

Order No.68
Dated 03.11.2025

Record is taken up for order on the petition u/s 227 of Cr.P.C. filed on behalf of the accused Amitava Chanda dated 07.12.2021.

Perused the petition and other materials on record. The instant case was initiated on the basis of a letter of complaint lodged by one Debajyoti Karan against one Bikash Chandra Sarkar, ex-employee in the office of ADSR, Alipore. It was alleged that said Bikash Chandra Sarkar along with two other staffs of ADSR, Alipore came to the house of the complainant's client Subodh Kumar Baidya on 11.01.2018 for the purpose of commission of registration of two deeds. That during the procedure of registration Bikash Chandra Sarkar demanded illegal gratification of Rs.3,000/- for completion of the pending work. It was also alleged that when the ADSR, Alipore was approached for accepting the registration fees, he sat tight over the matter and advised the complainant to talk with Bikash Chandra Sarkar and negotiate the matter with him. That subsequently the complainant contacted with Bikash Chandra Sarkar on 17.01.2018 for the pending work but he directed the complainant to meet in his office on 19.01.2018 and pay Rs.2,000/- as bribe instead of Rs.3,000/-.

On the basis of the said complaint, a trap was laid against accused Bikash Chandra Sarkar and after observing all legal formalities he was arrested on 19.01.2018 at 16.00 hours for demanding, agreeing to accept and accepting bribe of Rs.2,000/- from the complainant. Accused Amitava Chanda, the present petitioner, who was working as ADSR, Alipore, was interrogated and arrested on the same date at 16.30 hours for his involvement in the case. In course of investigation, documents were collected against both the accused persons as statement of various witnesses were recorded. The allegation against the present petitioner Amitava Chanda is that he abused his official position by allowing Bikash Chandra Sarkar to sit in his office like a regular employee after his retirement on 31.01.2017 from the post of a Peon in the said office. That Amitava Chanda rarely used to attend commission of registration of deeds but used to draw T A Bill for such commissions thereby abusing his official position and he was fully aware that the retired Peon Bikash Chandra Sarkar and serving Peon Mtrityunjoy Das used the official vehicle affixing the board "ADSR, Alipore" in his absence and continued to indulge in illegal activities of demanding bribe on behalf of Amitava Chanda.

In the instant case charge sheet was filed on 24.07.2018 against Bikash Chandra Sarkar for committing offence u/s 8 of P C Act, 1988 and against Amitava Chanda for committing offence u/s 10, 13(2) read with Section 13(1)(d)(i) and 13(1)(d)(ii) of P C Act, 1988 for using Bikash Chandra Sarkar with a mala fide intention to take bribe money on behalf of Amitava Chanda for his own unfair gain.

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The case of the accused Amitava Chanda in the discharge petition is that even if the charge sheet, statements of witnesses recorded by the investigating authority u/s 161 of Cr.P.C., purported documents relied by the prosecution and other materials available on record are taken at their face value and accepted in their entirety, then also those do not constitute the offence alleged against the present petitioner u/s 10, 13(2) read with Section 13(1)(d)(i) and 13(1)(d)(ii) of Prevention of Corruption Act. The specific case of the petitioner is that the delivery of the IGR was pending for want of payment of requisite fees to the tune of Rs.1501/- to the Government Exchequer and not for want of alleged non-fulfillment of demand of bribe money by the accused Bikash Chandra Sarkar, alleged by the prosecution. That the petitioner was arrested without any preliminary inquiry conducted against him and the purported sanction so accorded against the petitioner is not a valid sanction as the person who accorded the sanction had no power or authority to accord any sanction against the petitioner. It was also submitted that the petitioner is also entitled to be discharged from this case for the reason that the investigation was not assigned to the ACB by the P & A R Department, Government of West Bengal in view of Government order 283(SPAR)/2012 dated 22.11.2012. In support of his contentions, the Ld. Advocate for the accused relied upon the following decisions :-

- i) N. Sunkanna Vs. State of Andhra Pradesh 2015 Cr LJ 4927 SC.
- ii) B. Jayraj Vs. A. P. (2014) 13 SCC page 55.
- iii) P. Satyanarayana Murthy Vs. Inspector of Police (2015) 9 Scale 724.
- iv) R. S. Naik Vs. A. R. Antule.
- v) R. R. Chari Vs. State of U.P. AIR 1962 SC 1573.
- vi) Bastiram and Another Vs. State of Haryana and others 2016 (3) RCR 767.
- vii) Ramesh Kumar Vs. State of Chhatisgarh 2001 (1) 9 SCC 618.
- viii) Randhir Singh and another Vs. State of Punjab AIR 2004 (SC) 5097.
- ix) Pratima Dutta and another Vs. The State 1977 Cr LJ (NOC) 96 (Cal).
- x) Surendra Agnihatri Vs. State of M. P. 1998 Cr LJ 4443.
- xi) Union of India Vs. Prafulla Kumar Shyamal 1979 SCC (Cri) 609.
- xii) Niranjan Singh Karam Singh Punjabi and others Vs. Jitendra Bhimaraj Bijjaya 1991 SCC (Cri) 47.
- xiii) Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra 2008 (3) JCC 1599 (SC).

