IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 4495 of 2024

Ujjal Kumar Ghosh and Anr.
Versus
Umesh Chandra Mohapatra and Anr.

For the Petitioners	:	Mr. Milon Mukherjee, Ld. Sr. Adv. Ms. Kabita Mukherjee, Adv. Mr. Gaurab Das, Adv. Mr. Dattatreya Dutta, Adv.
For the O.P. No. 1	:	Mr. Avishek Guha, Adv. Ms. Sonal Agarwal, Adv.
For the C.B.I.	:	Mr. Amarjit De, Special P.P.
Heard on	:	31.07.2026
Judgment on	:	19.08.2026
Uploaded on	:	19.08.2026

Ajay Kumar Gupta, J.:-

1. By filing this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') corresponding to Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS'), the present petitioners seek quashing of the proceedings being R.C. No. 04/2018 (CBI Case No. 1 of 2023), pending before the learned Metropolitan Magistrate, 22nd Court, Calcutta (re-designated as the Learned Judicial Magistrate, 22nd Court, Calcutta) arising out of CBI/BSFB/Kolkata Case No. RCBSK2018E0004 dated 17.04.2018 under Sections 120B/420/468/471 of the Indian Penal Code and all orders passed therein, including the order dated 18.10.2023.

2. By the order dated 18.10.2023, the Learned Magistrate took cognizance of offence punishable under Sections 120B/420/468/471 of the Indian Penal Code against the petitioners in connection with the aforesaid proceeding.

FACTS OF THE CASE:-

3. The brief facts of the instant case are that the petitioner no. 1 was the Assistant General Manager and Branch Head of the Bank of Baroda, Camac Street Branch, and the petitioner no. 2 joined on 9th December, 2013 as the Deputy General Manager (SCH-VI), and Zonal Head, Bank of Baroda, EZ office, Kolkata.

4. On 17.04.2018, the opposite party no. 1- Umesh Chandra Mohapatra, Deputy General Manager, Bank of Baroda lodged a written complaint on behalf of Bank of Baroda and other consortium member banks, IDBI Bank Ltd. and ICICI Bank Ltd. against M/s. M.K. Patel Exim Pvt. Ltd. (the principal borrower) and its directors.

5. The complainant accused the borrower and its directors, including Mr. Om Prakash Pandey, Mr. Shree Prakash Pandey and others, of engaging in fraud, cheating and the diversion of funds. The company had been granted credit facilities amounting to Rs. 69 crores by the consortium banks, which were later classified as non-performing assets (NPAs). Allegations include the misuse of bank funds, siphoning off money to related parties, and the failure to fulfil commitments on letters of credit (LCs). The details of the letter of complaint indicate how the borrower company failed to route sales proceeds through consortium bank accounts, leading to significant financial losses. Bank of Baroda, the lead bank in the consortium, declared the company and its directors as wilful defaulters and initiated legal actions, including a suit before the Debt Recovery Tribunal (DRT) and notices under the SARFAESI Act, 2002. Investigations revealed that the company did not disclose its sister concerns, to whom significant LCs were issued, thus perpetrating a fraud on the banks. The fraud was reported to the Reserve Bank of India.

6. On the basis of aforesaid written complaint, an FIR was registered being CBI/BSFB/Kolkata Case No. RCBSK2018E0004 dated 17.04.2018 under Sections 420/120B of the Indian Penal Code and under Sections 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988 against six accused persons and initiated investigation. Although, the petitioners were not named in the F.I.R.

7. After culmination of investigation, the investigating agency has submitted a Charge Sheet being Charge Sheet No. 03 of 2020, dated 31.12.2020, under Sections 120B/420/468/471 of the Indian Penal Code and under Sections 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988 against the present petitioners and sixteen other accused persons. The said case was adjourned for a substantial period of time due to the pending filing of the sanction order as far as the petitioners are concerned. Finally, on 04.02.2023, two orders were filed before the Learned Special Judge, CBI, Court No. 2, Bichar Bhawan, Calcutta, in which the officials of the Bank of Baroda, being the General Manager (DP) and the Managing Director and CEO, declined to accord sanction against the petitioners, resulting in the dropping of charges under Sections 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988.

