2023 INSC 669

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1598 OF 2023

STATE OF KARNATAKA LOKAYUKTA POLICE .....APPELLANT

VERSUS

S. SUBBEGOWDA ....RESPONDENT

J U D G M E N T

BELA M. TRIVEDI, J.

1. The appellant – State of Karnataka Lokayukta Police by way of instant appeal has assailed the judgment and order dated 16.08.2018 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No. 4463 of 2018 whereby the High Court has allowed the said petition by discharging the respondent (original petitioner-accused) from the offences charged under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the said Act), on the ground that the sanction accorded to prosecute the respondent-accused by the Government was illegal and without jurisdiction.

2. The respondent was working as an Executive Engineer in the Karnataka Urban Water Supply and Drainage Board, Mandya

Division, Mandya during the period 1983 to 2007. On the basis of the Source Report dated 17.12.2007 submitted by the then Deputy Superintendent of Police, Bengaluru Rural Division, Karnataka Lokayukta, Bengaluru, a case being Crime No. 22 of 2007 (later numbered as Crime No. 62 of 2008) came to be registered against the respondent for the offence under Section 13(1)(e) read with Section 13(2) of the said Act. It was alleged, *inter alia,* that the respondent-accused during his tenure in the office as an Executive Engineer had amassed the wealth disproportionate to his known sources of income. On the completion of the investigation, the Investigating Officer had sent the papers to the State Government seeking sanction to prosecute the respondent as required in Section 19(1) of the said Act. The Government of Karnataka on the basis of the material placed before it, had accorded the requisite sanction by issuing the Government order dated 13.09.2010. Thereafter the chargesheet came to be filed in the Court of Principal District and Sessions Judge, Bengaluru Rural District at Bengaluru wherein it was alleged that respondent had abused his position as a public servant, had indulged into corrupt practices and had amassed wealth disproportionate to his known sources of income. The said

case was registered as Special Case No. 488 of 2011 before the said Court.

3. The respondent-accused filed an application under Section 227 read with 239 of CrPC on 12.10.2011, seeking his discharge from the case contending, *inter alia,* that neither the contents of the Source Report nor the other documents constituted any offence as alleged, and that the sanction under Section 19(1) of the said Act was issued by the Government without any application of mind. The said application came to be dismissed by the trial court by passing a detailed order on 01.02.2013. Being aggrieved by the said order, the respondent preferred a Criminal Revision Petition being no. 287 of 2013 before the High Court. The said petition came to be disposed of by the High Court vide the order dated 05.07.2013 directing the trial court to consider the documents made available by the respondent during the investigation and produced by the prosecution with the chargesheet, while framing the charge without being influenced by the order dated 01.12.2013.

4. It appears that in view of the said order passed by the High Court, the respondent-accused again filed an application under Sections 227 and 239 of CrPC before the trial court seeking his discharge

from the case by contending, *inter alia,* that the sanction order passed by the Government lacked application of mind and was given mechanically and that the Investigating Officer had suppressed the material produced by the respondent offering satisfactory explanations to the assets acquired, income derived and expenditure incurred by the respondent during period in question. Pertinently, the respondent did not press for the said application by submitting a memo on 02.12.2014 and stating therein that the Court may proceed to frame charge against him. The said memo reads as under-

"IN THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE BANGALORE RURAL AT BANGALORE
Spl.C.C. No.488 of 11

BETWEEN:

State by Lokayktha Police,
Bangalore Rural. ... Complainant

AND:

Subbegowda. … Accused

MEMO FILED ON BEHALF OF THE ACCUSED

The above named Accused humbly submits that he will not press the application filed under Sections 227 and 239 of Cr.P.C., 1973 seeking discharge in the case. It is further submitted that the Hon'ble Court may proceed to frame charges against the Accused.

