Manzoor Ali Khan vs Union Of India & Ors on 6 August, 2014

Equivalent citations: AIR 2014 SUPREME COURT 3194, 2015 (2) SCC 33, 2014 AIR SCW 4544, AIR 2014 SC (CRIMINAL) 1863, 2014 (5) ALL LJ 433, 2014 (4) AJR 63, (2014) 87 ALLCRIC 333, (2014) 4 JLJR 330, (2014) 4 JCR 141 (SC), (2014) 3 CAL LJ 186, (2014) 4 ALLCRILR 377, 2015 (1) SCC (CRI) 802, (2015) 2 CAL HN 194, (2015) 4 MAH LJ 86, 2014 (9) SCALE 202, 2014 ALLMR(CRI) 3784, 2014 (3) ABR (CRI) 306, (2014) 142 ALLINDCAS 184 (SC), 2014 (4) KER LT 9.1 SN, (2014) 4 PAT LJR 411, (2014) 3 CURCRIR 529, (2014) 4 RECCRIR 89, (2014) 6 MAD LJ 241, (2014) 59 OCR 326, (2014) 3 ALLCRIR 2535, (2014) 9 SCALE 202, (2014) 2 WLC(SC)CVL 419, (2014) 5 BOM CR 543

Bench: Adarsh Kumar Goel, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 305 OF 2007

Manzoor Ali Khan ... Petitioner (s)

Versus

Union of India & Ors. ... Respondent (s)

J U D G E M E N T

Adarsh Kumar Goel, J.

1. This petition, by way of public interest litigation, seeks direction to declare Section 19 of the Prevention of Corruption Act, 1988 (“PC Act”) unconstitutional and to direct prosecution of all cases registered and investigated under the provisions of PC Act against the politicians, M.L.As, M.Ps and Government officials, without sanction as required under Section 19 of the PC Act.

2. According to the averments in the writ petition, the petitioner is a practising advocate in the State of Jammu & Kashmir. In the said State, several Government officials have been charged for corruption but in the absence of requisite sanction, they could not be prosecuted. Referring to several instances including those noticed by this Court in various orders, it is submitted that the provision for sanction as a condition precedent for prosecution is being used by the Government of India and the State Governments to protect dishonest and corrupt politicians and Government

officials. The discretion to grant sanction has been misused.

3. The petition refers to various orders of this Court where incumbents were indicted but not prosecuted for want of sanction. In Common Cause, a registered Society vs. Union of India & Ors. (1996) 6 SCC 593, Captain Satish Sharma, the then Minister for Petroleum and Natural Gas was held to have acted in arbitrary manner in allotting petrol pumps but since sanction was refused, he could not be prosecuted. In Shiv Sagar Tiwari vs. Union of India & Ors. (1996) 6 SCC 599, Smt. Shiela Kaul, the then Minister for Housing and Urban Development, Government of India was indicted for making arbitrary, mala fide and unconstitutional allotments but still she could not be prosecuted. In M.C. Mehta (Taj Corridor Scam) vs. Union of India & Ors., (2007) 1 SCC 110, Ms. Mayawati, the then Chief Minister of U.P. and Shri Nasimuddin Siddiqui, the then Minister for Environment, U.P. were indicted and allegations against them were noticed but they could not be prosecuted in the absence of sanction. It is further stated that in Prakash Singh Badal & Anr. vs. State of Punjab & Ors., 2007 (1) SCC 1, Lalu Prasad @ Lalu Prasad Yadav vs. State of Bihar Thr. CBI(AHD) Patna 2007 (1) SCC 49 and K. Karunakaran vs. State of Kerala 2007 (1) SCC 59, validity of requirement of sanction was not gone into on the ground of absence of challenge to its validity. In Shivajirao Nilangekar Patil vs. Mahesh Madhav Gosavi (Dr.) & Ors. (1987) 1 SCC 227, this Court noticed that there was a steady decline of public standards and morals. It was necessary to cleanse public life even before cleaning the physical atmosphere. The provision for sanction under the PC Act confers unguided and arbitrary discretion on the Government to grant or not to grant sanction to prosecute corrupt and dishonest politicians, M.Ps, M.L.As and Government officials.

4. In response to the notice issued by this Court, affidavits have been filed by several State Governments and Union Territories but no counter affidavit has been filed by the Union of India. The stand taken in all the affidavits is almost identical. According to the said stand, the object of Section 19 of the PC Act is to protect public servants against irresponsible, frivolous and vexatious proceedings for acts performed in good faith in the discharge of their official duties and to protect them from unnecessary harassment of legal proceedings arising out of unfounded and baseless complaints. In the absence of such a provision, the public servant may not be inclined to offer his/her free and frank opinion and may not be able to function freely.

