C.B.I vs Ashok Kumar Aggarwal on 31 October, 2013

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Bench: B.S. Chauhan, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1838 OF 2013

C.B.I.
...Appellant

Versus

Ashok Kumar Aggarwal
...Respondent

J U D G M E N T

Dr. B.S. Chauhan, J.

1. This appeal has been preferred against the impugned judgment and order dated 3.10.2007 passed by the High Court of Delhi at New Delhi allowing Crl. R.P. No. 589 of 2007, setting aside the order dated 28.7.2007 passed by the court of Special Judge, Central Bureau of Investigation (hereinafter referred to as the 'CBI'), by which and whereunder the Special Judge rejected the application of the respondent questioning the sanction granted by the competent authority under Section 19 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act 1988'), observing that the issue could be examined during trial.

2. Facts and circumstances giving rise to this appeal are that:

> A. The appellant, CBI registered a preliminary enquiry against the respondent for disproportionate assets to the tune of Rs.8,38,456/- on 17.9.1999. After conclusion of the preliminary enquiry, a regular case was registered on 7.12.1999 as FIR No. S19/E0006/99 in respect of the same to the tune of Rs.40,42,23,478/-.

B. During the course of investigation, it came to light that disproportionate assets were only to the tune of Rs.12,04,46,936/-, which was 7615.45 times of his known sources of income. It further surfaced that the respondent was involved in money laundering; and for channelising his ill-gotten wealth, had established a number of companies wherein his family members were the founding directors. C. The CBI sent a letter to the Ministry of Finance dated 24.5.2002 for accord of sanction for prosecution of the respondent. The same was accompanied by the Superintendent of Police's (hereinafter referred to as the 'SP') report of 163 pages containing a detailed gist of the relevant statements and documents including the information on income tax returns etc. D. The Central Vigilance Commission after examining the said case advised the Ministry of Finance to grant sanction for prosecution. The Investigating Officer visited the Directorate of Income Tax (Vigilance) in September 2002 and placed necessary documents for the perusal of the Additional Director, Income Tax (Vigilance) who was seized of the matter pertaining to the sanction for prosecution of the respondent. The Finance Minister accorded sanction vide order dated 2.11.2002 and as a consequence thereof, the sanction order was issued vide order dated 26.11.2002 under the seal and signature of the Under Secretary (V&L), Ministry of Finance.

E. A charge sheet was filed by the CBI before the Court of Special Judge on 5.12.2002 and on the basis of the same, the court took cognizance and issued summon to the respondent on 10.1.2003. F. The respondent challenged the validity of the sanction by filing an application dated 1.5.2003 and a similar application was again filed on 12.9.2005. The learned Special Judge heard the said applications and dismissed the same vide order dated 28.7.2007, holding that it was not the appropriate stage to decide as to whether sanction granted by the competent authority was invalid. G. The respondent filed a Revision Application under Sections 397, 401 r/w 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') for setting aside the said order of the Special Judge dated 28.7.2007. The said petition was contested by the appellant. However, the High Court vide impugned judgment and order set aside the order of the Special Judge and remanded the case to record a finding on the question of any failure of justice in according sanction and to examine the sanctioning authority, as a witness even at pre-charge stage, if it deems fit.

Hence, this appeal.

3. Shri K.V. Vishwanathan, learned Additional Solicitor General appearing for the appellant has submitted that the application challenging the validity of the sanction at a stage anterior even to framing of the charges is unheard of and is in contravention of the settled legal propositions. In view of the fact that the sanction had been granted by the competent authority, the only issue remains as to whether the relevant material had been disclosed/placed before the sanctioning authority and the said authority had considered the same. The sanctioning authority can delegates its power to other officer or at least can act on the advice or notes prepared by his subordinates. However, such an issue can be agitated only during the trial. Therefore, the High Court committed an error in setting aside the order of the learned Special Judge and remanding the matter and also to examine, if necessary, the sanctioning authority i.e. the then Hon'ble Finance Minister at a pre-charge stage. Thus, the appeal deserves to be allowed.

