IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13th DAY OF DECEMBER, 2021

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.48249 OF 2018 (GM- RES)

BETWEEN:

KARNATAKA LOKAYUKTA POLICE
M.S.BUILDING
DR.AMBEDKAR VEEDHI
BENGALURU CITY-1
REPRESENTED BY
SRI DINESH KUMAR B.S.,
S/O SHUBAKARA
AGE-38 YEARS
OCC:POLICE INSPECTOR.

... PETITIONER

(BY SRI PRASAD B.S., ADVOCATE (PHYSICAL HEARING))

AND:

1. STATE REP. BY SECRETARY
DEPARTMENT OF PERSONNEL
AND ADMINISTRATIVE REFORMS
VIDHANA SOUDHA
BENGALURU - 560 001.

2. OFFICE OF THE DIRECTOR GENERAL AND
INSPECTOR GENERAL OF POLICE
NO.2, NRUPATHUNGA ROAD
BENGALURU - 560 001.

3. G. KRISHNAMURTHY
S/O LATE GOPALA
AGE:60 YEARS
WORKING AS POLICE INSPECTOR
STATE INTELIGENCE
MADIKERI, KODAGU DISTRICT
NOW RESIDING AT
HOUSE NO.D4/2282/375/1381
GOPALAKRISHNSWAMY NILAYA
10TH CROSS, CHAMUNDESWARINAGARA
MANDYA - 571 403.

... RESPONDENTS

(BY SRI RENUKARADHYA R.D., HCGP FOR R1 AND R2;
SRI T.P.VIVEKANANDA, ADVOCATE FOR R3 (PHYSICAL HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO QUASHING THE ORDER ISSUED BY THE RESPONDENT NO. 1 IN NO.O.E 36 Po.Ci.Pa. 2016 BANGALORE DATED 28/1/2017 IS PRODUCED AT ANNEXURE-C AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.11.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/Karnataka Lokayukta Police represented by its Police Inspector/Investigating Officer is before this Court calling in question orders dated 28-01-2017 and 31-05-2017, passed by the 1st respondent/Government declining to accord sanction to prosecute the 3rd respondent.

2. Shorn of unnecessary details, facts in brief necessary for consideration of the *lis*, are as follows:

The 3rd respondent was a Government Servant and at the relevant point in time was working as Police Inspector, State Intelligence in the Home Department. The petitioner registers a case in Crime No.8 of 2012 on 28-11-2012, against the 3rd respondent on receiving an information of commission of cognizable offence under Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act'), for possessing assets disproportionate to his known source of income. The check period, according to the said registration of crime was from 29.08.1977, till the date of registration of the FIR i.e., 28.11.2012. After completion of investigation, the petitioner claims to have prepared a final report alleging that the 3rd respondent had amassed wealth disproportionate of his known source of income to the tune of 100%.

3. After completion of investigation and preparation of final report, on 16-12-2015, a request was sent to the competent

authority to accord sanction to prosecute the 3rd respondent. This was returned on 17-10-2016, by the Government directing the petitioner to submit all documents in support of the claim for according sanction. Once again, on 29.12.2016, the petitioner addressed a letter to the 1st respondent enclosing all the documents with a request to accord sanction to prosecute the 3rd respondent. On a thorough scrutiny of all the documents, the State passed a detailed order on 28-01-2017, refusing to accord sanction for prosecution.

4. Yet again, the petitioner addresses a communication to the 1st respondent on 01-04-2017, modifying the report submitted earlier and sought for according sanction to prosecute the 3rd respondent. The Government again after scrutinizing entire documents in greater detail passed another order on 31-05-2017, rejecting the permission to prosecute the 3rd respondent. It is these orders of the State Government refusing to accord sanction to prosecute the 3rd respondent that are

called in question in this writ petition by the petitioner/Police wing of the Karnataka Lokayukta.

5. Heard the learned counsel, Sri B.S. Prasad, appearing for the petitioner, the learned High Court Government Pleader, Sri R.D. Renukaradhya, appearing for the 1st and 2nd respondents - State and the learned counsel, Sri T.P.Vivekananda, appearing for the 3rd respondent.

