REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1758 OF 2009
(Arising out of SLP(Crl.) No. 1735 of 2007)

State through
Central Bureau of Investigation …Appellant

Versus

Parmeshwaran Subramani & Anr. …Respondents

J U D G M E N T

B.SUDERSHAN REDDY,J.

Leave granted.

2. This appeal, which has come before us by special leave, is directed against the judgment of the High Court of Bombay at Goa dated 23.11.2006 in Criminal Revision Application No. 49 of 2006, by which the learned Single Judge affirmed the conclusion of the learned Special Judge,

North Goa, Panaji that previous sanction was necessary to prosecute a Public Servant under Section 12 of the Prevention of Corruption Act, 1988.

3. The brief factual matrix of the case is as under:

On source information the Central Bureau of Investigation, Goa registered a preliminary enquiry being PE 2(A)/2002/CBI/ACB against the respondent no. 1 and others. The respondent No. 1 was the then Commissioner of Customs and Central Excise, Panaji. It was alleged that respondent no. 1 along with others purchased 48 ready built flats for Customs Department from the respective firms at an exorbitant price of Rs. 3,55,69,150/- though the actual market value was much less than the price paid. It was further alleged that undue favour of respondent no. 1 caused huge loss of Rs. 1.04 crores to the department. Shri Ram Avtar Yadav, Inspector CBI/ ACB/ Goa was conducting the enquiry into said allegations.

4. The respondent No. 2 was the Inspector of Central Excise, Goa. It was alleged that on 24.9.2002, the respondent no. 2 made a request on telephone to Shri Ram Avtar Yadav, Inspector to meet him in connection with some personal work. On the next day i.e. 25.9.2002, the respondent no. 2 met Shri Ram Avtar Yadav, Inspector and during the course of meeting he made a request on behalf of the respondent no. 1 to close the case and also conveyed that the respondent no. 1 wanted to meet him in connection with the said case and to offer some gratification. On the same day, the Inspector (Complainant) lodged a written complaint against both the respondents before Superintendent of Police, CBI/ACB/Goa. Accordingly, RC8(A) /20J2 /CBI /ACB/ Goa, was registered against both the respondents. Both the respondents met the complainant at a restaurant and offered him a bribe of Rs. 1 lakh. On 26.9.2002, the respondent no. 1 withdrew an amount of Rs. 50,000/- from his savings bank account and handed over the same to the respondent no. 2 to deliver the said amount

as part of the bribe to the complainant. A trap was laid in the presence of two independent witnesses. The respondent no. 2 was caught red handed while offering and delivering bribe on behalf of respondent no. 1 at the residence of the complainant. Thereafter on completion of the investigation charge sheet was filed in the court of learned Special Judge against both the respondents for the offences punishable under Section 120B read with Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act").

5. The learned Special Judge having perused the chargesheet and material on record came to the conclusion that previous sanction as required under Section 19 of the Act, was necessary to prosecute a Public Servant for the offence punishable under Section 12 of the Act and accordingly declined to take cognizance of the offence. Being aggrieved by the order of the learned Special Judge, the appellant filed the Criminal Revision Application No. 49 of 2006 before the High Court of Bombay at Goa. The High

Court dismissed the revision of the appellant and upheld the discharge of the respondents for want of sanction under Section 19 of the Act.

Hence this appeal.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. The short question that arises for our consideration in this appeal is whether any previous sanction as such is necessary for taking cognizance of an offence punishable under Section 12 of the Act?

8. Shri H.P. Rawal, learned Additional Solicitor General appearing on behalf of the appellant submitted that the court is not precluded from taking cognizance of an offence punishable under Section 12 of the Act against a public servant inasmuch as the said provision does not provide for any such previous sanction and the requirement of previous sanction is only in respect of offences punishable under Sections 7, 10, 11, 13 and 15 of the Act.

9. M/s. Krishnan Venugopal, learned senior counsel and Santosh Kumar, learned counsel for the respondents supported the reasoning and conclusion of the High Court that previous sanction for taking cognizance against a public servant would be equally necessary in respect of the offence punishable under Section 12 of the Act also.

10. In order to appreciate the submissions that were made before us it may be necessary to notice the relevant provisions of the Act. Section 12 of the Act which provides for punishment for abetment of offences defined in Section 7 or 11 reads as under:

> **"Section 12** - **Punishment for abetment of offences defined in section 7 or 11**. - Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

11. Section 19 of the Act which deals with previous sanction for prosecution of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, reads as under:

> "**Section 19** - **Previous sanction necessary for prosecution. -**
>
> (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
>
> (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State

Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission

> or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.
>
> Explanation.— For the purposes of this section, —
>
> (a) error includes competency of the authority to grant sanction;
>
> (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

12. In the instant case, we are not concerned with the question as to whether the respondents have committed any offence punishable under Section 120B of the Indian Penal Code read with Section 12 of the Act. We have to proceed on the basis of the allegations made by the appellant against the respondents without going into the truth or otherwise of the allegations so made in the charge sheet. The issue that arises for consideration is whether the learned Special Judge as well as the High Court have committed any error in refusing to take cognizance of the offence punishable under

Section 12 of the Act alleged to have been committed by the respondents on the ground that there has been no previous sanction of the Government as required under Section 19 of the Act?

