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Court : Delhi

Decided On : May-07-2012

Judge : The Honourable Ms. Justice Pratibha Rani

Appeal No. : CRL.M.C. 92 OF 2012

Appellant : Hawa Singh

Respondent : Cbi

Judgement :

1. The petitioner has filed this petition under Section 482 Cr PC read with Section 27 of the PC Act, 1988 seeking discharge in CC No. 09/2006 (RC No.DAI-2004-A-0046/DLI).

2. The petitioner challenged the validity of sanction Ex.PW4/A and filed an application before learned Special Judge seeking discharge on the ground of invalidity of the sanction. The said application was dismissed vide order dated 29.11.2011 which is impugned before this Court.

3. Vide impugned order, learned Special Judge held that the sanction order did not suffer from any infirmity or non-application of mind by the authority to grant sanction for prosecution. Sanction was held to be valid and application of the accused was dismissed.

4. In brief, the case of the petitioner is that he was facing trial in the above noted case and during pendency of the trial, he filed an application seeking discharge on the ground of invalidity of the sanction which has been dismissed by learned Special Judge vide impugned order dated 29.11.2011. In the interregnum period his statement under Section 313 Cr PC was also recorded and while answering the questions bearing No.86 to 90, also validity of the sanction and it being accorded by the authority competent to remove him, was disputed.

5. Notice of the petition was sent to CBI. I have heard Mr.H.K.Sharma, counsel for the petitioner and Ms.Sonia Mathur, APP for CBI.

6. At the outset, I would like to observe that when the case was at the stage of final arguments, Court had already heard final arguments in part, the application seeking discharge challenging the validity of sanction, was undesirable particularly in view of Section 19 (3)(a) of Prevention of Corruption Act.

7. As per Section 5 of the Prevention of Corruption Act, 1988, the Special Judge is required to follow the procedure prescribed for warrant trial cases in Code of Criminal Procedure, 1973 (2 of 1974). The trial in a warrant case starts with framing of charge. Once charge has been framed in a warrant trial case, instituted either on a complaint or on a police report, the trial Court has no power under the Code of Criminal Procedure, 1973 (2 of 1974) to discharge the accused. The trial Court can either acquit or convict the accused unless it decides to proceed under Sections 325 and 360 of Code of Criminal Procedure, 1973 (2 of 1974), excepting where the prosecution must fail for want of a fundamental defect, such as want of sanction. An order of acquittal must be based upon a ‘finding of not guilty’ turning on the merits of the case on appreciation of evidence, at the conclusion of the trial.

8. The mere fact that after seeking approval from the competent authority, sanction order has been authenticated by Under Secretary, duly authorized for the said purpose under Government of India (Transaction of Business Rules), discharge could not have been sought on the ground of invalidity of the sanction order and that too at the stage when the case was fixed for final arguments.

9. In the instant case, it cannot be contended that there is no sanction at all. Infact, it is the very sanction order that has been challenged before learned Special Judge while seeking discharge which is now sought to be quashed by filing this petition.

10. The impugned order has been challenged by the petitioner claiming it to be bad in eyes of law and based on surmises and conjunctures on the following grounds :-

(i) On the application filed by the CBI to summon the sanctioning authority and PW-4 Under Secretary who authenticated the sanction order, they were allowed to be summoned by the Court. However, as both these witnesses were not produced, the statement of PW-4 cannot be read in evidence.

(ii) Vide order dated 27.07.2011 learned Special Judge accepted the contention of prosecuting agency that sanction has not been proved yet and ordered for recalling PW-4 and also summoned the sanctioning authority. But subsequently, the evidence was closed. The application filed by the petitioner seeking discharge was dismissed vide impugned order dated 29.11.2011, which shows perversity.

(iii) The Court allowed the application under Section 311 Cr PC and despite that the witnesses were not produced which has caused serious prejudice to the petitioner.

(iv) The sanction order Ex.PW4/A was signed by the Under Secretary who is not the sanctioning authority.

(v) Ex.PW4/A the sanction order does not disclose who is the sanctioning authority as neither the sanctioning authority is referred by name nor by designation but as competent authority.

(vi) Sanctioning authority being not cited as a witness, opportunity to fairly defend to prove that sanction has not been given after application of mind, is denied. It has caused serious prejudice to the petitioner.

