

(2018) 04 J&K CK 0020
In the Jammu And Kashmir High Court
Case No : 561-A No. 111 OF 2016

LOTIKA KHAJURIA & ORS

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND ORS

RESPONDENT

Date of Decision : 12-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 94, 169, 173, 173(8), 561A
Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 120B, 307, 420, 465, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 5(2), 6

Citation : (2018) 04 J&K CK 0020

Hon'ble Judges : M.K.HANJURA

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. These two petitions filed under Section 561-A Cr.P.C. have been clubbed together and therefore require to be decided and determined by a common order.

2. Before advertng to the merits of the petitions it will be profitable to give a brief narration of the facts that have coerced the petitioners to file these

petitions. It was somewhere in the month of February, 2013, when a sample of a drug known as Maximizin-625 mg (Amoxicillin Trihyarate and

Potassium clavulanate tablets IP) hereinafter referred to as spurious drug, was taken by Drug Inspector, Srinagar, from Provincial Medical Store,

Barzula, Kashmir. The sample so taken was lifted randomly to check the quality of supplies being made to the Govt. Institutions by the manufacturers

and suppliers. The sample was sent for analysis to the drug testing laboratory at Srinagar. The laboratory found it to be spurious. The content

Amoxicillin in the sample was found to be nil and on the basis of this report the

Government swung into action and appointed a three member high level committee to enquire into the matter vide an order bearing No. 239 of HME 2013, dated 04.04.2013. The committee was asked to enquire, determine and examine the lapses which led to the supply of spurious drug to the Govt. institutions. On 18.04.2013, the committee submitted a detailed report and indicted the supplier firm M/S Lifeline Pharmaco Surgicals as also the members of the Purchase Committee-II and others. The committee recommended that a proper investigation be conducted into the matter to fasten the criminal liability into the officials/officers, responsible for facilitating the supply of spurious drug to the Government institutions and to identify the people who had made or aided such supply. On the recommendation of the committee a case bearing FIR No. 20/2013, under Sections 307, 420, 120-B of RPC was registered at Police Station, Rajbagh, Srinagar, which was later on referred by the Govt. to Crime Branch, Jammu, as a consequence of which, a case bearing FIR No. 10/2013 was registered by the Crime Branch and the investigation ensued.Â

3. After the conclusion of the investigation of the case it came to the fore that during the year 2012 the Purchase Committee-II of the Health and Medical Education Department, floated tenders vide NIT No. 1 of 2012, dated 02.01.2012 for the purchase of allopathic drugs and I.V. fluids for the year 2012-13. However, this NIT was replaced by NIT No. 4 in terms of Govt. order No. 80-HME of 2012, dated 02.02.2012 for adoption of drug policy for J&K State. The replaced NIT was issued on 08.02.2012 vide GMC/J/PC-II/TN-4/263-71 for supply of 348 drugs/medicines including Maximizin-625 mg tablets. A purchase manual was issued by the department of Health and Medical Education on 02.08.2002 with certain important stipulations including the one regarding the samples and the past performance of the tenderers. Accordingly, the tenders were received and one of the bidders was M/S Lifeline Pharmaco Surgicals, which firm had also got itself enlisted as a supplier firm with GMC, Jammu. This firm quoted rates of 34 products including the one referred to above, which drug was proposed to be supplied in the pack of (10X1X10) strips by M/S Lifeline Pharmaco Surgicals. It is alleged that the said bidder did not fulfil the requisite formalities as specified in the tender notice, but the members of the Purchase Committee-II without the scrutiny of the tender documents and without the

approval of the samples, approved the rate of the firm (M/S Lifeline Pharmaco Surgicals) in respect of the supply of one product i.e. Maximizin-625 mg tablets, which in the opinion of the purchase committee, was found to be the lowest bidder as compared to the others, for the same drug. The FIR No. 10/2013 relates to only one drug i.e. Maximizin-625 mg supplied by M/S Lifeline Pharmaco Surgicals and allegedly the Purchase Committee-II, issued rate contract order on 16.06.2012 in favour of M/S Lifeline Pharmaco Surgicals, regarding the supply of Maximizine-625, on the basis of supply orders issued by four health department units and a huge quantity of 2,65,000 tablets of Maximizin-625 mg was supplied by M/S Lifeline Pharmaco Surgicals to SMGS, Jammu, Provincial Medical Store, Barzula, Kashmir, Lalded Hospital, Srinagar and Govt. Hospital, Gandhi Nagar, Jammu, which drug ultimately proved to be spurious.