4. Per contra, Shri Ram Jethmalani, learned senior counsel appearing for the respondent has opposed the appeal contending that the court is not permitted to take cognizance in the absence of valid sanction granted by the competent authority in accordance with law. In the instant case, the relevant material including the statement of the witnesses recorded by the investigating officer under Section 161 Cr.P.C. and a large amount of documentary evidence collected during the investigation were not placed before the Hon'ble Minister when the sanction was granted. The sanctioning authority did not examine the relevant documents which had been of an impeccable character before granting the sanction. Statement of 13 witnesses had been recorded between 10.5.2002 and 16.10.2002 out of which the statement of 10 witnesses had been recorded only after sending the SP's report to the sanctioning authority for obtaining the sanction for prosecution. Even if any officer of the CBI was present with the record in the office of the Finance Minister, there is nothing on record to show that the sanctioning authority was informed about this fact or that the sanctioning authority had examined any record so sent to his office. In the earlier litigation, the High Court vide order dated 9.4.2002 had directed the Revenue Secretary to examine and consider the record of the investigation fairly and objectively, by taking into consideration all relevant facts and circumstances and then proceed with the case. By the said order, the Director, CBI was also asked to examine the investigation record of the case and to consider all relevant aspects and factors in the light of the representation of the respondent and to pass appropriate orders within a stipulated period of two months. In such a fact-situation, the issue of sanction has to be considered at a pre-charge stage and such a void sanction cannot be a foundation for a valid trial. In pursuance of the impugned order, the Special Judge has summoned the then sanctioning authority and the latter filed an affidavit before the Special Judge that relevant material was not placed before him at the relevant time. The appellant suppressed all these facts and obtained the interim order from this court. The conduct of the appellant disentitles it for any relief from this court. Further placing reliance on the judgments of this court in Costao Fernandes v. State, AIR 1996 SC 1383; and Center for PIL & Anr. v. UOI & Ors., AIR 2001 SC 80, it is submitted that CBI is not a trustworthy investigating agency. Thus, no interference is required with the impugned judgment and order. The appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. In State of M.P. v. Dr. Krishna Chandra Saksena (1996) 11 SCC 439, while dealing with the issue this Court held :

> "...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." (Emphasis added)

7. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter-alia on the ground that the order suffers from the vice of total non-application of mind.

?(Vide: Gokulchand Dwarkadas Morarka v. King, AlR 1949 PC 82; Jaswant Singh v. State of Punjab, AIR 1958 SC 124; Mohd. Iqbal Ahmed v. State of A.P., AIR 1979 SC 677; State through Anti-Corruption Bureau, Govt. of Maharashtra v. Krishanchand Khushalchand Jagtiani, AIR 1996 SC 1910; State of Punjab v. Mohd. Iqbal Bhatti, (2009) 17 SCC 92; Satyavir Singh Rathi, ACP v. State, AIR 2011 SC 1748; and State of Maharashtra v. Mahesh G. Jain, (2013) 8 SCC 119).

8. In view of the above, the legal propositions can be summarised as under:

> (a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

9. In view of the above, we do not find force in the submissions advanced by Shri Vishwanathan, learned ASG that the competent authority can delegate its power to some other officer or authority, or the Hon'ble Minister could grant sanction even on the basis of the report of the SP. The ratio of the judgment relied upon for this purpose, in A. Sanjeevi Naidu etc. v. State of Madras & Anr., AIR 1970 SC 1102, is not applicable as in the case of grant of sanction, the statutory authority has to apply its mind and take a decision whether to grant sanction or not.

10. This Court in Ashok Tshering Bhutia v. State of Sikkim, AIR 2011 SC 1363, while dealing with the issue whether invalid sanction goes to the root of jurisdiction of the Court which would vitiate the trial and conviction, held that in the absence of anything to show that any defect or irregularity therein caused a failure of justice, the contention was without any substance. The failure of justice would be relatable to error, omission or irregularity in the grant of sanction. However, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice or has been occasioned thereby.

