HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case Number and Parties Name	**WP No.7818/2021** Sabit Khan Vs. State of M.P. and others
Date of Order	**12/08/2021**
Bench Constituted	**Division Bench:** **Justice Prakash Shrivastava** **Justice Arun Kumar Sharma**
Judgment delivered by	**Justice Prakash Shrivastava**
Whether approved for reporting	Yes
Name of counsels for parties	Shri Anshuman Singh, Advocate for the petitioner. Shri Ashish Anand Bernard, Deputy Advocate General. Shri Abhijeet Awasthi, Advocate for respondent No.2.
Law laid down	**1.** Section 19 of the PC Act requires previous sanction for prosecution. Sub section (3) thereof puts a rider that absence of or any error, irregularities etc. in sanction will not be a ground to reverse a finding or sentence unless in the opinion of the Court failure of justice has infact occasioned thereby. Sub section (4) thereof relates to raising an objection in this regard at an early stage in the proceedings. **2**. The Act of granting sanction is an administrative function. It is imperative that the sanctioning authority must apply his mind while granting sanction and in case of challenge the prosecution is required to establish that the sanction was granted by the

	sanctioning authority after being satisfied that a case was made out for sanction. Since the Court does not sit in appeal against the order of sanction, therefore, adequacy of material produced before the sanctioning authority cannot be gone into. The elaborate discussion of material in the sanction order is not necessary and if a challenge to the sanction order on this ground is raised then the relevant material can be produced before the Court during the course of trial to establish that it was produced for consideration before the sanctioning authority. **3**. The issue relating to absence of sanction or the order of sanction being a nullity can be raised at the threshhold but a challenge to the order of sanction on the ground that it suffers from the defect of improper application of mind or non-consideration of relevant material is required to be raised during the trial and establish by leading evidence when the prosecution will also have an opportunity to produce all the relevant material as also examine the sanctioning authority.
Significant paragraph numbers	6, 7 & 8

O R D E R
12.08.2021

Per: Prakash Shrivastava, J.

The petitioner who is working as District Co-ordinator, Tribal Welfare Department, has filed the present petition challenging the order dated 23.02.2021 whereby the sanction has been granted by the respondent No.1 under Section 19(1) of the Prevention of Corruption Act, 1988 (for short ***'the PC Act'***) for prosecuting the petitioner for offence under Section 7, 13(B), 13(2) of the PC Act in Crime No.285 of 2019. The aforesaid crime has been registered against the petitioner on the basis of the trap which was organised.

2. Learned cousnel for the State has raised the preliminary objection that the petition is premature as the sanction has been granted by the competent authority and the petitioner will have the opportunity to raise objection against the order of sanction during trial.

3. The submission of counsel for the petitioner is that the order of sanction suffers from the defect of non-application of mind and it has been passed in a mechanical manner without considering that there is no material against the petitioner to implicate him in the alleged offence. He has further submited that the order of sanction can be challenged at this stage.

4. Having heard the learned counsel for the parties and on the perusal of the record, it is noticed that the competent authority while passing the impugned order dated 23.02.2021 had noticed the details of the case and the mnaterial available and thereafter has recorded that after complete analysis of collected documents/physical and oral evidence, the petitioner was found involved in the commission of the alleged offence and after reaching that conclusion, the sanction has been granted.

5. The issue is as to whether the order granting sanction can be challenged at this stage or the objection in this regard is required to be raised by the petitioner during trial and the issue is to be decided by the trial Court on the basis of the evidence.

6. Section 19 of the PC Act requires previous sanction for prosecution. Sub section (3) thereof puts a rider that absence of or any error, irregularities etc. in sanction will not be a ground to reverse a finding or sentence unless in the opinion of the Court failure of justice has infact occasioned thereby. Sub section (4) thereof relates to raising an objection in this regard at an early stage in the proceedings.

