
(2015) 03 MP CK 0107
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 7649/2014

Pradeep Singh Jadon

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 362, 397, 401, 482
Prevention of Corruption Act, 1988 — Section 19

Citation : (2015) 03 MP CK 0107

Hon'ble Judges : S.C. Sharma, J.; P.K. Jaiswal, J.

Bench : Division Bench

Advocate : N. Hariharan, Learned Senior Counsel and Yogesh Gupta, Learned Counsel, for the Appellant; Brijesh K. Sinha, Learned Special Public Prosecutor and S.L. Nagar, Learned Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. By this application under Section 482 of Cr.P.C, 1973, the applicant is praying for quashment of order dated 5.9.2014 passed by the learned Special Judge, CBI, Indore in Special CBI Case No. 6/2013, whereby application for discharge filed by the applicant under Section 19 of the Prevention of Corruption Act, 1988 (herein after referred as P.C. Act) has been dismissed.

2. Brief facts of the case are that the non-applicant Central Bureau of Investigation (for short "CBI") had registered a Case No.RC0082009A0002 on 12.2.2009 against applicant - Pradeep Singh Jadon, the then Telecom. District Manager, Khargone (M.P.) in a trap for alleged demand of bribe from a contractor - (Shri Ramkrishna Patidar). The CBI led the trap on 12.2.2009 and allegedly recovered Rs.1,20,000/- from the upper drawer of the office table of applicant. The bribe allegedly was demanded for passing the bills of the complainant for laying of Optical Fiber Cable at USO Nandgaon and for giving the approval of work for laying of at Khangwada Site.

3. The CBI recommended the launching of prosecution against the applicant for

demand and acceptance of bribe and RDA for such action for retaining the file of contractor without justification. The department of Telecommunication has given its comments on the CBI report and observed that the evidence of motive, demand and acceptance of illegal gratification has not been brought out in adequate measure. The department has not agreed with the recommendation of CBI for launching the prosecution against the applicant and recommended RDA for major penalty will be appropriate for finding out as to whether the applicant was involved in passing the bills, dealing the file and committing any irregularity in given approval for work for any pecuniary gain. There was difference of opinion between the CBI and the department of telecommunication. To resolve the difference of opinion a joint meeting was held by the Central Vigilance Commission (for short, "CVC") on 2.12.2009 with the CBI and the Department of Telecommunication. On 3.2.2010, the Central Vigilance Commission in agreement with the department of telecommunication, does not find adequate evidence in the case to justify launching of prosecution against the applicant. The Commission also does not find any case for initiation of disciplinary action against the applicant. The Ministry of Communication and I.T. Department of Telecommunications vide letter/order No. 9-33/2009-Vig.I has concluded that prima facie there is no case of sanction for prosecution and refused to grant sanction for prosecution of the applicant.

4. The applicant received letter dated 24.02.2010 from the Department of Telecommunication, New Delhi whereby request to grant sanction for prosecution of the applicant was declined by the Competent Authority. As such, closure of the case against the applicant and revocation of his suspension was directed. Relevant para / order reads, as under: -

"..... the competent disciplinary authority i.e. the President, has considered the report of CBI along with its related records in consultation with the CVC and has decided that the evidence of motive, demand and acceptance of illegal gratification has not been brought out in adequate measure in the case and hence there is no justification for either launching of prosecution or initiating disciplinary action against Shri Pradeep Singh Jadon. The competent authority i.e. the President, has, therefore, decided that the proposal of CBI for launching of prosecution and initiating disciplinary action against Shri Pradeep Singh Jadon cannot be agreed to and no action need to be taken against him.

Now, therefore, the President has ordered that the case against Shri Pradeep Singh Jadon be treated as closed. At the same time as suspension of Shri Jadon has been found to be wholly unjustified, the President has ordered that the same be revoked with immediate effect with further direction that the entire period of suspension of Shri Pradeep Singh Jadon, TDM be treated as duty for all purposes including entire pay and allowance due and admissible to him."

