

Item No. 3

CBI No. 1/2018

**CBI Vs. M/s Sunrise Sales Ltd. Through its Diretor Rakesh Sindhvani
03.12.2018**

Present : Sh. Neetu Singh, Ld. PP for CBI.

**Sh. S. C. Yadav, Ld. counsel for the accused no. 1 to 5.
Accused no. 5 absent.
Remaining accused in person on bail.
IO in person.**

An application on behalf of accused no. 5 filed for his exemption from personal appearance. For the reasons stated therein, same is allowed for today only. She shall remain present on the next date of hearing positively.

Cognizance of the offences in this case was taken by this court vide order dated 08.05.2018. However, only the accused no. A1 to A5 I.e Sunrise Sales Ltd., Rohtakalies Pvt Ltd, Rakesh Sindhvani, Sunil Kumar and Anju Sindhvani were summoned. A6 Mahavir Verma, who is a public servant, was not summoned for the reason that sanction for his prosecution has not been obtained by CBI. This court was informed by Ld. PP on 04.09.18 that the competent authority has declined to accord sanction for prosecution of A6 Mahavir Verma.

Today, an application as been filed by Ld PP stating therein that sanction for the prosecution of A6 Mahavir Verma is not required at all in view of the judgment of the Supreme Court in case reported as ***L. Narayana Swamy Vs. State of Karnataka &Ors AIR 2016 SC 4125***. It is submitted by Ld. PP that A6 has since been promoted and is not holding the same post, which he was holding at the time of commission of offences alleged against them and, therefore, sanction for his

prosecution need not be obtained. His submission is that the provisions of Section 19 of Prevention of Corruption Act, 1988 are not applicable qua A6 Mahavir Verma and he can be summoned by this court without insisting on the sanction for his prosecution under the said Section 19 of P. C. Act.

I have considered the submissions of Ld. PP and have pondered over the legal proposition put forward by him.

Perusal of the charge sheet would reveal that A6 Mahavir Verma was posted as Assistant General Manager in Union Bank of India, Shalimar Bagh Branch, Delhi in the year, 2013-14 when he is stated to have submitted false and fraudulent inspection reports in connivance with the other accused and assisted them in achieving the object of the conspiracy. He has been since promoted and at present is occupying the post of Deputy General Manager, Union Bank of India, Regional office, Gaurakhpur, UP. It is thus, evident that he is not holding the same post as of now which he was holding at the time of alleged commission of offences by him in this case.

The issue as to whether a public servant, who is not on the same post and is transferred(whether by way of permission or otherwise to another post), loses the protection U/s 19(1) of the P. C . Act though he continues to be a public servant albeit on a different post, had come up for consideration before the apex court in ***L. Narayana Swamy Vs. State of Karnataka &Ors AIR 2016 SC 4125(Supra)***. It would be apposite to reproduce here the observations and the decision of the Supreme Court in this regard :-

"It clearly follows from the reading of the judgments in the cases of Abhay Singh Chautala and Prakash Singh Badal that if the

public servant had abused entirely different office or offices than the one which he was holding on the date when cognizance was taken, there was no necessity of sanction under Section 19 of the P. C. Act. It is also made clear that where the public servant had abused the office which held in the check up period, but had ceased to hold 'that office' or was holding a different office, then sanction would not be necessary. Likewise, where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction. However, detailed discussion contained in these judgments would indicate that the principle laid down therein would encompass and cover the cases of all public servants, including government employees who may otherwise be having constitutional protection under the provisions of Article 309 and 311 of the Constitution.

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It unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse

of the office by the public servant and not some rank outsider. By a catena of decisions, it has been held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. The Legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that the authority alone would be able, when facts and evidence are placed before him to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. That is why the Legislature clearly provided that the authority alone would be competent to grant sanction which is entitled to removed the public servant against whom

sanction is sought from the office. Where the public servant had abused the office which he held in the check period but had ceased to hold "that office" or was holding a different office, then a sanction would not be necessary. Where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction. "(emphasis supplied)

In view of the dictum of the Supreme Court in above noted case, I feel in agreement with the submissions of Ld. PP that since the accused A6 Mahavir Verma had abused entirely different office than the one which he is holding at present when the cognizance has been taken by this court of the offences involved herein, there is no necessity for obtaining sanction for his prosecution U/s 19 of the Prevention of Corruption Act, 1988. Hence, I do not find any legal impediment in proceeding further against the accused A6 Mahavir Verma in the absence of the sanction U/s 19 of the P. C. Act.

I have perused the charge sheet and the documents filed alongwith it minutely. There are specific allegations of criminal misconduct against accused A6 Mahavir Verma and the material on record indicates clearly that he had connived with the other accused was a party to the entire conspiracy involved in this case. Material on record is sufficient to proceed further against him.

Since this court has already taken cognizance of the offences in this case vide order dated 08.05.2018, let A6 Mahavir Verma

be summoned for the next date of hearing.

List on 21.12.2018.

(VIRENDER BHAT)
SPL. JUDGE: CBI-01: N/W: ROHINI
DELHI/03.12.2018