7. The Act of granting sanction is an administrative function. It is imperative that the sanctioning authority must apply his mind while granting sanction and in case of challenge the prosecution is required to establish that the sanction was granted by the sanctioning authority after being satisfied that a case was made out for sanction. Since the Court does not sit in appeal against the order of sanction, therefore, adequacy of material produced before the sanctioning authority cannot be gone into. The elaborate discussion of material in the sanction order is not necessary and if a challenge to the sanction order on this ground is raised then the relevant material can be produced before the Court during the course of trial to establish that it was produced for consideration before the sanctioning authority.

8. The issue relating to absence of sanction or the order of sanction being a nullity can be raised at the threshhold but a challenge to the order of sanction on the ground that it suffers from the defect of improper application of mind or non-consideration of relevant material is required to be raised during

the trial and establish by leading evidence, when the prosecution will also have an opportunity to produce all the relevant material as also examine the sanctioning authority.

9. The Supreme Court in the matter of ***Parkash Singh Badal & Another vs. State of Punjab & Others*** reported in **(2007) 1 SCC 1** has drawn the distinction between a case where there was absence of sanction and a case where the order of sanction was vitiated on some ground and has held that where there is absence of sanction the issue can be agitated at the threshhold of trial but when the sanction exists then question as to vitiation has to be raised during trial. The Supreme Court in the matter of ***Parkash Singh Badal***(supra) in this regard has held that -

> *"29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In Sub-Section (3) the stress is on "failure of justice" and that too "in the opinion of the court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is* (*sic* not) *considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of Narasimha Rao case. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act (Section 19(2) of the Act) question relates to doubt about authority to grant sanction and not whether sanction is necessary."*

It has further been held that -

> *"47. The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard."*
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> *48. The sanction in the instant case related to offences relatable to Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non*

> *application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial.*

10. The Supreme Court in the matter of ***Central Bureau of Investigation vs. Ashok Kumar Aggarwal*** reported in **(2014) 14 SCC 295** has reiterated that the proper stage of examining the validity of sanction is during trial. Taking note of Section 19 of the PC Act, the Hon'ble Court held that-

> *"58. The most relevant issue invovled 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 this Court dealt with the issue and placing reliance upon the judgment in Parkash Singh Badal v. State of Punjab, came to the conclusion as under:*
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> > *"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 ...."*
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> *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."*

11. In the matter of ***Dinesh Kumar vs. Chairman, Airport Authority of India & Another*** reported in **(2012) 1 SCC 532** in a case where cognizance was already taken by the trial Court, the Hon'ble Supreme Court has affirmed the order of the High Court whereby the question of validity of sanction was left open for consideration by the trial Court by giving liberty to the accused to raise this issue in course of trial. Considering the earlier judgment in the case of ***Parkash Singh Badal***(supra), the Supreme Court in the matter of ***Dinesh Kumar***(supra) held that-

> *9. While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in Parkash Singh Badal[5] expressed in no uncertain terms that the absence of sanction could be*

raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in Parkash Singh Badal[5], this Court referred to invalidity of sanction on account of non- application of mind.

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[5], the challenge to which can always be raised in the course of trial.

11. In a later decision, in the case of Aamir Jaan[4], this Court had an occasion to consider the earlier decisions of this Court including the decision in the case of Parkash Singh Badal[5]. Ameerjan[4] was a case where the Trial Judge, on consideration of the entire evidence including the evidence of sanctioning authority, held that the accused Ameerjan was guilty of commission of offences punishable under Sections 7,13(1)(d) read with Section 13(2) of the P.C. Act. However, the High Court overturned the judgment of the Trial Court and held that the order of sanction was illegal and the judgment of conviction could not be sustained.

12. Dealing with the situation of the case wherein the High Court reversed the judgment of the conviction of the accused on the ground of invalidity of sanction order, with reference to the case of Parkash Singh Badal[5], this Court stated in Ameerjan in para 17 of the Report as follows:

> *"17. Parkash Singh Badal, therefore, is not an authority for the proposition that even when an order of sanction is held to be wholly invalid inter alia on the premise that the order is a nullity having been suffering from the vice of total non-application of mind. We, therefore, are of the opinion that the said decision cannot be said to have any application in the instant case."*

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[5] and not unjustified."