5. Thereafter, for the second time the CVC has approached the department with an advice to accord prosecution sanction and simultaneously initiate major penalty proceedings against the applicant on the ground that earlier the case was

examined without a report of voice spectrography test. The result of forensic voice examination report relating to the applicant and the complainant, submitted by the DIG CBI vide their letter dated 18.1.2010 was not available at the time of joint meeting held on 2.12.2009. The previous examination, therefore, was done in absence of this vital piece of evidence. The CVC has observed that the forensic examination has confirmed the voices of the applicant (accused) and complainant in the conversation held prior to trap in which demand of money and negotiation of bribe amount was made. This provide adequate evidence for demand of bribe.

6. The department considering the aforesaid has observed that the forensic lab report states that the voices in the recording are probably of the accused and complainant. It does not state with the conformity that the voice is of the accused and complainant. For launching prosecution, there should be an agreement, demand and acceptance of bribe. These three elements are not there, since CVC themselves casting doubt of motive and acceptance of any bribe in para 3 of there office memo dated 14.5.2010 and referred the matter to the competent authority with a note that the advice of CVC dated 14.5.2010 needs to be rejected.

7. The Director of CVC vide memo dated 14.5.2010 intimated the CVO that the voice spectrography report dated 7.1.2000 was not considered earlier. The voice spectrography report confirmed the voices of applicant and Ramkrishna Patidar, the complainant of the case in conversation held prior to trap providing adequate evidence of demand of bribe and as demand itself was an offence, the Director, CVC, New Delhi advised CVO, DOT, New Delhi to accord prosecution sanction and also to initiate major penalty proceedings against the applicant. The competent authority i.e., Ministry of Communication and I.T. Department of Telecommunications after considering the matter in the light of the voice spectrography report has reiterated its decision for not taking any action against the applicant and refused to grant sanction to prosecute the applicant. The relevant part of the Office Memorandum dated 14.7.2010 reads as under :-

"The undersigned is directed to refer CVC's OM No. 009/PandT/158/86628 dated 14.5.2010 on the subject cited above. The revised advice of the CVC for launching of prosecution and initiating major penalty proceedings against Sh. Pradeep Singh Jadon was placed before the competent authority i.e., the President along with the complete facts and records of the case.

2. The competent authority has once again considered the related records, evidences, the original advice of CVC dated 3.2.2010 and the revised advice dated 14.5.2010, tendered in the light of the voice spectrography report (VSR). The competent authority has observed that while the VSR only indicate about probability of the voice of the accused in the conversation dated 11.2.2009, there is doubt on the other aspects of the trap. The CVC in their OM dated 14.5.2010 have also cast doubt on the trap proceedings.

3. After considering the matter in totality the President, the competent authority has reiterated its decision taken in the light of CVC's advice dated 3.2.2010 for not taking any action against Shri Pradeep Singh Jadon, the then TDM, Khargone. (Copy enclosed)."

8. As per para 2 of Office Memorandum dated 14.07.2010 of the Department of Telecommunication, the Competent Authority has observed that while the Voice Spectrography Report (VSR) only indicate about the probability of the voice of the accused in the conversation dated 11.02.2009, there is doubt on the other aspects of the trap. The CVC in their OM dated 14.05.2010 have also cast doubt on the trap proceedings.

9. After second refusal of sanction, the CVC again referred the matter for grant of sanction on the ground that at the second time vide OM dated 14.05.2010, the CVC very categorically stated about adequate evidence for demand of bribe, but the same has been ignored by the Department.

