C.S. KRISHNAMURTHY

*v.*

STATE OF KARNATAKA

MARCH 29, 2005

[P. VENKATARAMA REDDI AND A.K. MATHUR, JJ.]

*Prevention of Corruption Act, 1947—Section 6(1) and Section 5(2) read with Section 5(1)(e)—Accumulation of assets disproportionate to income by public servant—Sanction Order by the Authority for prosecution under Section 5(2) read with 5(1)(e)—Validity of—Held : Facts disclosed in the sanction order are eloquent for constituting* **prima facie** *offence under the Section and on reading it with evidence of sanctioning authority, it is clear that the sanction was accorded properly with due application of mind and hence, valid—Order of High Court that sanction accorded was valid calls for no interference—Constitution of India, 1950—Article 136.*

**It is alleged that a technical supervisor of the Telephone Department accumulated assets disproportionate to his known source of income for certain period. CBI carried out the investigation and filed charge sheet against the employee for offence under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947. Deputy General Manager of the Department accorded sanction under section 6(1) of the Act for prosecution of the accused. Special Judge acquitted the accused on the ground that the sanction was invalid. Single Judge of High Court set aside the order holding that the sanction accorded by the prosecution was valid and remitted the matter to the Special Judge. Hence the present appeal.**

**Dismissing the appeal, the Court**

**HELD : 1.1. Sanction is necessary for every prosecution of public servant; this safeguard is against the frivolous prosecution against public servant from harassment. But, the sanction should not be taken as a shield to protect corrupt and dishonest public servant. Sanction order should speak for itself and in case the facts do not so appear, it should be *proved* by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction**

A speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. When the sanction itself is very expressive, then the argument that particular material was not properly placed before the sanctioning authority for according sanction and sanctioning authority has not applied its mind becomes unsustainable. When sanction order itself is eloquent enough, then in that case only formal evidence has to be B produced by the sanctioning authority or by any other evidence that the sanction was accorded by a competent person with due application of mind. [1168-G; 1170-E-F; 1169-C-D]

1.2. In the instant case, the sanction order itself discloses the facts that the incumbent is being prosecuted under the provisions of the C Prevention of Corruption Act for accumulating moveable and immovable assets disproportionate to his known source of income and he has failed to give satisfactory account for the same. The sanction order speaks for itself that the incumbent has to account for the assets disproportionate to his known source of income. More so, Deputy General Manager of the D Department has come in the witness box as prosecution witness and has proved the sanction order, that he was competent authority to accord sanction and he accorded the sanction for prosecution of accused for the alleged offence. He deposed that after going through the report of the Superintendent of Police, CBI and after discussing the matter with his legal department, he accorded sanction which is enough to show that there is E due application of mind. The facts contained in the sanction order read with evidence of sanctioning authority makes it clear that sanction was properly accorded and is valid. Facts mentioned in sanction order are eloquent for constituting *prima facie* offence under Section 5(2) read with Section 5(1)(e) of the Act. Therefore, the view taken by Single Judge of F the High Court is justified and calls for no interference.

[1171-G-H; 1170-F-G; 1172-A]

*Mansukhlal Vithaldas Chauhan* v. *State of Gujarat,* [1997] 7 SCC 622, distinguished.

*Indu Bhusan Chatterjee* v. *State of West Bengal,* [1958] SCR 999; *R.S.* G *Pandit* v. *State of Bihar,* [1963] Supp. 2 SCR 652; *Balaram Swain* v. *State of Orissa,* [1991] Supp. 1 SCC 510 and *State of T.N.* v. *M.M. Rajendran,* [1998] 9 SCC 268, referred to.

2. It cannot be said that since the offence was alleged to have been committed almost 19 years ago, it would not be advisable to proceed with H the matter. It is a matter of corruption and latitude cannot be give in such

**matters. [1172-B]** A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 462 of 2005.

From the Judgment and Order dated 10.6.2004 of the Karnataka High Court in Crl.A. No. 608 of 1998. B

N.D.B. Raju, Ms. Bharathi R. and Guntur Prabhakar for the Appellant.