6. The learned counsel for the petitioner would vehemently argue and contend that the petitioner has *locus* to challenge the orders of the State refusing to accord sanction to prosecute as the investigation is conducted by the petitioner and the 3rd respondent cannot escape the clutches of penal law on declining sanction to be accorded. He would further submit that the competent authority while declining to accord sanction has looked into the entire material of investigation, which is impermissible in law.

7. On the other hand, the learned counsel appearing for the respondents in unison refute the aforesaid submissions and contend that it is the discretion of the competent authority either to accord sanction or refuse it and the petitioner cannot be construed to be an aggrieved person in the refusal to accord sanction to prosecute the 3rd respondent.

8. The learned counsel appearing for the 3rd respondent in particular, would take this Court to the communications and refusal of sanction not once, twice but thrice to contend that the competent authority in exercise of its discretion found no material to accord sanction and would submit that the writ petition be dismissed.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof the issues that fall for my consideration are:

(i) Whether the petitioner can claim to be an aggrieved person by the act of the State declining to grant sanction to prosecute the 3rd respondent?

(ii) Whether there is an error committed by the competent authority in looking at the entire material on record while declining to grant sanction to prosecute the 3rd respondent?

10. POINT NO.1: Whether the petitioner can claim to be an aggrieved person by the act of the state declining to grant sanction to prosecute the 3rd respondent?

The afore-narrated facts are not in dispute. The facts with regard to the 3rd respondent joining service and retiring on attaining the age of superannuation or the service that he has rendered in the State Government need not be gone into, as they are not the issues in the case at hand and not the point that has arisen for consideration.

11. The petitioner in order to buttress his contention that he does possess *locus* to challenge the orders of refusal to grant sanction, places reliance on the judgment rendered by the Apex Court in the case of ***STATE OF PUNJAB AND ANOTHER v. MOHAMMED IQBAL BHATTI***[1]**,** particularly on paragraphs 6, 7 and 8, which read as follows:

> *"6. 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 authority concerned 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.***
>
> *7. 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 evidence must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind*

[1] (2009) 17 SCC 92

does not appear from the order of sanction, extrinsic evidence 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. (See Mansukhlal Vithaldas Chauhan v. State of Gujarat [(1997) 7 SCC 622: 1997 SCC (L&S) 1784: 1997 SCC (Cri) 1120]). The authority concerned cannot also pass an order of sanction subject to ratification of a higher authority. {See State v. Dr. R.C. Anand [(2004) 4 SCC 615: 2004 SCC (Cri) 1380}.]

8. The High Court called for the entire records. It perused the same. It noticed that several queries were raised but remained unanswered. The departmental proceeding initiated against the respondent was dropped. The recommendations therefore were made not to grant sanction on the basis whereof the aforementioned order dated 15-12-2003 was passed. A finding of fact has been arrived at by the High Court that no material was placed before the competent authority. Only a communication had been received from the Director, Vigilance Bureau dated 22-6-2004 wherein reference of the letter dated 26-5-2004 was made. It, according to the High Court, was not a new material."

(Emphasis supplied)

The issue before the Apex Court in the said case was, sanction to prosecute the employee therein has been refused by the competent authority on 15-12-2002. Later, the competent

authority once again on 14-09-2004, accorded sanction to prosecute the employee therein. The High Court had held that the State had no power to review an order granting sanction having exhausted its jurisdiction once. The Apex Court was considering the said order passed by the High Court and holds that an order refusing to accord sanction may attract judicial review by superior Courts. The Apex Court also notices that the High Court after calling the entire records and perusing the same, had accepted that there was no material placed before the sanctioning authority and no case was made out for grant of sanction. The Apex Court further holds that, it was not a case where fresh materials were placed before the sanctioning authority and affirmed the order passed by the High Court, setting aside the subsequent order of grant of sanction without there being any fresh material and that was the issue before the Apex Court.