10. Para 3 of the Office Memorandum dated 14.05.2010 of the Chief Vigilance Commission reads, as under: -

"3. The result of Forensic Voice Examination Report relating to the accused and the complainant, submitted by the DIG/CBI vide their letter dated 18.01.2010 was not reported at the time of the joint meeting held on 02.12.2009. The previous examination, therefore, was done in the absence of this vital piece of evidence. The Commission has observed that the forensic examination has confirmed the voices of the accused and complainant in the conversation held prior to trap in which demand of money and negotiation for the bribe amount were made. This provides adequate evidence for demand of bribe. It has also been observed that the discrepancies and contradictions pertaining to the laying of trap brought out in the earlier examination are not explained satisfactorily. For instance insertion of entry in visitors register, typographical mistakes of writing ""I" for "Inspector", absence of any reaction of accused to the presence of unknown person (witness) who is not even sought to be introduced etc. are unusual features which will continue to cast shadow of doubt.

4. Since the demand of bribe by itself is an offence, the Commission would advise the Department of Telecommunication to accord prosecution sanction against Shri Pradeep Singh Jadon, the then TDM. The Commission would also advise DA to simultaneously initiate major penalty proceedings against Shri Jadon."

11. Since there was a difference of opinion between the CBI and DoT, the CVC decided to convene a meeting of Committee of Experts for prosecution sanction to resolve the issue. The meeting was chaired by the Vigilance Commissioner of CVC with the Members of the Committee. The said meeting was also attended by the Chief Vigilance Officer, Department of Telecommunication and DIG, CBI. The Committee, after the detailed deliberation and on the basis of evidence on record, has recommended to accord prosecution sanction against the applicant,

the then TDM.

12. The case has been analyzed and the CVC has observed, as under: -

(a) Motive for bribe: - It was alleged in the complaint that Shri Jadon delayed file related to payment of laying optical fibre and also delayed approval in another case related to laying of optical fibre. The DoT had raised certain doubts about disposal of the file / bill and was of the opinion that the files were disposed off immediately by him. When asked by the Commission during meeting that how they came to the conclusion, no evidence could be pointed out based on which the conclusion was drawn. Shri SN Jalonía, the then Civil Engineer (Plg. And Admn) in his statement during investigation by the CBI had stated that the files were cleared by Shri Jadon on 12.02.2009 with back dated signatures. The statement of Shri Jalonía proves that the files were pending with Shri Jadon till 12.02.2009.

(b) Demand for bribe: - The complainant, Shri RK Patidar in complaint dated 11.02.2009 to CBI had alleged that Shri Jadon had demanded a bribe of Rs.1,50,000/- from him for payment of his bill and approval of a contract. The verification of demand of bribe was carried out by the CBI and as per the conversation between the complaint and the accused, the negotiation of bribe amount had taken place. The voice of the complainant and the accused in the recordings on 11.02.2009 has been confirmed by CFSL. The independent witness, Shri Pradeep Kumar Supekar, in his statement to CBI, had stated that the accused had negotiated the amount to Rs.1,20 lakh / 1.25 lakh during conversation.

A trap was laid on 12.02.2009. The conversation between the complainant and the accused during post trap proceedings on 12.02.2009 reveals that the complainant had confirmed to the accused that he had brought Rs.1.20 lakhs. The voice of the complainant and the accused has been confirmed by CFSL.

(C) Acceptance and recovery of bribe money: - The bribe amount of Rs.1,20,000/- was recovered from the upper drawer of left side table of the accused. The hands wash and paper wash was obtained during trap and were found to be positive for presence of Phenolphthalein and Sodium Carbonate. The statement of the accused was recorded by the CBI on 17.02.2009 in which he had accepted that he demanded a bribe of Rs.1,50,000/- from the complainant and later reduced to Rs.1,20,000/- on his request. The independent witness, Shri Supekar, in his statement to CBI had stated that the bribe was accepted by the accused from the complainant and after handling with both the hands, kept the same in his upper drawer of left side table."

13. Since the motive, demand and acceptance and recovery of bribe from the accused stands established, CVC in agreement with the recommendations made by the Committee of Experts, would advise CVO, Department of Telecom to accord prosecution sanction against the applicant.

