REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1322 OF 2018
(Arising out of SLP(Crl.) No.10290 of 2015)

STATE OF MIZORAM ….Appellant

VERSUS

DR. C. SANGNGHINA ….Respondent

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the order dated 13.08.2015 passed by the High Court of Assam in Criminal Revision Petition No.6 of 2014 in and by which the High Court affirmed the order of the Special Court declining to take on file the charge sheet filed under Section 13(1)(c)(d)(e) read with Section 13(2) of Prevention of Corruption Act, 1988 on the ground that it was barred under the principles of "*double jeopardy*".

3. Brief facts which led to filing of this appeal are that a complaint was made to the Superintendent of Police, Mizoram, Aizawl against the accused/respondent on 17.02.2009 by the

President of PRISM alleging misappropriation/mismanagement of public money. On the basis of the complaint, the Superintendent of Police, ACB conducted an inquiry and submitted its report on 21.08.2009 with a request for registration of ACB case against the accused/respondent. During inquiry, it was detected that the respondent has acquired his valuable assets disproportionate to known sources of income. On receipt of the inquiry report and after taking the approval of the Government of Mizoram, Vigilance Department, ACB Case No.3 of 2009 under Section 13(1)(c)(d)(e) read with Section 13(2) of Prevention of Corruption Act, 1988 (PC Act) and Section 409 IPC was registered against the accused/respondent.

4. Charge sheet No.6 of 2013 was filed under Section 409 IPC and Section 13(1)(c)(d)(e) read with Section 13(2) of PC Act. The Special Court, PC Act found that the prosecution sanction against the accused/respondent was issued by the Commissioner-Secretary, Department of Personnel & Administrative Reforms (DP & AR) directly without sanction of the Governor. After hearing the parties, the learned Judge, Special Court, PC Act by an order dated 12.09.2013, discharged the accused/respondent from the charges levelled against him due to lack of proper sanction. By its order

dated 12.09.2013, Special Judge closed the criminal case arising out of ACB Case No.3 of 2009 under Section 13(1)(c)(d)(e) of the PC Act read with Section 409 IPC.

5. Subsequently, after due consideration of the materials, the Governor vide order dated 20.12.2013 in supersession of the earlier order dated 08.04.2013 granted sanction for prosecution of the respondent for the aforesaid offences and other offence punishable under any other provisions of law. In view of the fresh sanction issued against the respondent on 20.12.2013, the Inspector, ACB Mizoram on 30.01.2014 submitted fresh/supplementary charge sheet along with fresh prosecution sanction against the accused/respondent with further request to accept the fresh/supplementary charge sheet and to reopen the case.

6. The learned Judge, Special Court vide order dated 26.08.2014 dismissed SR (PCA) No.8 of 2014 holding that there is no provision/scope for review of its own order under Criminal Procedure Code. The learned Judge found that the second charge sheet is barred by the principles of "*double jeopardy*" and accordingly, the application to take the fresh charge sheet was dismissed by order dated 26.08.2014.

7. Being aggrieved by the order dated 26.08.2014 as well as the earlier order dated 12.09.2013, the State has preferred Criminal Revision Petition No.6 of 2014 before the High Court and the same was dismissed by the High Court affirming the order of the Special Court that the second charge sheet with fresh sanction cannot be entertained. The High Court also held that the revision petition against the order dated 12.09.2013 is barred by the limitation and there is no proper explanation by the State as to the delay in filing the revision petition.

8. We have heard learned counsel for the appellant and the respondent and perused the impugned judgment and other materials placed on record.