8. Pursuant to the said order, the Learned Special Judge, CBI, Court No. 2, Bichar Bhawan, Calcutta was pleased to transfer the instant case to the Court of the Learned Chief Metropolitan Magistrate, Calcutta only dropping charges under Sections 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988. In turn, vide order dated 01.06.2023, the learned Chief Metropolitan Magistrate, Calcutta was pleased to transfer the case to the Court of the Learned Metropolitan Magistrate, 22nd Court, Calcutta (hereinafter referred to as the "Learned Magistrate") for its trial and disposal.

9. Upon receiving and perusal of the case records of the instant case, the learned Magistrate vide order dated 08.06.2023 was pleased to fix the next date on 31.07.2023 for hearing on the point of taking cognizance of the offences punishable under sections 120B/420/468/471 of the Indian Penal Code. The learned Magistrate further directed the investigating officer to be present on that date along with the case diary of the instant case.

10. On 31.07.2023, the investigating officer in the instant case failed to appear before the learned Magistrate, and the case diary was also not made available for consideration. As a result, the case was adjourned, and the next date was fixed on 05.09.2023 for hearing on the point of taking cognizance of the offences. The learned Magistrate further directed the investigating officer to be present on that date along with the case diary of the pending case.

11. On 05.09.2023, the case was taken up for hearing by the learned Magistrate in the presence of the investigating officer, who was present with the case diary of the instant case. Upon hearing, the learned Magistrate was pleased to observe that the matter was heard in part with respect to the taking of cognizance of the offence. The learned Magistrate further fixed the next date as 18.10.2023 for further hearing on the issue of cognizance. The learned Magistrate further directed the investigating officer to be present on that date.

12. Finally, by the impugned order dated 18.10.2023, the learned Magistrate took cognizance of offences punishable under Sections 120B/420/468/471 of the Indian Penal Code against the petitioners. Although the bank officials of the Bank of Baroda, being the General Manager (DP) and the Managing Director and CEO, have exonerated the petitioners from the alleged offence by declining to accord sanction against them, thereby leading to the dropping of charges under Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. Although, all the sections levelled against the petitioners were connected with the offences as allegedly committed during their service period in the official capacity. No case under Sections 120B/420/468/471 of the Indian Penal Code has been made out against the petitioners herein and further no sanction has been accorded by the competent authorities. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:-

13. Mr. Mukherjee, learned senior counsel appearing on behalf of the petitioners submitted that on the basis of written complaint lodged by opposite party no. 1, a case was initiated against the petitioners being CBI/BSFB/Kolkata Case No. RCBSK2018E0004 dated 17.04.2018 under Sections 420/120B of the Indian Penal Code and under Sections 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988 and after investigation, a Charge Sheet being Charge Sheet No. 03 of 2020, dated 31.12.2020, under Sections 120B/420/468/471 of the Indian Penal Code and under Sections 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988 has been submitted against the petitioners and sixteen other accused persons although no sanction was accorded by the Higher Authority to initiate the proceeding against the present petitioners as per section 19(1)(c) of the Prevention of Corruption Act, 1988.

14. The learned Special Judge also did not take cognizance against the petitioners under the P.C. Act as the competent authority has not accorded sanction for prosecution against the petitioners. However, the learned Special Judge wrongly appreciated that the petitioners could be proceeded with under other sections in the Indian Penal Code. Accordingly, the record was transferred to the learned Chief Metropolitan Magistrate, Calcutta, who, in turn, transferred the case to the Learned Metropolitan Magistrate, 22nd Court at Calcutta (re-designated as Learned Judicial Magistrate, 22nd Court at Calcutta). The learned Magistrate had taken cognizance against the present petitioners after observing that a prima facie case had been made out against the petitioners under Sections 120B/420/468/471 of the Indian Penal Code, although no sanction was accorded by the higher authority to proceed further against the petitioners as both the petitioners were public servants.

15. Learned senior counsel drew attention of this Court with regard to the order passed by Sanjib Chadda, Managing Director and CEO, Bank of Baroda, Mumbai being the competent authority. He did not accord sanction under the P.C. Act, 1988 for prosecution against the present petitioners. Apart from that, the prosecution also failed to produce any sanction order for prosecuting the present petitioners under Sections 120B/420/468/471 of the Indian Penal Code.