11. The court must examine whether the issue raised regarding failure of justice is actually a failure of justice in the true sense or whether it is only a camouflage argument. The expression 'failure of justice' is an extremely pliable or facile an expression which can be made to fit into any case.

The court must endeavour to find out the truth. There would be 'failure of justice' not only by unjust conviction but also by acquittal of the guilty as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be over emphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under Indian Criminal Jurisprudence. 'Prejudice' is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is

able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under legal jurisprudence, the accused can seek relief from the Court. (Vide:

> Nageshwar Sh. Krishna Ghobe v. State of Maharashtra, AIR 1973 SC 165; Shamnsaheb M. Multtani v. State of Karnataka, AIR 2001 SC 921; State by Police Inspector v. T. Venkatesh Murthy, AIR 2004 SC 5117; Rafiq Ahmed @ Rafi v. State of U.P., AIR 2011 SC 3114; Rattiram & Ors. v. State of M.P. through Inspector of Police, AIR 2012 SC 1485; Bhimanna v. State of Karnataka, AIR 2012 SC 3026; Darbara Singh v. State of Punjab, AIR 2013 SC 840; and Union of India & Ors. v. Ex-GNR Ajeet Singh, (2013) 4 SCC 186).

12. Be that as it may, in State of T.N. v. M.M. Rajendran, (1998) 9 SCC 268, this Court dealt with a case under the provisions of Act 1988, wherein the prosecuting agency had submitted a very detailed report before the Asanctioning Authority and on consideration of the same, the competent authority had accorded the sanction. This Court found that though the report was a detailed one, however, such report could not be held to be the complete records required to be considered for sanction on application of mind to the relevant material on record and thereby quashed the sanction.

13. In view thereof, the CBI - appellant herein, immediately issued circular dated 6.5.1999 to give effect to the observations made in the said judgment in M. M. Rajendran (Supra) and directed that all the investigating officers to give strict adherence to the said observations made by this Court. The CBI manual was amended accordingly, adding paragraph 22.16, wherein it was directed that in view of the said judgment in M. M. Rajendran (Supra), it was imperative that alongwith SP's report, the branches must send the copies of all the relied upon relevant material "including the statements of witnesses recorded by the investigating officers under Section 161 Cr.P.C. as well as statements under Section 164 Cr.P.C. recorded by the Magistrate to the authority competent to grant sanction for prosecution". Further, the investigating officer concerned shall be deputed to the competent authority to produce the relevant material for perusal of the competent authority and this fact be recorded in the case diary of the case concerned. Paragraph 22.16 of the CBI manual reads as under:

> "On completion of investigation in a case covered in item 22.15.1 and 22.15.2, even the CBI shall send its report to the administrative authority alongwith relevant statements of witnesses recorded during investigation and the documents. The judgment of the Supreme Court in State of T.N. v. M.M. Rajendran reported in (1998) 9 SCC 268 and the Circular No. 21/33/98-PD dated 6.5.1999 issued by the Policy Division which also referred to in this regard."

14. A Three-Judge Bench of this Court in Vineet Narain & Ors. v. Union of India & Anr., AIR 1998 SC 889 to prevent the erosion of the rule of law, issued large number of directions to various authorities. Relevant part of directions issued to CBI, reads:

> "59(12). The CBI Manual based on statutory provisions of the CrPC provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres

> scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned."

15. Thus from the above, it is evident that the CBI manual, being based on statutory provisions of the Cr.P.C., provides for guidelines which require strict compliance. More so, in view of the fact that the ratio of judgment of this Court in M.M. Rajendran (Supra) has been incorporated in the CBI manual, the CBI manual itself is the best authority to determine the issue at hand. The court has to read the relevant provisions of the CBI manual alone and no judgment of this Court can be a better guiding factor under such a scenario.