9. In ACB P.S.C./No.3/2009 under Section 13(1)(c)(d)(e) read with Section 13(2) of PC Act, the prosecution sanction was accorded against the respondent vide order dated 08.04.2013 by the Commissioner-Secretary (DP & AR) to Government of Mizoram. The Commissioner-Secretary (DP & AR) was not the competent authority to accord sanction for prosecution and the case came to be closed for want of proper sanction. Since the earlier sanction accorded was not by the competent authority, after due consideration of the materials placed before him, the Governor

accorded fresh sanction vide order dated 20.12.2013 in supersession of the earlier order dated 08.04.2013. In view of the prosecution sanction against respondent accorded by the Government of Mizoram, the Inspector of Police made an application on 30.01.2014 to accept fresh/supplementary charge sheet No.3/2014 under Section 13(1)(c)(d)(e) read with Section 13(2) of PC Act. Since the earlier order of sanction was found to be invalid, there is no bar for the competent authority to issue a proper order of sanction for prosecution.

10. The courts are not to quash or stay the proceedings under the Act merely on the ground of an error, omission or irregularity in the sanction granted by the authority unless it is satisfied that such error, omission or irregularity has resulted in failure of justice. A combined reading of sub-sections (3) and (4) of Section 19 of Prevention Act make the position clear that notwithstanding anything contained in the Code no finding, sentence and 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. In the instant case, of course,

the initial sanction was granted by the Secretary, DP & AR to Government of Mizoram. Having taken cognizance of the matter, before passing the order dated 12.09.2013, the Special Judge ought to have examined the matter to ascertain whether such error or irregularity in the sanction has resulted in failure of justice. No such reasonings are recorded by the Special Judge or by the High Court that the initial sanction for prosecution granted by the Secretary has resulted in failure of justice.

11. This Court in ***State of Goa v. Babu Thomas*** (2005) 8 SCC 130 was dealing with a sanction order issued by an authority who was not competent as is also the position in the case at hand. The second sanction order issued for the prosecution of the accused in that case was also held to be incompetent apart from the fact that the same purported to be retrospective in its operation. In the said case, the Supreme Court held that when cognizance was taken by the Special Judge on 29.03.1995, there was no order sanctioning the prosecution with the result that the court could not have taken cognizance and that the error was so fundamental that it invalidated the proceedings conducted by the court. The Court accordingly upheld the order passed by the High Court but reserved liberty to

the competent authority to issue fresh orders of sanction having regard to the serious allegation made against the accused.

12. The judgment in ***Babu Thomas*** was referred to with approval in ***Nanjappa v. State of Karnataka*** (2015) 14 SCC 186. After referring to number of judgments and observing that despite invalidity attached to the sanction order, upon grant of a fresh valid sanction is not forbidden, in para (22) of ***Nanjappa case***, it was held as under:-

> **22.** The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (*a*), (*b*) and (*c*) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

13. In ***Nanjappa case***, after referring to number of judgments, this Court summarised the principles in para (23) as under:-

> **"23.** Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to Section 19, which starts with a non obstante clause. Also relevant to the same aspect would be Section 465 CrPC which we have extracted earlier.
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> **……..**
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> **23.2.** A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding,

sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.3. Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.

23.4. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher court and not before the Special Judge trying the accused.

23.5. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning the prosecution under Section 19(1). Failure of justice is, what the appellate or revisional court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision."

14. In light of the above principles, considering the case in hand, 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. 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 Cr.P.C. 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) Cr.P.C. 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 12.09.2013 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*".

17. The learned counsel for the respondent has drawn our attention to the annexures filed by the respondent and submitted that the respondent has been exonerated from the departmental proceedings on various charges by order dated 08.07.2013. We are not inclined to go into the merits of this contention and all the contentions raised by the respondent are kept open.

18. In the result, the impugned judgment and order dated 13.08.2015 is set aside and this appeal is allowed. The Special Court, PC Act, Aizawl, Mizoram is directed to take cognizance of the charge sheet dated 30.01.2014 in ACB P.S.C.No.3/2009 on file and proceed with the same in accordance with law.

……J.
[R. BANUMATHI]

……J.
[INDIRA BANERJEE]

New Delhi;
October 30, 2018