The Ld. P.P. submitted that the statement of witnesses and the documents collected during investigation will clearly show that the accused Amitava Chanda, while posted as ADSR, Alipore, abetted the offence u/s 8 of the P C Act by co-accused Bikash Chandra Sarkar, a retired Peon by allowing him to sit in the office

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of ADSR, Alipore and demanding bribe for registration of deeds on behalf of the petitioner Amitava Chanda. It is further claimed that there are sufficient materials in the CD that the accused by using corrupt and illegal means and by abusing his official position as a public servant, obtained for himself and for the co-accused Bikash Chandra Sarkar pecuniary advantage and hence he is liable u/s 13(2) read with Section 13(1)(d)(i) and 13(1)(d)(ii) of the P C Act. It was pointed out by the Ld. P.P. that the accused Amitava Chanda refused to accept the requisite fees for registration and instead directed the complainant to co-accused Bikash Chandra Sarkar for negotiation. According to the Ld. P.P. there was no illegality in the sanction order and the sanction was accorded by the sanctioning authority after due consideration of the available materials. It was submitted that preliminary inquiry was not mandatory in every case under P C Act if a superior officer trusts the information and is of the view that it prima facie disclosed commission of a cognizable offence. In this regard, the Ld. P.P. relied upon two decisions of the Hon'ble Supreme Court passed in **Special Leave Petition (Criminal) No.16212 of 2024 dated 08.04.2025** and **Criminal Appeal No.5001 of 2024 arising out of Slp (Criminal) No.13264 of 2024 dated 17.02.2025**.

In the instant case, the petitioner Amitava Chanda, ADSR, Alipore, being a public servant, is accused of abusing his official position by obtaining illegal gratification other than legal remuneration through co-accused Bikash Chandra Sarkar, who was allowed to work officially on his behalf even after his retirement. A trap was laid against accused Bikash Chandra Sarkar who was subsequently arrested for demanding and accepting bribe.

Perused the available materials in the record as well as in the CD.

The statements of witnesses recorded u/s 161 of Cr.P.C. reveal that one Sumit Sarkar, a junior Lawyer under the instruction of his senior i.e. the complainant Debajyoti Karan personally met with the petitioner Amitava Chanda, who did not pay any heed about the complain of demanding bribe by his office staff and was asked to negotiate the matter with Bikash Chandra Sarkar. The witness Sumit Sarkar further alleged that he was informed by the petitioner, Amitava Chanda that payment of extra money for commission was the prevailing practice in the office of ADSR, Alipore and as such, the bribe had to be paid. The statement of some of the staff working in the office of ADSR, Alipore including Shri Mrityunjoy Das revealed that the petitioner Amitava Chanda did not attend all the commissions but used to send retired Peon Bikash Chandra Sarkar and Mrityunjoy Das for the purpose of commission. It was also alleged by these witnesses that Bikash Chandra Sarkar used to charge money beyond Government fees as per instruction of Amitava Chanda. The witness Mrityunjoy Das also stated that Bikash Chandra Sarkar paid the extra money to the ADSR.

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Charge sheet has been filed against the present petitioner u/s 10 of the P C Act for abetting the offence u/s 8 of the said Act by co-accused Bikash Chandra Sarkar and also u/s 13(2) read with Section 13(1)(d)(i) and 13(1)(d)(ii) of the P C Act for abusing his position as a public servant and obtaining pecuniary advantage by corrupt and illegal means. From the available materials a prima facie case is made out against the accused Amitava Chanda u/s 10/13(2) r/w 13(1)(d)(i)/13(1)(d)(ii) of the P C Act. I am unable to accept the contention that even if the available materials on record are taken in their face value and accepted in their entirety, then also offence u/s 10/13(2) r/w 13(1)(d)(i)/13(1)(d)(ii) of the P C Act is not made out.

In i) N. Sunkanna Vs. State of Andhra Pradesh 2015 Cr LJ 4927 SC, ii) B. Jayraj Vs. A. P. (2014) 13 SCC page 55 and iii) P. Satyanarayana Murthy Vs. Inspector of Police (2015) 9 Scale 724, the accused persons therein faced the trial and when their conviction was challenged before the Hon'ble Supreme Court, it was found that demand and acceptance u/s 7/13(1)(d) of the P C Act was not duly proved. In the instant case, there is no allegation against the petitioner for personally accepting any bribe but there is allegation of abusing his position as public servant and obtaining illegal gratification through a retired Peon who is co-accused in this case. Such allegation can be established mostly by oral evidence and the prosecution should be given a chance to establish such fact during trial.

