

**IN THE COURT OF SH. HASAN ANZAR,
SPECIAL JUDGE, PC ACT (CBI)-03,
ROUSE AVENUE DISTRICT COURT, NEW DELHI**

Registration/CC No. 56/2022

CNR No. DLCT11-000590-2022

RC No. 0032022A0050

Under section : 120-B IPC r/w Section 7 of Prevention of Corruption Act, 1988

PS : CBI, ACB, New Delhi

Central Bureau of Investigation

Versus

- | | |
|---|----------------------------|
| 1. Satish Kumar
S/o Shri Ram Niwas,
R/o VPO Ganiyar, Tehsil Narnaul,
District Mahendragarh,
Haryana – 123021. | Accused No. 1 |
| 2. Deepak
S/o Shri Dharam Pal,
R/o House No. 1995, Sector-9A
Bahadurgarh, Haryana.
And also at : Village Mandothi Pana,
Kabosia, Tehsil Bahadurgarh,
District Jhajjar, Haryana-124507. | Accused No. 2 |

03.02.2024

ORDER

1. Separate applications for discharge/dropping of proceedings have been filed on

behalf of the accused persons namely Satish Kumar and Deepak on the ground that valid sanction for prosecution has not been accorded by the competent authority.

2. Brief facts relevant for disposal of the subject application(s) are that Shri Tarsem S/o Shri Sunil Kumar was doing a business of brick kiln with his uncle having an office at Rohtak Road, Delhi. It is also alleged that complainant received a call on 19.07.2022 from HC Deepak and HC Satish, both the police officials from PS Mundka, Delhi and made a demand of Rs.2 lakhs and threatened that if the said money is not paid, they would implicate the complainant in a NDPS case. It is further alleged that on 21.07.2022, the complainant approached CBI, as he did not want to pay the bribe and accordingly, the complaint of the complainant was marked to Inspector C.M.S. Negi for verification. During the process of verification, the complainant told the verifying officer that he received a call from his worker i.e. Deepak to the effect that he had been picked by police and police personnels were calling him. During discussion in the verification proceedings, complainant told the verifying team that suspect officers would not discuss the bribe amount on telephone call and, therefore, in order to verify the allegations, the CBI team went to a make shift shelter point of police personnel in the lane adjacent to Sarvodaya Kanya Vidhyalaya with the complainant carrying the recording device and the CBI team and independent witnesses were stationed at different places. It is also transpired during verification that complainant went to a dilapidated first floor of the building at Tikri Kalan where Satish enquired about the bribe amount and demanded the same. It is also stated that complainant told the accused that he could arrange only Rs.80,000/- and Rs.20,000/- shall be paid subsequently and the complainant shall pay the bribe

amount of Rs.80,000/- at the office situated at the plot of complainant at Firni road of Tikri Kalan and it was decided to lay a trap to catch the accused persons in the act of demanding and accepting the said bribe amount. Thereafter, on 22.07.2022, FIR was registered under section 7 of Prevention of Corruption Act and trap for both the accused persons was laid and for this purpose DVR alongwith Memory Card was arranged. Complainant also made arrangement of Rs.80,000/- which is to be given to Constable Deepak as per his demand. The government currency notes of Rs.80,000/- were noted down in the presence of the independent witnesses in a separate note sheet and after giving demonstration about the purpose of laying trap and the significance of use of phenolphthalein powder and its reaction with sodium carbonate with water and after completing other formalities, the recording device was put on the complainant and the shadow witness was also arranged to witness the transaction and also to over hear the conversation by giving a pre-decided signal. At the pre-decided place, constable Deepak came, whereas complainant alongwith audio recording device reached his office at Firni Road on a scooty. The complainant gave a pre-decided signal and constable Deepak was apprehended and he told that the bribe amount was kept in his right front pocket of his pant. The hand washes of accused Deepak were taken and the necessary samples etc. were preserved, bribe amount was recovered. Apprehended constable Deepak could not give whereabouts of HC Satish Kumar, therefore, CBI team alongwith witnesses and Deepak went to make shift shelter of the police personnel near Sarvodaya Kanya Vidhyalaya where no police personnel was found, however, a Delhi Police uniform and a cap was found which was taken into possession and other articles were also found which indicate that the premises was being used by Delhi Police Personnel. Thereafter, trap team went to the