02.12.2014
Bangalore. Sd/-
Advocate for Accused."

5. The trial court thereafter framed the charge against the respondent-accused on 23.12.2014 for the offence of criminal misconduct under Section 13(1)(e) punishable under Section 13(2) of the said Act in Special Case No. 488 of 2011. The prosecution thereafter examined as many as 17 witnesses in support of its case, and in the midst of the trial the respondent-accused again filed third application under Section 227 of CrPC seeking his discharge from the case on the ground that the respondent was an employee of the Karnataka Urban Water Supply and Drainage Board and could be removed only by the said Board in view of Rule 10 of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. The State Government therefore had no jurisdiction to accord the sanction to prosecute the respondent under Section 19(1) of the said Act. The trial court vide the order dated 05.06.2018 dismissed the said application by passing a detailed order holding, *inter alia,* that the third successive application filed by the respondent-accused for the discharge from the case, when the evidence of 17 witnesses had been recorded and when the contention based on the sanction was already rejected by the Court earlier, was liable to be dismissed. The aggrieved respondent filed the Criminal Petition being no. 4463 of

2018 under Section 482 of CrPC before the High Court, which came to be allowed by the High Court vide the impugned order.

6. In view of the afore-stated undisputed facts the following questions arise for consideration before this Court:

(i) Whether the High Court in exercise of its powers under Section 482 of CrPC could have discharged the respondent-accused from the charges levelled against him for the offences under Section 13(1)(e) punishable under Section 13(2) of the said Act, despite the fact that the accused had not pressed for his second application for discharge by submitting the Memo dated 02.12.2014 and despite the fact that after framing of the charge by the Special Court on 23.12.2014, the trial had proceeded further and the prosecution had examined 17 witnesses in support of its case?

(ii) Whether the High Court in the criminal petition filed under Section 482 of the CrPC could reverse the findings recorded by the Special Court with regard to the validity of sanction, ignoring the bar contained in sub-section (3) read with sub-section (4) of Section 19 of the said Act?

7. As stated earlier, after having not succeeded in the first application seeking discharge under Section 227 of CrPC, in which the

petitioner had raised the issue of sanction by contending that the sanction was accorded by the Government under Section 19(1) of the said Act without any application of mind, the respondent-accused had filed the second application again seeking his discharge under Section 227 of CrPC by raising the issue of sanction by contending, *inter alia,* that the sanction order was passed mechanically by the Government and that the Investigating Officer had suppressed the material produced by the respondent offering satisfactory explanations to the assets acquired by him. Admittedly, the second application was not pressed for by the respondent by submitting the Memo on 02.12.2014, wherein it was stated that the Court may proceed to frame charge against him. Thus, by submitting the said Memo, the respondent-accused had specifically not pressed for his contention with regard to the validity of sanction or error in granting the sanction by the Government, and he specifically requested the Court to proceed further with the framing of charge. Considering the said memo, the trial court framed the charge, and the prosecution examined as many as 17 witnesses in support of its case. At that stage, the respondent submitted the third application which was in the nature of interlocutory application

again seeking the discharge under Section 227 of CrPC on the ground that there was an error in the sanction order, the Government being not competent to grant the sanction under Section 19(1) of the said Act. The said application having been dismissed by the trial court, the High Court could not and should not have entertained the petition under Section 482 of CrPC, which was in the nature of revision application, and reversed the findings recorded by the trial court, in view of sub-section (3) read with sub-section (4) of Section 19 of the said Act.

8. For the ready reference, the relevant part of sub-section (1), (3) and (4) of Section 19 are reproduced herein 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, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)—
>
> (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.
>
> **(2)** ----------

(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."