4. The crime branch contends that the Purchase Committee-II wilfully ignored the terms and conditions of the NIT issued by it, which ultimately led to the acceptance of the tender submitted by M/S Lifeline Pharmaco Surgicals in respect of Maximizin-625 mg tablets, although the supplier firm did not submit the documents as per the terms and conditions of the NIT. Not only this the supplier firm quoted the supply of drug manufactured by Medlay Pharmaceuticals but supplied the drug prepared through a fake firm known as Sanative Pharmaco Surgical Selequi, Dehradun, which firm was black listed on 2/3.01.2013 for its involvement in illegal preparation and supply of spurious drugs to Rajasthan Govt. All these facts were totally overlooked by the Purchase Committee-II and even on the basis of false documents M/S Lifeline Pharmaco Surgicals succeeded in managing the approval of its rates on account of omissions and commissions on the part of Purchase Committee-II and so many other people also actively aided the firm in managing the acceptance of its tender document.Â

5. On the completion of investigation of the case, a charge-sheet in terms of Section 173 Cr.P.C. was laid against the accused, 12 in number before the court of Special Judge, Anti-Corruption, Jammu with a further stipulation that a supplementary charge-sheet will be produced against the other accused in due course of time. The supplementary charge was produced before the court against three persons namely Dr. Madhu Khullar, Mrs. Reva Gupta and Sh. Joginder Kumar. The court of learned Special Judge, Anti-

Corruption after taking the cognizance of the matter vide order dated 08.03.2016 (impugned in the petition filed by Mrs Lotika Khajuria) held that framing of charge is not an idle exercise. It is a matter which needs serious deliberations and elevation of the material assembled by the Investigating Agency to arrive at a conclusion whether the case qualifies for trial or not. The learned court also stated that at the stage of framing of charges the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The trial court also directed that the appreciation of evidence is not within the domain of the court at the stage of framing of charges nor can the court appreciate the evidence to ascertain whether the material on record is sufficient for the conviction of the accused. Although sifting of evidence for the limited purpose of ascertaining whether ingredients of the offence(s) are at least coming forth from the material on record is permitted, yet the extent of appreciation cannot be enlarged to reach at the conclusion as to whether the accused is guilty or not. The learned trial court also opined that having said that we have a limited purpose of ascertaining whether there is a prima facie case made out for going to the trial.Â

6. The court further viewed that the accused No. 13 Dr. Aniece Choudhary has repeatedly sought further investigation in terms of Section 173(8) of Cr.P.C mainly on the ground that the I.O. has conveniently left out two suspects Mrs. Lotika Khajuria, Deputy Drug Controller, Drug and Food Control, Jammu and Mr. Yogesh Sharma, who were similarly placed as the other members of the Purchase Committee and so there was no justification whatsoever for leaving them out from the array of accused. The accused No. 13 contended that the Doctrine of parity demands that each and every suspect should be dealt with in the same manner and the Investigating Officer does not have the prerogative to selectively array the accused in the case at his whim and wish. So, accused No. 13 contends that there is every justification for further investigation of the case as the Investigating Officer has to come out clean and tender an explanation as to how and in what circumstances he has left out Mrs. Lotika Khajuria and Yogesh Sharma from the array of accused. He has also sought prosecution of SSP, Vigilance and also the Investigating Officer, as he nourishes a belief that they have destroyed the evidence to shield Mrs. Lotika Khajuria and

Yogesh Sharma. The matter does not end there only, as another accused has through an application under section 94 Cr.P.C, made a prayer that the Investigating Officer be directed to produce the minutes of the meetings held on different dates by the members of Purchase Committee and also the attendance register etc.Â

7. After deliberating over the subject in its entirety, the court of the learned Special Judge, Anti-Corruption directed that the Crime Branch after further investigation in the matter shall come up with a detailed report and do the needful on following aspects:-

â??A) It would seek a sanction for prosecution of Mrs. Lotika Khajuria Deputy Drug Controller, Jammu, who was a member of purchase committee-

II because the court is of the view that there is sufficient evidence on record which reveals her involvement like other members of the purchase

committee, who have been arraigned as accused, and it need not be re-stated that accused cannot be selectively arrayed or left out, when they are

similarly placed.

B) The investigating officer has recommended departmental action against members of the verification boards but the justification for doing so does

not appear to be plausible. So it is required of investigating agency that it will identify the members of the verification boards who were supposed to

check the quality, efficiency, purity etc. of the drug supplied after the approval of rate contract. The investigating agency will also look into the fact as

to how was the drug supplied without proper tests and who under law was having an obligation to do so. After doing the needful the investigating

officer would submit a further investigation report in which details of all these facts are found.

C) The investigating agency is also required to collect all the reports from concerned laboratories/experts where they have sent the samples/hard disc

etc. and workout the effect thereof on the conclusions already arrived at.Â Â

D) After conducting further investigation the crime branch will submit a further investigation report to the court within two months positively. Any

record required by investigating agency for the sake of carrying out further investigation may be provided to the I.O against proper receipt. The

question of charge/discharge and other ancillary matters can only be considered after a further investigation report is submitted by the I.O. Nothing

stated herein shall cause a prejudice to anyone who is in the array of accused or may be arrayed subsequently after consideration of further

investigation report.â??

