



2025:KER:62639

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 19TH DAY OF AUGUST 2025 / 28TH SRAVANA, 1947

CRL.REV.PET NO. 1366 OF 2024

AGAINST THE ORDER DATED 20.07.2024 IN CRL.M.P.NO.342 OF 2024 IN C.C. NO.9

OF 2013 ON THE FILES OF THE SPECIAL COURT (SPE/CBI)- II, ERNAKULAM

REVISION PETITIONER/ACCUSED NO.2:

S. ATTAKOYA

AGED 60 YEARS

SUPERINTENDING ENGINEER, PUBLIC WORKS DEPARTMENT, KAVARATTI,
UNION TERRITORY OF LAKSHADWEEP, PIN - 682555

BY ADV SRI.BABU S. NAIR

RESPONDENTS:

- 1 THE CENTRAL BUREAU OF INVESTIGATION
ANTI CORRUPTION BUREAU, COCHIN,
REPRESENTED BY THE SPECIAL PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 THE INSPECTOR OF POLICE
CENTRAL BUREAU OF INVESTIGATION, ANTI CORRUPTION BUREAU,
KOCHI, PIN - 682017

ADV.SREELAL N.WARRIER - SPL PP CBI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
11.08.2025, THE COURT ON 19.08.2025 DELIVERED THE FOLLOWING:



“C.R”

ORDER

Dated this the 19th day of August, 2025

The 2nd accused in C.C. No.9 of 2023 on the files of the Court of the Special Judge (SPE/CBI)-II, Ernakulam, has filed this criminal revision petition under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the order dated 20.07.2024 in Crl.M.P. No.342/2024 in the above case, whereby the learned Special Judge dismissed the discharge plea at the instance of the 2nd accused.

2. Heard the learned counsel for the revision petitioner and the learned Standing Counsel appearing for the Central Bureau of Investigation (CBI), in detail. Perused the order impugned and the decisions placed by the learned counsel for the revision petitioner.

3. Parties in this criminal revision petition shall be referred as ‘accused’ and ‘prosecution’, hereafter.

4. In this matter, the prosecution case is that, during 2006-2008, accused Nos.1, 2 and 5 at



Lakshadweep, Calicut and Kochi hatched a criminal conspiracy among themselves and in pursuance thereto accused Nos.1 and 2 abused their official position and unauthorisedly awarded contracts to accused No.5 for supply of granite chips and river sand from the mainland to the Islands of Lakshadweep at exorbitant rates. Accused Nos.1 and 2 were regularly paying bribes and they were also given valuable things by accused No.5 for the favour they extended. During the course of investigation, involvement of other public servants and private individuals were revealed and they were also arraigned as accused in this case. Accused Nos.1, 2 and 4 were habitually accepting valuable things for doing official favours to accused Nos.3 and accused Nos.5 to 7 were parties to the conspiracy. On this premise, the prosecution alleges commission of offences punishable under Sections 11, 14, 13(2) read with Section 13(1)(a) and (d) of the Prevention of Corruption Act, 1988 [hereinafter referred as 'P.C. Act' for short] and under Section 120B read with Section 420 IPC, by the accused.

5. While seeking interference in the impugned



order, the learned counsel for the revision petitioner submitted that, the revision petitioner sought discharge in this matter mainly urging that, the competent authority to grant sanction to prosecute the revision petitioner/ 2nd accused, under Section 19 of the P.C. Act, since he was a public servant, working as Executive Engineer (Civil) in LPWD, is the President of India. But, in the instant case, sanction was accorded by the Administrator of Lakshadweep on the premise that, he is the person competent to appoint and remove the 2nd accused/ revision petitioner. It is also submitted by the learned counsel for the revision petitioner, while canvassing the point that, when a person is appointed by the President of India, if at all, subsequently by way of delegation, the power of appointment was delegated to a subordinate officer by the President of India, insofar as the person who appointed by the President of India is concerned, the authority to remove him is vested within the domain of the President of India and the subsequently delegated Officer could not remove him. In this regard, the learned counsel for the



revision petitioner read out Article 311(1) of the Constitution of India, which provides that, *no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