16. It was further submitted that even if offences alleged to have been committed by the petitioners under the IPC, a sanction order by the competent authority is essential under Section 197 of the Cr.P.C. for prosecuting a public servant, when the offence is allegedly stated to have been committed during service tenure in official capacity. Therefore, order of taking cognizance by the learned Magistrate is required to be set aside and the entire proceeding is also required to be quashed insofar as the petitioners are concerned, due to lack of sanction order granted by the appropriate authority for prosecuting against the present petitioners even under IPC to prevent abuse of process of law as the petitioners are innocent and were not involved in the offences as alleged.

SUBMISSION ON BEHALF OF THE C.B.I.:-

17. Mr. De, learned counsel appearing on behalf of the CBI, vehemently opposed the prayer of the learned senior counsel appearing on behalf of the petitioners and further submitted that the competent authority has admittedly not sanctioned to prosecute the petitioners under the P.C Act. In such a situation, the learned Trial Court could have proceeded with the trial against the alleged offences committed by the petitioners under Sections 120B/420/468/471 of the Indian Penal Code and for that, no necessary sanction is required.

18. To bolster his submission that sanction with regard to offences punishable under Sections 120B/420/468/471 of the Indian Penal Code is not mandatory and necessary under Section 19(1)(c) of the P.C. Act, learned counsel has placed reliance of a unreported judgment passed by the Hon'ble High Court of Jharkhand at Ranchi in **Cr.M.P. No. 400 of 2015 dated 21.01.2020** and the Hon'ble Supreme Court's order affirming the said judgment in **Special Leave to Appeal (Crl.) No(s). 2787/2020 dated 29.07.2020.**

19. Learned counsel further contended that although sanction for prosecution under the P.C. Act in connection with the petitioners was not accorded or sanctioned by the appropriate authority, but the trial court found there are sufficient materials on record to establish prima facie case under Sections 120B/420/468/471 of the Indian Penal Code against the petitioners. Accordingly, the learned Trial Court took cognizance of offences against the petitioners under the provisions of IPC correctly. As such, the instant Revisional application is liable to be dismissed.

SUBMISSION ON BEHALF OF THE O.P. No. 1:-

20. Learned counsel appearing on behalf of the O.P. No. 1 also supported the submissions made by the learned counsel appearing on behalf of the C.B.I. and also prayed for dismissal of the instant Revisional application.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:-

21. Heard the submissions of the learned counsels for the respective parties and on careful perusal of the materials on record, it appears that initially a case was registered against the accused persons without naming the petitioners in the Copy of FIR and subsequently after investigation, the petitioners were arraigned as accused persons under Sections 120B/420/468/471 of the Indian Penal Code read with Sections 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988 but due to declining of the sanction order for prosecution against the petitioners by the competent authority, the learned Special Judge, CBI, Court No. 2, Bichar Bhawan, Calcutta was pleased to transfer the instant case to the Court of the Learned Chief Metropolitan Magistrate, Calcutta dropping the offence as alleged under Sections 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988. In turn, vide order dated 01.06.2023, the learned Chief Metropolitan Magistrate, Calcutta was pleased to transfer the case to the Court of the Learned Metropolitan Magistrate, 22nd Court, Calcutta (in short 'Learned Magistrate') for its trial and disposal.

22. Upon perusal of the record, it is revealed that the learned Magistrate took cognizance against the petitioners under Sections 120B/420/468/471 of the Indian Penal Code. Although it is an admitted fact that no sanction was accorded by the competent authority even for the offences allegedly stated to have been committed by the petitioners under the provisions of the IPC.

23. Copy of the order of the competent authority declining the sanction for prosecution against the petitioners, *inter alia*, are as follows: -

"It is stated in the investigation report of CBI that the aforesaid acts of omissions and commissions of said Shri Rajendra Laxman Guttikar, the then General Manager, Bank of Baroda, Eastern Zone, Kolkata, prima facie constitute offences punishable under Section 120B r/w 420, 468 and 471 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences thereof.

In this regard, I would like to state as under:

A. Offences alleged under Sec 120B of IPC i.e., Criminal Conspiracy:

The action of Shri Rajendra Laxman Guttikar in allowing opening of LCs with "Nil" margin was purely a business decision with a bonafide intent. He has referred the above decision taken by him to the higher authority at BCC, Mumbai for confirmation of his action. In other words, it is apparent that he has not concealed his above action from the notice of the sanctioning authority.