8. The petition bearing No. 111/2016 has been filed by Smt. Lotika Khajuria, in which she has craved the indulgence of this Court in setting aside the

order dated 08.03.2016 passed by the court of learned Special Judge, Anti-Corruption, Jammu, in case bearing titled â??State vs. Ashok Kumar and

orsâ?, arising out of case FIR No. 10/2013 of Police Station, Crime Branch, Jammu, under Sections 420, 465, 467, 468, 471, 120-B RPC and 5(2)

Prevention of Corruption Act, to the extent it decides to proceed against the petitioner by holding that there is sufficient evidence on record which

reveals the involvement of the petitioner in the aforesaid offences like the other members of the Purchase Committee with a further direction that

sanction for the prosecution of the petitioner be obtained. The petitioner has pleaded in the petition that the order passed by the Special Judge, Anti-

Corruption, Jammu dated 08.03.2016 is a sheer abuse of the process of law. The petitioner participated in the meeting of the Purchase Committee-II

on 15.05.2012. The court below was moved by the fact that in the final charge-sheet the investigating officer had mentioned that sanction to prosecute

the petitioner is required to be obtained and thereafter supplementary charge-sheet shall be presented. The petitioner has also stated that there is not

even an iota of any evidence on record to connect her with the commission of any offence. The charge-sheet, even if, taken on its face value, does

not disclose the commission of any offence against the petitioner. The order passed by learned Special Judge, Anti-Corruption, Jammu has resulted

into the miscarriage of justice and, therefore, it is necessary to set aside the same in order to secure the ends of justice. The petitioner has proceeded

to state that the learned Special Judge, Anti-Corruption, Jammu has committed a grave error while passing the order impugned, inasmuch as, as per

the two bid system, the financial bid of a bidder is opened only after he qualifies the technical bid. The entire case of the prosecution is that the

technical bid of M/S Lifeline Pharmaco Surgicals was cleared by the Purchase Committee-II on 07.05.2012 despite the fact that the said firm did not

fulfil the eligibility criteria. The evidence on record is clear to the extent that the petitioner did not attend the Purchase Committee meeting held on

07.05.2012 when the technical bid of M/s Lifeline Pharmaco Surgicals was cleared. As a matter of fact the petitioner herself was not a member of the Purchase Committee-II, but it was the Controller, Drugs, who was the member of the said Purchase Committee. On 07.05.2012, admittedly, the petitioner had not been nominated to attend the meeting of the Purchase Committee, which met to consider the technical bids of the bidders, and therefore, it is, palpably wrong to saddle any liability upon the petitioner for the acts of the Purchase Committee dated 07.05.2012 when the petitioner was not even present in the said meeting.Â

9. It is further contended that the next reason given by the learned court below to pass the order impugned is the fact that the petitioner had been named as an accused in the first charge-sheet with the observation that supplementary charge against her shall be presented after obtaining sanction from the Government for her prosecution. Admittedly, when the supplementary charge-sheet came to be filed before the learned court below, the Investigating Officer had clarified that while presenting the earlier charge-sheet, the petitioner had not been questioned as she was out of the country. Subsequently, when the petitioner came back she brought it to the notice of the Investigating Officer that she was neither a party to the checking/evaluation of the technical papers of the firms nor had she conducted any scrutiny of the documents. This fact it is stated is duly proved by the record before the learned court below and as such, she was given the benefit under and in terms of Section 169 Cr.P.C. The learned court below, however, failed to appreciate the aforesaid explanation offered by the Investigating Officer while presenting the supplementary charge-sheet and in passing the order impugned the learned Special Judge, Anti-Corruption has erred in law and, therefore, the same is bad and liable to be set aside.

10. It is also contended that the learned court below has failed to appreciate the fact that the petitioner cannot be held to have ratified the proceedings of the meeting held on 20.04.2012 or for that matter 07.05.2012, just because she participated in the Purchase Committee meeting dated 15.05.2012, in as much as the agenda for 07.05.2012 Purchase Committee meeting and the agenda for 15.05.2012 Purchase Committee meeting was totally different. The petitioner had not been deputed to attend the meeting dated 07.05.2012, but she did attend the Purchase Committee meeting held on

15.05.2012, where no decision was taken by the petitioner in any manner to ratify the decisions taken earlier in point of time. The observations of the learned court below in this behalf are devoid of reason and substance.Â

11. It is further contended that in the order impugned the learned court below has come to the conclusion that a policy of pick and choose has been adopted by the Investigating Officer while arraying the accused in the case. As a matter of fact, the yardstick which has been adopted by the learned court below is itself arbitrary, rather than the approach of the Investigating Officer. All the members of the Purchase CommitteeÂ could not be arrayed as accused in the case but the role played by each and every member of the Purchase Committee had to be evaluated and assessed by the Investigating Officer before looking into the culpability of a member of the Purchase Committee. In the present case the Investigating Officer had rightly scanned the role of the petitioner and found that she was not responsible for clearing the technical bids of ineligible firm which had supplied the spurious drugs and the record of the learned trial court also bears a testimony to this fact. To the contrary, the learned judge below has taken an absolutely incoherent view which is not sustainable in law. There was absolutely nothing on record, which persuaded the learned court below to come to the conclusion that the petitioner had ratified the earlier decision taken by the members of the Purchase Committee in her absence. The order impugned, as such, is bad and liable to be set aside.