6. The learned counsel for the revision petitioner placed decision of the Apex Court reported in **[1979 AIR 1912 : 1979 SCR (1) 50 : AIR 1979 SUPREME COURT 1912] Krishna Kumar v. Divisional Assistant Electrical Engineer Central Railway and Others**. That apart, the learned counsel for the revision petitioner placed another decision of the Apex Court reported in **[1977 ICO 129 : (1977) 3 SCC 56 : AIR 1977 SC 1793], State of Haryana v. N C Tandon** as well as the decision of the High Court of Bombay in **The State of Maharashtra v. Sunil Dharma Mane and Others** reported in **[MANU/MH/1271/2020]**, in support of his contentions.

7. Whereas, the learned Standing Counsel



appearing for CBI would submit that, as per Rule 8 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred as 'the Rules, 1965' for short], all appointments to Central Civil Services, Group 'A' and Central Civil Posts, Group 'A', shall be made by the President and as per the proviso to the said Rule, the President may, by a general or a special order and subject to such conditions as he may specify in such order, delegate to any other authority the power to make such appointments. Therefore, the Administrator of Lakshadweep is the present appointing authority, who is competent to remove the 2nd accused/revision petitioner herein. In view of the matter, the order of sanction is perfectly justifiable and on that ground the discharge plea is not liable to succeed.

8. In view of the rival submissions, the core issue arises for consideration is that, who is the competent authority to issue sanction under Section 19 of the P.C. Act to prosecute the 2nd accused/revision petitioner?

9. In this connection, it is relevant to refer Section



19 of the P.C. Act. Section 19 of the P.C. Act reads as under:

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 -*

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

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

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

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



time when the offence was alleged to have been committed.

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

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

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

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

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could



and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,-

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

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

10. In ***Krishna Kumar's*** case (supra), the Apex Court dealt with a case, where the appellant was appointed on May 30, 1966 as an Apprentice Mechanic (Electrical) after selection by the Railway Service Commission and on completion of his training period, he was appointed as a Train Examiner (Electrical). On July 11, 1974, he was appointed as a Train Lighting Inspector, Nagpur under an order passed by the Chief Electrical Engineer. The contention raised by the respondents therein was that as on January 7, 1978, the power to make appointments to the post of the Train Lighting Inspector was delegated to certain officers, including the Divisional



Assistant Electrical Engineer, who removed the appellant from service. The Apex Court, while addressing the legality of the order of removal held that, *we cannot accept this contention. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Art. 311 (1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorization made in favour of respondent 1 in regard to making appointments to the post held by the appellant cannot confer upon respondent 1 the power to remove him. On the date of the appellant's appointment as a Train Lighting Inspector, respondent 1 had no power to make that appointment. He cannot have, therefore, the power to remove him.*

11. In ***N C Tandon's*** case (supra), the Apex Court while dealing with question of sanction under Section 6(1) of the P.C. Act, 1947, observed in paragraph Nos.4 and 31



to 33, as under:

4. Tandon appealed to the High Court. The appeal was heard by a learned Single Judge who held that on 24-6-1971, when Brig. Naresh Prasad Chief Engineer, North Western Zone passed the order of sanction for prosecution, he had under the relevant Rules, no plenary or delegated power to appoint to a post in Class III service and that such a power was delegated to Chief Engineers of Zones for the first time on 14 1 1972. The learned Judge noted that the authority competent to appoint the accused respondent on 24-6-71, was the Chief Engineer Western Command, Simple, and not the Zonal Chief Engineer. He therefore concluded that the sanction for prosecution of the accused had not been given by the competent authority. On this short ground, the High Court allowed Tandon's appeal, without going into the merits of the case.