12. The core issue was not whether the investigating agency who had investigated into the matter had *locus* or can be

construed to be an aggrieved person of an order refusing to accord sanction. The aggrieved person therein was the State Government as its order granting sanction after having refused was called in question by the employee. It is thus, the State of Punjab became aggrieved by the order passed by the High Court. This, in my considered view, will not clothe the petitioner to file a writ petition calling in question the orders refusing the grant of sanction by the competent authority to prosecute the 3rd respondent. The words used by the Apex Court on the aforesaid facts is that, an order refusing to grant sanction '*may*' attract judicial review by the superior Courts. Since that was not the issue, the same is not the ratio that is laid down by the Apex Court that an order refusing to accord sanction can be called in question by the Investigating Officer. It is trite law that a judgment is treated as a precedent for the law that is laid down in the facts of the case and those facts would come in aid in the subsequent decision.

13. Reference to the judgment of the Apex Court in the case of ***HARYANA FINANCIAL CORPORATION v. JAGDAMBA OIL MILLS***[2]**,** in the circumstances is apposite. The Apex Court holds as follows:

> *"**20.** In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294: 1970 AC 1004 (HL)] Lord Reid said (at All ER p. 297g-h), "Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in (1971) 1 WLR 1062 observed:"One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board [(1972) 2 WLR 537 [sub nom British Railway Board v. Herrington, (1972) 1 All ER 749 (HL)]] Lord Morris said: (All ER p. 761c)*
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> > *"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."*
>
> ***21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.***

[2] (2002) 3 SCC 496

22. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT [AIR 1962 SC 680], AIR p. 688, para 19)

> ***"19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."***
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> ***
>
> *"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."*
>
> *(Emphasis supplied)*

In the light of the facts that went into the judgment in ***MOHAMMED IQBAL BHATTI'S*** case and the law laid down by the Apex Court in ***JAGADAMBA OIL MILLS'*** case, the contention of the learned counsel for the petitioner that the petitioner is aggrieved by the refusal of sanction and can maintain the writ

petition deserves to be rejected and the *point (i)* that has arisen is to be held against the petitioner and it is accordingly held.

14. POINT NO.2: ***Whether there is an error committed by the competent authority in looking at the entire material on record while declining to grant sanction to prosecute the 3rd respondent?***

Before considering the subject point, it is necessary to notice Section 19 of the Act. Section 19 reads as follows:

> ***"19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 –***
>
> *(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;*
>
> *(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;*

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

Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless-

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the

decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression "public servant" includes such person-

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed."

(Emphasis supplied)

Placing reliance on Section 19 of the Act, the submission made by the learned counsel appearing for the petitioner is that, the competent authority has looked into the entire material collected during investigation and has commented upon the nature of investigation done. It is the submission of the learned counsel

that the competent authority is not empowered to look into the entire material in an administrative act of granting or refusing sanction and it is a matter of trial that the Government servant will have to undergo on the basis of the material collected during the investigation.

15. The issue requires to be considered, at the outset considering the judgments of the Apex Court, as to whether the entire material concerning the Government servant has to be looked into by the competent authority, while considering the grant or refusal of sanction for prosecution. The Apex Court in the case of ***MANSUKHLAL VITHALDAS CHAUHAN v. STATE OF GUJARAT***[3]**,** has held as follows:

> *"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 the Central or the State Government or the "other authority" has not only the*

[3] (1997) 7 SCC 622

right to consider the question of grant of sanction, it has also the discretion to grant or not to grant sanction.

… … … …

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 a 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.

… … …. …

32. By issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction and to act only in one way, namely, to sanction the prosecution of the appellant. The Secretary was not allowed to consider whether it would be feasible to prosecute the appellant; whether the

complaint of Harshadrai of illegal gratification which was sought to be supported by "trap" was false and whether the prosecution would be vexatious particularly as it was in the knowledge of the Government that the firm had been blacklisted once and there was demand for some amount to be paid to the Government by the firm in connection with this contract. The discretion not to sanction the prosecution was thus taken away by the High Court.