PS Mundka and asked the SHO Mundka to ensure the presence of accused Satish and thereafter, the accused Satish was arrested in the present case. Necessary formalities were completed. The samples were sent to FSL for analysis and mobile phones of accused persons were seized and both the accused persons were arrested and after conclusion of the investigation, a charge sheet under section 120B of IPC r/w Section 7 of Prevention of Corruption Act and substantive offence against both the accused persons was filed and subsequently supplementary charge sheet alongwith the order of sanction under section 19 of the Prevention of Corruption Act 1988 in respect of both the accused persons from the competent authority.

3. In the application for discharge moved on behalf of the accused Satish Kumar, it is contended that accused Satish Kumar was promoted and appointed on the post by Commissioner of Police vide notification bearing no. 14049-14128/promotion Cell (Desk0IV)/P.Br./PHQ dated 02.06.2022 (D-15). It is further contended that sanction for prosecution was obtained from Dy. Commissioner of Police who is subordinate in rank to the Commissioner of Police and, therefore, the sanction is invalid. It is also contended that Article 311 of the Constitution of India provides that no government servant can be dismissed or removed by an Authority subordinate to that by which he was appointed. It is also contended that Section 21 of Delhi Police Act is subject to Article 311 of the Constitution of India.

4. In the application for discharge moved on behalf of the accused Deepak, it is contended that accused Deepak was promoted and appointed on the post by Commissioner of Police vide notification bearing no. 11024-11100/promotion Cell (Desk0IV)/P.Br./PHQ dated 21.05.2022 (D-15). It is contended that sanction for

prosecution was obtained from DCP who is subordinate in rank to the Commissioner of Police and, therefore, the sanction is invalid. It is also contended that Article 311 of the Constitution of India provides that no government servant can be dismissed or removed by an Authority subordinate to that by which he was appointed. It is also contended that Section 21 of Delhi Police Act is subject to Article 311 of the Constitution of India. It is also contended in the application that Article 311 of the Constitution of India prevails on Section 21 of Delhi Police Act.

5. Separate replies to both the applications were filed by CBI. In the reply, the CBI has prayed for the dismissal of the application(s). In the reply after narrating the factual element of the case, it is stated that valid sanction for prosecution has been obtained from the Competent Authority. It is also averred that appointment and punishment of Delhi Police officials up to the rank of Inspector is governed as per provisions of Delhi Police Act 1978 and the Delhi Police Punishment & Appeal Rules and valid sanction was granted by Dy. Commissioner of Police.

6. It is contended by the Ld. Counsels for the accused persons that accused persons were appointed by the Commissioner of Police and by virtue of mandate of Article 311 of Constitution of India, only Competent Authority to grant a prosecution sanction is the Authority which can appoint a government servant. It is also contended that reference to the removal/appointment of a government servant is relatable to Article 311 of the Constitution of India. It is also contended that sanction for the prosecution under section 19(c) of the Prevention of Corruption Act could be granted by the Authority competent to remove him from his post. It is also contended that an Authority which is inferior to the appointing Authority cannot grant

prosecution sanction. It is also contended that prosecution sanction under section 19(c) of the Prevention of Corruption Act was accorded by Dy. Commissioner of Police and the Dy. Commissioner of Police is lower in rank in comparison to the appointing Authority i.e. Commissioner of Police and therefore, the grant of prosecution sanction is invalid and non-est in law. In support of their submissions, the Ld. Counsels have relied upon the following judgments :-

- (i) Nanjappa Vs. State of Karnataka, MANU/SC/0788/2015
- (ii) Krishna Kumar Vs. Divisional Assistant Electrical Engeer & Ors., (1979) 4 SCC 289
- (iii) State Inspector of Police Visakhapatnam Vs. Surya Sankaram Karri, 2006 (4) RCR (Criminal) 53 SC
- (iv) Ashok Rangshahi Vs. State of MP, 1996 (2) Crimes 39
- (v) Omkar Chand Parshar Vs. The State, 1994 (3) CC Cases 38 (Delhi HC)
- (vi) Davinder Singh Vs. State, Indian Law Reports (1974) II 400 (DHC-DB)
- (vii) Gopalbhai Mohanbhai Nagoda Vs. State of Gujrat, IV(1993) CCR 3288 (DB) GHC
- (viii) Uttam Vs. State of Maharashtra, Crl. Appeal No. 333/2012 with Crl. Application No. 1089/2018 judgment dated 05.02.2021 Bombay High Court.

