

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 30<sup>TH</sup> DAY OF JANUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL REVISION PETITION No.1313 of 2019

BETWEEN

MR.SYED ZAMEER PASHA,  
S/O LATE SYED GULAM,  
AGED ABOUT 67 YEARS,  
HUSSAIN, RESIDING AT No.40/1,  
WELLINGTON STREET,  
RICHMOND TOWN,  
BENGALURU-560 027.

...PETITIONER

(BY SRI B.V.ACHARYA, SENIOR COUNSEL  
ALONG WITH SRI SAMARTHA S., ADVOCATE)

AND

STATE OF KARNATAKA,  
THROUGH KARNATAKA LOKAYUKTA,  
BANGALORE CITY, REPRESENTED BY  
SPECIAL PUBLIC PROSECUTOR,  
BANGALORE-560 001.

...RESPONDENT

(BY SRI VENKATESH ARABATTI, S.P.P.)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH 401 OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 14.08.2019 REJECTING THE DISCHARGE APPLICATION FILED BY THE PETITIONER UNDER SECTIONS 227 AND 239 OF THE CODE OF CRIMINAL PROCEDURE, IN SPL.C.C.No.564/2018 BEFORE THE HON'BLE LXXVIII

ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE (P.C.A.) (CCH-79), BENGALURU.

THIS CRIMINAL REVISION PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This revision petition is filed by the petitioner-accused being aggrieved by the order 14.08.2019 passed by the LXXVIII Additional City Civil & Sessions Judge & Special Judge (P.C.A.), Bengaluru City (hereinafter referred to as the 'Trial Court') in Spl.CC.No.564/2018 dismissing the application filed by the petitioner under Section 227 read with Section 239 of Cr.P.C.

2. Heard Sri B.V. Acharya, learned Senior Counsel appearing for Sri Samartha S, learned counsel for the petitioner and Sri Venkatesh Arabatti, Special P.P. for the respondent-Lokayuktha.

3. The status of the parties before the Trial Court is retained for the sake of convenience.

4. The factual matrix of the prosecution case is that the Lokayuktha Police, Bengaluru City, filed charge sheet against the accused for the offence under Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'P.C.Act') alleging that the accused being a public servant worked in the Government Department as the Special Assistant Commissioner appointed on 01.08.1978 and retired from service on 30.06.2012 as a Secretary to the Government, Department of Social Welfare and the accused has amassed the wealth for an amount of Rs.19,35,564.85ps. ie., 13.4% over and above the known source of income. After the raid, the Investigating Officer filed charge sheet against the accused for the alleged offence and the Trial Court took cognizance and the accused filed an application under Section 227 of Cr.P.C. for discharging him from the charges, which came to be dismissed by the Trial Court. Assailing the same, the petitioner/accused is before this Court by way of this revision petition.

5. Learned Senior counsel appearing for the petitioner/accused mainly argued on two grounds; the first ground of the argument is that, the Trial Court proceeded to take cognizance of the offence under Section 13 of the P.C. Act even though there was no sanction obtained by the Investigating Officer for prosecuting the case against the accused. As per the amendment to Section 19 of the P.C. Act, sanction is required even though the public servant has retired from the service and the alleged offence is committed by the accused during his service as a public servant. Learned senior counsel submits that though the charge sheet came to be filed on 29.05.2018, the file was put up before the Trial Court on 05.07.2018, but cognizance was taken by the Trial Court on 30.07.2018, after the amendment to Section 19 of the P.C. Act, which came into force from 26.07.2018. Therefore, taking cognizance without sanction itself is wrong and the order under revision requires to be set aside. It is contended that the question of sanction is the point of law which can be raised before the Court at any stage.

6. The second ground urged by the learned senior counsel on merits is that as per the Source report of the Investigating Officer, it was 272% of proportionate assets more than the known source of income, but while filing the charge sheet, the Investigating Officer stated only 13.41% excess of assets more than the known source of income. While calculating the expenditure, the Investigating Officer calculated the expenditure of the son of the accused, who is an earning member and doing business and also an income tax assessee from the year 2004-2012, who had also filed his income tax returns. Rs.1,66,00,000/- was the income of the son of the accused. Though the same was considered by the Investigating Officer, but the expenditure of the son has been included in the expenditure of the accused, which is not correct. Even though 80 gms. of golden ornaments were brought by the wife of the accused at the time of the marriage in the year 1982, the said gold has been calculated by the Investigating Officer with the present market value, thereby the expenditure and assets of the accused were

valued more than the actual value of the golden ornaments. Therefore, if that is calculated by the Investigating Officer, there shall be assets more than the known sources of income as alleged by the Investigating Officer. This aspect has not been considered by the Trial Court at the time of dismissing the application. Hence, prayed for allowing the revision petition.