13. The courts below relying upon the decision in **Sharad Waman Bushake** Vs. **State of Maharashtra**[1] were of the view that Section 12 cannot be treated as being wholly distinct or independent from Section 7 or 11 because it speaks of abetment of those offences punishable under Section 7 or 11 as the case may be. The view taken by the High Court was that though an accused can be charged independently under Section 12, the existence of an offence under Section 12 is dependent upon Section 7 or 11. Therefore, so long as a sanction is required for punishment of the principal offence under Section 7 or 11 of the Act, sanction would equally be necessary in regard to punishment for abetment of those offences.

14. In our considered opinion, the interpretation sought to be placed by the High Court on Section 19 of the Act is

[1] [1993 Mah. L.J. 284]

wholly erroneous. The court at that stage cannot go into the question whether there was any abetment of any offence punishable under Section 7 or 11. Section 12 of the Act, in clear and categorical terms, speaks that whoever abets any offence punishable under Section 7 or 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term as provided thereunder. It is thus clear that abetment of any offence punishable under Section 7 or 11 is itself a distinct offence. The offence punishable under Section 7 or 11 whether actually committed by a public servant is of no consequence. It is precisely for the said reason Section 19 of the Act specifically omits Section 12 from its purview. The courts by process of interpretation cannot read Section 12 into Section 19 as it may amount to rewriting the very Section 19 itself. It is settled law that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the

legislature in its wisdom consciously omitted. Such an exercise if undertaken by the courts may amount to amending or altering the statutory provisions.

15. In a plethora of cases, it has been stated that where, the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should be. The courts adopt a construction which will carry out the obvious intention of the legislature but cannot set at naught legislative judgment because such course would be

subversive of constitutional harmony [See: **Union of India & Anr.** Vs. **Deokinandan Aggarwal**[2]].

16. In **A.R. Antulay** Vs. **Ramdas Sriniwas Nayak**[3]**,** it so happened that a private complaint was made by the respondent therein against the appellant after the requisite sanction under Section 6 of Prevention of Corruption Act,1947 was given by the Government. The Court of Special Judge took cognizance of the alleged offences under Section 8 (1) of the Criminal Law Amendment Act, 1952. On behalf of the appellant an application was made in that court questioning jurisdiction of that court inter alia on the ground that it could not take cognizance of any of the offences enumerated in Section 6 (1) (a) and (b) of the said Act upon a private complaint of facts constituting the offences. The courts below rejected the contention. This Court observed: "It is well-established cannon of construction that the court should read the section as it is and cannot rewrite it to suit its convenience; nor does any

[2] (1992) Supp. (1) SCC 323
[3] (1984) 2 SCC 500

canon of construction permit the court to read the section in such manner as to render it to some extent otiose." This Court further observed: "Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi. To hold that a specific statutory exception exists: the court would require an unambiguous statutory provision and the tangled web of argument for drawing a far fetched implication cannot be a substitute for an express statutory provision."

17. In **State of Jharkhand & Anr.** Vs. **Govind Singh**[4] this Court once again reiterated that where the language is clear, the intention of the legislature is to be gathered from the language used and the attention should be paid to what has been said as also to what has not been said. In that case the Jharkhand High Court held that even though there

[4] (2005) 10 SCC 437

is no specific provision in Section 52 (3) of the Indian Forest Act, 1927 as amended by Bihar Act 9 of 1990, a vehicle seized for alleged involvement in commission of forest offence can be released on payment of fine in lieu of confiscation. The High Court took the view that it would be inequitable to direct confiscation and, therefore, it was held that to meet the interest of justice the power to impose fine in lieu of confiscation can be read into under Section 52(3) of the Act. Accordingly, a fine was imposed and the seizing authority was directed to release the vehicle on payment thereof. This Court interfered with the judgment observing that the view taken by the High Court was against the settled principles relating to statutory interpretation. It was observed:

> "Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to

> remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See: Frankfurter, "*Some Reflections on the Reading of Statutes*" in *Essays on Jurisprudence*, Columbia Law Review, p.51.)"

It was further observed:

> "Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature."

18. Keeping in view of the aforesaid legal principles the inevitable conclusion is that the High Court fell into error in reading into Section 19 of the Act, the prohibition not to take cognizance of an offence punishable even under Section 12 of the Act without previous sanction of the Government which is not otherwise provided for. The language employed in Section 19 of the Act is couched in mandatory form directing the courts not to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 only, alleged to have been committed by a public servant, except with the previous sanction of the Government. The legislature consciously in its wisdom omitted the offence of abetment of any offence punishable under Section 7 or 11 of the Act thereby making its intention clear that no previous sanction as such would be required in cases of offence punishable under Section 12 of the Act. The High Court read something into Section 19 on its own thereby including Section 12 also into its ambit, which in our opinion is impermissible.

19. The judgment of the High Court is clearly erroneous, deserves to be set aside which we direct.

20. The appeal is accordingly allowed.

……J.
(R.V. Raveendran)

……J.
(B. Sudershan Reddy)

New Delhi;
September 11, 2009.