12. In the matter of ***State of M.P. vs. Virender Kumar Tripathi***, reported in **(2009) 15 SCC 533** in a case where the

High Court had quashed the proceedings on the ground that Law & Legislative Department was required to consult parent department of the accused for want of which there was no proper sanction, the Hon'ble Supreme Court found that there was no whisper or pleading about failure of justice and the stage when failure of justice was to be eastablished was yet to be reached as the issue of failure of justice could be determined once trial commenced and evidence is led. In this regard, the Hon'ble Supreme Court in the matter of ***Virendra Kumar Tripathi***(s) held that -

> *"9. Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of /or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the Court a failure of justice has in fact been occasioned thereby.*
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> *10. In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was lead. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [2004(7) SCC 763] and in Prakash Singh Badal v. State of Punjab [2007(1) SCC 1] need to be noted. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct."*

13. This Court also in the matter of ***Satish Pateriya vs. State of M.P. and another*** by order dated 15.03.2021 passed in WP No.19813/2020 considering the earlier judgments on the point has held that -

> *"**10**. In the case of **State of M.P. v. Dr. Krishna Chandra Saksena, (1996) 11 SCC 439** Hon'ble the Supreme Court has held that at the stage of quashing of criminal proceedings where even challan had not been filed the order of sanction could not have been treated by the High Court ex facie illegal or invalid. It is settled law that at the stage of granting of sanction, the accused need not be heard. The question*

> *whether all the relevant evidence which would have titled the balance in favour of the accused if it was considered by the sanctioning authority before granting sanction and which was actually left out of consideration, could be examined only at the stage of trial when the sanctioning authority comes forward as a prosecution witness to support the sanction order, if challenged during the trial. It is further held that as that stage was not reached the prosecution could not have been quashed at the very inception on the supposition that all the relevant documents were not considered by the sanctioning authority while granting the impugned sanction."*

14. The Supreme Court in the matter of ***State of Karnataka vs. Ameerjan*** reported in **(2007) 11 SCC 273** considering the issue of grant of sanction under Section 19 of the PC Act has held that the sanction order must be demonstrative of the fact that there had been proper application of mind on the part of sanctioning authority. The material collected during investigation which would prima facie establish existence of evidence in regard to commission of offence should be available before the sanctioning authority before the order of sanction is passed. It has further been held that if the sanction order does not indicate application of mind as to the material produced before the authority then the same may be produced before the Court to show that such a material was infact produced before the competent authority. That was a case where in appeal the High Court had reversed the judgment on the ground of invalid sanction and the sanctioning authority himself was examined before the trial Court. In this background, the Hon'ble Court held that -

> *"10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayuktha. Even the said report has not been brought on record. Thus, whether in the said report, either in*

> *the body thereof or by annexing therewith the relevant documents, IG Police Karnataka Lokayuktha had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."*

15. In the matter of ***P.L. Tatwal vs. State of Madhya Pradesh*** reported in **(2014) 11 SCC 431**, it has been held that grant of sanction is an administrative function which intend to protect public servant against frivolous and vaccacious litigation. It has further been clarified that if the relevant material is not reflected in the order, it shouldbe capable of proof before the Court. Observing so the Hon'ble Supreme Court in the case of ***P.L. Tatwal***(supra) has held that -

> *"12. The grant of sanction is only an administrative function. It is intended to protect public servants against frivolous and vexatious litigation. It also ensures that a dishonest officer is brought before law and is tried in accordance with law. Thus, it is a serious exercise of power by the competent authority. It has to be apprised of all the relevant materials, and on such materials, the authority has to take a conscious decision as to whether the facts would reveal the commission of an offence under the relevant provisions. No doubt, an elaborate discussion in that regard in the order is not necessary. But decision making on relevant materials should be reflected in the order and if not, it should be capable of proof before the court.*
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> *16. In such circumstances, we are of the view that the trial court should conduct a proper inquiry as to whether all the relevant materials were placed before the competent authority and whether the competent authority has referred to the same so as to form an opinion as to whether the same constituted an offence requiring sanction for prosecution. In that view of the matter, we set aside the impugned order passed by the High Court and also order dated 27.12.2004 passed in Special Case No. 12 of 2004 by the trial court and remit the matter to the Special Judge (P.C. Act, 1988), Ujjain, Madhya Pradesh."*