CBI's investigation report does not establish as to what was the purpose for the said retired General Manager to do the alleged crime. What benefits he derived for himself/ his family members from the borrower/associates concerns of the borrower or from any other sources by allowing the branch to open of LCs with "Nil" margin under "Handholding" mechanism. The opening of the LCs was also against an approved hand holding mechanism which was approved earlier by a higher Committee at the Corporate level to enable the company to tide over the difficulties it was facing then. Hence, I observe that he has not committed any act involving criminal conspiracy.

B. Offences alleged under Sec 420 of IPC i.e., Cheating & Dishonesty:

There are no reasonable grounds to believe that the said Ex-General Manager Shri Rajendra Laxman Guttikar had conspired with the *borrower and its associate concerns to cheat the bank by allowing opening of LCs with "Nil" margin. Moreover, when he has brought his action in allowing opening of LCs with "Nil" margin to the notice of the sanctioning authority instantly with a view to ratify his such action, it is clearly evident that there is no element of malafide and dishonesty at all in his action. The opening of the LCs were also against an approved hand holding mechanism which was approved earlier by a higher Committee at the Corporate level to enable the company to tide over the difficulties it was facing then. Hence, I observe that the said retired General Manager has not committed any crime of cheating the bank.*

C. Offences alleged under Sec 468 of IPC i.e., Forgery for the purpose of cheating:

No evidence is produced by the CBI to establish that the ex-General Manager Shri Rajendra Laxman Guttikar has committed any offence which can be termed as forgery for the purpose of cheating nor have they established that Shri Guttikar has derived any benefit for himself/his family members by allowing opening of LCs with "Nil" margin. The opening of the LCs Were also against an approved hand holding mechanism which was approved earlier by a higher Committee at the Corporate level to enable the company to tide over the difficulties it was facing then. Therefore, I observe that he has not committed any forgery for the purpose of cheating.

D. Offences alleged under Sec 471 of IPC i.e. Using as genuine a forged document or electronic record:

CBI has not produced any evidence to show that Shri Rajendra Laxman Guttikar has used any document as genuine which was a forged document to the best of his knowledge and therefore, I observe that he has not committed any offence in the above context i.e., using a forged document or electronic record as genuine.

E. Offences alleged under Sec 13 (2) of PC Act i.e., Criminal misconduct by a public servant

As regards the alleged Criminal Misconduct u/s 13 of PC Act, it is noted that for constituting any criminal offence, there needs to be criminal intention/ purpose behind such act. Here, the CBI's investigation report doesn't reveal any criminal intention on the part of ex-General Manager Shri Rajendra Laxman Guttikar, hence, I observe that he has not committed any criminal misconduct.

F. Offences alleged under Sec 13 (1)(d) of PC Act i.e., conditions under which criminal misconduct is committed by a public servant

If a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his official position or without any public interest, it will be construed that he has committed the criminal misconduct. In the subject case, there is no such evidence to show that Shri Rajendra Laxman Guttikar has obtained for himself or for any other person any valuable thing/pecuniary advantage by corrupt /illegal means or he has abused official position for obtention of such valuable thing /pecuniary advantage. As stated in the aforementioned paragraphs, there is no malafide intention/criminal overtone in his action in allowing the branch to open LCs with "Nil" margin in the course of implementing the handholding as approved by COCC-ED in the sanction dated 13.12.2013.

The CBI has alleged that criminal misconduct is committed by Shri Rajendra L Guttikar, ex-General Manager as a public servant under Section 13 (2) read with Section13(1) (d) of Prevention of Corruption Act, 1988. The ingredient of Section 13(1) (d) of Prevention of Corruption Act attracts whenever a public servant by corrupt or illegal means obtains for himself or for any other person a valuable thing or pecuniary advantage by abusing his official position. However, CBI *has not brought out any evidence to establish that the said ex-General Manager was benefited with any pecuniary or material gains from the entire episode.”*

24. In the similar way, the competent authority also observed the same and similar view against the another accused/ petitioner no. 2.

25. The competent authority, finally declined to accord the sanction for prosecution against both the present petitioners.

26. Upon perusal of the aforesaid observation of the competent authority, it is crystal clear that the competent authority was of the opinion that there were no materials to indicate that the petitioners were involved in any crime or obtained any pecuniary advantage either for himself or for any other person by corrupt or illegal means or by abusing their official position as public servants.