(vii) The original file produced from the department which was placed before the competent authority for grant of sanction show that it was a case of total non-application of mind by the sanctioning authority. He has simply written the word 'Approved' and that itself shows that the note which was prepared by Under Secretary and sent to him through Deputy Secretary, was approved without application of mind to the facts of the case. This in itself is sufficient to declare the sanction invalid.

11. The contention of learned counsel for the petitioner that in view of non-production of sanctioning authority and PW-4 after the application under Section 311 Cr PC of CBI was allowed and now statement of PW-4 cannot be read in evidence, appears to be attractive at the first glance but without any force. No doubt, the prayer of the CBI to examine sanctioning authority and re-examine PW-4 the Under Secretary to obtain certain clarifications regarding some matter already on record was allowed and on failure of the CBI to examine them, opportunity was closed. However, there does not seem to be any conflict in the two orders. In the application under Section 311 Cr PC, the prayer of the CBI was allowed and if the sanctioning authority was not produced or the clarification from PW-4 regarding some matter, already on record, could not be obtained by CBI, the prejudice, if any, was caused to CBI and not to the petitioner as examination-in-chief and cross examination of PW-4 by counsel for the petitioner was complete.

12. Learned counsel for the petitioner has relied upon **Mansukhlal Vithaldas Chauhan vs. State of Gujarat AIR 1997 SC 3400, Mohd. Iqbal Ahmed vs. State of A.P. (1979) 4 SCC 172; State of H.P. vs. Nishant Sareen 2011 (1) AD (SC) 222; State of Karnataka vs. Ameer Jan 2008 Sri.L.J. 347; Salauddin, Nisar Ahmed Bhat vs. State of A.P. in Writ Petition No.7594 of 1996 decided on 29th August, 1996** (A case under Terrorist and Disruptive Activities (Prevention) Act, 1987 'hereinafter referred to as TADA')**; State of M.P. vs. Jiyalal AIR 2010 SC 1451** in support of his contention.

13. On behalf of CBI, Ms.Sonia Mathur, APP submitted that under the Business Rules of Government of India, Under Secretary is duly authorized to convey the sanction. She has further submitted that sanction infact has been accorded by the

Joint Secretary Mr. T.Sugathan and he was the authority competent to grant sanction and also remove the petitioner from service.

14. Learned APP for CBI further submitted that the original file containing all the documents/material was sent to the sanctioning authority for his satisfaction and after application of mind by the competent authority the sanction has been accorded and the Under Secretary was directed by the Sanctioning Authority to issue the sanction order. Not only that, the CBI has got the file produced before this Court also to satisfy that all the material was placed before the sanctioning authority and thereafter approval was given by the Joint Secretary, who is competent authority to accord sanction in this case, for prosecution of the petitioner. Learned APP for CBI has relied upon decision of Co-ordinate Bench of this Court in **Jagdish Chandra Makhija vs. State (CBI) 2011 (3) JCC 1847 and Jiyalal's case** (Supra).

15. First of all, it is necessary to mention here that the object of sanction under Prevention of Corruption Act is that the authority giving the sanction should be able to consider the material to satisfy that on the basis of evidence produced before him, sanction for prosecution be granted or refused.

16. In the case **Jaswant Singh v. State of Punjab AIR 1958 SC 124**, it was held as under :-

‘The object of the provision for sanction is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden.’

17. The intention of the legislature in providing for a sanction is merely to afford a reasonable protection to public servant in discharge of their official duties. The requirements of law are satisfied if from the record the prosecution is able to show that the sanction was accorded by the competent authority in respect of allegations forming subject matter of chargesheet filed against the accused, after applying mind to the facts and material submitted to him to satisfy whether to grant or refuse the sanction.

Section 19(3)(a) Prevention of Corruption Act, 1988 provides as under :-

‘ Sec.19 **- Previous sanction necessary for prosecution -**

(1) xxx xxx

(2) xxx xxx

(3) Nothwithstanding 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;’

18. There is no provision in TADA analogous to Section 19(3)(a) of Prevention of Corruption Act and the sanction as required under Section 19 of the Prevention of Corruption Act cannot be compared with the requirement of Section XXA of TADA the purpose of which is to secure a well-considered opinion of a superior authority in the echelon of administration of the police department before a person is actually proceeded against and prosecuted before the designated Court.