5. We have heard Mr. D.K. Garg, learned counsel for the petitioner and Mr. P.S. Narasimha, learned Additional Solicitor General for the Union of India and learned counsel for various States.

6. Section 19 of the PC Act is as follows:-

> "19. Previous sanction necessary for prosecution.— (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) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

7. Question for consideration is whether Section 19 of the PC Act is unconstitutional and whether any further direction is called for in public interest and for enforcement or fundamental rights?

8. The issue raised in this petition is no longer res integra. Requirement of sanction has salutary object of protecting an innocent public servant against unwarranted and mala fide prosecution. Undoubtedly, there can be no tolerance to corruption which undermines core constitutional values of justice, equality, liberty and fraternity. At the same time, need to prosecute and punish the corrupt is no ground to deny protection to the honest. Mere possibility of abuse cannot be a ground to declare a provision, otherwise valid, to be unconstitutional. The exercise of power has to be regulated to effectuate the purpose of law. The matter has already been dealt with in various decisions of this Court.

9. In Vineet Narain & Ors. vs. Union of India & Anr. (1996) 2 SCC 199, this Court observed in paragraph 3 as follows:

> "3. The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, [pic]bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: "Be you ever so high, the law is above you." Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies."

10. Again in a later order in the same case, i.e., Vineet Narain & Ors. vs. Union of India & Anr., reported in (1998) 1 SCC 226, it was observed as under:

> "55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.
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> 56. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that

> future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant.

Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: R. v. Secy. of State for Foreign and Commonwealth Affairs, 1995 (1) WLR 386.

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15. Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office."

11. In a recent judgment of this Court in Subramanian Swamy vs. Manmohan Singh & Anr., (2012) 3 SCC 64, the question for consideration was whether a private citizen has locus to prosecute a public servant and to obtain sanction and how an application for sanction was to be dealt with. It was held that any application for sanction sought even by a private citizen must be looked into expeditiously and decided as per the observations of this Court in Vineet Narain case (supra) and guidelines framed by the CVC which were circulated vide Office Order No. 31/5/05 dated 12.05.2005. The relevant clauses have been quoted in the said judgment. In paragraphs 30, 33, 49, 50 of the leading judgment, it was observed:

> "30. While dealing with the issue relating to maintainability of a private complaint, the Constitution Bench observed: (A.R. Antulay vs. Ramdas Sriniwas Nayak and Anr. (1984) 2 SCC 500, para 6) "6. It is a well-recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and [pic]independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. Numerous statutory provisions, can be referred to in support of this legal position such as (i) Section 187-A of the Sea Customs Act, 1878 (ii) Section 97 of the Gold (Control) Act, 1968 (iii) Section 6 of the Imports and Exports (Control) Act, 1947 (iv) Section 271 and Section 279 of the Income Tax Act, 1961 (v) Section 61 of the Foreign

Exchange Regulation Act, 1973, (vi) Section 621 of the Companies Act, 1956 and (vii) Section 77 of the Electricity (Supply) Act, 1948. This list is only illustrative and not exhaustive. While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 CrPC. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force ... is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straitjacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far-fetched implication, cannot be a substitute for an express statutory provision." (emphasis supplied)

33. In view of the aforesaid judgment of the Constitution Bench in Antulay case, it must be held that the appellant has the right to file a complaint for prosecution of Respondent 2 in respect of the offences allegedly committed by him under the 1988 Act.

49. CVC, after taking note of the judgment of the Punjab and Haryana High Court in Jagjit Singh v. State of Punjab, State of Bihar v. P.P. Sharma, Supt. of Police (CBI) v. Deepak Chowdhary, framed guidelines which were circulated vide Office Order No. 31/5/05 dated 12-5-2005. The relevant clauses of the guidelines are extracted below:

"2 (i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does

not arise. The sanctioning authority has only to see whether the facts would prima facie constitute the offence.

(ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the sanctioning authority, by asking the IO to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.

* * *

(vii) However, if in any case, the sanctioning authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind properly, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

(viii) If the sanctioning authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the sanctioning authority to adhere to the time-limit allowed by the Supreme Court in Vineet Narain case."

50. The aforementioned guidelines are in conformity with the law laid down by this Court that while considering the issue regarding grant or refusal of sanction, the only thing which the competent authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The competent authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true." In concurring judgment, it was further observed:

"68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision. Therefore, the duty of the court is that any anti- corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.