7. Per contra, learned Special P.P appearing for the Lokayuktha has supported the order of the Trial Court and contended that, the amendment came into force on 26.07.2018 for the offence committed, which is punishable under Section 13(1)(e) of unamended P.C. Act, 1988, but not after the amended Act of Section 13 which came into force on 26.07.2018. The sanction is required as per Section 19 of the P.C. Act, wherein the provision says that for the purpose of taking cognizance, sanction is required only for the offences punishable under Sections 7, 11, 13 and 15 of the amended P.C. Act, but not required for the offence committed during the period of unamended P.C.

Act which was in force. Learned Special P.P. also brought to the notice of the Court that the Sections 7, 11, 13 and 15 are repealed by the amended Act and new provisions were brought on the statute book. In the earlier unamended Act, the offence under Sections 13(1)(e) of the P.C. Act now is amended as Section 13(1)(b) of the P.C. Act and explanations were also added. Therefore, the question of getting sanction for the offence committed prior to the commencement of the amended Act is not required as Section 19 of the unamended P.C. Act apply to the offence committed by the accused under unamended Act. Therefore, the sanction is not required for taking cognizance as per the newly amended Section 19 to the P.C. Act. In support of which, learned Special P.P. relied upon the judgment of the Hon'ble Apex Court in case of **Jagan M. Seshadri vs. State of Tamil Nadu** reported in **AIR 2002 SC 2399** and also the judgment of a Co-ordinate Bench of this Court in the case of **Panchalingaiah vs. State of Karnataka** passed in

Crl.R.P.No.485 of 2019 and connected matters decided on 06.01.2020.

8. The learned special counsel also contended in respect of merits of the case that the Investigating Officer collected the information submitted by the accused as per the Schedule 1 to 22 mentioned therein. The same was considered by the Investigating Officer and the gold ornaments value has not been taken into consideration as it was already declared by the accused in his assets and liabilities statement to his higher authority and the value has been considered as zero value in respect of the assets what is declared by him in his assets and liabilities statement. Even the Investigating Officer has considered all the contentions raised by the accused and thereafter, came to the conclusion that still there was excess of assets worth of Rs.19,35,565/-, which is almost 13.4% over and above the known source of income. Learned counsel also submits that the Court cannot meticulously go into the probative value of the document and appreciate the



evidence prior to trial. The Court is required to frame charges based upon the charge sheet material produced by the Investigating officer. Therefore, the learned Special P.P. prayed for dismissal of the revision petition.

9. Upon hearing the arguments and on perusal of the records, the points that arise for consideration is that;

*"i) Whether the sanction is necessary under Section 19(1) of the amended P.C. Act even though the offence committed under the unamended P.C. Act?*

*(ii) Whether the order of the Trial Court calls for interference by this Court?"*

10. On perusal of the record, it is not in dispute that the accused joined as Special Assistant Commissioner in the year 1978 and retired on 30.06.2012 as a Secretary to the Government, Department of Social Welfare. The raid was conducted by the Investigating Officer of Lokayuktha Police after registering the case on 21.06.2012, but in the source report, it was mentioned as 272% of assets more than the

known source of income. After conducting the raid, a detailed panchanama has been prepared by the Investigating Officer and thereafter, the accused also submitted the explanation as per Schedule 1 to 22 and therefore, the charge sheet came to be filed on 29.05.2018 admittedly, prior to the commencement of the amendment to the P.C. Act. The case was also registered against the accused under Section 13(1) (e) of the unamended P.C. Act, investigation concluded and charge sheet filed prior to the commencement of the amendment. Now, the question is, whether the amendment to the Act already came into force while the Trial Court was taking cognizance on 30.07.2018. Learned Senior counsel for the accused contended that as per Section 19 of the amended P.C. Act, sanction is necessary even though the accused retired in the year 2012 and was not in service at the time of filing the charge. In this regard, learned Special P.P. appearing for the Lokayuktha contended that the offence is committed prior to the commencement of the amended P.C. Act and the accused already retired from service in

the year 2012 and as per Section 19 of the unamended P.C. Act, no sanction is necessary to file the charge sheet against the retired government servant. For the purpose of convenience, Section 19 of the unamended P.C. Act is extracted 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<sup>1</sup> [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.*

*(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."*

11. On a bare reading of Section 19(1) of unamended P.C. Act, no court shall take cognizance of an offence punishable under Sections 7, 10, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the government or employer and there is no sanction required for a person already retired from the service. But under Section 19(1) of the amended P.C. Act, Section 10 has been deleted and Sections, 7, 11, 13 and 15 have been mentioned where sanction is necessary even if the public servant or person who is employed or at the time of commission of the alleged offence employed. It means sanction is necessary even for a public servant who has already retired from the service, but for the offence under Sections 7, 11, 13 and 15 the Section 13 of the unamended P.C. Act was also amended by the legislature from the earlier Section 13 of the P.C.