27. In the present case, sanction under Section 197 of the Cr.P.C. applies to the public servant who falls under the provisions of Section 197 of the Indian Penal Code. For better understanding and for ready reference, Section 197 of the Cr.P.C. is set out herein below: -

> *“**197. Prosecution of Judges and public servants.** — (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [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, of the Central 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, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, [Section 376-A, Section 376-AB, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under

> *clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.*
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> *(3-B) Notwithstanding anything to the Contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]*
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> *(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."*

28. Therefore, petitioners herein are entitled to get protection under the provisions of IPC as well as under the provisions of the P.C. Act in the present case. Therefore, they are entitled to get protection from prosecution under Sections 13(2)/13(1)(d) of the P.C. Act as well as under sections 120B/420/468/471 of the Indian Penal Code.

29. So far as the judgment relied upon by the learned counsel appearing on behalf of the C.B.I. is concerned, this Court finds the said judgment is not applicable in the present facts and circumstances of the case. In the said case, the learned trial court at the time of framing charge, did not consider the fact that there was no prosecution sanction with regard to prosecute the petitioners under the provision of P.C. Act, 1988 and further the learned trial court had taken note of the fact at the time of rejecting the prayer for discharge of the petitioners directing to consider the aspect of sanction order not sanctioned while passing the final judgment. In the said case, the evidence of prosecution was over and statement of the petitioners has already been recorded under Section 313 of the CrPC and the matter was pending for evidence of defence side.

30. The Hon'ble Court also took note that the prosecution certainly cannot be treated as a bar for fresh trial against the petitioners under the provisions of the PC Act or IPC if any prosecution sanction under the PC Act is received subsequently.

31. In the facts and circumstances of the present case, this Court relied upon a judgment passed in the case of ***Suneeti Toteja v. State of U.P. & Anr.***[1] where the Hon'ble Supreme Court held in particular paragraphs nos. 23, 29, and 30, set out below: -

> *"23. Now coming to the contentious issue of sanction for prosecution arising in the present case, the test to decide whether sanction is necessary in a particular case is, whether, the act is totally unconnected with the official duty or whether, there is a reasonable connection with the official duty. In the present case, the letter requesting sanction for prosecution was sent to FSSAI, Delhi by the Additional Chief Secretary, Department of Home (Police), Government of UP, but the same was not sent to BIS, even though at that time, the appellant had gone back to BIS from her deputation at FSSAI. The letter seeking sanction for prosecution is said to have been received by BIS only on 29.07.2022. By that time, the chargesheet had already been filed and the summoning*

[1] **2025 INSC 267 [SLP (Crl.) No. 6898 of 2023]: 2025 SCC OnLine SC 433.**

order was issued by the Magistrate. Thereafter, BIS sought for further documents, including the FIR, and upon furnishing of the FIR and the chargesheet, BIS denied the sanction for prosecution of the appellant vide its letter dated 14.11.2022. This issue of sanction was decided by BIS within the stipulated period of four months. The relevant paragraph of the letter dated 14.11.2022 reads as under:

> *"2. To examine the matter, the related documents i.e. the report of Internal Complaints Committee (ICC) and the copy of FIR was sought from FSSAI vide BIS letter dated 25 Aug 2022 and 22 Sep 2022 respectively. On perusal of the records received, the following facts are observed:*
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> *i. The alleged offence (based on the complaint filed by Dr. Manisha Narayan against Dr. S. S. Ghonkrokta) took place during the period May 2012 to December 2012 and the ICC submitted its report in June 2015.*
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> *ii. Smt. Suneeti Toteja Scientist-E was relieved on 27 April 2016 (FN) from BIS to lake up her assignment on deputation as Director in FSSAl, long after the occurrence of the alleged incident and submission of the report by the ICC. She was relieved from FSSAl on 25 July 2019 and reported back to BIS on 26 July 2019.*
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> *iii. Dr S.S. Ghonkrokta had filed a case in CAT (O.A. No. 1505 of 2016) for setting aside the constitution of ICC. its proceedings and findings. Smt. Suneeti Toteja had signed the counter affidavit (to dismiss the referred OA) in this ease in her official capacity' as the presiding officer of the ICC. alter the erstwhile presiding officer Dr. Sandhya Kalra was repatriated to the Ministry of Health on completion of her tenure in April 2016."*