A. Sharan, Additional Solicitor General, V. Krishnamurthy and P. Parmeswaran, with him for the Respondent.

C

The Judgment of the Court was delivered by

**A.K. MATHUR, J.** Leave granted.

This appeal is directed against an order passed by learned Single Judge of the High Court of Karnataka at Bangalore in Criminal Appeal No. 608 of D 1998 whereby learned Single Judge by his order dated June 10, 2004 has allowed the appeal of State and set aside the order of the XXI Additional Sessions Judge and Special Judge for CBI at Bangalore City whereby he acquitted the appellant accused under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act 1947 on the ground of sanction being invalid in CC No. 131/1990 dated 20th March, 1998. E

Brief facts necessary for disposal of this appeal are that the accused Sri C.S. Krishnamurthy, Technical Supervisor, Bangalore Telephones, Bangalore was charge-sheeted for the offence under Section 5(2) read with Section 5(1) (e) of the Prevention of Corruption Act 1947 (hereinafter referred to as the "Act") alleging that during the period from May 25, 1964 to June 27, 1986 F he acquired assets disproportionate to his known source of income. On 27th June, 1986 he was in possession of movables and immovable assets worth Rs. 4, 01, 454.58 disproportionate to his known source of income and did not give any satisfactory account. The CBI, Bangalore City, after completion of the investigation filed charge sheet against the accused. The charges were G framed against the accused and prosecution examined 56 witnesses and marked exhibits P-1 to P.124. The statement of the accused was recorded under Section 313 Cr.P.C. The accused filed the written explanation. However, he did not choose to lead any defence evidence. The learned Special Judge after hearing the parties framed following questions which read as under : -

H

A "1. Whether the sanction order is valid?

2. Whether the prosecution proves beyond all reasonable doubt that the accused being Technician and then Technical Supervisor in Bangalore Telephones, being a public servant during the period from 25.5.1964 to 27.6.1986 acquired assets which were
B disproportionate to his known sources of income as on 27.6.1986 as the accused was in possession of movables and immovable assets worth Rs. 4,01,454.58 Ps. Which were disproportionate to his known source of income for which he could not give satisfactory account?

C 3. Whether the prosecution has proved beyond all reasonable doubt that the accused has committed the offence under Section 5(1)(e) of the Prevention of Corruption Act, 1947, punishable under Section 5(2) of the said Act?

4. What order? "

D

Learned Special Judge acquitted the accused and held that there was no proper sanction. Learned Special Judge held that the prosecution has failed to prove the valid Sanction under Exhibit P-83 and therefore, prosecution is without jurisdiction and he acquitted the accused of all charges. Aggrieved against the order, an appeal was presented by the CBI to the High Court.

E

Learned Single Judge of the High Court of Karnataka, after examining the evidence came to the conclusion that the sanction accorded by the prosecution is valid and set aside the order of the learned Sessions Judge and remitted the matter back to the Special Judge, CBI, Bangalore to register the case and to decide the matter afresh after hearing both the parties. Aggrieved
F against this order of the learned Single Judge, the present appeal has been preferred by the accused.

We heard both the learned counsel for the parties and perused the record. Whole case depends upon the sanction. Whether the sanction granted
G by the authority is a valid sanction or not? In order to appreciate this controversy, we reproduce the sanction order which reads as under : -

"SANCTION ORDER

Whereas it is alleged that Shri C.S. Krishnamurthy while
H functioning as Technician and then as Technical Supervisor, Bangalore

Telephones, Bangalore, during the period between 25.5.1964 to 25.6.1986, and, as on 27.6.1986 he was found in possession of assets/ properties/pecuniary resources to the tune of Rs. 4,01,454.58 Ps. Which are disproportionate to his known source of income suggesting that the said Sri. C.S. Krishnamurthy acquired the said assets by questionable means and/or from dubious sources and for which he cannot render any satisfactory account/explanation.

Whereas the above said allegation is based on the following facts and circumstances : -

Shri C.S. Krishnamurthy joined the Telephone Department as Telephone Mechanic on 25.5.1964. He was promoted as Technical Supervisor and was working with Bangalore Telephone.

Whereas it has been made to appear that the total income earned by the said Shri C.S. Krishmurthy from all known sources between the period 25.5.1964 to 27.6.1986 is Rs. 7, 91,534.93Ps. The income was from salary, GPF advances, the Rental income, the interest amount received from Bank accounts, the loan amount received from LIC towards house constructions, the dividend income, interest amount and gain in respect of chits received from Navyodaya "Sahakara Bank, Vyyalikaval House Building, Co-operative Society, Vishalam Chit Funds and Reliance Industries, loan received from friends and family members, gain towards sale of scooter/car, sale proceeds of jewellery and income received by family members.

Whereas it has been made to appear that the total expenditure incurred by the said Shri C.S. Krishnamurthy in the above said period from 25.5.1964 to 25.6.1986 was Rs. 2,41,382.85Ps.

Whereas it has been, made to appear that the total assets both movable and immovable acquired by the said Shri C.S. Krishnamurthy during the check period from 25.5.1964 to 27.6.1986 amounted to Rs. 9,51,606.66Ps.