... ...

34. Learned counsel for the State of Gujarat contended that the judgment passed by the High Court cannot be questioned in these proceedings as it had become final. This contention is wholly devoid of substance. The appellant has questioned the legality of "sanction" on many grounds one of which is that the sanctioning authority did not apply its own mind and acted at the behest of the High Court which had issued a mandamus to sanction the prosecution. On a consideration of the whole matter, we are of the positive opinion that the sanctioning authority, in the instant case, was left with no choice except to sanction the prosecution and in passing the order of sanction, it acted mechanically in obedience to the mandamus issued by the High Court by putting the signature on a pro forma drawn up by the office. Since the correctness and validity of the "sanction order" was assailed before us, we had necessarily to consider the High Court's judgment and its impact on the "sanction". The so-called finality cannot shut out the scrutiny of the judgment in terms of actus curiae neminem gravabit as the order of the Gujarat High Court in directing the sanction to be granted, besides being erroneous, was harmful to the interest of the appellant, who had a right, a valuable right, of fair trial at every stage, from the initiation till the conclusion of the proceedings."

(Emphasis supplied)

In a later judgment the Apex Court in the case of ***STATE OF HIMACHAL PRADESH v. NISHANT SAREEN***[4] – (2010) 14 SCC 527 has held as follows:

> ***"7. The object underlying Section 19 is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations. The exercise of power under Section 19 is not an empty formality since the Government or for that matter the sanctioning authority is supposed to apply its mind to the entire material and evidence placed before it and on examination thereof reach the conclusion fairly, objectively and consistent with public interest as to whether or not in the facts and circumstances sanction be accorded to prosecute the public servant.*** *In Mansukhlal Vithaldas Chauhan v. State of Gujarat [(1997) 7 SCC 622: 1997 SCC (Cri) 1120: 1997 SCC (L&S) 1784] this Court observed: (SCC p. 631, para 17)*
>
> > *"17. ... Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty."*
> >
> > ... ...
> >
> > *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*

[4] (2010) 14 SCC 527

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 a 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.

... ...

14. 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 15-3-2008 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."

(Emphasis supplied)

Referring to the aforesaid judgment, the Apex Court in a later judgment in the case of ***CBI v. ASHOK KUMAR AGGARWAL***[5]**,** considering Section 19 of the Act, has held as follows:

> *"13. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.*
>
> *14. It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.*

[5] (2014) 14 SCC 295

15. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge-sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter alia on the ground that the order suffers from the vice of total non-application of mind. (Vide Gokulchand Dwarkadas Morarka v. R. [(1947-48) 75 IA 30: (1948) 61 LW 257: AIR 1948 PC 82]; Jaswant Singh v. State of Punjab [AIR 1958 SC 124: 1958 Cri LJ 265] , Mohd. Iqbal Ahmed v. State of A.P. [(1979)4 SCC 172: 1979 SCC (Cri) 926], State v. Krishanchand Khushalchand Jagtiani [(1996) 4 SCC 472: 1996 SCC (Cri) 755], State of Punjab v. Mohd. Iqbal Bhatti [(2009) 17 SCC 92: (2011) 1 SCC (Cri) 949], Satyavir Singh Rathi, ACP v. State [(2011) 6 SCC 1: (2011) 2 SCC (Cri) 782] and State of Maharashtra v. Mahesh G. Jain [(2013) 8 SCC 119: (2014) 1 SCC (Cri) 515: (2014) 1 SCC (L&S) 85] .)

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

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

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

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

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

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

(Emphasis supplied)

In the light of the afore-quoted judgments of the Apex Court, what would unmistakably emerge is that, the competent authority to accord sanction for prosecution should satisfy the Court that at the time of grant of sanction adequate material was made available by the authority, who sought sanction. The Apex Court further holds that Courts should bear in mind that sanction lifts the bar of prosecution and it is not an acrimonious exercise but a solemn and sacrosanct act, which affords protection to the government servant against frivolous prosecution and a weapon to discourage vexatious prosecution. On the said principle, the legal proposition summarized by the Apex Court is found at paragraph 16. In paragraph 16.1 of the said summary, the Apex Court holds that the prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charges and all other relevant material. The authority has to look into the complete record and undertake a conscious scrutiny of the whole record

independently, applying its mind while discharging its duty to give or withhold sanction.