The decisions reported in vi) Bastiram and Another Vs. State of Haryana and others 2016 (3) RCR 767, vii) Ramesh Kumar Vs. State of Chhatisgarh 2001 (1) 9 SCC 618, viii) Randhir Singh and another Vs. State of Punjab AIR 2004 (SC) 5097, ix) Pratima Dutta and another Vs. The State 1977 Cr LJ (NOC) 96 (Cal) and x) Surendra Agnihatri Vs. State of M. P. 1998 Cr LJ 4443 dealt with abetment of suicide u/s 306 of IPC. In the instant case under P C Act if the allegation of abusing the position as a public servant and obtaining pecuniary advantage through a retired Peon by allowing him to sit in the office, attend commission and demand bribe on instruction of the public servant i.e. the petitioner is established during trial, it will constitute abetment within the meaning of Section 10 of the P C Act. As such, I find that the referred decisions are of no help to the petitioner.

In v) R. R. Chari Vs. State of U.P. AIR 1962 SC 1573 the conviction of the appellant was set aside on the ground that his trial was without jurisdiction since his prosecution was commenced without a valid sanction as required by Section 6 of the Prevention of Corruption Act. In the instant case, it appears that sanction for prosecution from the competent authority was obtained on 21.06.2018 before charge sheet was filed and cognizance was taken in this case. I have carefully considered the sanction order wherefrom it appears that the Additional Chief Secretary, Finance Department, Government of West Bengal, after considering the

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materials collected in course of investigation of the instant case, was pleased to accord sanction for prosecution of the accused/petitioner for allegedly committing offence punishable u/s 10/13(2) read with Section 13(1)(d)(i) and 13(1)(d)(ii) of the P C Act. I do not find any illegality in the sanction order since it was passed after due consideration of the available materials. The contention that the sanction so accorded against the petitioner is not a valid sanction as the person who accorded the sanction had no power or authority to accord any sanction against the petitioner, can be dealt with and decided during trial.

In iv) R. S. Naik Vs. A. R. Antule, the issue involved was whether an MLA was a public servant and whether a sanction of the legislative assembly was a condition precedent to taking cognizance of the offence. No such issue is involved in the present case and the available materials clearly suggest that the petitioner herein was a public servant within the meaning of Section 19 of P C Act on the date of the alleged offence as well as on the date when cognizance was taken by the Court.

In xi) Union of India Vs. Prafulla Kumar Shyamal 1979 SCC (Cri) 609, xii) Niranjan Singh Karam Singh Punjabi and others Vs. Jitendra Bhimaraj Bijjaya 1991 SCC (Cri) 47 and xiii) Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra 2008 (3) JCC 1599 (SC), the Hon'ble Apex Court laid down the ambit and scope of Section 227 of Cr.P.C. and observed that the Trial Judge has to sift and weigh the materials on record for the limited purpose of ascertaining whether prima facie case is made out against the accused. Facts vary from case to case and each case has to be decided on its own merit. In the present case, it is already found that there are sufficient materials to make out a prima facie case u/s 10/13(2) read with Section 13(1)(d)(i) and 13(1)(d)(ii) of the P C Act against the petitioner. Such being the position, I find that the referred decisions are of no help to the petitioner.

The Ld. P.P. relied upon two decisions of the Hon'ble Supreme Court being **Special Leave Petition (Criminal) No.16212 of 2024 dated 08.04.2025** and **Criminal Appeal No.5001 of 2024 arising out of Slp (Criminal) No.13264 of 2024 dated 17.02.2025**, where it was held that preliminary inquiry was not mandatory in every case under the P C Act. In the present case, the complaint was lodged before the Superintendent of Police, Directorate of Anti Corruption Branch. The petitioner was arrested for aiding co-accused Bikash Chandra Sarkar in demanding and accepting bribe. I do not find sufficient ground for discharging the accused at this stage for want of preliminary inquiry and/or for the reason that the investigation was not assigned to the ACB by the P & A R Department, Government of West Bengal.

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The specific case of the petitioner that the delivery of the IGR was pending for want of payment of requisite fees to the tune of Rs.1501/- to the Government Exchequer and not for want of alleged non-fulfillment of demand of bribe money by the accused Bikash Chandra Sarkar, cannot be looked into at this stage. The petitioner shall be at liberty to establish such fact during trial by adducing cogent evidence.

In view of the reasons discussed above, I do not find any merit in the instant discharge petition u/s 227 of Cr.P.C. and accordingly, the same is rejected on contest without cost.

To **22.12.2025** for appearance and consideration of charge.

Dictated & corrected by me.

Judge, Bench – II,
City Sessions Court,
Calcutta.
J.O. Code No. WB00868

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