7. It is contended by the Ld. Sr. PP for the CBI that Delhi Police Act 1978 has provided the authority which can appoint/remove a person of subordinate rank and the same is clearly mentioned in Section 21 and 12 of Delhi Police Act read with relevant Rule 6 of Delhi Police (Punishment & Appeal Rules). It is submitted that as per the statutory provision, the appointing and removal Authority for Head Constable is Dy. Commissioner of Police and therefore, the prosecution sanction is valid in the eyes of law. It is submitted that in the present case, the appointing and removal authority as per Delhi Police Act is Dy. Commissioner of Police and this Authority

has accorded the prosecution sanction of both the accused persons. It is also contended that even otherwise, the question of sanction is to be determined stage by stage and the disputed questions with reference to the validity of sanction cannot be considered at this stage. The Ld. Sr. PP for CBI has relied upon the following judgments which were annexed with the reply filed by the CBI :-

- (i) Dinesh Kumar Vs. Chairman, Airport Authority of India & Ors., CrI. Appeal Nos. 2170-2171, arising out of SLP (CrI.) Nos. 10278-10279 of 2010 decided on 22.11.2011.
- (ii) Central Bureau of Investigation (CBI) Vs. Pramila Virendra Kumar Agarwal & Anr., AIR Online 2019 SC 1131

8. I have considered the submissions made by both the sides and perused the material available on record. It is relevant to mention that both the application(s) for discharge on behalf of the accused persons are confined to the extent whether sanction under section 19 of Prevention of Corruption Act was validly granted or not.

9. The submissions made on behalf of the accused persons to the effect that question of sanction can be raised at any stage and in the present case, the question of sanction is being raised at the first available instance after appearance of the accused before the court. The accused persons raised the validity of sanction at the stage of framing of charge. The Ld. Sr. PP the CBI has contended that sanction was validly granted and further submitted that question in respect of the validity of sanction cannot be adjudicated at the stage of framing of charge and the question of validity of sanction can be determined after the witness is examined by the prosecution.

10. In order to determine the issue what would be the appropriate stage to decide

the issue of validity of sanction. It would be appropriate to refer and rely upon the judgment of Hon'ble Supreme Court of India in **Nanjappa Vs. State of Karnataka (supra)**. In the cited judgment, the acquittal of appellant was reversed by Hon'ble High Court of Karnataka by holding that the validity of the sanction was not questioned at an appropriate stage. Hon'ble Supreme Court after considering the provisions of Section 19 of Prevention of Corruption Act as well as Section 465 of Cr.P.C., was pleased to hold that Section 19(1) of Prevention of Corruption Act is mandatory in nature and bars the court from taking cognizance of any offence under sections 7(10)(11)(13)&(15) against public servant except with the previous sanction of the competent Authority as enumerated in Clause 'a', 'b' and 'c' to Sub-Section (1) of Section 19 of Prevention of Corruption Act. The Hon'ble Supreme Court had also relied upon a judgment of the Constitution Bench in **Baij Nath Tripathi Vs. State of Bhopal & Anr.**, AIR 1957 SC 494. Apex Court had also relied upon **Yusofalli Mulla King Basdev Aggarwal Vs. King Emperor**, AIR 1945 FC 16 in which the question before privy council was whether failure to obtain sanction affected the competence of the court to try the accused, it was held that there was a difference between a valid sanction of prosecution on one hand and the competence of the court to determine the prosecution. In that case, it was observed that a court which is not competent to hear and determine a prosecution, the institution which is prohibited by law and when the institution of a prosecution in the absence of proper sanction is not permitted then the jurisdiction of the court to entertain the prosecution. The Hon'ble Supreme Court in para 15 after considering the plethora of judgment was pleased to observe that :-