9. Similar provision is contained in Section 465 of CrPC on whether finding or sentence is reversible by reason of error, omission or irregularity. It reads as under: -

"**465. Finding or sentence when reversible by reason of error, omission or irregularity. -**

1. Subject to the provisions hereinbefore contained, no finding sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal,

> confirmation of revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.
>
> 2. In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

10. Having regard to the afore-stated provisions contained in Section 19 of the said Act, there remains no shadow of doubt that the statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of the Government/authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). It is also well settled proposition of law that the question with regard to the validity of such sanction should be raised at the earliest stage of the proceedings, however could be raised at the subsequent stage of the trial also. In our opinion, the stages of proceedings at which an accused could raise the issue with regard to the validity of the sanction would be the stage when the Court takes cognizance of the offence, the stage when the charge is to be framed by the Court or at the stage when the trial is complete i.e., at the stage of final arguments in the trial. Such issue of course, could be raised before the Court in appeal, revision or confirmation,

however the powers of such court would be subject to sub-section (3) and sub-section (4) of Section 19 of the said Act. It is also significant to note that the competence of the court trying the accused also would be dependent upon the existence of the validity of sanction, and therefore it is always desirable to raise the issue of validity of sanction at the earliest point of time. It cannot be gainsaid that in case the sanction is found to be invalid, the trial court can discharge the accused and relegate the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with the law.

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. This Court in case of ***Nanjappa Vs. State of Karnataka***[1] has very aptly dealt with the intricacies of Section 19(1) as also Section 19(3) and 19(4) of the said Act as to at what stage the question of validity of sanction accorded under Section 19(1) of the said Act could be raised, and what are the powers of the court in appeal, confirmation or revision under sub-section (3) of Section 19 of the said Act.

> **"22.** The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids

1 (2015) 14 SCC 186

taking of cognizance by the court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (*a*), (*b*) and (*c*) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

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

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

23.2. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.3. Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or

> irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.
>
> **23.4.** The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher court and not before the Special Judge trying the accused.
>
> **23.5.** The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning the prosecution under Section 19(1). Failure of justice is, what the appellate or revisional court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision."

13. In ***State of M.P. vs. Bhooraji and Others***[2], this Court had an occasion to deal with the various aspects contained in Section 465 of CrPC more particularly to deal with the expression "A failure of justice has in fact been occasioned" as contained therein. Since, the provisions contained in Section 19(3) of the Prevention of Corruption

2 (2001) 7 SCC 679

Act and in Section 465(1) of CrPC are *pari materia*, the observations made in the said decision would be relevant.

> **"14.** We have to examine Section 465(1) of the Code in the above context. It is extracted below:
>
> > "465. (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby."
>
> **15.** A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned "a failure of justice" the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.
>
> **16.** What is meant by "a failure of justice" occasioned on account of such error, omission or irregularity? This Court has observed in *Shamnsaheb M. Multtani* v. *State of Karnataka* [(2001) 2 SCC 577: 2001 SCC (Cri) 358] thus: (SCC p. 585, para 23)
>
> > "*23*. We often hear about 'failure of justice' and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression 'failure of justice' would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in *Town Investments Ltd.* v. *Deptt. of the Environment* [(1977) 1 All ER 813 : 1978 AC 359 : (1977) 2 WLR 450 (HL)]). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage."

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.

15. As a matter of fact, such an interlocutory application seeking discharge in the midst of trial would also not be maintainable. Once the cognizance was taken by the Special Judge and the charge was framed against the accused, the trial could neither have been stayed

nor scuttled in the midst of it in view of Section 19(3) of the said Act. In the instant case, though the issue of validity of sanction was raised at the earlier point of time, the same was not pressed for. The only stage open to the respondent-accused in that situation was to raise the said issue at the final arguments in the trial in accordance with law.

16. In that view of the matter, the impugned order passed by the High Court is set aside. It will be open for the respondent to raise the issue of validity of sanction if he desires to do so, in accordance with law at the final stage of arguments in the trial. Special Judge is directed to proceed with the trial from the stage it had stopped, in accordance with the law and as expeditiously as possible.

17. Appeal stands allowed accordingly.

…….....J.
[ANIRUDDHA BOSE]

…….....J.
[BELA M. TRIVEDI]

NEW DELHI;
03.08.2023