12. It is further averred that the learned trial court has used the doctrine of parity in a criminal investigation on a principle which is unknown to the law. The members of the same group can be arrayed as accused in a criminal case on the basis of the role played by each of the them or on the basis of the role played by them collectively, but a person cannot be arrayed as an accused for an act which has not been committed by him/her and it appears that the whole controversy has arisen because of the inability of the learned court below to understand the opening of the bids, where the bids are received in two forms i.e. the technical bids and the financial bids. As a matter of fact, when the technical bids are opened and the bidders are declared qualified or unqualified, the next step is only to open the financial bids, as such, considering the technical qualification of the bidders was over but unfortunately this aspect of the matter has not been appreciated correctly by

the learned court below.Â

13. It is further pleaded that the learned court below has miserably failed to even point out a single piece of evidence, act of omission or commission

on the part of the petitioner to come to the conclusion as drawn by it. The order passed by the learned judge below is based upon mere conjectures

and surmises. A departmental enquiry was also initiated against the petitioner, in which she was exonerated, as the Enquiry Officer fully understood

the procedure of opening of bids in two bid system. Copy of the Government Order No. GAD (Vig.)/32-RDA/2013, dated 25.03.2014 vide which the

enquiry report was forwarded to the Financial Commissioner, Industries & Commerce Department, Principal Secretary to Government, Finance

Department & Commissioner/Secretary to Government, Health & Medical Education Department, was considered by the Government and the

Government accorded sanction for the prosecution of Dr. Madhu Khullar, Mrs. Reva Gupta and Mr. Joginder Kumar in the supplementary charge-

sheet and did not accord any sanction to the prosecution of the petitioner. The trial court misrepresented itself by directing the authorities of Vigilance

Organization to seek and obtain sanction for the prosecution of the petitioner. It is settled position of law that the trial court cannot direct that sanction

for the prosecution of a person should be solicited from the Government. It is an administrative action and had to be performed by the Government in

the case of the petitioner.Â

14. It has further been contended that the observation of the court below that the approach of the Investigating Officer is not in tune and line with the

fundamental principles of fairness, parity and reasonableness, is also not supported by any material on record. To the contrary, the entire evidence on

record points to the innocence of the petitioner, but unfortunately, by invoking the doctrine of equality/parity, the learned court below has come to the

conclusion that the petitioner should be prosecuted and issued the directions to the Investigating Officer to obtain sanction for her prosecution. The

opinion of the court below on that count cannot be sustained in the eyes of law. It has also been pleaded that the court below has failed to appreciate

that vide Government Order No. 55-GAD of 2013, dated 26.11.2013 sanction to the prosecution of three public servants was accorded and it did not

include the name of the petitioner. The aforesaid action was taken by the

Government after considering the facts and circumstances of the case but no sanction was accorded to prosecute the petitioner as she had been granted the benefit under and in terms of Section 169 Cr.P.C. It is interesting to note that while granting sanction, the Government considered the entire record including the fact that the petitioner had been granted the benefit of 169 Cr.P.C. and the application of the mind on the part of the Government is duly reflected in the sanction order. One fails to understand how the learned court below has looked at the evidence in order to implicate the petitioner, more particularly, when there is no evidence on record about the participation of the petitioner in the Purchase Committee meeting held on 07.05.2012 when the technical bids were cleared on 16.05.2012. The participation of the petitioner in the Purchase Committee meeting on 15.05.2012 at the time when the financial bids were opened, cannot be treated as approval of the petitioner for something which had to be done in the future i.e. on 16.05.2012 when the supply orders were placed by the Purchase Committee as admittedly, the petitioner was not a part of the meeting held on 16.05.2012.