19. Before dealing with the contentions raised by learned counsel for the petitioner and to ascertain whether the relevant material was placed before the sanctioning authority and he has accorded the approval after application of mind, it is necessary to refer to the sanction order Ex.PW4/A. Paras 1 to 3 of the sanction order contain the details of the allegations made by the complainant, registration of the FIR and the trap being laid. The sanction order further refers to the CFSL report on the hand washes as well as sofa seat wash which confirmed the presence of phenolphthalein in exhibit marked as LHWT. After referring to the pre-trap conversation recorded before and during the trap and other related documents showing that the petitioner demanded and accepted illegal gratification of Rs.5,000/- from the complainant by exploiting his official position as public servant which constituted an offence punishable under Section 7 and 13 (2) read

with 13(1)(d) of Prevention of Corruption Act, 1988 (at 49 of 1988). Paras 5 and 6 of the sanction order needs to be reproduced to ascertain what material was perused by the sanctioning authority before according approval. Paras 5 and 6 of the sanction order Ex.PW4/A are extracted below :-

“5. AND WHEREAS, authority competent to remove the said Sh. Hawa Singh from the office, **after carefully examining the entire records of the case including the statements recorded u/s 161 Cr.P.C., complaint, FIR and other material relevant in regard to the said allegations** and circumstances of the case, consider that Sh. Hawa Singh should be prosecuted in the Court of Law for the said offences and other offence made out of said allegations.

6. Now, therefore, the competent authority has accorded sanction under Section 19 of the Prevention of Corruption Act, 1988 for the prosecution of the said Sh. Hawa Singh for the said offences and any other offences punishable under any other provision of law in respect of the acts aforesaid and for taking cognizance of the said offences by the Court of Competent Jurisdiction.”

20. In the case **Indu Bhushan Chatterjee v. State of W.B. AIR 1958 SC 148**, it was held as under:-

“Where the sanctioning authority went through all the relevant papers placed before him and accorded sanction, it was held it was a valid sanction if the papers before him gave him the necessary material to take a decision to accord sanction.”

21. The reliance placed by learned counsel on **Mansukhlal Vithaldas Chauhan vs. State of Gujarat** (Supra) is of no help to the petitioner as there is no material on record to suggest that any pressure was put on the sanctioning authority to accord sanction. The reliance on this authority is of no advantage to the petitioner for the simple reason that in **Mansukhlal's case** sanction was given by the competent authority on the Mandamus/directions issued by the High Court and therefore the sanction was held to be invalid without any application of mind and being accorded mechanically in obedience of the Mandamus issued by the High Court.

22. So far as reliance placed on **Mohd. Iqbal Ahmed vs. State of A.P.** (Supra) and **State of H.P. vs. Nishant Sareen** (Supra) is concerned, the legal position is well settled in this regard and there cannot be any quarrel about it. The sanction order Ex.PW4/A (paras 5 and 6) clarifies the confusion, if any, in the mind of the petitioner about the material being perused by the competent authority for satisfying himself before granting sanction.

23. Reliance placed by learned counsel for the petitioner on **State of Karnataka vs. Ameer Jan** (Supra) is also of no help to the petitioner as the original file containing approval by the sanctioning authority has been produced even before this Court which is sufficient to satisfy that the sanctioning authority had all the relevant material before it while according approval to prosecute the petitioner.

24. Reliance on the report **State of M.P. vs. Jiyalal** (Supra) had been placed by the petitioner as well as CBI. While the report had been referred by the petitioner to show that a serious failure of justice had been caused to him, the CBI had cited it in support of its contention that non-examination of sanctioning authority had no adverse effect on the validity of the sanction. Learned counsel for the petitioner has relied upon para 7 of the judgment while CBI had relied upon paras 7 and 8 of the judgment. Hence, both the paras are reproduced as under :-

‘7. In the case before us, even if it were to be accepted that there has been an “error, omission or irregularity” in the passing of the sanction order, the learned Single Judge of the High Court has not made a finding which shows that a serious failure of justice had been caused to the respondent. In the absence of such a finding it was not correct for the High Court to set aside the conviction and sentence given by Special Judge.

8. It was also not justified for the learned Single Judge to hold that the District Magistrate who had passed the sanction order should have been subsequently examined as a witness by the prosecution in order to prove the same. The sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the respondent to question the genuineness or validity of the sanction order before the Special Judge but there is no requirement for the

District Magistrate to be examined as a witness by the prosecution.'