14. As per Office Memorandum dated 6th November, 2006 issued by the Government of India, Minister of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi, if the concerned Ministry / Department proposes not to accept the reconsidered advice of the CVC, the case will be referred to the Department of Personnel and Training for a final decision, as per the DOPandT OM No. 134/2/85-ADV-I dated 17.10.1986.

15. From the aforesaid, it is clear that if there is difference of opinion between the Department of Telecommunication and CVC, then the matter needs to be referred to the Department of Personnel and Training for final decision, as per the instructions contained in their 17.10.1986.

16. On 12.11.2010, CVC in agreement with the recommendations made by the Committee of Experts, advised (third advice) afresh for grant of prosecution sanction against the applicant on the ground of motive, demand, acceptance and recovery of bribe. Thereafter, the sanction for prosecution against the applicant was done on 09.04.2011 by the Assistant Director General (Vigilance-I), DoT, New Delhi.

17. The applicant by way of an application under Section 19 of P.C. Act, sought dropping of prosecution against him and his discharge. By order dated 17.7.2012, the aforesaid application was rejected by the Special Judge. The applicant challenged the said order by filing Criminal Revision No. 914/2012. During pendency of the criminal revision charges were framed against the applicant on 26.12.2012. The applicant filed another criminal revision vide Criminal Revision No. 103/2013 against the charges dated 26.12.2012. On 16.8.2013 both the criminal revisions were disposed of by directing the trial Court to decide the applicant's application under Section 19 of the P.C. Act, keeping in view the provisions of P.C. Act by a reasoned order, in accordance with law. Order dated 16.8.2013 passed by the coordinate Bench of this Court reads as under :-

"With consent heard finally.

This order shall also govern the disposal of Criminal Revision No. 103/2013 (Pradeep Singh s/o Gopal Singh Jadon v. State of Madhya Pradesh).

By filing this criminal revision under Sections 397 and 401 of the Code of Criminal Procedure, 1973, the petitioner has challenged the order dated 17.07.2012 (Annexure K) passed by the Special Judge (CBI), Indore in Special Case No. 03/2011 pending before it under the provisions of Prevention of Corruption Act, 1988 (hereinafter referred to as the PC Act).

According to the petitioner, the sanction for prosecution was rejected by the Competent Authority firstly on 24.02.2010 and thereafter on 14.07.2010. However, for the third time, without there being any fresh material / evidence, the sanctioning authority granted the sanction vide order dated 19.04.2011, without taking into consideration that previously the sanctions were declined.

Learned Senior Counsel for the petitioner submits that on filing an application (Annexure D) under Section 19 of the PC Act, raising the aforesaid objections and making a prayer for discharging the petitioner, the said application has been dismissed by the trial Court vide impugned order dated 17.07.2012 (Annexure K) by observing that under Section 362 of the Code of Criminal Procedure, such an application is not maintainable, whereas the said application was not filed under Section 362 of the Cr.P.C.

The respondent has filed reply and has supported the impugned order passed by the trial Court.

We have heard learned counsel for the parties.

Having considered the submissions made by the learned counsel for the parties and having gone through the impugned order, we find that the trial Court has dealt with the matter as if the prayer of the writ petitioner was under Section 362 of the Code of Criminal Procedure. The trial Court has not considered the application (Annexure D) filed by the petitioner before it in its correct perspective. The application, which was filed under Section 19 of the PC Act, was required to be dealt with taking into consideration the provisions of Section 19 of the PC Act.

During the course of hearing, learned counsel for the parties are one on the point that the application ought to have been decided by the trial Court on its own merits and should not have been dismissed by saying that such an application is not maintainable under Section 362 of the Code of Criminal Procedure. Admittedly, it was nobody's case that the petitioner's application was under Section 362 of the Code of Criminal Procedure.

Having regard to the aforesaid, as agreed to by the learned counsel for the parties, this petition is disposed of directing the trial Court to decide the petitioner's application (Annexure D), keeping in view the provisions of the PC Act, by a reasoned order, in accordance with law.