16. The sanction order runs into 27 pages. The relevant part thereof reads as under:

> ?"And whereas the Central Government, after fully and carefully considering the material placed before him and taking into account the available evidence, including the case diaries and documents collected, by the investigating officer during the course of investigation and statements of witnesses including the statements of witnesses recorded by the investigation officer U/s 161 Cr.P.C. and statements recorded before Magistrates under u/s 164 Cr.P.C. with regard to the said allegations and circumstances of the case, is satisfied that Shri Ashok Kumar Aggarwal should be prosecuted in the ?competent Court of Law for the abovementioned offences and any other offences if made out on these facts,"
>
> (Emphasis added)

17. Before proceeding further, it may be pertinent to note that the sanction order speaks of consideration of the entire material including the case diaries and documents collected during the course of investigation and statements recorded under Section 161 Cr.P.C. and statements recorded by the Magistrate under Section 164 Cr.P.C. The learned Special Judge dealt with the issue in its order and brushed aside the same observing that the same may be factually incorrect, and there was a letter on record showing the true picture that the relevant documents had not been sent to the sanctioning authority. However, it is open to the prosecution during the course of trial to examine the sanctioning authority where such a discrepancy can be explained. The learned Special Judge has wrongly labeled such a fact which goes to the root of jurisdiction and clearly shows that the extent to which there could be application of mind was a mere discrepancy. The relevant part of the order of the Special Judge reads:

> "The contents of Para 27 of the sanction order dated 26th November, 2002 stating that the case diaries, documents collected by the investigating officer during the course of investigation, statements of witnesses under Section 161 CrPC and under Section 164 CrPC were considered by the sanctioning authority may be factually incorrect in view of the letter dated 24th May, 2002, written by the DIG of the CBI, which shows that this document had not been sent. However, this statement by itself

at this stage cannot be construed s non-application of mind by the sanctioning authority. If the charges are framed against the accused and the case goes for trial the sanctioning authority shall get an opportunity to explain the discrepancy." (Emphasis added)

18. The High Court in the impugned judgment and order has taken a prima facie view that:

a) The CBI had not sent the complete record to the sanctioning authority.

b) The order dated 11.7.2007 passed by the Special Judge made it evident that the learned counsel appearing on behalf of the CBI had conceded before the court that only SP's report alongwith list of evidence (oral) and list of evidence (documentary) were sent to the sanctioning authority for the purpose of according sanction.

c) The statement of witnesses and other relevant documents were not sent to the sanctioning authority as per the own case of CBI.

d) The observation in the sanction order dated 26.11.2002 that "the case diaries and documents collected by the investigating officers during the course of investigation, statements of witnesses under Section 161 Cr.P.C. and under Section 164 Cr.P.C. were considered by the sanctioning authority" is factually incorrect.

e) The aforesaid facts make it clear that the sanctioning authority had not considered the entire material available with the investigating agency.

19. The High Court further held:

?"30. In the present case, petitioner has raised objections to the validity of sanction at the very initial stage, i.e. even before arguments on charge could be advanced. However, the trial court has not recorded any finding in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19 of the Act, that non-production of the relevant material before the sanctioning authority at the time of grant of sanction "has not resulted in a failure of justice".

31. Under these circumstances, it would be appropriate to require the trial court to record the findings in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19 of the Act.

32. Hence, the impugned order, passed by the learned Special Judge is set aside and the matter is remanded back to the trial court with direction to record a finding in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19 of the Act.

The trial court, if it deems fit, for this purpose, can examine the sanctioning authority as a witness even before charge, keeping in view the provisions of Section 311 Cr.PC."

20. The aforesaid concluding paragraphs of the judgment give rise to questions as to what is the proper stage to examine the issue of sanction; as well as relating to the applicability of the provisions of Section 19(3)(b) and 19(4) of the Act 1988.

Section 19(1) reads as under:

> "19. (1)No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction
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> --
>
> (a) xx xx xx
>
> (2) xx xx xx
>
> (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) xx xx xx (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." Sub-section (4) thereof clearly provides that the question of validity of sanction could be raised at an earlier stage of proceedings.