16. In the matter of ***State of Maharashtra through CBI vs. Mahesh G. Jain*** reported in **(2013) 8 SCC 119**, it has been held that the

adequacy of material placed before the sanctioning authority cannot be gone into by the Court as it does not sit in appeal over the sanction order and that an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity. Symphoning technicalities cannot be allowed to become tool in the hands of accused. The Hon'ble Supreme Court in the matter of ***Mahesh G. Jain***(supra) has culled out the following principles in this regard:

> *"14. From the aforesaid authorities the following principles can be culled out: -*
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> *14.1 It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.*
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> *14.2 The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.*
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> *14.3 The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.*
>
> *14.4 Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.*
>
> *14.5 The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.*
>
> *14.6 If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.*
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> *14.7 The order of sanction is a pre-requisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity."*

17. In the matter of ***State of M.P. vs. Dr. Krishna Chandra Saksena*** reported in **(1996) 11 SCC 439**, it has been held that where the

sanction order is not *ex facie* illegal or invalid, the proceeding cannot be quashed. It has further been held that non-consideration of relevant documents supporting the accused while granting sanction cannot be a ground for quashing the proceedings and such aspect can be examined at the stage of trial for invalidating the sanction. The Hon'ble Supreme Court in this regard has held that -

> *"The second ground given by the High Court was to the effect that the affidavits filed by the staff members of the clinic of the respondent were not considered by the sanctioning authority. It is true that the learned Single Judge had observed in paragraph (21) of his judgment that 'admittedly' in this case, representation of the petitioner, documents relied by him which have been lost, and the affidavits of the witnesses present on the spot who were large in number were not placed before the sanctioning authority and, therefore, the sanction granted is definitely bad in law. However it must be kept in view that without looking at the relevant documents comprised in the file which were lost during the pendency of the proceedings before the High Court it would be too premature to say whether the lost documents were seen by the sanctioning authority or not before granting sanction. Even otherwise if it is found on evidence which may be led at the stage of trial that the affidavits of the staff were self-serving statements obtained by the respondent to support his case and were of such a nature that they could not adversely affect the trap evidence, then it could not be urged by the prosecution that non-consideration of such irrelevant and self-serving evidence would have affected the efficacy of the sanction. In Short all these aspects could have been better examined at the stage of trial for invalidating the sanction. It is too premature at the present stage to hold that all necessary and relevant evidence must not have been considered by the sanctioning authority. It appears that the word 'admittedly' as found in paragraph (21) of the .order passed by the learned Single Judge appears to have been mentioned loosely and in an inadvertent manner. Learned senior counsel for the appellant fairly stated that the sanction order does not on the face of it indicate that the affidavits of staff members were considered by the sanctioning authority. But the recitals in the last but one paragraph of the sanction order show that the sanctioning authority was satisfied after complete and conscious scrutiny of the records produced in respect of the allegation against the accused. Now the question whether all the relevant evidence which would have tilted the balance in favour of the accused if it was considered by the sanctioning authority before granting sanction and which was actually*

> *left out of consideration could be examined only at the stage of trial when the sanctioning authority comes forward as a prosecution witness to support the sanction order if challenged during the trial. As that stage was not reached the prosecution could not have been quashed at the very inception on the supposition that all relevant documents were not considered by the sanctioning authority while granting the impugned sanction. We, therefore, hold that the twin reasons given by the learned Single Judge of the High Court for quashing the proceedings on the ground that the sanction was invalid are unsustainable and unjustified."*

18. Having examined the present case in the light of the above judicial pronouncements, we find that the order of sanction in the present case is not a nullity and since the petitioner is raising the issue of improper application of mind by the sanctioning authority, therefore, he will have an opportunity to raise it during the trial and the challenge to the sanction order at this stage is premature. Hence, the writ petition is **dismissed**, however, with liberty to the petitioner to raise the issue during the trial and establish it by leading evidence.

(PRAKASH SHRIVASTAVA)
JUDGE

(ARUN KUMAR SHARMA)
JUDGE

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