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SUPERINTENDENT OF POLICE (C.B.I).

v.

DEEPAK CHOWDHARY AND ORS.

AUGUST 17, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Criminal Law :

Prevention of Corruption Act, 1947 :

C

Ss.6(1)(c), 5(1)(d) 5(2)—Public servant—complaint against—Investigation—Sanction for prosecution—Opportunity of hearing before grant of sanction—Held, need not be afforded since grant of sanction is an administrative function—Exoneration in departmental inquiry not relevant at the time of grant of sanction.

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On a complaint that the bank, whereof the respondent was the Branch Manager at the relevant time, had been, in connivance with some of its officers, defrauded for a sum of Rs. 45,000, the appellant investigated the matter and was accorded sanction under s.6(1) (c) of the Prevention of Corruption Act 1947, to file the charge sheet against the respondent for offences punishable under ss.120B, 420, 467, 468, 471, 477A, 201 and 109 IPC as also under s.5(1)(d) read with section 5(2) of the Prevention of Corruption Act. The respondent challenged the sanction by filing a writ petition before the High Court, which quashed the sanction on the ground that the respondent was not afforded any opportunity of hearing before granting the sanction and in the departmental inquiry the respondent had been exonerated. Aggrieved, the Superintendent of Police (C.B.I.) filed the appeal by special leave.

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Allowing the appeal and setting aside the order of the High Court, this Court

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HELD : 1. The grant of sanction under s.6(1) (c) of the Prevention of Corruption Act, 1947 being only an administrative function, an opportunity of hearing to the accused need not be provided before according the sanction, though the accused may be saddled with the liability to be prosecuted in a court of law. Nor is the fact of departmental exoneration

by disciplinary authority relevant. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. *Prima facie*, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The High Court, was in error in holding that the order of sanction is vitiated by violation of the principles of natural justice. [820-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7940 of 1995.

From the Judgment and Order dated 2.4.92 of the Calcutta High Court in Matter No. 489 of 1987.

N.N. Goswamy, P. Parmeswaran, T.C. Sharma, C.V.S. Rao and Ms. Neelam for the Appellants.

T.C. Ray, Ms. Mridual Ray Bharadwaj, Bhola Prasad Singh, Sumant Bhardwaj and Ms. Mridula Ray for the Respondents.

The following Order of the Court was delivered :

Leave granted.

Delay of 232 days condoned.

The facts lie in a short compass. During the year 1982, while the respondent No. 1 was working as a Branch Manager in Desh Priya branch of the United Bank of India at Calcutta it was realised that certain officers working in that bank had conspired with a creditor and the bank was defrauded for a sum of Rs. 45,000. On a complaint laid, a crime case was registered and the appellant investigated the matter and submitted the report to the competent authority for sanction, who, by its order dated the 14th January, 1987 accorded sanction under 6(1-C) of the Prevention of Corruption Act, 1947 (for short, 'PC Act) to file the charge-sheet against the respondent for the offences punishable under Section 120B, 420, 467, 468, 471 477A, 201 and 109 IPC and also under Section 5(1) (d) read with Section 5(2) of the PC Act. The respondent filed writ petition in the High Court to quash the sanction. The High Court by the impugned order dated

- A the 2nd April, 1992 in Matter No. 498/87 quashed the sanction on two grounds, namely, that the respondent was not given any opportunity of hearing before granting sanction and in the departmental enquiry conducted by the Bank, respondent was exonerated of the charge. Therefore, it was not expedient to proceed with the prosecution of the respondent.
- B Hence, the above appeal has been filed.

C It is contended for the appellant that the question of giving an opportunity to the charged officer before granting sanction does not arise since it is not a quasi-judicial function. Grant of sanction is an administrative function. What is required is that the investigating officer should place all the necessary material before the sanctioning authority who should apply its mind to that material and accord sanction. Therefore, the question of giving opportunity of hearing to the accused before granting sanction does not arise.

D We find force in the contention. The grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. *Prima facie*, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore, being administrative act the need to provide an opportunity of hearing to the accused before according sanction does not arise. The High Court, therefore, was clearly in error in holding that the order of sanction is vitiated by violation of the principles of natural justice.

G The second ground of departmental exoneration by the disciplinary authority is also not relevant. What is necessary and material is whether the facts collected during investigation would constitute the offence for which the sanction has been sought for.

H It is not appropriate at this stage to go into the merits of the culpability of the respondent though sought to be contended for by Shri Thopas Roy, the learned counsel. In fairness to the accused, we deem it inappropriate to go into the merits to express any opinion.

The appeal is accordingly allowed, the order of the High Court is set aside and the trial court is directed to proceed with the trial against the respondent as expeditiously as possible and conduct joint trial, if trial is not already concluded, along with other accused. If the case has been separated and the trial of other accused has been concluded, than the trial court is directed to expeditiously conclude the trial of the respondent, not exceeding one year. **A**

R.P.

Appeal allowed. **B**