25. Reliance by the petitioner on **Jiayalal's case** (Supra) does not advance his case any further as this Court had failed to notice a serious failure of justice being caused to him by non-examination of sanctioning authority or by just writing 'Approved' and direction to Under Secretary to issue the sanction order. His contention is that the competent authority simply wrote the words 'Approved' which shows lack of application of mind, as held in **Salauddin's case** (Supra), the sanction has to be declared to be invalid and proceedings to be quashed. The answer to this argument has been furnished by the decision in **Salauddin's case** which was under TADA, though cited to promote the case of the petitioner but ultimately turned against him. In the **Salauddin's case**, in paras 5, 7 and 8, it was observed as under :-

'(5) Sri K.G.Kannabhiran, the learned senior counsel contended that (i) prior approval required under sub-section (1) of Section 20-A is a threshold condition precedent to launch criminal prosecution under the Act; although the power to accord prior approval conferred upon the prescribed police officer is a discretionary one, that power should be exercised sparingly and for valid reasons and after due application of mind to the materials placed before him; sanction of prior approval is not a routine and mechanical act; the sanctioning authority, before sanctioning approval should be satisfied that the grounds are made out for launching prosecution under the Act; in the present case the endorsement of the Commissioner of Police **"seen. Permitted"** does not reflect due application of mind on the part of the Commissioner of police and his subjective satisfaction and therefore it should be held that there was no proper prior approval under sub-section (1) of Section 20-A;(ii) that the competent authority to grant prior approval under Sec.20-A (1) within the territory of Corporation of Hyderabad is the concerned deputy Commissioner of Police, being equivalent in official status to that of District Superintendent of Police and in this case prior approval is sanctioned by the Commissioner of Police, Hyderabd and therefore it should be held that there is no approval accorded by the competent statutory authority; (iii) the Fourth Metropolitan Sessions Judge, Hyderabad by his order dated 11.03.1994 in Crl.M.P. No.368/94, while granting bail to some of the accused,

recorded the finding that prior approval under Sec.20-A(1) was not obtained; it was not open for the prosecution now to invoke the provisions of the Act; further, the same learned Judge in his order dated 13.04.1994 in Crl.M.P. No.520/94 held that the endorsement of the commissioner of Police dated 11.11.1993 “seen. Permitted” does not amount to prior approval for want of due application mind; these two orders remain unchallenged and therefore the State is bound by those findings and it is impermissible for the State to contend anything contrary to those findings and they are estopped from doing so; the learned Senior Counsel would press into service the principle of “issue estoppel” in support of his contention; (iv) previous sanction under sub-section (2) of Section 20-A of the Act was obtained only in respect of Accused No.1 to 7 and there is no sanction under the said sub-section as regards the Accused No.8 (the petitioner in W.P.No.7594/96) is concerned and therefore the Designated Court ought not to have taken cognizance of offences under the provisions of the act against the Accused No.8.

(7) Section 20-A was inserted into the Act by Amendment Act 43 if 1993 and it came into force with effect from 22-05- 1993. Section 20-A reads as under :-

“20-A Cognizance of offence:- (1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police. (2) No Court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police or as the case may be, the Commissioner of Police.”

(8) Two prior sanctions contemplated under Section 20-A are sine qua non for recording any information about the commission of an offence and for taking cognizance of any offence. The Act was enacted in the background of escalation of terrorist activities in many parts of the country in order to combat and cope with terrorist and disruptive activities effectively providing for constitution of special designated courts and laying down drastic procedures, a departure from the procedure observed in the regular criminal law courts. This special procedure in the Act tends to trench upon the ordinary, general processorial rights of the citizens and persons, but it had become necessary evil to protect the larger

national and community interest. The fundamental freedoms conferred and the goals cherished by the Constitution could never be enjoyed and achieved in society besieged by anti-social and terrorist activities. At the same time, it is of paramount importance that innocent people should not be hauled up as terrorists under the Act subjecting them to rigour of hard procedure and enhanced sentences at the instance of the ordinary, field level police officers who are entrusted with the duty of maintenance of law and order. Therefore, it appears to our mind that the purpose of the two sanctions contemplated under Section 20- A of the Act is to secure a well-considered opinion of a superior authority in the echelon of administration of the police department before a person is actually proceeded against and prosecuted before the designated Court.'

26. Mr.H.K.Sharma, learned counsel for the petitioner has submitted that in paras 42 and 43 of **Salauddin's case** the sanction accorded qua the petitioner was held to be invalid and therefore, in para 46, cognizance was treated to be non-est in law as Commissioner of Police while according sanction made endorsement 'Seen. Permitted'. and on this analogy, in this case also 'Approved' written by the sanctioning authority cannot be termed to be valid sanction accorded after due application of mind to the facts and material produced before him.