With the aforesaid direction, both the criminal revisions stand disposed of.

C. c. within three days."

18. The learned Special Judge by impugned order dated 5.9.2014, rejected the application on the ground that after framing of charges, no new documents is to be examined while considering the application under Section 19 of the P.C. Act and relying on the decision of the Apex Court in the case of State of Orissa Vs. Debendra Nath Padhi, , rejected the application.

19. Learned Senior counsel for the applicant has drawn our attention to the order of refusal dated 24.2.2010 and submitted that sanction to prosecute the applicant was rejected by the competent authority not only at first occasion on 24.2.2010, but also it was rejected on second occasion on 14.7.2010 and at the time of second occasion all the documents and material were placed before the

CVC as well as before the competent authority, which include voice spectrography report. He submits that office memo dated 14.7.2010 clearly establishes that the competent authority considered the voice spectrography report along with other related matter in totality and refused to grant the sanction to prosecute the applicant. The sanction for prosecution was granted on the third occasion on 19.4.2011 under extraneous influence, on the basis of very same material/evidence on which it was refused earlier on 14.7.2010. He further pointed out that after second refusal of sanction dated 14.7.2010, no fresh material/evidence was placed before the sanction authority, the sanction authority was not having any jurisdiction to review its earlier order dated 14.7.2010 and grant sanction on the same material. He submits that review or reconsideration of the sanction for prosecution by the sanctioning authority on the same material is impermissible. He also pointed out that the learned trial Court did not appreciate the order dated 16.8.2013 passed by this court in its correct perspective and has proceeded to deviate from the main issue and erroneously sought refuge in the judgment of Apex Court in the Debendra Nath Padhi's case. He further contended that by order dated 17.1.2014, the sanction file was summoned by the learned Special Judge and as per sanction order dated 14.7.2010 and 19.4.2011, there was no dispute that the voice spectrography report was considered while granting refusal on 14.7.2010. Thereafter, the sanction authority in absence of any additional evidence reviewed the earlier order, which is impermissible in law. He lastly submits that after passing of the order dated 14.7.2010, the sanctioning authority has become "functus officio". The sanctioning authority has no power to review its earlier order on the same material. The sanction is "void ab initio" and prayed that the application under Section 482 of Cr.P.C be allowed and the impugned order dated 5.9.2014 passed by the learned Special Judge, CBI, Indore in Special CBI Case No. 6/2013, be set aside and applicant be discharged.

20. In reply, the learned Special Public Prosecutor CBI has submitted that sanction for prosecution dated 19.4.2011 was based on all evidence against the applicant, including CFSL and voice spectrograph report. As per report of Committee of Experts, the voice of applicant had been identified not only by the forensic expert but also by colleague of the applicant. Expert committee recommended the prosecution of the applicant. Thereafter, the sanction for prosecution was issued by the competent authority on 19.4.2011. He further submits that there is no provision in law for dropping prosecution against the applicant. He also submitted that validity of the sanction order is to be proved during the trial when sanctioning authority was examined before the trial Court and at this stage, the applicant cannot question the order of sanction nor at this stage, the Court has jurisdiction to consider the same. It was submitted that objection in respect of sanction ought not be entertained at this stage and party should be asked to agitate this plea at the time of trial. It is submitted that power of this court under Section 482 Cr.P.C are to be exercised in exceptional case and the present case cannot be said to be one such case and prays for

dismissal of the application filed by the applicant under Section 482 of Cr.P.C.

21. We have heard the arguments at length and perused the original record of the case.

22. In the case of State of Himachal Pradesh Vs. Nishant Sareen, , the respondent was at that relevant time was working as a Drug Inspector in Bilsapur (Himachal Pradesh). He had said to have demanded Rs.5000/- bribe in order of checking by the Drug Inspector. The complaint was filed and in a trap arranged the respondent was said to have caught raid handed at that time. However, the authority i.e., Principal Secretary (Health) Government of Himachal Pradesh when move for sanction, it has concluded that there is no justification for granting of sanction of prosecution. However, on consideration later on authority has granted the sanction.