21. This Court considered the aforesaid statutory provisions in Satya Narayan Sharma v. State of Rajasthan, AIR 2001 SC 2856 and held as under:

> "3. The prohibition is couched in a language admitting of no exception whatsoever, which is clear from the provision itself. The prohibition is incorporated in sub-section (3) of Section 19 of the Act. The sub-section consists of three clauses. For all the three clauses the controlling non obstante words are set out in the commencing portion as:
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> "19. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973...." Hence none of the provisions in the Code could be invoked for circumventing any one of the bans enumerated in the sub- section."

22. The letter dated 17.5.2005 written by the Addl. DIT (Vigilance) to DIG, CBI makes it clear that the documents relied upon were voluminous and therefore, were not enclosed with the SP's report. It further revealed that an order was passed by the High Court directing the Revenue Secretary and the Director (CBI) to examine the grievance of the respondent/accused and to dispose of his representations in this regard.

23. In Commissioner of Police v. Gordhandas Bhanji, AIR 1952 SC 16, this Court held as under:

> "We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.....Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order." (Emphasis added) (See also: Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors., AIR 1978 SC 861; and Chairman, All India Railway Recruitment Board & Anr. v. K. Shyam Kumar & Ors., (2010) 6 SCC 614).

24. The provisions of Sections 91 and 92 of the Evidence Act provide that evidence may be led to invalidate a document itself. The best evidence as to the contents of a document is the document itself and it is the production of the document that is required by this section in proof of its contents. Section 91 describes the "best evidence rule", while Section 92 comes into operation for the purpose of excluding evidence of any oral agreement, statement etc., for the purpose of contracting or adding or subtracting from its terms. However, these sections differ in some material particulars.

25. Charge sheet filed by the appellant, CBI against the respondent does not reveal that it had examined any witness to the effect that the relevant documents had been produced before the sanctioning authority or the authority had asked for a document and the same had been shown to

him.

26. In the counter affidavit it has been stated by the respondent that there is no evidence on record to indicate that all material records had been separately examined by the Vigilance Wing of the department as permissible under Chapter VII of the Vigilance Manual. Clause 18 of the Manual enables the accused to make a representation to withdraw the prosecution. The relevant part thereof reads as under:

> "18.1. Once a case has been put in a court, it should be allowed to take its normal course. Proposal for withdrawal of prosecution may however, be initiated by the S.P.E. on legal consideration. In such cases the S.P.E. will forward its recommendations to the Department of Personnel and Training in cases in which sanction for prosecution was accorded by that Ministry and to the administrative Ministry concerned in other cases. The authority concerned will in all such cases consult the Ministry of Law and accept their advice.
>
> 18.2. Requests for withdrawal of prosecution may also come up from the accused. Such requests should not generally be entertained except in very exceptional cases where, for instance, attention is drawn to certain fresh, established or accepted facts which might alter the whole aspect of the case.

In such cases also the administrative Ministry concerned should consult the Ministry of Law and accept their advice."

27. The respondent had given a representation on 13.3.2003 making various averments, inter-alia, that there was no evidence to indicate that the relevant material/record had been separately examined by the Vigilance Wing of the department, and for the verification of which the Finance Minister had requisitioned the records. The appellant, CBI brushed aside the said representation on the pretext that the issue of validity of sanction was sub-judice.

28. It has further been averred therein that before the court, the Special PP of CBI has stated that no relevant material had been placed before the sanctioning authority except the SP's report as is evident from the order dated 11.7.2007. The relevant part of the order reads as under:

> "It is conceded by Shri N.K. Sharma, Ld. Special PP that only SP's report alongwith list of evidence oral and list of evidence documentary were sent to the sanctioning authority for the purpose of according sanction."

29. The representation made by the respondent was considered at various levels. The letter written by Shri Rakesh Singh, Joint Secretary (Revenue) to the Director General of Income Tax (Vigilance) with a copy of the same to the Chairman, CBDT stated that in order to consider the representation of the respondent, it was necessary that the concerned records including those of the Income Tax Department for the relevant period be requisitioned from the CBI and examined by the Vigilance Wing of the Income-Tax Department and the finding of such examination be sent to him within 10

days, based on which a final view could be taken on the representation of the respondent.