27. Learned counsel for the petitioner failed to notice para 14 of the report in **Salauddin's case** which is just contrary to the submissions made by learned counsel for the petitioner, extracted below :-'(14) The original records placed before us disclose that Sri Shyam Rao, Inspector of Police, East Zone, Team-I, C.C.S., submitted a letter bearing no.Cr/151/93/e-2/1-1/93, dated 11.11.1993 to the Commissioner of Police, Hyderabad seeking approval to add the provisions of the Act in the FIR enclosing a copy of the complaint lodged by Sri T.V.Raju, Inspector of Police (SIT) on the previous day. **The Commissioner of Police made an endorsement on the said letter on 11.11.1993 itself to the following effect : "seen. Permitted".** Since a copy of the complaint lodged by Sri T.V.Raju on 10.11.1993 was appended to the letter, we have no reason to suppose that the Commissioner of Police read the letter only and not the copy of the complaint. The complaint taking it on its face value, dearly discloses commission of offence-under the act. If that is so, then what is the meaning of the endorsement of the

commissioner of Police in the letter? **The endorsement "seen"in the content of the case, meant that the Commissioner perused both the letter and the copy of the complaint. There was sufficient as well as relevant materials before the commissioner to record his subjective satisfaction about the commission of offences under the Act and for according approval under sub-section (1) of Section 20-A.** This is borne out from the original records. Therefore, it cannot be said that the sanction accorded by him is invalid merely because he did not record reasons for according the approval. Approval under Section 20-A(1) not being a judicial or quasi-judicial act, it need not be based on any legal evidence nor is illegally necessary to give reasons for accordingly approval for lodging the complaint. **After perusal of the original records, we are fully satisfied that the commissioner of police accorded approval after due application of mind and satisfying himself that the offences under the Act were committed.**'

28. Not only this, in paras 42 and 43 of the report, the conclusion arrived is not what has been submitted before this Court. The sanction 'Seen. Permitted' accorded in respect of seven accused persons listed therein was considered to be valid. Since the list did not include name of accused No.8, that cognizance taken against him, was held to be without jurisdiction. For the benefit of the petitioner, para 42 and 43 are extracted hereunder as above conclusion is clearly discernible on bare reading of these paragraphs :-

'(42) **From this order it is clear that the Commissioner of Police has accorded previous sanction to prosecute seven persons listed therein under the provisions of the Act as well as certain other provisions of the Indian Arms Act and Explosive Substances Act after recording his subjective satisfaction. The list of seven persons named therein does not include the name of the petitioner in W.P.No.7594/96 who is arrayed as accused No.8 in SC No.595/94 on the file of the Designated Court. In that view of the matter it should be held that there is no sanction to prosecute Md. Salauddin, the petitioner in W.P.No.7594/96.** Therefore it should be held that taking cognizance of the offences under the provisions of the Act against Md. Salauddin, should be held to be one without jurisdiction and we hold accordingly.

(43) The resultant position is **that there is proper sanction by the Commissioner of Police both under sub-sections (1) and (2) of Section 20-A as regards the accused 1 to 7 are concerned. There is also proper sanction under sub-section (1) of Section 20-A of the Act as regards the Accused No.8 is concerned.**

Therefore, it has become necessary to declare that the action of the Designated Court in taking cognizance of offences under the provisions of the Act against the accused No.8 is one without jurisdiction and a nullity. In other words W.P.No.7594/96 is entitled to be allowed whereas W.P.No.7700/96 is liable to be dismissed.'

29. The contention of learned counsel for the petitioner that Under Secretary PW-4 Mr.Rajnish Tingal is not the author of the sanction order and was not the authority competent to remove the petitioner from service and the sanctioning authority has not been cited and examined as a witness, is liable to be rejected in view of various pronouncements in this regard including **Jiyalal's case.** 30. In the case **T.A. Rambabu vs. State of Karnataka, 2009, Cr.LJ 629 (Karn.)**, it was held as under :-

'The Petitioner, an employee of State Government who was prosecuted for offences under Secs. 7 and 13 of P.C. Act after obtaining sanction signed by the Under-Secretary by order and in the name of the Governor of Karnataka challenged the validity of sanction order in the writ petition. The High Court after referring to the decisions of the Supreme Court on sanction held that there is a presumption of official acts to have been done in proper manner and in accordance with procedure. In the facts and circumstances of the case, the High Court held that no reason exists to doubt the sanction at the threshold and dismissed the writ petition.'