> 70. The learned Attorney General in the course of his submission fairly admitted before us that out of the total 319 requests for sanction, in respect of 126 of such requests, sanction is awaited. Therefore, in more than one-third cases of request for prosecution in corruption cases against public servants, sanctions have not been accorded. The aforesaid scenario raises very important constitutional issues as well as some questions relating to interpretation of such sanctioning provision and also the role that an independent judiciary has to play in maintaining the Rule of Law and common man's faith in the justice-delivering system. Both the Rule of Law and equality before law are cardinal questions (sic principles) in our constitutional laws as also in international law and in this context the role of the judiciary is very vital. In his famous treatise on Administrative Law, Prof. Wade while elaborating the concept of the Rule of Law referred to the opinion of Lord Griffiths which runs as follows:
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> "... the judiciary accepts a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to [pic]refuse to countenance behaviour that threatens either basic human rights or the rule of law." [See R. v. Horseferry Road Magistrates' Court, ex p Bennett, AC at p. 62 A.] I am in respectful agreement with the aforesaid principle.
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> 74. Keeping those principles in mind, as we must, if we look at Section 19 of the PC Act which bars a court from taking cognizance of cases of corruption against a public servant under Sections 7, 10, 11, 13 and 15 of the Act, unless the Central or the State Government, as the case may be, has accorded sanction, virtually imposes fetters on private citizens and also on prosecutors from approaching court against corrupt public servants.

These protections are not available to other citizens. Public servants are treated as a special class of persons enjoying the said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was extended in public interest cannot become a shield to protect [pic]corrupt officials. These provisions being exceptions to the equality provision of Article 14 are analogous to the provisions of protective discrimination and these protections must be construed very narrowly. These procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption.

75. Therefore, in every case where an application is made to an appropriate authority for grant of prosecution in connection with an offence under the PC Act it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue without being influenced by any extraneous consideration. In doing so, the authority must make a conscious effort to ensure the Rule of Law and cause of justice is advanced. In considering the question of granting or refusing such sanction, the authority is answerable to law and law alone. Therefore, the requirement to take the decision with a reasonable dispatch is of the essence in such a situation. Delay in granting sanction proposal thwarts a very valid social purpose, namely, the purpose of a speedy trial with the requirement to bring the culprit to book. Therefore, in this case the right of the sanctioning

authority, while either sanctioning or refusing to grant sanction, is coupled with a duty.

76. The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of the Rule of Law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecutions and is adversely viewed in public mind that in the name of considering a prayer for sanction, a protection is given to a corrupt public official as a quid pro quo for services rendered by the public official in the past or may be in the future and the sanctioning authority and the corrupt officials were or are partners in the same misdeeds. I may hasten to add that this may not be the factual position in this (sic case) but the general demoralising effect of such a popular perception is profound and pernicious.

77. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny and determination of the allegations against corrupt official and thus the legitimacy of the judicial institutions is eroded. It, thus, deprives a citizen of his legitimate and fundamental right to get justice by setting the criminal law in motion and thereby frustrates his right to access judicial remedy which is a constitutionally protected right. In this connection, if we look at Section 19 of the PC Act, we find that no time-limit is mentioned therein. This has virtually armed the sanctioning authority with unbridled power which has often resulted in protecting the guilty and perpetuating criminality and injustice in society.

79. Article 14 must be construed as a guarantee against uncanalised and arbitrary power. Therefore, the absence of any time-limit in granting sanction in Section 19 of the PC Act is not in consonance with the requirement of the due process of law which has been read into our Constitution by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India (1978) 1 SCC 248.

80. I may not be understood to have expressed any doubt about the constitutional validity of Section 19 of the PC Act, but in my judgment the power under Section 19 of the PC Act must be reasonably exercised. In my judgment Parliament and the appropriate authority must consider restructuring Section 19 of the PC Act in such a manner as to make it consonant with reason, justice and fair play.

81. In my view, Parliament should consider the constitutional imperative of Article 14 enshrining the Rule of Law wherein “due process of law” has been read into by introducing a time-limit in Section 19 of the PC Act, 1988 for its working in a reasonable manner. Parliament may, in my opinion, consider the following guidelines:

> (a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.
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> (b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause

(a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.

(c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit." The above observations fully cover the issue raised in this petition.

12. Thus while it is not possible to hold that the requirement of sanction is unconstitutional, the competent authority has to take a decision on the issue of sanction expeditiously as already observed. A fine balance has to be maintained between need to protect a public servant against mala fide prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other hand.

13. In view of the law laid down by this Court, no further directions are necessary.

14. The writ petition is disposed of.

.....J. [T.S. THAKUR] .....J. [ADARSH KUMAR GOEL] New Delhi August 06, 2014