“The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption 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 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.**”

11. It is vivid from the observations of the above referred judgment that the question in respect of the validity of sanction can be raised at any stage and an invalid sanction shall be deemed to be non-est in the eyes of law. One of the contentions of the Ld. Sr. PP for the CBI is that at this stage, the court cannot go into the validity of the sanction since prosecution has asserted that a valid sanction has been granted. There could be some cases where evidence is required to determine whether valid sanction was granted or not. Bare perusal of section 19 of the Prevention of Corruption Act would reveal that question in respect of the competence of the person can be looked at a threshold stage from the perusal of the documents. The judgment titled as *CBI Vs. Pramila Virendra Kumar Agrawal & Ors. (supra)*, is clearly distinguishable in reference to the present case.

12. The second issue that is required to be determined as to whether Authority was competent to grant sanction, secondly, the Authority who appointed the public servant and thirdly, the Authority who can remove the public servant from the service.

13. The prosecution sanctions in respect of both the accused persons were accorded by Shri Harendra Kumar Singh, Dy. Commissioner of Police.

14. The relevant portion of order of accused Satish Kumar mentioned at Sr. No. 2671 reads as under :

“The Commissioner of Police, Delhi is pleased to assign **Functional Rank of Head Constable** to the **following Constables in their respective cadre** with immediate effect **to cope with emergent operational requirements** of Delhi Police and **in the interest of Government work**, on the recommendation of the Screening Committee subject to the conditions given hereunder :-

	RANK	CADRE	NAME	BELT NO.	PIS NO.	POSTING	C.G. NO.
2671	CT.	Exe.	Satish Kumar	1584/OD	28081111	OUTER	P020622-143-2671

No. 14049-14128/Promotion Cell(Desk-IV)P.Br./PHQ dated Delhi the 02.06.2022

Copy forwarded for information and necessary action to the :-

1. All Spl. CsP in Delhi Police including Joint Director/DPA & MD/DPHC, Delhi.
2. All Joint CsP/Addl. CsP in Delhi Police.
3. OSD to CP/Delhi.
4. All DcsP/Districts/Units/Bns. including FRRO, Delhi. The police personnel may be informed, accordingly. All these personnel have been considered for grant of **Functional Rank on the basis of their service record** on Intra DP module updated by the Distt/Unit concerned, which is subject to review at any stage in case of incorrect service record on Intra DP comes to notice. Besides, the complete and updated service particulars in respect of those personnel, whose decision have been kept pending by the Screening Committee for grant of Functional Rank due to their incomplete service record available on Intra DP module may be sent to this Hdqrs., immediately to decide their cases.
5. All AcsP in PHQ.
6. Insprs./CB, CR, I.T., Acctt & HAR/PHQ.
7. All desk of P. Br.PHQ
8. I/C-Computer/CB/PHQ for uploading the same on the website of Delhi Police.

15. The relevant portion of order of accused Deepak mentioned at Sr. No. 552

reads as under :

“The Commissioner of Police, Delhi is pleased to assign **Functional Rank of Head Constable** to the **following Constables** in their **respective cadre** with immediate effect to **cope with emergent operational requirements** of Delhi Police and in the **interest of Government work**, on the recommendation of the Screening Committee subject to the conditions given hereunder :-