30. The letter dated 17.5.2004 by Shri B.P.S. Bisht, Additional DIT(V) HQ, CBI revealed that as in the representation, the respondent had averred that all relevant material had not been placed before the sanctioning authority, it was necessary for the CBI to provide all relied upon documents, as referred to in the letter dated 24.5.2002, as also the relevant income tax records which were in the CBI custody to enable compliance of the directions received from the Revenue Secretary. In case it was not possible to provide the original records as above, authenticated copies thereof be given, treating it to be a matter of utmost urgency.

31. The DIG, CBI vide its letter dated 5.6.2004 informed Shri B.P.S. Bisht that it was not possible to send the record. The matter was pending consideration in the trial court and as such was sub-judice.

32. The covering letter of the draft sanction dated 24.5.2007 does not make it clear as to what had been sent to the sanctioning authority. It reveals that alongwith the draft sanction order, a list of witnesses and list of documents had been sent. The relevant part thereof reads as under:

> "The SP's report sent herewith may please be treated as a secret document and no reference to it may be made in the sanction order when issued. In case the Ministry/Department, due to some reasons wants to depart from the material placed on record for issuing sanction, the matter may please be discussed with the undersigned so that the sanction for prosecution so accorded not found wanting legally.
>
> Since the relied upon documents are very large in quantity, they are not being enclosed. The Investigating Officer of this case Shri V.K. Pandey, will show the documents and also explain the evidence as and when required. Further List of witnesses and List of documents will be provided, if necessary." (Emphasis added) Thus, it is evident that even on the date the draft sanction was sent, the investigation was not complete.

33. It appears from the facts and figures given in the report, particularly from the Income Tax returns/assessment orders of the respondent and his family members, that there has not been a fair assessment regarding the income of the respondent and other family members as shown by them in their income-tax returns and it is far from satisfaction, as is evident from the preliminary enquiry report dated 17.9.1995. Same remained the position regarding the assessment of the value of the apartments purchased by the respondent at Barakhamba Road, New Delhi, if compared with the property purchased by the Indian Oil Corporation in the same locality.

34. The judgment delivered by the Delhi High Court in the case of Vijay Aggarwal, brother of the respondent, in Writ Petition (Crl.) No. 675 of 2001 against the officers of the CBI impleading them by name, make it evident that very serious allegations had been made against the said officers of having acted with oblique motive to force him to ensure that his brother Ashok Kumar Aggarwal withdraws the complaint filed by him against them under Section 340 Cr.P.C. The court ultimately

held that investigation had not been conducted in a fair manner. The order passed therein reads:

> "33. In the result, the petition is partly allowed. The Special Cell of Delhi Police is directed to register an FIR on the basis of the allegations contained in the present petition and the complaint of the petitioner dated 23.2.2004 addressed to the Commissioner of Police, Delhi and take up the investigation of the case. The investigation shall be conducted by an officer not below the rank of Assistant Commissioner of Police in the said Cell independently and uninfluenced by the findings and observations contained in the report of enquiry dated 26.4.2005 conducted by the Joint Director, CBI and shall endeavour to conclude the investigation expeditiously within a period of two months from the date of this order and shall file a status report in the court on 5th September, 2006."

35. Another Writ Petition (Crl.) No. 738 of 2001 was filed by Shish Ram Saini, Chartered Accountant against the CBI and its officers making allegations against them that he had been harassed by the CBI's officers as he was employed as an Accountant in the firms and companies of respondent herein. The court held that the authorities had proceeded with high-handedness and found substance in the allegations made by the petitioner therein. The order runs as under:

> "31. In view of the above discussion and in the result, the present petition is partly allowed and the Special Cell of Delhi Police is directed to register a case on the basis of allegations contained in the complaint dated 5.7.2001 lodged by the petitioner with police station Lodhi Colony and those contained in the present petition. The investigation shall be conducted by an officer not below the rank of Assistant Commissioner of Police in the said Cell independently and uninfluenced by the findings and observations contained in the report of enquiry dated 26.4.2005 conducted by the Joint Director, CBI."