29. As per the aforementioned proposition, it is only to be seen if the accused public servant was acting in the performance of his/her official duties, and if the answer is in the affirmative, then prior sanction for their prosecution is a condition precedent to the cognizance of the cases against them by the courts. It is therefore largely a disputed question of fact here and not a question of law. However, this fact of appellant herein acting in her official capacity is not seriously contested by the respondents herein. In the instant case, the appellant had filed the counter affidavit and interacted with the complainant in her capacity of a Presiding Officer, ICC. The correctness of the allegations with regard to the conduct of the appellant need not be ascertained herein by this Court but the fact that she was acting in her official duty is sufficient to hold that a prior sanction from the department was in fact necessary *before the Magistrate taking cognizance against her. The Magistrate therefore erred in proceeding to take cognizance against the appellant without the sanction for prosecution being received from BIS, and since BIS has eventually refused to grant sanction for the prosecution of the appellant, the prosecution against the appellant could not have been sustained.*

30. The argument advanced by the respondent-State and the complainant with respect to "deemed sanction" is also not tenable. Section 197 of CrPC does not envisage a concept of deemed sanction. The chargesheet, as well as the counter affidavit of the respondent-State, have relied upon the judgment of this Court in Vineet Narain to contend that lack of grant of sanction by the concerned authority within relevant time would amount to deemed sanction for prosecution. However, a perusal of the said judgment reveals that it did not deal with Section 197 CrPC and rather it dealt with the investigation powers and procedures of Central Bureau of Investigation and Central Vigilance Commission. While it did mention that the time limits for grant of sanction for prosecution must be strictly adhered to, there is no observation to the effect that lack of grant of sanction for prosecution within the time limit would amount to deemed sanction for prosecution."

32. Applying the aforesaid principles enunciated by the Hon'ble Supreme Court to the facts of the present case, it is evident that the alleged acts of the petitioners, acting in discharge of their official duties in connection with the sanction and disbursal of credit facilities to the borrower company, bear a reasonable and direct connection with the discharge of their official functions, and were not de hors to their office. The competent authority, upon a detailed examination of the role played by the petitioners, has in unequivocal terms declined to accord sanction for their prosecution, holding that no material existed to indicate any criminal intent, conspiracy, or pecuniary benefit derived by the petitioners. It is well settled that the character of the offence, whether falling under the Prevention of Corruption Act, 1988 or under the Indian Penal Code, does not dilute the requirement of sanction under Section 197 of the Cr.P.C. so long as the act complained of is referable to the discharge of official duty; the two are not mutually exclusive protections, and denial of sanction under the P.C. Act, arrived at after due consideration of the very same allegations, cannot be circumvented by permitting prosecution to proceed under the general provisions of the Indian Penal Code alone.

33. In such circumstances, sanction under Section 197 of the Cr.P.C., being a condition precedent to the taking of cognizance, and the same having been consciously and specifically declined by the competent authority, the learned Magistrate committed a manifest error in taking cognizance of the offences under Sections 120B/420/468/471 of the Indian Penal Code against the petitioners vide the impugned order dated 18.10.2023 in absence of sanction order. The infirmity goes to the very root of the initiation of the proceeding.

34. In view of the above discussions, it appears that sanction is mandatory for prosecution against the petitioners even under the provisions of IPC prior to taking cognizance against a public servant, against whom there is an allegation of committing offence of acting in discharge of their official duties.

35. Accordingly, **CRR No. 4495 of 2024** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

36. Consequently, the proceedings being R.C. No. 04/2018 (CBI Case No. 1 of 2023) pending before the learned Metropolitan Magistrate, 22nd Court, Calcutta (re-designated as the Learned Judicial Magistrate, 22nd Court, Calcutta) arising out of CBI/BSFB/Kolkata Case No. RCBSK2018E0004 dated 17.04.2018 under Sections 120B/420/468/471 of the Indian Penal Code is quashed and all orders passed therein including the order dated 18.10.2023 passed by the Learned Metropolitan Magistrate, 22nd Court, Calcutta thereby taking cognizance of offences punishable under Sections 120B/420/468/471 of the Indian Penal Code in connection with the aforesaid case are hereby set aside insofar as the petitioners are concerned.

37. Case Diary, if any, is to be returned to the learned Advocate for the State.

38. Let a copy of this Judgment be sent to the Learned Court below for information.

39. Interim order, if any, stands vacated.

40. Parties shall act on the server copies of this Judgment uploaded on the website of this Court.

41. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J.)

(P.A.)