23. The Hon''ble Supreme Court referring the earlier cases on the point dismissed the appeal has concluded thus :-

12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

13. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction

to prosecute the respondent which, in our opinion, is clearly impermissible.

14. By way of foot-note, we may observe that the investigating agency might have had legitimate grievance about the order dated November 27, 2007 refusing to grant sanction, and if that were so and no fresh materials were necessary, it ought to have challenged the order of the sanctioning authority but that was not done. The power of the sanctioning authority being not of continuing character could have been exercised only once on the same materials.

24. In *Romesh Lal Jain Vs. Naginder Singh Rana and Others*, , it was held by the Apex Court that an order granting or refusing sanction must be preceded by application of mind on the part of appropriate authority. If the complainant or accused can demonstrate such an order granting or refusing sanction to be suffering from non-application of mind, the same may be called in question before the competent court of law.

25. In the case of *State of Punjab and Another Vs. Mohammed Iqbal Bhatti*, , Apex Court had an occasion to consider the question whether the State has any power of review in the matter of grant of sanction in terms of Section 197 of the Code. The Apex Court observed as under:

"7. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered."

26. The Apex Court then noticed the opinion of the High Court which was recorded as follows :

"Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to

prosecute the concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible."

27. While affirming the above opinion of the High Court, the Apex Court held in paragraphs 22 and 23 of the Report as under :

"22. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon"ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to."

"23. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise."

28. In the case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, observed the following in paragraph 19 which reads as under :-

"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 genuine 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 prosecution."

29. In the case of Dinesh Kumar Vs. Chairman, Airport Authority of India and Another, the Apex court considering the fact that cognizance has already been taken against the appellant therein by the trial judge, the High court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the trial court and giving liberty to appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of the Apex Court in the case of Parkash Singh Badal

and Another Vs. State of Punjab and Others, and not unjustified and dismissed the appeal of the appellant.

30. In the case of Central Bureau of Investigation and Another Vs. Ashok Kumar Aggarwal and Others, the Hon'ble Supreme Court reiterated the same view as has been taken in the matter of Dinesh Kumar v/s. Chariman Airport Auth. Of India and Anr. (supra) it has been held that the validity of sanction should be examined during trial and not at pre-trial stage.

31. In the case of State of Bihar and Others Vs. Rajmangal Ram, , the Apex Court set aside the order passed by the High Court holding that failure of justice can be established not at the stage of framing of charge, but only after the trial has commenced and evidence is led.

32. In the case in hand, when the matter was referred by the CVC for second time on 14.05.2010, the Competent Authority of Telecom Department has observed that while the Voice Spectrography Report (VSR) only indicate about the probability of the voice of the accused in the conversation dated 11.02.2009, there is doubt on the other aspects of the trap. The CVC in their Office Memorandum dated 14.05.2010 have also cast doubt on the trap proceedings. As per para 3 and 4 of the memo dated 14.05.2010, the aforesaid fact is not correct. The CVC in its letter dated 14.05.2010 quoted about the observation made in earlier office memo dated 03.02.2010. The same was misconstrued by the Department of Telecom.

33. In view of the difference of opinion, the matter has been referred by the CVC to the Expert Committee and on the basis of the advice of the Expert Committee, the matter was again placed before the Competent Authority of the Department of Telecommunication, who after considering the aforesaid, gave its opinion and ordered prosecution sanction against the applicant, which in our opinion is clearly permissible.

34. For the above mentioned reasons and considering the fact that it has been held by the Courts that the validity of the sanction should be examined during the trial and not at pre-trial stage, we are of the considered view that there are no compelling circumstances to quash the impugned order and discharge the applicant. The applicant may raise issue of validity of sanction order in the course of trial. The application under Section 482 of Cr.P.C. has no merit and is accordingly dismissed.