Act, 1988, wherein the new Act is only Section 13(1) having two provisions as sub-section (a) and (b) whereas under earlier Section 13, Section 13(1) (a), (b), (c), (d) and (e) alleged to be committed by the public servant under the old Act whereas amended Act has only Section 13(1)(a) and (b). Therefore, the sanction is required for the purpose of taking cognizance for the offence committed under the new Section 13 and not the old Section 13 of unamended P.C. Act. In this regard, the Hon'ble Apex Court in the case of **Jagan M. Seshadri** (*supra*), at paragraphs 4 and 5 has held as follows:

*"4. There is no dispute that when the offence was committed, it was the 1947 Act which was in operation. It is also not in dispute that at the time when FIR was lodged, it was also the 1947 Act which was in operation. Reliance on Section 30(2) of the 1988 Act to hold that offence for which the appellant should have been charged was one which fell under Section 13 of the 1988 Act is wholly misplaced.*

5. A bare reading of Section 30(2) of the 1988 Act shows that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of the Act. It does not substitute Section 13 in place of Section 5 of the 1947 Act. Section 30(2) is applicable "without prejudice to the application of Section 6 of the General Clauses Act, 1897". In our opinion, the application of Section 13 of the 1988 Act to the fact situation of the present case would offend Section 6 of the General Clauses Act, which, inter alia provides that repeal shall not (i) affect previous operation of any enactment so repealed or anything duly done or suffered thereunder or (ii) affect any investigation legal proceedings or remedy in respect of any such rights, privilege, obligation, penalty, forfeiture of punishment. Section 13 both in the matter of punishment as also by the addition of the explanation to Section 13(1)(e) is materially different from Section 5 of the 1947 Act. The presumption



*permitted to be raised under the explanation to Section 13(1)(e) was not available to be raised under Section 5(1)(e) of the 1947 Act. This difference can have a material bearing on the case."*

12. In a similar situation, the Hon'ble Apex Court has held that the provision would apply in respect of the offences committed under the unamended P.C. Act, but not under the amended P.C. Act. That apart, a co-ordinate Bench of this Court in the case of **Panchalingaiah** (supra), has held that the amended P.C. Act is prospective in nature and not retrospective. At paragraph 25, this Court has held as under:

*" 25. I have thoroughly gone through the decisions relied upon by the learned counsel for the petitioners. By giving my thoughtful consideration, I am not having any difference of opinion with regard to the law laid down in the said decisions. But the said principles are not applicable to the facts of the present case. If the intention of the legislation is taken into consideration, no legislation would intend to repeal an offence which has already been*

*committed. If such an interpretation is given to the provisions of Section 13(e) and 19(1) of the PC Act, it will have a devastating effect on the pending proceedings and it amounts to paving path to the accused persons who are retired public servants to sneak away from prosecution though they have committed serious offences. As such the contention of learned counsel for the petitioners is not sustainable in law."*

The amended P.C. Act does not say anything about the repealing Act.

13. In view of the judgments of the Hon'ble Apex Court as well as this Court, the Section 19(1) of the amended P.C. Act would apply for taking cognizance, previous sanction is applicable to the amended Section 13 of the P.C. Act, but no sanction is required for the offence committed under Section 13(1)(e) of the unamended P.C. Act. Therefore, the contention raised by learned Senior counsel for the accused that the Trial Court committed error in taking cognizance without sanction is not correct.

14. Another contention is as regard to the merits of the case that the uncalculated expenditure of the son of the accused and income of the son of the accused who was an income tax assessee, he has produced the income tax returns before the Court. All these documents cannot be looked into for the purpose of framing of charge. The Trial Court is required to consider the charge sheet material filed by the Investigating Officer for the purpose of framing of charges under Section 228 and 240 of Cr.P.C. Even looking to Section 239 of Cr.P.C., the Court can discharge if there no grounds at all. On perusal of the record, there is sufficient material placed on record for framing of charges under Section 13(1)(e) of the P.C. Act. If at all excess of assets whether 13.4% or less than 13.4% for giving the benefit of 10% were all required to be considered only after appreciation of the evidence and after completion of defence evidence, but not at the stage of framing of charges. The Court cannot go in to the probative value of the documents for framing of charges,

which is nothing but expressing opinion on merits. The Hon'ble Apex Court in the case of **Sajjan Kumar vs. Central Bureau of Investigation** reported in **(2010) 9 Supreme Court Case 368** has held that the Court cannot go into the depth for allowing the material on record for framing of charges. Therefore, the Trial Court after considering the material placed on record by the Investigating Officer has rightly dismissed the application. The same does not call for interference by this Court. Therefore, the revision petition deserves to be dismissed. Accordingly, the Criminal Revision Petition is dismissed.

All pending I.As stand disposed of.

Sd/-  
JUDGE

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