16. It is again summarized that the order of sanction should make it evident that the authority was aware of all the relevant material and had applied its mind to all such relevant material. On the touchstone of the legal principles summarized by the Apex Court in the aforesaid cases, particularly, in the case of ***ASHOK KUMAR AGGARWAL*** *(supra)*, the case at hand will have to be considered.

17. First of the communications by the petitioner to the Government seeking sanction was on 10-06-2016. This was returned by the State to the petitioner to submit all supporting documents for the competent authority to look into the same and then pass orders either according or refusing to grant sanction. It is after that a communication was sent on 29.12.2016, by the petitioner to the State again seeking sanction. The communication reads as follows:

"ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ

ಸಂಖ್ಯೆ:ಲೋಕ್/ಐಎನ್‌ವಿ(ಜಿ)/ಎಂ– 46/ಮೊ.ನಂ.8/2012
ಮಂಡ್ಯ ದಿನಾಂಕ:29–12–2016.

ಲಗತ್ತು:– ಅಂತಿಮ ತನಿಖಾ ವರದಿ ಮತ್ತು ದಾಖಲೆಗಳ ಪ್ರತಿಗಳು.

ರವರಿಗೆ,

ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ,
ಒಳಾಡಳಿತ ಇಲಾಖೆ,
ವಿಧಾನ ಸೌಧ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಆಪಾದಿತರಾದ ಜಿ.ಕೃಷ್ಣಮೂರ್ತಿ, ಆರಕ್ಷಕ ವೃತ್ತ ನಿರೀಕ್ಷಕರು, ಮಂಡ್ಯ ಗ್ರಾಮಾಂತರ ವೃತ್ತ, ಮಂಡ್ಯ ಜಿಲ್ಲೆ ಇವರ ಮೇಲಿನ ದಾಳಿ ಪ್ರಕರಣದಲ್ಲಿ ಅಭಿಯೋಜನಾ ಮಂಜೂರಾತಿ ಆದೇಶ ಹೊರಡಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: ಸರ್ಕಾರದ ಪತ್ರ ಸಂಖ್ಯೆ. ಒಇ 36 ಪೊಸಿಪ 2016, ದಿನಾಂಕ 17–10–2016.

