Government, it is only a person who is employed. It is not a public servant who is employed, it is essentially a person and after being employed, he comes to a public servant because of his position. The keywords in these three clauses i.e. (a),(b)&(c) of sub-section 1 are not removable from his office save by or with the sanction of, therefore, respondents No.2 to 7 even on transfer to another post or in the department by virtue of their holding a transferable post still a public servant removable by or with the approval of Central Government or the State Government as the case may be.

[9] So far as the judgment passed in the case of State of **Rajasthan Vs. Tejmal Choudhary (supra)** is concerned, it is a case where the amendment in Section 17A which deals with the

previous approval before enquiry or investigation of allegations of an alleged offence by a public servant has been considered by the Hon'ble Apex court. The amendment of Section 17A has been held prospective and shall apply to all pending investigations. In the present case, amendment in section 19 is under consideration in respect of a person who is employed or as the case may be at the time of the commission of the alleged offence employed has been added which is not changing the basic requirement that the public servant is not removable from his office by or with the sanction of Government.

[10] In view of the above, the learned special judge did not commit any error of law in dismissing the application, hence the Revision is devoid of substance and thus dismissed, accordingly.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

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