

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M.P. No.725 of 2025

Dr. Harendra Kumar Singh (Aadhar No.5340, 3360, 4997) aged about 76 years, S/o Late Kapileshwar Prasad Singh, R/o H. No. 104, Ward No.4, Williams Town, Jewes Nagar, Behind B. Ed. College, P.O. P.S & District- Deoghar ... Petitioner

Versus

Central Bureau of Investigation ... Opp. Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Bharat Kumar, Advocate.
For the CBI : Mr. Prashant Pallav, ASGI
Ms. Shreya Shukla, AC to ASGI

2/27.11.2025 Heard learned counsel Mr. Bharat Kumar, appearing on behalf petitioner and learned counsel Mr. Prashant Pallav, appearing for the CBI assisted by Ms. Shreya Shukla, learned AC to ASGI.

2. This petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing the entire criminal proceedings against the petitioner including the order taking cognizance and order issuing summons dated 16.01.2025, passed by learned A.J.C. XVIII cum Special Judge, C.B.I, Ranchi, arising out of Case No. RC 05(A)/2012-AHD-R, registered under Sections 420, 423, 424, 467, 468, 469, 471, 477A/120B, 109 & 201 of Indian Penal Code and Section 13(2) and Section 13(1)(d) of Prevention of Corruption Act, 1988; pending before the Court of learned A.J.C. XVIII cum Special Judge, C.B.I, Ranchi.

3. Pursuant to the order dated 14.06.2012 passed by Jharkhand High Court in W.P. (PIL) No. 3594 of 2011 with W.P. (PIL) No. 4980 of 2008, L.P.A. No. 254 of 2011, L.P.A. No. 255 of 2011, L.P.A. No. 247 of 2011, L.P.A. No. 351 of 2011, L.P.A. No. 321 of 2011, L.P.A.

No. 322 of 2011, L.P.A. No. 323 of 2011, L.P.A. No. 324 of 2011, L.P.A. No. 325 of 2011 and L.P.A. No. 434 of 2011, the matter was handed over to the CBI and pursuant to that, the CBI has registered the case being RC 05(A)/2012-AHD-R and investigated the case and charge-sheet was submitted on 01.05.2024 against several persons including the petitioner. The allegation against the petitioner as alleged in the charge-sheet that the Petitioner was the 2nd examiner of Sanskrit (Paper 1) and had given more marks to the favored candidate who had earlier scored lesser marks and the CBI found that the Petitioner was the 2nd examiner and the Petitioner had not given marks on the answer sheets but has given marks on a marks foil.

4. Mr. Bharat Kumar, learned counsel appearing for the petitioner submits that earlier the vigilance case was registered vide Vigilance Case No.10 of 2011 and pursuant to the order passed by the High Court, the FIR was re-registered by the CBI being RC 05 (A)/2012-AHD-R. He submits that after the submission of the charge-sheet, the learned Court has been pleased to take cognizance against the petitioner in absence of any sanction order by the competent authority. He also submits that in light of Section 19 of Prevention of Corruption Act, in absence of sanction, cognizance order is bad in law and in view of that the entire criminal proceeding may kindly be quashed.

5. To buttress to his argument, he relied in the case of *A. Sreenivasa Reddy Vs. Rakesh Sharma & Another* reported in (2023) 8 SCC 711. Relying upon the above Judgment, he submits that in light of the ratio laid down by the Hon'ble Supreme Court, in absence of

sanction, the order taking cognizance is bad in law, the entire criminal proceeding may kindly be quashed.

6. He then relied upon the case of *State of Punjab Vs. Partap Singh Verka* reported in *2024 SCC OnLine SC 1659*. Relying upon the above Judgment, he submits that in absence of any sanction in light of Section 19 of Prevention of Corruption Act, the Hon'ble Supreme Court has been pleased to quash the proceeding.

7. He lastly relied in the case of *Shivendra Nath Verma Vs. The Union of India through CBI* being *Cr.M.P. No.2079 of 2021*, which has been dismissed by the Coordinate Bench of this Court, that was challenged before Hon'ble Supreme Court in SLP (Cr.) No.12708 of 2023. He submits that the Hon'ble Supreme Court has been pleased to set-aside the order of the High Court and remanded the matter to the trial court as the sanction was already granted by that time. On these grounds, he submits that mandatory provision is there and the learned Court has erred in taking the cognizance.