15. In the petition filed by Dr. Aniece Chowdhary, he has pleaded that he has been falsely implicated in the case at the behest of some higher ups. He has proceeded to state that vide order dated 08.03.2016 the trial court deferred the hearing of arguments on charge/discharge and directed the Crime Branch to conduct further investigation and submit a report before the court within two months. After passing the order dated 08.03.2016, a member of the Purchase Committee, Dr. Lotika Khajuria approached the High Court through the medium of a petition under Section 561-A Cr.P.C. and by suppressing the material facts obtained an order of stay from the High Court. In terms of the orders dated 08.03.2016 and 11.05.2016, passed by the trial court the respondent No. 3 i.e. Investigating Officer, Crime Branch Jammu was under a legal obligation to file a supplementary charge-sheet after conducting further investigation in the matter, but the respondent No. 3 instead of filing the supplementary charge-sheet in accordance with the law, gave a clean chit to the principal accused i.e. Mrs Lotika Khajuria. He has further contended that on 11.03.2017 he filed written objections/arguments stating therein that the fresh report dated 09.02.2017 filed before the learned trial court should not be accepted and in addition he

filed an application for initiating contempt proceedings against the respondent No. 3 for wilfully disobeying the orders dated 08.03.2016 and

11.05.2016, passed by the learned Special Judge, Anti-Corruption, Jammu. The learned trial court, however, accepted the written objections/arguments

and returned the contempt application to him. On 31.05.2017 Crime Branch filed a status report, which was placed on record and a copy thereof was

supplied to the petitioner. It is further stated that on 31.05.2017 the petitioner also brought to the notice of the trial court that the Crime Branch has not

filed the supplementary charge-sheet in accordance with the direction extended vide orders dated 08.03.2016 and 11.05.2016, but the learned trial

court to his dismay directed that arguments on charge/discharge shall be heard in the matter. It is this order dated 31.05.2017 which is impugned

herein this petition by the petitioner and the petitioner has beseeched that the said order arising out of FIR No. 10/2013 of Police Station, Crime

Branch, Jammu be quashed in the interest of justice to the extent as it decides to hear the arguments on the charge and discharge and this order has

been passed in ignorance of the earlier orders dated 08.03.2016 and 11.05.2016 whereby the Crime Branch was under a legal obligation to file the

supplementary charge-sheet after conducting further investigation into the matter.Â

16. Heard and considered.

17. The main thrust of the arguments of the learned counsel for the petitioner representing Mrs Lotika Khajuria is two-fold. His first argument is that

the order dated 08.03.2016, passed by the learned court of Special Judge, Anti-Corruption, Jammu, whereby he has directed further investigation in the

case with a further stipulation that the Investigating Officer will seek sanction for the prosecution of the petitioner as she was a member of the

Purchase Committee-II buttressed with the fact that there is sufficient evidence on record which justifies her involvement in the case like the other

members of the purchase committee is against the canons of law. The second limb of the arguments of the learned counsel for the petitioner is that in

view of the phraseology of Section 173(8) of the Code of Criminal Procedure, a Magistrate has no power to direct further investigation after he has

taken cognizance of a case which is within the exclusive domain and power of the investigating agency. The arguments of the learned Sr. AAG

representing the State are also in tune and in line with what the learned counsel for the petitioner has urged before this Court. Per contra the petitioner

in the other petition filed Section 561-A Cr.P.C. i.e. Dr. Aniece Chowdhary has argued that the competent authority was obliged to accord sanction to

the prosecution of Mrs Lotika Khajuria on the bulwark of the order of the trial court and that Section 173(8) Cr.P.C. does empower a Magistrate to

direct further investigation of a case and this power cannot be tinkered with.

18. As far as the first plank of the arguments of the learned counsel for the petitioner is concerned, there is all force and substance in his contention

that a valid sanction for the prosecution of a public servant (which the petitioner is) gives the court the teeth and jurisdiction to proceed further in a

given case for the offences detailed in Section 6 of the Prevention of Corruption Act which runs under the head “Previous sanction necessary for

prosecution” is for the convenience of ready reference reproduced below verbatim:

“6. Previous sanction necessary for prosecutions.- (1) No Court shall take cognizance of an offence punishable under Section 161 [or Section 164]

or Section 165 of the Indian Penal Code, 1860, or under sub-section (2) [or subsection (3A)] of Section 5 of this Act, alleged to have been committed

by a public servant, except with the previous sanction,“

(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 the] Central 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 the] State 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 whether the previous sanction as required under sub-section (1) should be given by the Central

or 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.“

19. From a bare perusal of the language within the framework of which Section 6

of the Prevention of Corruption Act, is woven it is evident that the grant of sanction or otherwise is the exclusive prerogative of the competent authority and the court has no power and authority to interfere in this power vested with the competent authority. Sanction gives the court the clout and ascendancy to prosecute a person for the commission of the offences imputed to him. It is the competent authority that has the right to consider the question of the grant of sanction for the prosecution of a public servant and the competent authority is well within its bounds in declining the grant of sanction for the prosecution of a public servant. A cue can be had in this behalf from the law laid down by the Apex Court of this country in the case of *Mansukhlal Vithaldas Chauhan v. State of Gujarat*, (SC), reported in 1997 (3) Crimes 301, paras 14 to 19 of which are germane in the context of the decision of this issue and these read as under:

“14. From a perusal of Section 6, it would appear that the Central or the State Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that “public servant” is to be prosecuted or not. Since the Section clearly prohibits the Courts from taking cognizance of the offences specified therein, it envisages that Central or the State Government or the other authority” has not only the right to consider the question of grant of sanction, it has also the discretion to grant or not to grant sanction.”