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31. The argument advanced on behalf of the appellant is that the very authority that had issued the letter dated April 27, 1956, has construed it as delegating the powers of appointment, punishment etc. to the Zonal CEs, also, and therefore, the Court should accept that interpretation.

32. We are unable to accept this argument. We have already pointed out that this letter,



dated 23-1 1963, has not been issued under the signature of the same authority from which the order, dated 27-4-56, had emanated. It does not ex facie show that any order, apart from that dated 27-4-36, had been passed by the Engineer-in-Chief under Rule 10. For reasons given earlier, we have not hesitation in holding that the assumption made in Paragraph 12 of this letter extracted above, to the effect that the Zonal Chief Engineers were vested with powers of appointments, punishment etc. in accordance with H.Q. letter dated 27 April, 1956-was clearly incorrect, Perhaps that was why on 14-1-1972, the necessity of making a proper order delegating such powers to Zonal Chief Engineers and others, under Rule 9 was felt by the Engineer-in-Chief.

33. No other order of the Engineer-in-Chief made prior to 24-6-1971 under Rule 10 of 1952 Rules or under Rule 9 (1) of the 1965 Rules delegating the power of appointment to posts in Class III Service, had been placed before us. We have therefore no alternative but to hold that on 24-6-1971, Brig. Naresh Prasad, Zonal Chief Engineer, North Western Zone, Chandigarh, was not competent to remove the accused respondent. Tandon, from the post of Superintendent, B & R Grade I, Chandigarh and as such, the order sanctioning the prosecution of the respondent was bad in law.



12. In ***Sunil Dharma Mane's*** case (supra), in paragraph Nos. 9 and 10, the Bombay High Court held that, the authority competent to remove a public servant from office is the authority competent to accord sanction for prosecution. In the said case also the appointment of accused No.1 was made by the Director General of Police (DGP). But sanction to prosecute him was given by the Commissioner of Police, a subordinate officer on the ground of delegation, where the Bombay High Court held that the sanction is not proper.

13. Even though, the learned Standing Counsel relied on Rule 8 of the Rules, 1965, and its proviso to support sanction issued in this case, he fairly submitted that, as per the decision in ***Krishna Kumar's*** case (supra), the Apex Court addressed a similar question and held in favour of the appellant therein. The learned Standing Counsel submitted further that, as per Section 197(1)(a) of Cr.P.C, it has been provided that, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government



and that would emphasize that the relevant factor for consideration is, on the date of commission of crime, who is the appointing authority.

14. In the instant case, the 2nd accused/revision petitioner who was appointed as Executive Engineer (Civil) in LPWD by the President of India as on 26.03.2001 as borne out from the office order dated 26.03.2001, produced by prosecution along with prosecution records. The delegation of the power of the appointing authority for the purpose of appointment as well as removal of similar posts was on 14.07.2005, as per the order issued by the Under Secretary to the Government of India and now as per the proviso to Rule 8 of the Rules, 1965. If so, applying the ratio in **Krishna Kumar's** case (supra), merely because subsequently in view of Rule 8 of the Rules, 1965, the power of appointment and removal was delegated to the Administrator of Lakhadweep, the Administrator of Lakshadweep could not be held as the competent authority to remove the 2nd accused/revision petitioner, who was appointed prior to the delegation by the President of India. In such view of the matter, the contention raised by the



learned counsel for the 2nd accused/revision petitioner, seeking discharge on the ground of improper sanction would sustain. The argument advanced by the learned Standing Counsel for the CBI, referring Section 197(1)(a) of Cr.P.C. cannot be considered as the sanction disputed herein is one under Section 19 of the P.C. Act. Therefore, the cognizance taken by the Special Court in this case is set aside and the Final Report put at the pre-cognizance stage.