8. *Per Contra*, Mr. Prashant Pallav, learned counsel appearing for the CBI opposed the prayer and submits that Judgments relied by the petitioner were prior to the enforcement of the Bharatiya Nagarik Suraksha Sanhita, 2023. (hereinafter referred to as Sanhita). He submits that the said Sanhita has come into effect w.e.f. 01.07.2024 and the cognizance has been taken on 16.01.2025. He submits that in view of Sanhita, the entire trial will proceed in light of said Sanhita. He submits that new provision has been made therein in light of Section 218 of Bharatiya Nagarik Suraksha Sanhita, 2023. He submits

that in light of the Second Proviso, if within a period of 120 days from the date receipt of representation, the sanction is not granted, it will deemed to be accorded such sanction. He submits that in view of this provision, the learned court has been pleased to take cognizance and no prejudice is caused to the petitioner.

9. He relied in the case of ***Vijay Rajmohan Vs. Central Bureau of Investigation (Anti-Corruption Branch)*** reported in ***(2023) 1 SCC 329*** and he refer to para 30, reads as under: -

“30. The intention of Parliament is evident from a combined reading of the first proviso to Section 19, which uses the expression "endeavour" with the subsequent provisions. The third proviso mandates that the extended period can be granted only for one month after reasons are recorded in writing. There is no further extension. The fourth proviso, which empowers the Central Government to prescribe necessary guidelines for ensuring the mandate, may also be noted in this regard. It can thus be concluded that Parliament intended that the process of grant of sanction must be completed within four months, which includes the extended period of one month.

33. It is in between these competing interests that the Court must maintain the delicate balance. While arriving at this balance, the Court must keep in mind the duty cast on the competent authority to grant sanction within the stipulated period of time. There must be a consequence of dereliction of duty to giving sanction within the time specified. The way forward is to make the appointing authority accountable for the delay in the grant of sanction.

10. Relying upon the above Judgment, he submits that deemed sanction has been considered by the Hon’ble Supreme Court in above case, however the Supreme Court has hold that in absence of any provision in statute, the deemed sanction will prejudice the right of the accused. He submits that in light of the observation of the Hon’ble

Supreme Court in the case of ***Subramanian Swamy Vs. Manmohan Singh & Another*** reported in ***(2012) 3 SCC 64***, now the Legislature has incorporated the said provision in Section 218 of BNSS, 2023. He also refers to para-80 of the case of ***Subramanian Swamy Case (Supra)***. He submits that the guidelines have been made therein and the deemed sanction has been discussed in para 81(c) and it was expected by the Hon'ble Supreme Court that deemed sanction provision will be made by the Legislature.

11. He then relied in the case of ***Suneeti Toteja Vs. State of U.P. and Another*** reported in ***2025 SCC OnLine 433*** and he refers to Para 31, which stipulates as under: -

“31. Similarly, learned counsel for the complainant had placed reliance on the judgment of this Court in Subramanian Swamy to lend credence to the argument of deemed sanction for prosecution. However, even the said judgment does not in any manner lay down the notion of deemed sanction. First, the said judgment dealt primarily with the Prevention of Corruption Act, 1988 and the sanction for prosecution under that Act. Secondly, G.S. Singhvi, J. while penning his separate but concurring opinion in the said judgment, had given some guidelines for the consideration of the Parliament, one of which is to the effect that at the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/complaint in the court to commence prosecution within fifteen days of the expiry of the aforementioned time limit. However, such a proposition has not yet been statutorily incorporated by the Parliament and in such a scenario, this Court cannot read such a mandate into the statute when it does not exist.”

12. He submits that in the said Judgment, again the case of Subramanian Swamy was discussed and the Hon'ble Supreme Court

has taken into consideration the guidelines made therein, unless it is incorporated in the statute, deemed to be not existing.

13. Relying upon the above Judgments, he submits that now the Legislature has taken care of by way of incorporating Section 218 of BNSS, 2023 and even the prevention of corruption cases are governed by changed provision. He submits that while taking cognizance in the case, the learned Court has considered the deemed sanction in light of provisions made under Section 218 of BNSS, 2023. He submits that all the Judgments relied by the petitioner were prior of enforcement of BNSS, 2023, which was affected from 01.07.2024. In view of that, he submits that the learned court has rightly taken cognizance.