15. In *Gokulchand Dwarkadas Morarka v. The King*, AIR 1948 PC 82, it was pointed out that:-

The sanction to prosecute is an important matter, it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not, as the High Court seem to have thought, concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as in expedient. Looked at as a matter of substance it is plain that the Government cannot adequately discharge the obligation of deciding whether to give or withhold a sanction without a knowledge of the facts of the case.”

16. In *Basdeo Agarwalla v. Emperor*, AIR 1945 FC 16, it was pointed out that

sanction under the Act is not intended to be, nor is an automatic

formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. This Court in *State through Anti-*

Corruption Bureau, Government of Maharashtra, Bombay v. Krishanchand Khushalchand Jagtiani. (1996) 4 SCC 472, while considering the provisions

of Section 6 of the Act held that one of the guiding principles for sanctioning authority would be the public interest and, therefore, the protection

available under Section 6 cannot be said to be absolute.Â

17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act

which affords protection to Government Servants against frivolous prosecutions. (See: *Mohd. Iqbal Ahmed vs. State of Andhra Pradesh*, AIR 1979

SC 677). Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecutions and is a safeguard for the innocent but not a shield

for the guilty.Â

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant

facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must

ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by

extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also:

Jaswant Singh v. The State of Punjab, 1958 SCR 762 : AIR 1958 SC 12; *State of Bihar & Anr. v. P.P. Sharma*, 1991 Cr.L.J. 1438 (SC)].Â

19. Since the validity of ""Sanction"" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and

evidence collected during investigation, it necessarily follows, that the sanctioning authority has to apply its own independent mind for the generation of

genuie satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any

quarter nor should any external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction

vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown

that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or

constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority ""not to sanction"" was taken away and it was

compelled to act mechanically to sanction the prosecutionâ??

20. Looking at the instant case from the perspective of the law laid down in the judicial precedent cited above, the court has no power to direct the

competent authority to accord sanction for the prosecution of a particular person. It also needs to be borne in mind that without a valid sanction the

court cannot take the cognizance of offence spelt out in Section 6 supra. The existence of a valid sanction accorded by the competent authority is a

condition precedent to the institution of the prosecution against a public servant. The Government/competent authority has an absolute discretion to

grant or withhold the sanction. It is for the competent authority to assess and evaluate the material placed and produced before it and to find out

whether a prima facie case against the person sought to be prosecuted is made out. It is well within the domain and area of the sanctioning authority

to refuse the grant of sanction against a person sought to be prosecuted. The aim and object behind inserting and engrafting this provision appears to

be that it works as a salutary safeguard to ensure that no false or malicious prosecution can pierce into the portals of the court of justice. The law as

laid down by the Supreme Court in a catena of judicial pronouncements is that no court of special judge can take cognizance of an offence except

with the sanction of the competent/appropriate authority. Grant of sanction is not an acrimonious exercise, but a solemn duty which enforces

protection to the Government servant against false prosecution and must therefore be strictly complied with before any prosecution can be launched

against the public servant concerned.Â

21. The sanctioning authority is obliged under law to apply its independent mind to the facts and circumstances of the case as also the material and

evidence collected during the investigation of the case. The sanctioning authority has to derive satisfaction on the basis of the material produced

before it and has to take a call whether the sanction for the prosecution of the public servant is or is not warranted to be accorded. For a sanction to

be valid it is necessary that the sanctioning authority does not buckle, bend or

yield to any influence exerted on it, nor has the sanctioning authority to act upon any decision forced on it. Grant of sanction is the absolute discretion of the sanctioning authority and this discretion cannot be influenced by any extraneous consideration. If the facts and circumstances of a case reveal that the sanctioning authority has succumbed to the dictates of any outside authority in the matter of the accord of sanction, the court can very well come to the conclusion that the sanctioning authority has acted mechanically and has not formed an independent opinion in making such a judgment. Therefore, it was not within the region, power and scope of the learned trial court to direct the investigating officer to seek sanction for the prosecution of the petitioner and in the absence of such a sanction the court had no power to proceed in the case as against the petitioner.