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"ಮೇಲಿನ ವಿಷಯ ಮತ್ತು ಉಲ್ಲೇಖಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಮಂಡ್ಯ ಲೋಕಾಯುಕ್ತ ಠಾಣೆ ಮೊ.ನಂ.8/2012 ಆಪಾದಿತರಾದ ಜಿ.ಕೃಷ್ಣಮೂರ್ತಿ, ಆರಕ್ಷಕ ವೃತ್ತ ನಿರೀಕ್ಷಕರು, ಮಂಡ್ಯ ಗ್ರಾಮಾಂತರ ವೃತ್ತ, ಮಂಡ್ಯ ಜಿಲ್ಲೆ ಇವರ ಮೇಲಿನ ದಾಳಿ ಪ್ರಕರಣದಲ್ಲಿ ಅಭಿಯೋಜನಾ ಮಂಜೂರಾತಿ ಆದೇಶ ಹೊರಡಿಸುವುದಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಆರೋಪಿತರು ಸಲ್ಲಿಸಿದ್ದರೆನ್ನಲಾದ ದಾಖಲಾತಿಗಳನ್ನು ಮತ್ತೊಮ್ಮೆ ಪರಿಶೀಲಿಸಿ, ಅಭಿಯೋಜನಾ ಮಂಜೂರಾತಿಗಾಗಿ ಸರ್ಕಾರಕ್ಕೆ ಪ್ರಸ್ತಾವನೆ ಸಲ್ಲಿಸುವಂತೆ ಉಲ್ಲೇಖಿತ ಪತ್ರದಲ್ಲಿ ತಿಳಿಸಿದ್ದು, ತನಿಖಾಧಿಕಾರಿಗಳು ಅಂತಿಮ ತನಿಖಾ ವರದಿಯನ್ನು ಪುನರ್ ಪರಿಶೀಲಿಸಿ ಪಾಲನಾ ವರದಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ತನಿಖಾಧಿಕಾರಿಗಳ ಪಾಲನಾ ವರದಿಯನ್ನು ಸದರಿ ಪತ್ರದೊಂದಿಗೆ ಲಗತ್ತಿದ್ದು, ಆರೋಪಿತರು ತನಿಖಾ ಕಾಲದಲ್ಲಿ ಸಲ್ಲಿಸಿದ್ದ ದಾಖಲೆಗಳ ಪರಿಶೀಲನೆಯಲ್ಲಿ ಆರೋಪಿತರು ರೂ.42,23,738/– ಗಳ ಆಸ್ತಿಯನ್ನು ಗಳಿಸಿದ್ದು, ಸದರಿ ಅವಧಿಯಲ್ಲಿ ರೂ.37,23,326/– ಗಳನ್ನು ಖರ್ಚು ಮಾಡಿದ್ದು, ಇವರೆಡರ ಮೊತ್ತ ರೂ.79,47,064/– ಆಗುತ್ತದೆ. ಸದರಿ ಅವಧಿಯಲ್ಲಿ ರೂ.39,69,591/– ರಷ್ಟು ಆದಾಯ ಹೊಂದಿರುವುದು ಧೃಡಪಟ್ಟಿದ್ದು, ಸದರಿ ಆರೋಪಿತರನ್ನು ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಅಭಿಯೋಜನೆಗೆ ಒಳಪಡಿಸಲು ಶೀಘ್ರವಾಗಿ ಅಭಿಯೋಜನಾ ಮಂಜೂರಾತಿಯನ್ನು ನೀಡುವಂತೆ ಈ ಮೂಲಕ ಮತ್ತೊಮ್ಮೆ ಕೋರಲಾಗಿದೆ."

Based upon the said communication and the material that was placed, the Government by a detailed order refuses to grant sanction to prosecute the 3rd respondent by its communication dated 28-01-2017. After refusal to grant sanction for prosecution, the Lokayukta again sought sanction on the very same material on 01-04-2017. The said communication reads as follows:

"ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ

ಸಂಖ್ಯೆ:ಲೋಕ್/ಐಎನ್‌ವಿ(ಜಿ)/ಎಂ– 46/ಮೊ.ನಂ.8/2012 ಮಂಡ್ಯ ದಿನಾಂಕ:1/4/17.

ರವರಿಗೆ,

ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ,
ಒಳಾಡಳಿತ ಇಲಾಖೆ,
ವಿಧಾನ ಸೌಧ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಆಪಾದಿತರಾದ ಜಿ.ಕೃಷ್ಣಮೂರ್ತಿ, ಆರಕ್ಷಕ ವೃತ್ತ ನಿರೀಕ್ಷಕರು, ಮಂಡ್ಯ ಗ್ರಾಮಾಂತರ, ವೃತ್ತ, ಮಂಡ್ಯ ಜಿಲ್ಲೆ ರವರ ಲೋಕಾಯುಕ್ತ ದಾಳಿ ಪ್ರಕರಣದಲ್ಲಿ ಅಭಿಯೋಜನಾ ಮಂಜೂರಾತಿ ಆದೇಶ ಹೊರಡಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: ಸರ್ಕಾರದ ಪತ್ರ ಸಂಖ್ಯೆ. ಒಇ 36 ಪೊಸಿಪ 2016, ದಿನಾಂಕ 28–06–2017.

