

**(2009) 15 Supreme Court Cases 72 : (2010) 2 Supreme Court Cases (Cri) 272 :  
2009 SCC OnLine SC 1414**

(BEFORE K.G. BALAKRISHNAN, C.J. AND P. SATHASIVAM, J.)

STATE OF MADHYA PRADESH . . Appellant;

*Versus*

JIYALAL . . Respondent.

Criminal Appeal No. 1386 of 2009<sup>±</sup>, decided on July 31, 2009**Prevention of Corruption Act, 1988 — S. 19 and Ss. 7 & 13(1)(d)(ii) r/w S. 13(2) —  
Sanction — Held, valid — High Court by impugned judgment setting aside conviction of  
respondent-accused for offence under S. 7 & S. 13(1)(d)(ii) r/w S. 13(2), mainly on ground  
that requisite sanction order**

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had not been properly obtained viz. (i) DM, who was the appropriate authority had given sanction order mechanically without applying his mind, and hence, was illegal; and (ii) Said sanction order had not been proved, because DM was not examined to prove the same — Held, aforementioned findings of High Court are incorrect — High Court, therefore, was not justified in interfering with “finding, sentence or order” passed by Special Judge — Even if it were accepted that there was an “error, omission or irregularity” in passing sanction order, no finding had been recorded as to how serious failure of justice had been caused to respondent — Further, it was not necessary for prosecution to examine DM to prove the same — Sanction order was clearly passed in discharge of routine official functions and hence there was a presumption that same was done in a bona fide manner — It was open to respondent to question genuineness or validity of sanction order before Special Judge, but examination of DM as witness therefor was unnecessary — Hence, matter remitted to High Court for consideration on merits — Evidence Act, 1872, S. 114 Ill. (e)

**(Paras 2 to 9)**

P-M/43535/SR

Advocates who appeared in this case:

Vibha Datta Makhija, Advocate, for the Appellant;

Rajesh, Advocate, for the Respondent.

**ORDER**

**1.** Leave granted. Application for exemption from filing OT is allowed. The State of Madhya Pradesh had filed a petition seeking special leave to appeal against a judgment given by a Single Judge at the Jabalpur Bench of the High Court of Madhya Pradesh (in Criminal Appeal No. 1539 of 1995).

**2.** Prior to the impugned judgment of the High Court, a Special Judge at Balaghat, Madhya Pradesh had convicted the respondent for offences under Section 7 and Section 13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the Act”). In pursuance of the findings of the Special Judge, the respondent had been sentenced to undergo imprisonment for a period of one year and a fine of Rs 200 had also been imposed on him. Aggrieved by this result, the respondent had filed an appeal before the High Court.

**3.** The learned Single Judge of the High Court set aside the conviction and the sentence mainly on the ground that the requisite sanction order had not been obtained properly. Under the scheme of the Act, a sanction order from an appropriate authority is required before proceeding with a prosecution under the same Act. The rationale for

requiring such a sanction order is to discourage frivolous prosecutions under the Act.

**4.** In the present case, the learned Single Judge of the High Court had opined that the District Magistrate (the appropriate authority in this case) who had granted the sanction order in question had not applied his mind. It was held that since the sanction order did not enumerate reasons, it had been given mechanically and was hence illegal. It was further stated that the said sanction order (Exhibit P-6 in the proceedings before the Special Judge) had not been proved because the District Magistrate who passed the order had not



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been subsequently examined as a witness by the prosecution in order to prove the same.

**5.** In our opinion, both the abovementioned findings of the learned Single Judge of the High Court are not correct. Therefore, the High Court was not justified in interfering with the "finding, sentence or order passed by a Special Judge" under the Act. As per Section 19(3)(a) of the Act "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".

**6.** The relevant portion of the Act 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,—

(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



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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.”

(emphasis supplied)

**7.** In the case before us, even if it were to be accepted that there has been an “error, omission or irregularity” in the passing of the sanction order, the learned Single Judge of the High Court has not made a finding which shows that a serious failure of justice had been caused to the respondent. In the absence of such a finding it was not correct for the High Court to set aside the conviction and sentence given by the Special Judge.

**8.** It was also not justified for the learned Single Judge to hold that the District Magistrate who had passed the sanction order should have been subsequently examined as a witness by the prosecution in order to prove the same. The sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the respondent to question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution.

**9.** It is apparent that the High Court has not considered the appeal on merits to decide whether a failure of justice had been occasioned in the present case. Therefore, we set aside the judgment of the learned Single Judge of the High Court and direct that the appeal filed by the respondent before the High Court be considered on merits and disposed of accordingly.

**10.** The appeal is disposed of accordingly.

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<sup>†</sup> Arising out of SLP (Crl.) No. 3276 of 2008. From the Judgment and Order dated 26-6-2006 of the High Court of Judicature of Madhya Pradesh at Jabalpur in Crl. Appeal No. 1539 of 1995