22. Looking at the instant case from another perspective, that is whether a Magistrate has the power to direct further investigation after taken cognizance of a case, the judicial precedents evolved on the subject convey that a Magistrate has no jurisdiction to do so. It needs must be said that the learned Special Judge, Anti-Corruption while considering whether the accused before him can or cannot be arraigned on a charge for the commission of offences levelled against them directing further investigation in the matter.Â

23. From the plain language of Section 173(8) Cr.P.C. what can be said that it is only on the request of the Investigating Officer that further investigation can be directed after the court has taken cognizance. The learned trial court erred in directing further investigation on the asking of the accused i.e. Dr. Aniece Chowdhary who wanted to stall the proceedings in the case one way or the other by taking umbrage under the plea that Smt. Lotika Khajuria should also be prosecuted in the case. The petition filed by Dr. Aniece Choudhary under Section 561-A Cr.P.C. primarily revolves round this plea. His petition does not have much ado except for the assertion that both he and Mrs. Lotika Khajuria should be equated together and treated on par as far as their prosecution is concerned.Â

24. Reverting back to the question, whether it was within the domain and power of the learned Special Judge, Anti-Corruption to direct further investigation in the case, the Apex Court of the country has dealt with a like situation in the case of â??Amrutbhai Shambhubhai Patel v. Sumanbhai

Kantibhai Patel, reported in (2017) 4 Supreme Court Cases 177 the relevant excerpts of which that have a direct bearing on the decision of the

instant petition read as follows:-

“From the plain comparison of the provisions of Section 173 of the old Cr.P.C. of 1898 as well as of the same section of the new CrPC of 1973, it

is explicit that the recast provision of the 1973 CrPC did incorporate sub-section (8) as a significant addition to the earlier provision. The newly added

sub-section (8) in Section 173 1973 Cr.PC, as its text evinces, permits further investigation by the officer in charge of the police station concerned had

been forwarded to the Magistrate and also to lay before the Magistrate a further report, in the form prescribed, wherever such investigation, he

obtains further evidence, oral or documentary. It is further ordained that on submission of such further report, the essentialities engrafted in

subsections (2) to (6) of Section 173 would apply also in relation to all such report or reports.”

The integration of sub-section (8) in Section 173 is axiomatically subsequent to the 41st Report of the Law Commission of India conveying its

recommendation that after the submission of a final report under Section 173, a competent police officer, in the event of availability of evidence

bearing on the guilt or innocence of the accused ought to be permitted to examine the same and submit a further report to the Magistrate concerned.

This assumes significance, having regard to the language consciously applied to design Section 173(8) in 1973 CrPC. Noticeably, though the officer in

charge of a police station, in categorical terms, has been empowered thereby to conduct further investigation and to lay a supplementary report

assimilating the evidence, oral or documentary, obtained in court of the said pursuit, no such authorization has been extended to the Magistrate as the

Court is in seisin of the proceedings. The unamended and the amended sub-section (8) of Section 173 CrPC if read in juxtaposition, would

overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorized to conduct further investigation without limiting the

stage of the proceedings relatable thereto.”

This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings.

On an overall survey of the pronouncements of the Supreme Court on the scope

and purport of Section 173(8) CrPC and the consistent trend of explication thereof, though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the court thereof, before it had submitted its report and obtaining its approval, no such power is available therefor to the Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and the accused has entered appearance in response thereto. At that stage, neither the Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure their fair investigation and trial, the life purpose of the adjudication in hand.Â

It is no longer res integra that a Magistrate, if exigent to do so, to espouse the cause of justice, can trigger further investigation even after a final report is submitted under Section 173(8). But, though the Magistrate has the power to direct investigation under Section 156(3) Cr.PC at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant.Â Sections 156, 190, 200, 202 and 204 clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. In this respect, the direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a postcognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) CrPC.Â

If, in the scheme envisaged by CrPC, the power of the Magistrate to order further investigation even after the cognizance is taken, the accused persons and charge is framed, is acknowledged or approved, the same would be discordant with the stage of law, as enunciated by the Supreme Court and also the relevant layout CrPC. Additionally, had it been the intention of the legislature to invest such a power, Section 173(8) CrPC would have

been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the

three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been authoritatively

enumerated in Bhagwant Singh, (1985) 2 SCC 537, the Magistrate, in both the contingencies, namely, when he takes cognizance of the offence or

discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his

permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the

complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the

complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with

the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 CrPC, whereunder any witness can be

summoned by a court and a person can be issued notice to stand trial at any stage, in a way redundant.

Thus, the impugned decision of the High Court annulling the decision of the Magistrate for further investigation is unexceptional and does not merit any

interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of

the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.â??â??

25. The Supreme Court on taking a comprehensive view of the matter after referring to a catena of judicial pronouncement on the subject has

pronounced it authoritatively that the Magistrate does not have the power to direct further investigation after it is in seisin of the proceedings. The

impugned order dated 08.03.2016 of the learned Special Judge, AntiCorruption, Jammu, opens with the words that We are at the pre-trial stage of this

case. Arguments were heard in detail on the issue whether the case qualifies for trial and if so, against whom. The accused vehemently contended

that crime branch has miserably failed to deliver and has collected some irrelevant record to substantiate the charges against the accused, which when

sifted even for the purpose of charge/discharge does not make out a case, which could suffice to frame the charges against the accused. The learned

court has also stated that, to begin with, an application was moved by accused No. 13 Dr. Aniece Choudhary on 25.07.2013, with a prayer for further investigation of the case. On the set above contentions raised, detailed and debated in the order impugned it can logically be concluded that the court had taken the cognizance of the case and therefore, since the Court was in seisin passing of the impugned order was unwarranted for being against the canons of law and above all if it be assumed that the court is invested with such a power it could not have been exercised on the asking of an accused.