15. In the decision in ***State of Mizoram v. C.Sangnghina*** reported in ***[AIR 2018 SC 534]***, the Apex Court considered the procedure when the accused was discharged due to lack of proper sanction and in paragraph Nos.14 to 16, the Apex Court held as under:

14. In light of the above principles, considering the case in hand, even before commencement of trial, the respondent/accused was discharged due lack of proper sanction, there was no impediment for filing the fresh/supplementary charge sheet after obtaining valid sanction. Unless there is failure of justice on account of error, omission or irregularity in grant of sanction for prosecution, the proceedings under the Act could not



be vitiated. By filing fresh charge sheet, no prejudice is caused to the respondent nor would it result in failure of justice to be barred under the principles of "double jeopardy".

15. Under Article 20(2) of the Constitution of India, no person shall be prosecuted and punished for the same offence more than once. Section 300 CrPC lays down that a person once convicted or acquitted, cannot be tried for the same offence. In order to bar the trial of any person already tried, it must be shown (i) that he has been tried by a competent court for the same offence or one for which he might have been charged or convicted at that trial, on the same facts; (ii) that he has been convicted or acquitted at the trial; and (iii) that such conviction or acquittal is in force. Where the accused has not been tried at all and convicted or acquitted, the principles of "double jeopardy" cannot be invoked at all.

16. The whole basis of Section 300(1) CrPC is that the person who was tried by a competent court, once acquitted or convicted, cannot be tried for the same offence. As discussed earlier, in the case in hand, the respondent/accused has not been tried nor was there a full-fledged trial. On the other hand, the order of discharge dated 12-9-2013 passed by the Special Court was only due to invalidity attached to the prosecution. When the respondent/accused was so discharged due to lack of proper sanction,



the principles of "double jeopardy" will not apply. There was no bar for filing fresh/supplementary charge sheet after obtaining a valid sanction for prosecution. The Special Court once it found that there was no valid sanction, it should have directed the prosecution to do the needful. The Special Court has not given sufficient opportunities to produce valid prosecution sanction from the competent authority. The Special Court erred in refusing to take cognizance of the case even after production of valid prosecution sanction obtained from the competent authority and the High Court was not right in affirming the order of the Special Court. The Special Court and the High Court were not right in holding that the filing of the fresh charge sheet with proper sanction order for prosecution was barred under the principles of "double jeopardy."

16. The sum and substance of the decision in ***C.Sangnghina's*** case (*supra*) is that even before commencement of trial, the respondent/accused was discharged due to lack of proper sanction, there was no impediment for filing the fresh/supplementary charge sheet after obtaining valid sanction. By filing fresh charge sheet, no prejudice would be caused to the respondent nor would it result in failure of justice to be barred under the



principles of "double jeopardy". Although under Article 20(2) of the Constitution of India, no person shall be prosecuted and punished for the same offence more than once and as per Section 300 CrPC, a person once convicted or acquitted, cannot be tried for the same offence, in order to bar the trial of any person already tried, it must be shown (i) that he has been tried by a competent court for the same offence or one for which he might have been charged or convicted at that trial, on the same facts; (ii) that he has been convicted or acquitted at the trial; and (iii) that such conviction or acquittal is in force. Where the accused has not been tried at all, neither convicted nor acquitted, the principles of "double jeopardy" could not be invoked at all. Thus when the accused was discharged due to lack of proper sanction, the principles of "double jeopardy" will not apply and there is no bar for filing fresh/supplementary charge sheet after obtaining a valid sanction for prosecution. On filing fresh report with sanction, the Special Court shall proceed with the same and to take cognizance of the matter.

17. Going by the law laid down by the Apex Court in



the above decision, the investigating officer is at liberty to re-file the final report after taking back the final report from the Special Court along with proper sanction, and in such event, the Special Court has to accept the same and proceed further in accordance with law.

18. Accordingly, this petition stands disposed of as indicated above. The 2nd accused/revision petitioner herein will have to appear before the Special Court only on getting fresh summons, if any.

Registry is directed to forward a copy of this order to the special court forthwith, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE

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