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ಮೇಲಿನ ವಿಷಯ ಮತ್ತು ಉಲ್ಲೇಖಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಮಂಡ್ಯ ಲೋಕಾಯುಕ್ತ ಠಾಣೆ ಮೊ.ನಂ.8/2012 ರ ಆರೋಪಿತರಾದ ಜಿ.ಕೃಷ್ಣಮೂರ್ತಿ, ಆರಕ್ಷಕ ವೃತ್ತ ನಿರೀಕ್ಷಕರು, ಮಂಡ್ಯ ಗ್ರಾಮಾಂತರ ವೃತ್ತ, ಮಂಡ್ಯ ಜಿಲ್ಲೆ ರವರ ಮೇಲಿನ ಲೋಕಾಯುಕ್ತ ದಾಳಿ ಪ್ರಕರಣದಲ್ಲಿ ಅಭಿಯೋಜನಾ ಮಂಜೂರಾತಿ ನೀಡುವಂತೆ ಕೋರಿದ್ದು, ಉಲ್ಲೇಖಿತ ಸರ್ಕಾರಿ ಪತ್ರದಲ್ಲಿ ಸದರಿ ಪ್ರಸ್ತಾವನೆಯನ್ನು ತಿರಸ್ಕರಿಸಲಾಗಿರುತ್ತದೆ.

ಸದರಿ ತಿರಸ್ಕೃತ ಅಭಿಯೋಜನಾ ಮಂಜೂರಾತಿ ಆದೇಶಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತನಿಖಾಧಿಕಾರಿಗಳು ಅಕ್ಷೇಪಣಾ ನರದಿಯನ್ನು ಸಲ್ಲಿಸಿದ್ದು, ಸದರಿ ವರದಿಯನ್ನು ಈ ಪತ್ರದೊಂದಿಗೆ ಲಗತ್ತಿಸಿದ್ದು, ಆರೋಪಿತರ ಮೇಲಿನ ಆರೋಪಗಳು ದೃಢಪಟ್ಟಿರುವ ಕಾರಣ ಪ್ರಕರಣದ ಆರೋಪಿತರ ವಿರುದ್ಧ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿ ಸಲ್ಲಿಸಲು ಅಭಿಯೋಜನಾ ಮಂಜೂರಾತಿ ಆದೇಶವನ್ನು ಶೀಘ್ರವಾಗಿ ಹೊರಡಿಸುವಂತೆ ಈ ಮೂಲಕ ಮತ್ತೊಮ್ಮೆ ಕೋರಲಾಗಿದೆ."

This is again rejected by the Government in terms of communication dated 05-06-2018. The communication reads as follows:

"ವಿಷಯ: ಶ್ರೀ ಜಿ.ಕೃಷ್ಣಮೂರ್ತಿ, ಆರಕ್ಷಕ ವೃತ್ತ ನಿರೀಕ್ಷಕರು, ಮಂಡ್ಯ ಗ್ರಾಮಾಂತರ ವೃತ್ತ, ಹಾಲಿ ರಾಜ್ಯ ಗುಪ್ತವಾರ್ತೆ, ಬೆಂಗಳೂರು ರವರ ವಿರುದ್ಧ ದಾಖಲಾಗಿರುವ ದಾಳಿ ಪ್ರಕರಣದಲ್ಲಿ ಮಂಜೂರಾತಿಯನ್ನು ನೀಡುಲು ತಿರಸ್ಕರಿಸಿರುವ ಆದೇಶದ ಧೃಢೀಕೃತ ಪ್ರತಿಗಳನ್ನು ನೀಡಲು ಕೋರಿ.