26. One more factor which appears to have influenced the competent authority in not according sanction for the prosecution of Smt. Lotika Khajuria, is that on 07.05.2012 when the bids were opened the members of the Purchase Committee-II considered the technical bids and out of 89 bids 32 were rejected by the Purchase Committee-II. It was resolved that the financial bids of 57 participants who had declared qualified in the meeting of 7th May, 2012 will be opened on 15.05.2012. On the said day i.e. on 15.05.2012, the Purchase Committee-II met in which the petitioner was deputed as a representative of the Controller Drug, Food Organization and the price bids of the bidders who had qualified were opened. The minutes of the meeting dated 15.05.2012 manifestly reveal that the only action that was taken on the said date was the opening of the price bids of the 57 qualified bidders and in the said meeting it was unanimously decided to permit the Principal Secretary of the Purchase Committee-II to get the comparative rates of the fluids calculated by the participating qualified firm on 16.05.2012. The petitioner did not participate in any meeting after 15.05.2012 and had no role to play in the final contract or in awarding the contract to the bidders. The Investigating Officer on examination of these issues granting the benefit of Section 169 Cr.P.C. to the petitioner. The relevant extract of the final report as it envisions so is reproduced below word for word and letter for letter:

â??Mrs. Lotika Khajuria, Dy. Drug Controller, Jammu who was a member of the Purchase Committee-II and was arrayed as accused in the preliminary chargesheet could not be questioned as she was in USA on some personal visit. However, after she returned from USA, she was questioned and a questionnaire was also served to her. In her reply she stated that she had not taken part in any of the initial meetings of Purchase

Committee-II held on 20.04.2012 and 07.05.2012 due to her pre-occupation in some other jobs. She was neither a party to the checking/evaluation of technical bid papers of the firms nor had conducted any scrutiny of the documents, as such, no credible evidence regarding her involvement has been found in this case and she has been given the benefit u/s 169 Cr.P.C and the Honâ??ble Court is requested to drop the name of Mrs. Lotika Khajuria from the list of accused persons in the case.â??

27. After noting the above, on the basis of the available record the petitioner has been granted the benefit under and in terms of Section 169 Cr.P.C.

as a corollary to which the Government did not accord sanction to the prosecution of the petitioner. Therefore, one fails to understand as to how the learned court below has carved out a case to implicate and inculcate the petitioner for the omissions and commissions assembled to her in the

impugned order. The participation of the petitioner in the Purchase Committee meeting on 15.05.2012 at a time when the financial bids were opened

does not tantamount to mean that she accorded approval for something which had to be done in future i.e. on 16.05.2012 when the supply orders were

placed by the Purchase Committee and when admittedly, the petitioner was not a part or component of that meeting. Similarly, the participation of the

petitioner on 15.05.2012 cannot be taken as approval on her part for what was done by the Purchase Committee in its meeting held on 07.05.2012

when the technical bids were cleared.

28. Viewed in the context of all that has been said and done above, the impugned order dated 08.03.2016 passed by the learned Special Judge, Anti-

Corruption, Jammu in the case titled State vs. Ashok Kumar and ors arising out of case FIR No. 10/2013 of Police Station, Crime Branch, Jammu

under Sections 420, 465, 467, 468, 471, 120-B RPC and 5(2) Prevention of Corruption Act to the extent it directs to proceed against the petitioner by

holding that there is sufficient evidence on record which reveals the involvement of the petitioner in the case like the other members of Purchase

Committee and whereby further direction has been issued for obtaining sanction for the prosecution of the petitioner, does not stand the test of reason,

logic and the law as a sequel to which the same is quashed alongwith all the proceedings emanated therefrom.

29. The other petition of the petitioner Dr. Aniece Choudhary under Section 561-

A Cr.P.C. bearing No. 586/2017 primarily revolves round the plea that Mrs Lotika Khajuria the petitioner in the other petition be arrayed as an accused in the case and it was on his application that the order dated 08.03.2016 impugned in the other petition cause to surface. The petition does not urge any other ground as is repeated and reiterated here on the basis of which the court could sum up that his prosecution in the case willÂ be a sheer abuse of the process of the court. Therefore, the said petition deserves dismissal and is accordingly dismissed. The record of the case shall be sent back to the trial court with the direction to proceed in the matter in accordance with the law, without any amount of delay.