Whereas it has been made to appear that the said Shri C.S.Krishnamurthy during the entire period of his service as a public servant have likely savings to the tune of Rs. 5,50,152.08ps. only against which has had been found in possession of total assets both movable and immovable to the tune of Rs. 9,51,606.66 ps. The extent of disproportionate assets possessed by Shri C.S. Krishnamurthy as

A on 27.6.1986 comes to Rs. 4,01,454.58 Ps..

Whereas the said acts constitute offence punishable under Section 5(2) r/2 5(1)(e) of the Prevention of Corruption Act, 1947, (Act II of 1947).

B And whereas, I, V. Partha Sarthy being the authority competent to remove Shri C.S. Krishnamurthy from office after fully and carefully examining the materials placed before me in regard to the said allegations and circumstances of this case, consider that the said Shri C.S. Krishnamurthy should be prosecuted in a Court of Law for the said offences.

C

Now, therefore, I V. Partha Sarthy do hereby accord sanction under Section 6(1) (C) of the Prevention of Corruption Act 1947 (Act II of 1947) for the Prosecution of the said Shri C.S. Krishnamurthy for the said offences and any other offences punishable under other provisions of Law in respect of the said offences by a Court of D competent jurisdiction."

This sanction order was proved by Mr. V. Parthasarthy, Deputy General Manager of Bangalore Telecom as PW-40, he was competent authority to accord sanction and he accorded the sanction for prosecution of accused for the alleged offence on 28th February, 1990 as per Ex.P. 83. He deposed that E S.P. CBI sent a report against the accused and he perused the report and accorded the sanction as per Ex.P.83. He deposed that he was satisfied that there was a case for prosecuting the accused for the alleged offence. He admitted that he received a draft sanction order and a draft sanction order was also examined by vigilance cell and then it was put up before him. He F also deposed that before according sanction he discussed the matter with the vigilance cell. He also admitted that he was not a law man, therefore, he discussed the legal implication with a legally qualified officer in the vigilance cell. He has denied the suggestion that he did not apply his mind in according sanction. It is no doubt true that the sanction is necessary for every prosecution of public servant, this safeguard is against the frivolous prosecution against G public servant from harassment. But, the sanction should not be taken as a shield to protect corrupt and dishonest public servant. In the present case, a perusal of the sanction order itself shows that Shri C.S. Krishnamurthy's income from all known sources between the period from May 25, 1964 to June 27, 1986 was Rs. 7,91, 534.93 that income was from salary, GPF H advances, rental income, interest amount from bank accounts and loan amount

received from LIC towards house constructions, the dividend income, interest amount and gain in respect of chits received from Navyodaya Sahakra Bank, Vyyalikaval House Building Co-operative Society, Vishalam Chit Funds and Reliance Industries loan received from friends and family members, gain towards sale of scooter/car, sale proceeds of jewellery and income received by family members and the total expenditure incurred by the accused during these period is Rs. 2,41,382.85 and the total assets acquired by the accused both movable and immovable from May 25, 1964 to June 27, 1986 is Rs. 9,51,606.66 ps. Therefore, the accused has to account for difference between the two. The sanction itself shows that there is something to be accounted by the accused. When the sanction itself is very expressive, then in that case, the argument that particular material was not properly placed before the sanctioning authority for according sanction and sanctioning authority has not applied its mind becomes unsustainable. When sanction order itself is eloquent enough, then in that case only formal evidence has to be produced by the sanctioning authority or by any other evidence that the sanction was accorded by a competent person with due application of mind. In the present case the learned additional sessions Judge took a very narrow view that all the papers were not placed before the Court to show that there was proper application of mind by the sanctioning authority. The view taken by learned Special Judge was not correct and the learned Single Judge correctly set aside the order. In this connection we may refer to a three Judge Bench decision of this Court reported in [1958] SCR 999, *Indu Bhusan Chatterjee* v. *The State of Bangal* in which a similar argument was raised that a sanctioning authority did not apply his mind to the facts of the case but merely perused the draft prepared by the Police and did not investigate the truth of the offence. The learned Judges after perusing the sanction order read with the evidence of Mr. Bokil held that there was a valid sanction accorded by a competent person. In this case, the accused was charged under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act. The accused was paid a sum of Rs. 100 in marked currency as illegal gratification at Coffee House for clearing some claims entrusted to him and same was found in his possession. Sanction for prosecution of the appellant was sought from PW-5. Mr. Bokil as a competent authority to grant sanction, he came in witness box and he deposed that he accorded sanction for prosecution after proper application of mind. On these facts the learned Judges observed that Ext. 6 on face of it disclosed a valid sanction for prosecution. In the sanction order it was disclosed that accused had accepted a bribe of Rs. 100 for clearing claim cases and he was trapped. Though sanctioning authority who came in witness box could not answer some questions in cross

A B C D E F G H

A examination, yet this Court held that sanction itself is eloquent read with evidence of sanctioning authority and same is valid. In the present case, the facts contained in the sanction order read with evidence of sanctioning authority makes it clear that sanction was properly accorded and is valid.