36. The record reveals that VIP reference was made by the Ministry of Finance to the Law Ministry in respect of the case against the respondent as the matter had been agitated by one Hon'ble Member of the Parliament and the Law Ministry gave its opinion. The salient features thereof are that the sanction had been accorded without considering and examining the relevant material as the same had not been sent by the CBI and even thereafter despite being requested by the Vigilance Department of CBDT, the Vigilance, CBI did not send the relied upon documents to the authorities.

37. Similarly, it is also evident from the records that the Ministry of Finance, Department of Revenue had written a letter dated 11.3.2011 to the Law Department seeking the said opinion and earlier the Directorate General of Income Tax (Vigilance) had also sent a letter to the Law Ministry seeking its opinion. Thus, the concerned authorities had sought legal opinion of the Law Ministry on the issue.

> 38. The CVC Manual provides that opinion of the Law Ministry was to be accepted by the other departments in such cases.

However, the respondent claims that the said legal opinion was subsequently withdrawn. Whether the legal opinion could be validly withdrawn or not can be considered by the trial court while considering the validity of the sanction.

39. It may also be pointed out that after the impugned judgment was passed, the Special Judge in order to ensure compliance thereof, dealt with the case on 12.10.2007 and directed:

> "Let the sanctioning authority be produced on 3.11.2007." It was on the suggestion made by Special Public Prosecutor for CBI that the court issued summon to the sanctioning authority. The order sheet dated 3.11.2007 further reveals that after passing of the order and signing the same, the matter was again taken up at 2.00 P.M., wherein the affidavit purported to have been given by the then sanctioning authority was taken on record and it was directed that the matter be listed on 20.11.2007.

40. The relevant part of the affidavit filed by the then sanctioning authority dated 3.11.2007 reads as under:

> "4. I confirm the statement of facts in Paragraphs 8 and 24 of the order of the Hon'ble High Court. No statements of witnesses or the documents relied in the charge-sheet are ordinarily forwarded to the Finance Minister of the day. What is sent is a draft order, whereafter sanctioning by the Minister in normally a routine acceptance of that draft. What was considered by me was only that which was sent or recommended to me.
>
> 5. If the obligation was to consider more than which was sent, then that has not been done, therefore, unwittingly prejudice might have been caused and justice miscarried. I leave it to the Court to decide the matter."

41. The aforesaid affidavit, whatever may be its evidentiary value and without going into technicalities such as the issue of whether it is admissible in evidence or not or whether it may be considered at a later stage, one thing is clear that it is in consonance and confirmation of the findings recorded by the High Court in paragraphs 8 and 24 of the impugned judgment. Paragraph 8 of the judgment reads as under:

> "8. Further, it is contended that the charge sheet relies upon 366 witnesses, whereas the list annexed to the SP's report mention only 278 witnesses. 88 witnesses were not even mentioned in the list and the statement of not even a single witness, out of 366 witnesses was sent to the sanctioning authority. Moreover, the charge sheet refers to 1220 documents, whereas the list attached to the SP's report only mention 282 documents. Thus, 938 documents were withheld from the sanctioning authority

including documents consisting of income tax record of the petitioner. The Apex Court has held in DSP Chennai v. K. Inbasagaran, (2006) 1 SCC 420 that:

"Income tax return and assessment orders are relevant in a case of disproportionate assets." Paragraph 24 mentioning relevant part of sanction order has already been quoted hereinabove."

42. Thus, it becomes crystal clear that the statements of 28 witnesses were not even mentioned in the SP's report. Similarly, there was no reference to the 938 documents in the said report and there had been no reference to the income tax returns and assessment orders so far the respondent and his family members were concerned therein.