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ಮೇಲಿನ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಶ್ರೀ ಜಿ.ಕೃಷ್ಣಮೂರ್ತಿ, ಆರಕ್ಷಕ ವೃತ್ತ ನಿರೀಕ್ಷಕರು, ಮಂಡ್ಯ ಗ್ರಾಮಾಂತರ ವೃತ್ತ, ಹಾಲಿ ರಾಜ್ಯ ಗುಪ್ತವಾರ್ತೆ, ಬೆಂಗಳೂರು ರವರ ವಿರುದ್ಧ ದಾಖಲಾಗಿರುವ ದಾಳಿ ಪ್ರಕರಣದಲ್ಲಿ ಮಂಜೂರಾತಿಯನ್ನು ನೀಡಲು

ತಿರಸ್ಕರಿಸಿರುವ ಆದೇಶ ಹಾಗೂ ಎಡಿಜಿಪಿ ಲೋಕಾಯುಕ್ತ ರವರಿಗೆ ಬರೆದ ಪತ್ರದ ದೃಢೀಕೃತ ಪ್ರತಿಗಳನ್ನು ಇದರೊಂದಿಗೆ ಲಗತ್ತಿಸಿ ತಮಗೆ ಕಳುಹಿಸಿಕೊಡಲು ನಿರ್ದೇಶಿತನಾಗಿದ್ದೇನೆ."

To this communication, entire order of the competent authority declining to grant sanction was appended. Again the State Government passes a detailed order refusing to grant sanction and also holds that several files and documents are placed for scrutiny for grant of sanction, were false documents. Therefore, it is not once, twice but thrice communications of Lokayukta have been turned down by the State Government refusing to accord sanction.

18. The State performing the act of considering grant of sanction or otherwise, is required to look at the entire material or the whole material. The usage of the words 'whole' or 'entire' material by the Apex Court in the case of ***ASHOK KUMAR AGGARWAL*** *(supra),* clearly mandates that the competent authority is required to look into everything placed before it and other material, if available, at the time of considering the request for grant of sanction, as it is trite that it is not an acrimonious

exercise but a solemn or sacrosanct act, which affords protection to the Government servant or releases him to face prosecution. It is the discretion of the competent authority either to accord sanction or refuse sanction. What material has to be looked into while granting or refusing sanction has been the subject matter of interpretation by the Apex Court in the afore-extracted judgments. In my considered view, no fault can be found with the exercise of discretion of the competent authority in looking into the whole or entire material, while refusing to accord sanction, failing which, the act of the competent authority would have fallen foul of the law laid down by the Apex Court in the afore-extracted judgments.

19. The State Government right from 2001, has directed by issuance of certain official memoranda with regard to the manner of exercise of discretion in according sanction. The Official Memorandum dated 24-03-2001, is apposite to be quoted in the circumstances and it reads as follows:

"GOVERNMENT OF KARNATAKA

No.DPAR 16 SDE 88 Karnataka Government Secretariate
Vidhana Soudha
Bangalore, dt.28th March, 1998.

OFFICIAL MEMORANDUM

Sub: Sanction for prosecution of Government servants – instructions regarding.

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According to Section 6 of the Prevention of Corruption Act or Section 197 of the Code of Criminal Procedure, sanction of the authority competent to remove a Government servant from service is necessary for prosecuting a Government servant who is accused of any offence alleged to have been committed by him while discharging his official duties.

2. Before according sanction for the prosecution a Government servant, the competent authority has to satisfy itself that there is a prima facie case against the concerned Government servant necessitating his prosecution in a Court of law and that such a competent authority has applied its mind to the material placed before it.

3. The above facts should be reflected in the order sanctioning prosecution as a speaking order.

4. All the appointing authorities are requested to bear in mind the above instructions and ensure that only speaking orders are issued in such cases.

Sd/- M.M.Naik,
Additional Secretary to Government,
Dept. of Personnel and Admnv. Reforms
(Service Rules)"

Therefore, a coalesce of the facts obtaining in the case at hand, Section 19 of the Act, judgments of the Apex Court interpreting Section 19 of the Act and delineating the manner in which the competent authority has to accord or refuse sanction and the Official Memorandum or the circulars issued by the Government of India and the State, would result in the subject point also being held against the petitioner.

20. In view of the preceding analysis, I do not find any merit in the writ petition and the same is accordingly, dismissed.

Sd/-
JUDGE

nvj
CT:MJ