



**IN THE COURT OF THE PRL.DISTRICT & SESSIONS JUDGE,
UTTARA KANNADA, KARWAR.**

DATED THIS [THE 26th DAY OF JUNE-2024.](#)

SPECIAL CASE NO: [07/2015](#)

PRESENT:

Sri. D.S.Vijaya Kumar,
B.Sc., LL.B.,
Prl. District and Sessions Judge,
Uttara Kannada, KARWAR.

COMPLAINANT:

The State of Karnataka
Karnataka Lokayuktha Police Station,
Represented by Spl.Public Prosecutor.
Uttara Kannada, Karwar.

Vs.

ACCUSED:

Ganesh Anant Naik,
Occ: Assistant Director,
Akshara Dasoha Division,
Taluk Panchayat, Kumta.

(By [Sri.N.V.Nayak.](#), Advocate.)

ORDERS ON APPLICATION U/S 227 OF CR.PC.

This is an application filed under Section 227 of Cr.P.C., by the accused seeking for his discharge from the charges leveled against him for the offences punishable under Section 7, 13(1)(D) R/w 13(2) of Prevention of Corruption Act, 1988.

2. The brief averments made in the application are that, the police have filed charge sheet for the offences punishable under Section 7, 13(1)(D) R/w 13(2) of Prevention of Corruption Act, 1988 against accused. The cross examination of the P.W-17 may kindly be treated as part and parcel of this application. The P.W-17 clearly admitted before this court that Lokayukta police have not sent any requisition to him to issue sanction order. Under that circumstances as per Section 19 of the PC Act 1988, there is a clear violation of law and the mandatory provision is violated by the prosecution. The alleged sanction order obtained by the police is not correct as per Section 19 of the PC Act. Under these circumstances no case can be continued against the accused. The very continuance of case against the accused in the absence of sanction as per Section 19 amounts to in justice to the accused. There is no sufficient ground for proceedings against the accused and in view of the judgment passed in Criminal Petition No. 100719/2023 by the Hon'ble High Court of Karnataka. Hence, on these grounds the accused has prayed for allowing the application by discharging him for the charges leveled against them.

3. The learned Special Public Prosecutor representing the State has filed detailed objections and the application filed by the accused is not tenable either in law or on facts and as such,

the same deserves to be dismissed in limine. The material witnesses have already been examined in the case and the case is nearing to its conclusion. The conduct of the accused, filing such an application indicates his intention of delaying the proceedings. The accused has made an attempt to challenge the competency of the sanctioning authority only after conclusion of the examination-in-chief of 3 material witnesses in this Court. The accused had filed another application under Section 91 r/w 311 Cr.P.C., before this Court and sought for producing the documents pertaining to the agreement and documents establishing the competency before the cross examination of P.W-1 to P.W-3 and the same also came to be rejected by this Court, giving its detailed finding on the competency of the Authority to give sanction. Hence, prayed to dismiss the application of accused.

4. Heard arguments of both sides.

5. In the circumstances, following points arise for determination:-

(1) Whether the applicant/ accused is entitled for the relief as sought for ?

(2) What Order?

6. My findings to the above points are under:

Point No.1: In the Negative.

Point No.2: As per final order,
for the following:

REASONS

7. **Point No.1:** I have perused the application, objections filed by the learned Special Public Prosecutor and documents available on record.

8. It is the contention of the counsel for the accused/appellant that, the accused had moved criminal petition No. 100719/2023 under Section 482 of Cr.P.C., for quashing the proceedings inter-alia on the ground that sanction given to prosecute the accused is invalid. It is submitted for the accused that after the said petition was dismissed the accused had filed an application before this Court under Section 91 r/w 311 of Cr.P.C., for direction to produce documents to establish the competency of sanctioning authority by name Sri. Veeranna Turumuri, but the same was also rejected. It is further contended that in the order passed in Criminal Petition No. 100719/2023, the question of valid sanction has been kept open to be urged at the trial of this case and now the sanctioning authority Veeranna Turumuri has been examined as additional witness as P.W-17 and in his cross-examination he has admitted that he did not

have authority to issue sanction in the case and if he had seen Ex.D-29 produced by the accused, he would not have issued sanction order. On the said ground the accused counsel has sought for allowing the application under Section 227 of Cr.P.C., and to discharge the accused.