14. In view of above submissions of the learned counsel for the parties, the Court has gone through the materials available on record and finds that the CBI has taken over the investigation pursuant to the order of the High Court passed in W.P. (PIL) No. 3594 of 2011 along with the analogous cases by order dated 14.06.2012. The learned Court has been pleased to take cognizance by order dated 16.01.2025. The learned Court in the order taking cognizance has noted the materials are against the petitioner and others and thereafter also considered the sanction aspect and has hold that if the sanction is not there, it is deemed to be sanctioned and pursuant to that, the learned Court has been pleased to take cognizance. There is no doubt that Section 19 of the Prevention of Corruption Act bars cognizance in absence of any sanction order, however, in view of the provisions made in Section 218 of Bharatiya Nagarik Suraksha Sanhita, 2023

particularly in second proviso, if the sanction order is not there within 120 days, it will be deemed to be sanctioned. For ready reference, the Second proviso of Section 218 of BNSS, 2023 is quoted herein:

“218. Prosecution of Judges and public servants: -

.....

.....

Provided further that such Government shall take a decision within a period of one hundred and twenty days from the date of the receipt of the request for sanction and in case it fails to do so, the sanction shall be deemed to have been accorded by such Government.”

15. In the cases relied by the learned counsel for the petitioner, those cases have been decided by the Hon’ble Supreme Court prior to the enforcement of BNSS, 2023 and the BNSS, 2023 has come into effect from 01.07.2024.

16. The Judgment relied by the learned counsel appearing for the CBI in the case of *Suneeti Toteja (Supra)* the Hon’ble Supreme Court has considered the case of *Subramanian Swamy (Supra)* and held that deemed sanction is not incorporated in the statute and in absence of that if the deemed sanction will be considered, the accused will be prejudiced. However, in light of proviso of Section 218 of BNSS, 2023, the said care has been taken by the Legislature. Now the cognizance order has been passed after implementation of BNSS, 2023. In the entire petition, what prejudice has been caused to the petitioner, that is not stated and if there is no miscarriage of justice and the investigation has already been done, the learned Court has taken the cognizance, the entire criminal proceeding cannot be quashed and reference may be made to the case of *H.N. Rishbud v. State (Delhi*

Admn.) reported in (1954) 2 SCC 934 in which para-13, it has been held as under: -

“The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 CrPC as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Section 190 CrPC is one out of a group of sections under the heading “Conditions requisite for initiation of proceedings”. The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 CrPC which is in the following terms is attracted:

“537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings. —Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered ... on appeal or revision on account—

(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code,

unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice.”

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial is well-settled as appears from the cases in Parbhu v. King Emperor [Parbhu v. King Emperor, 1944 SCC OnLine PC 1 : (1943-44) 71 IA 75 : AIR 1944 PC 73] and Lumbhardar Zutshi v. R. [Lumbhardar Zutshi v. R., 1949 SCC OnLine PC 64 : (1949-50) 77 IA 62 : AIR 1950 PC 26] These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.”

17. Further in the case of ***Prakash Singh Badal Vs. State of Punjab*** reported in ***(2007) 1 SCC 1***, it has been held that the sanction aspect can be the subject matter of the trial, even the cognizance is taken that is required to be proved in the trial and prejudice aspect can be taken in trial. In light of Proviso 218 of BNSS, 2023 as quoted herein above, the deemed sanction aspect is there and the Judgment relied by the learned counsel appearing for the petitioner, this aspect was not the

consideration at that point of time as at that time, Section 218 of BNSS, 2023 was not existing.

18. Further the Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Jivalal* reported in (2009) 15 SCC 72 has held that it is open to an accused to question the genuineness or validity of the sanction order before the Special Judge. Similarly, recently in *Chittaranjan Das v. State of Orissa* reported in (2011) 7 SCC 167 also, it was observed that if disputed questions of fact are involved it is expedient to leave the question of validity of the sanction to be decided by the trial court.

19. After careful scrutiny of the aforesaid legal provisions, this Court finds that the purpose of prosecution sanction is to provide a safeguard against frivolous or vexatious litigation. It ensures that the prosecution of a public servant is based on substantial grounds and it has to be scrutinized in trial.

20. In view of the above facts, reasons and analysis, this Court finds that no interference is required.

21. As such, this petition is dismissed.

(Sanjay Kumar Dwivedi, J.)

27.11.2025

R.Kumar A.F.R.
Uploaded on 05.12.2025