In this connection, a reference was made to a decision of the Constitution B Bench in the case of *R.S.Pandit* v. *State of Bihar,* reported in [1963] Supp. 2 SCR 652 wherein their Lordships after referring to a decision of the Privy Council in the case of *Gokulchand Dwarkadas Morarka* v. *The King,* AIR (1948) PC 83 observed as under :

> C "Section 6 of the Act also does not require the sanction to be given in a particular form. The principle expressed by the Privy Council, namely that the sanction should be given in respect of the facts constituting the offence charged equally applies to the sanction under S.6 of the Act. In the present case all the facts constituting the offence of misconduct with which the appellant was charged were D placed before the Government. The second principle, namely, that the facts should be referred to on the face of the sanction and if they do not so appear, the prosecution must prove them by extraneous evidence, is certainly sound having regard to the purpose of the requirements of a sanction."

E Therefore, the ratio is sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. In the present case, the sanction order speaks for itself that the incumbent has to account for the F assets disproportionate to his known source of income. That is contained in the sanction order itself. More so, as pointed out, the sanctioning authority has come in the witness box as witness No. 40 and has deposed about his application of mind and after going through the report of the Superintendent of Police, CBI and after discussing the matter with his legal department, he G accorded sanction. It is not a case that the sanction is lacking in the present case. The view taken by the Additional Sessions Judge is not correct and the view taken by learned Single Judge of the High Court is justified.

In the case of *Balaram Swain* v. *State of Orissa,* reported in [1991] Supp. 1 SCC 510 the High Court reversed the finding of the trial court that H the sanctioning authority has not applied its mind on the materials placed

before him. It was observed in para 9 that the sanctioning authority , namely, PW 4 has stated on both that he perused the consolidated report of the vigilance and fully applied his mind and thereafter issued the sanction. The admission of PW-7 in that case that the entire record was not looked into, was held to be not fatal to the sanction. The finding of the High Court was affirmed by Apex Court. Likewise, P.W.40, i.e. the sanctioning authority in the present case, has gone through the report of the Superintendent of Police and after discussing the matter with the legal department has accorded sanction. That is enough to show that there is due application of mind in the present case.

Our attention was invited to another decision of this Court. In the case of *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat,* reported in [1997] 7 SCC 622, wherein sanction was quashed because sanction for prosecution was given under the direction of the High Court, therefore, it was held that it was not independent application of mind by sanctioning authority as such sanction was invalid. In this case, sanctioning authority who was supposed to apply its mind for granting sanction was denuded of its power because of the direction given by the High Court. Therefore, this case does not help the appellant.

Similarly, our attention was invited to a decision of this Court.

In the case of *State of T.N.* v. *M.M. Rajendran,* reported in [1998] 9 SCC 268. In this case, sanction was accorded by the City Commissioner of Police, Madras. On that basis the trial commenced. The High Court found that all the relevant materials including the statements recorded by the Investigating Officer was not placed for consideration before the City Commissioner of Police, Madras because only a report of the Vigilance Department was placed before him. The High Court came to the finding that although the Personal Assistant to the City Commissioner of Police, Madras has deposed that proper sanction was accorded by the City Commissioner of Police after going though the detailed report of vigilance, but the statements recorded during the investigation was not placed before sanctioning authority and therefore, there was no proper application of mind by sanctioning authority, as such sanction was invalid. But in the present case, the sanction order itself discloses the facts that the incumbent is being prosecuted under the provisions of the Prevention of Corruption Act for accumulating moveable and immovable assets worth Rs. 4, 01, 454.58 paise which is disproportionate to his known source of income and he has failed to give satisfactory account for the same.

A In the present case, facts mentioned in sanction order are eloquent for constituting *prima facie* offence under Section 5(2) read with Section 5(1)(e) of the Act. Therefore, there is due application of mind by sanctioning authority and the sanction is valid.

Learned counsel for appellant submitted that offence was alleged to B have been committed in 1986, now after lapse of almost 19 years would it be advisable to proceed with the matter. It is a matter of corruption and we cannot give any latitude in such matters.

Therefore, under these circumstances, we are of opinion that the view C taken by learned Single Judge of the High Court appears to be justified and there is no ground to interfere in the present appeal. Accordingly, the appeal is dismissed. However, nothing said herein or the High Court excepting on the point of sanction should influence the trial court's decision on merits.

The adverse observations made against the trial Judge are deleted.

D N.J. Appeal dismissed.