9. The learned Special Public Prosecutor has contended that the application is filed solely for prolonging the proceedings and to delay the trial. That the P.W-17 in his examination-in-chief has specifically deposed that he is the competent authority to issue sanction for prosecution of the accused. Having emphatically stated so in the examination-in-chief during the cross-examination he has turned around in favour of the accused. Whether what is stated in the examination-in-chief is true or his statement in the cross-examination is true is to be decided in the appreciation of the oral and documentary evidence after the trial is concluded by deciding the case on merits. At this juncture, merely because in the cross-examination P.W-17 has given an admission in favour of the accused, the accused cannot be discharged.

10. On perusing the records, it is seen already in this case 18 witnesses have been examined as P.W-1 to 18. The order sheet shows that the accused has repeatedly taken adjournments for cross-examination of witnesses and this is a

case of the year 2015. Actually the crime is registered in 2013 and the charge sheet is filed in 2015, the case is pending before this Court from 2015. In view of seeking repeated adjournments for cross-examination, the trial has delayed. The accused has filed Criminal Petition No.100719/2023 for quashing the proceedings mainly on the ground that the sanction issued for prosecution is not valid and the sanctioning authority did not have competency to issue sanction order. The said Criminal Petition was disposed off on 06/06/2023 by passing the following order :

"Criminal petition stands disposed of with a direction that the question of competency of Sri.Veeranna Turamari is kept open to be decided before the trial Court, if he is cited as an additional witness on behalf of the prosecution.

The prosecution is at liberty to cite him as an additional witness and examine him before the trial Court as an additional witness, subject to condition that documents establishing the competency of Sri.Veeranna Turamari be provided to the accused, before Sri.Veeranna Turamari is examined as a witness in due compliance of Section 207 of Cr.P.C. "

11. As per the above order the question of competency of P.W-17 Sri. Veeranna Turumuri is kept open to be decided before the Trial Court. Now there after P.W-17 Sri. Veeranna

Turumuri was cited as additional evidence and examined before the Court. In the examination-in-chief he has categorically stated that he was the competent authority as per the Government Circular marked at Ex.P-49, dated 22/02/2008 to issue sanction for prosecution against the accused. During the cross-examination it was elicited that Ex.P-49 is in Kannada language and the accused confronted Ex.D-26 as the English version of the very same circular marked as Ex.P-49. P.W-17 admitted that Ex.D-26 is the English version circular of Ex.P-49 and then he admitted that the translation of Ex.P-49 in Kannada language in Ex.D-26 has different connotation. P.W-17 agreed that there is difference in the meaning of the subject matter in English version and Kannada version of the circular which are marked above. Then he further admitted Ex.D-29 confronted by accused, and thereafter admitted that, in view of the discrepancy which is seen in Ex.D-26 and also in view of Ex.D-29, he could not have issued sanction for prosecution.

12. Now on the above ground the accused is contending that he is to be discharged under Section 227 of the Cr.P.C.,. On considering the same, I agree with the prosecution contention that the same requires to be decided after trial while disposing the case on merits. Now in the examination-in-chief P.W-17 has himself produced Ex.P-49 voluntarily as a circular by stating that

the same authorizes him to issue sanction but then in the cross-examination the accused has confronted Kannada version of the said alleged circular and he has admitted it and he has also admitted Ex.D-29 and then stated that he had no competency to issue sanction. The prosecution contention is that whether P.W-17 was competent to issue sanction has to be decided by looking to the relevant rules and notifications issued and the accused has produced the alleged Kannada version of circular which according to the accused and the witness are differing from its English version and this aspect has to be decided at the time of disposing the case on merits. In the facts and circumstances, I am of opinion that this question has to be decided by appreciation of evidence at the time of disposal of the case on the merits. Otherwise the witnesses examined in the case have so far supported the prosecution and it is seen the accused is delaying the trial on one pretext or the other. Consequently, point is answered in negative.

13. **Point No.2:** On the above findings, I proceed to pass the following:

:ORDER :

The application filed by the applicant/ accused No.1 under Section 227 of Cr.P.C. for discharging him for the offence punishable

under Section 7, 13(1)(D) R/w 13(2) of the Prevention of Corruption Act 1988 is hereby dismissed.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the 26th Day of June-2024)

(D.S.Vijaya Kumar)
Prl.District and Sessions Judge,
Uttara Kannada, Karwar.

(MR)