31. The effect of non-examination of sanctioning authority has also been discussed in **State of Punjab vs. Bhim Sain 1985 Cri.L.J. 1602**, it was held as under :-

‘There the Deputy Secretary, Revenue according sanction to prosecute, himself made the statement on oath that he, under the rules of business, was authorized to sign for and on behalf of the Governor of Punjab and also proved the signatures of the Revenue Minister on the concerned file, the sanction could not be said to be invalid on the ground that copy of rules of business was not produced and application of mind by the Minister could not be inferred on the basis of mere appending of signature by him.’

It was further held as under :-

‘There is a presumption that all official acts have been done by the respective functionaries in discharge of the duties enjoined on them under the law. When the sanction file had been put up before the Minister, containing a self-explanatory note, whereupon he appended his signatures, it was to be presumed that he had applied his mind thereto and thereafter as a token of accord put his signatures thereon.’

32. In the case **Gurbachan Singh v. State, AIR 1970**

Delhi 102, in paras 28 and 29, it was held as under:-

‘28. Mr.Sharma lastly argued that the officer who accorded the sanction has not been examined as a witness and all that had been done was that a Head Assistant (Lekh Raj PW-1) from the office of the Controller had been examined. He had only proved the signature of that Officer but there was no evidence to establish that the officer according the sanction, had applied his mind to the facts of the case.

29. There is no merit in this argument. The sanction order (Ex.P1) sets out the material facts and the offences disclosed by those facts. There is a presumption about official acts having been regularly performed. In the absence of any evidence to the contrary, it cannot be held that the officer granting the sanction acted mechanically without applying his mind to the material placed before him.’

33. In another case **State of Bihar v. P.P.Sharma, AIR 1991 SC 1260**, it was observed as under :-

‘The order of sanction is only an administrative act and not a quasi-judicial one nor is a lis involved. Therefore the order of sanction need not contain detailed reasons in support thereof. But the basic facts that constitute the offence must be apparent on the impugned order and the record must give the reasons in that regard. The question of giving opportunity to the public servant at that stage does not arise. Proper application of mind to the existence of prima facie evidence of the commission of the offence is only a precondition to grant or refuse the sanction. When the Government accorded sanction, Sec.114(e) of the Evidence Act raises presumption that the official acts have been regularly performed.’

34. Thus it has emerged on record that the competent authority has accorded ‘approved’ to prosecute the petitioner after due application of mind to the material placed before him. The Under Secretary who issued the sanction order was duly authorized under Government of India (Transaction of Business Rules) to issue the sanction order and non-examination of sanctioning authority by the prosecution does not have the effect of declaring the sanction to be invalid. It would be apt to quote a decision of this Court in **Darshan Lal vs. State (CBI) Crl.Appeal No.73/2001 decided on 31.07.2009 (MANU/DE/3460/ 2009)** wherein the Court was constrained to make observation in such like cases wherein validity of the sanction is being challenged on technical grounds including that sanction order is reproduction of the draft sanction letter. Deploring such tactics, the Court observed in paras 21 and 25 of the report as under :-

‘21. The Court is not to go into the technicalities of the sanctioning order. Justice cannot be at the beck and call of technical infirmities. The Court is only bound to see that the sanctioning authority after the careful consideration of the material that is brought forth it, has passed an order that shows application of mind.

25. In my considered opinion, it would be incorrect to conclude that simple because the sanctioning order Ex.PW- 3/A is a virtual reproduction of the draft sanction letter Ex.DW1/DA, the same would be deemed to have been passed without any application if mind. There is no necessary concomitant corollary between the two.’

35. It is painful to note that when the case was on the verge of final disposal, discharge was sought by the petitioner raising all kinds of objections to challenge the validity of the sanction order. Learned Special Judge had no option but to decide the application seeking discharge and return a finding on the issue of validity of the sanction. Thereafter instead of letting the trial to conclude, this petition under Section 482 Cr PC has been filed, invoking inherent jurisdiction of this Court which though unrestricted and undefined, should be exercised in appropriate cases to do real and substantial justice. In the facts and circumstances of this case, it would be suffice to quote the observation of the Apex Court made in para 15 of the case **Santosh De and Anr. vs. Archna Guha and Ors. (1994) 2 SCC 420** which is extracted hereunder:-

15. The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory order is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 Cr PC. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Such frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system.'

36. Finding no merits in the petition, the same is hereby dismissed.

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