43. The present special leave petition was drawn/drafted on 20.11.2007 and filed thereafter. Interim order was granted by this Court on 10.12.2007. In the special leave petition it has not been disclosed that the Special Judge, after remand, entertained the matter and issued summons to the then sanctioning authority i.e. Hon'ble Finance Minister, and in response thereto, an affidavit dated 3.11.2007 had been filed by the then sanctioning authority, disclosing that no material had been considered by him while granting sanction.

However, leaving the issue open as to what prejudice had been caused to the respondent, it is apparent that all the material facts had not been disclosed in the special leave petition. Thus, the appellant suppressed some of the most material facts from this Court.

44. Section 19(3) of the Act, 1988 puts a complete embargo on the court to grant stay of trial/proceedings.

?In Selvi J. Jayalalithaa & Ors. v. State of Karnataka & Ors., JT 2013 (13) SC 176, this court while dealing with the scope of power under Article 142 of the Constitution held that the court cannot pass an order in contravention of the statutory provisions:

"28.1 The powers under Article 142 of the Constitution stand on a wider footing than ordinary inherent powers of the court to prevent injustice. The constitutional provision has been couched in a very wide compass that it prevents "clogging or obstructing of the stream of justice." However, such powers are used in consonance with the statutory provisions." (emphasis added) (See also: Teri Oat Estates (P) Ltd. v. UT, Chandigarh & Ors., (2004) 2 SCC 130, Manish Goel v. Rohini Goel, AIR 2010 SC 1099, and State of Uttar Pradesh v. Sanjay Kumar, (2012) 8 SCC 537).

45. This court passed the interim order in contravention of the provisions of Section 19 of the Act 1988. Though the appellant claims that it did not ask for such order, the court itself granted the stay. Even the respondent never applied for vacating the said interim order. In such a fact-situation, it is not desirable to make any comment on the issue.

46. The most relevant issue involved 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. Chairman Airport Authority of India & Anr., AIR 2012 SC 858, this Court dealt with an issue and placing reliance upon the judgment in Parkash Singh Badal & Anr. v. State of Punjab & Ors., AIR 2007 SC 1274, came to the conclusion as under:

> "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..."

47. 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 pretrial stage.

48. However, in the instant case, the fact-situation warrant a different course altogether as the impugned order had already been partly complied with before filing the petition before this Court. The appellant admittedly did not disclose the material facts in this petition. Had the said facts been disclosed perhaps this Court would not have entertained this petition and the matter could have been concluded by the Trial Court much earlier. The affidavit filed by the sanctioning authority may tilt the balance in favour of the respondent if duly supported by the deponent and not disclosing the material fact i.e. filing of such an affidavit by the sanctioning authority before the Special Judge, indicates serious and substantial prejudice to the respondent. The material on record reveals that it could be a case of serious prejudice to the respondent so far as the decision making process by the sanctioning authority is concerned. The benefit of interim protection granted in favour of the appellant where the appellant has not disclosed the material facts, should be neutralized.

49. We do not find any force in the submission made by Shri Jethmalani, learned senior counsel that as the matter is about one and a half decade old and the respondent has already suffered because of protracted legal proceedings at various stages before different forums, it is warranted that prosecution against him be closed altogether. This Court has consistently held that no latitude can be given in the matter of corruption. (Vide: C.S. Krishnamurthy v. State of Karnataka, AIR 2005 SC 2790) wherein contrary view had been taken from Mansukhlal Vithaldas Chauhan v. State of Gujarat, AIR 1997 SC 3400.

50. In view of the above, we are of the considered opinion that the peculiar facts and circumstances of the case do not warrant any interference and the appeal is dismissed.

However, before parting with the case, we clarify that the trial court will proceed without being influenced by any observation made hereinabove as we have considered the facts of the case only to decide this appeal. In the facts and circumstances of the case, as the matter remained pending before the court for a long time, we request the learned Special Judge to proceed with the matter from the stage when the stay operated and conclude the same at the earliest.

.....……..J.
(DR. B.S. CHAUHAN)

.....……J.
(S.A. BOBDE)

New Delhi,
November 22, 2013