	RANK	CADRE	NAME	BELT NO.	PIS NO.	POSTING	C.G. NO.
552	CT.	Exe.	Deepak	3145/OD	28071693	OUTER	P210522-143-0313

No. 11024-111000/Promotion Cell(Desk-IV)P.Br./PHQ dated Delhi the 21.05.2022

Copy forwarded for information and necessary action to the :-

1. All Spl. CsP in Delhi Police including Joint Director/DPA & MD/DPHC, Delhi.
2. All Joint CsP/Addl. CsP in Delhi Police.
3. OSD to CP/Delhi.
4. All DcsP/Districts/Units/Bns. including FRRO, Delhi. The police personnel may be informed, accordingly. All these personnel have been considered for grant of **Functional Rank on the basis of their service record** on Intra DP module updated by the Distt/Unit concerned, which is subject to review at any stage in case of incorrect service record on Intra DP comes to notice. Besides, the complete and updated service particulars in respect of those personnel, whose decision have been kept pending by the Screening Committee for grant of Functional Rank due to their incomplete service record available on Intra DP module may be sent to this Hdqrs., immediately to decide their cases.
5. All AcsP in PHQ.
6. Insprs./CB, CR, I.T., Acctt & HAR/PHQ.
7. All desk of P. Br.PHQ
8. I/C-Computer/CB/PHQ for uploading the same on the website of Delhi Police.

16. A careful perusal of both the orders would reveal that same were issued under the signatures of Shri Mahesh Batra, DCP/HQ-IV under the directions of the Commissioner of Police.

17. A perusal of this order would indicate that the order mentions **Commissioner**

of Police was pleased to assign Functional Rank of Head constable to the constables in their respective cadre with immediate effect to cope with emergent operational requirements of Delhi Police and in the interest of Government work, on the recommendation of the Screening Committee subject to the conditions. It was also mentioned that the persons whose names were mentioned in the list have been considered on the basis of their service record on Intra DP module updated by the Distt./Unit concerned, which is subject to review at any stage in case of incorrect service record on Intra DP comes to notice. A personal bio-data as annexed with the case file records that the designation of the accused persons are that of Head Constable in Functional Rank. It is pertinent to mention that the pay scale of both the accused persons i.e. Satish Kumar and Deepak remained at Rs.25,500 – Rs.81,100. A perusal of order would indicate that both accused Satish Kumar and Deepak were granted Functional Rank of Head Constable in their respective cadre and the cadre of both the accused persons is Constable and the order itself clearly mentions that the same was basically granted to meet out the operational requirement of Delhi Police and the interest of the government work. It is also necessary to mention that order did not say that both the accused persons were promoted or appointed and rather it clearly used the word as “**Functional Rank of Head Constable**”, meaning thereby that both the accused persons are substantially retaining their cadre of Constable and the assertion that both of them were promoted as Head Constable on the substantive post is not emerging from the record produced by the Prosecution and, therefore, the submission of the Ld. Counsel for the accused persons that since both the accused persons were promoted and appointed as Head Constable by Commissioner of Police is rejected and rather, both the accused persons

were assigned the Functional Rank of Head Constable.

18. The contention on behalf of accused persons that since the appointing authority was the Commissioner of Police and they could not have been removed by Dy. Commissioner of Police in reference to Article 311 of the Constitution of India is not applicable as both the accused persons were merely granted the Functional Rank of Head Constable only and the order cannot be said as the order for promotion.

19. The Delhi Police (Appointment & Recruitment) Rules 1980 provides that appointing authority in relation to the subordinate police officers below the rank of Inspector is DCP/Addl. DCP/Principal/PTS or any other officer or equal rank. The appointing authorities are mentioned in Rule 4 and for Constable/ Head Constable appointing authority is Dy. Commissioner of Police. It is apparent that both appointing and sanctioning authority are same.

20. Number of judgments such as *Davinder Singh Vs. State, Krishna Kumar Vs. Divisional Assistant Electrical Engineer & Ors., Gopalbhai Mohanbhai Nagoda Vs. State of Gujrat and State Inspector of Police Visakhapatnam Vs. Surya Sankaram Karri, Ashok Rangshahi Vs. State of MP and Omkar Chand Parshar Vs. The State (supra)* were relied on behalf of the accused persons. The ratio as flowing out from the judgments cited is to the effect that an authority subordinate to the appointing authority cannot grant the sanction for prosecution and in view of the above discussions, the authorities as referred are distinguishable in reference to the present case and thus, the same are not applicable in the present case.

21. In view of the aforementioned discussion and observations as made above, the application for discharge/dropping of proceedings on the ground of invalid sanction filed by the accused persons are dismissed.

Announced in the open court
today i.e. on 03.02.2024.

(HASAN ANZAR)
Special Judge (PC Act) CBI-03,
RADC/New Delhi/03.02.2024