here that a D.N.A. examination is a significant tool in the armoury of the investigation agency, as Section 53 of the Code permits the use of reasonable force in collecting any evidence from the person of an accused. A direction therefore, issued by a court directing an accused to furnish his blood sample and simultaneously directing the use of a reasonable force would not violate Article 20(3) or Article 21 of the Constitution of India.

(19) In the present case, the accused agreed to undergo a blood test but subsequently refused to allow such a test. The respondent cannot be allowed to retract from his earlier consent. The learned trial court fell into an error while dismissing the application, as in essence, the prayer was for issuance of a direction to the respondent to furnish his blood sample in accordance with his consent and did not involve the passing of a fresh order.

(20) In view of what has been stated herein above, the revision petition is allowed. The order dated 3rd May, 2007 is set aside. The learned trial court shall direct the Civil Surgeon, Gurgaon, to take a blood sample of the accused and for the said purpose use such force, as may be reasonably necessary.

R.N.R.

Before Ajai Lamba, J.

SURAT RAM SHARMA—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER—*Respondents*

C.W.P. No. 14627 of 2007

17th December, 2009

Constitution of India 1950—Art. 226—Prevention of Corruption Act, 1988—S.19—Allegation against an S.D.O. of taking illegal gratification—Vigilance Bureau seeking necessary sanction for prosectuion from employer/department of petitioner—Department refusing to grant sanction to prosecute petitioner—Vigilance Bureau again writing to department to reconsider decision—Competent authority reviewing its earlier order and giving sanction to prosecute

petitioner—Whether an order passed refusing sanction to prosecute under provisions of S. 19 of 1988 Act can be reviewed—Held, yes—An order denying sanction to prosecute can be reviewed where fresh material is placed before sanctioning authority—Sanctioning authority after applying its mind and considering relevant material finding act of petitioner falling within scope of offences committed u/ss 7 & 13(2) of 1988 Act—No interference in order granting sanction to prosecute—Petition dismissed.

Held, that the authority giving sanction is required to, *prima facie,* consider the evidence and all attending circumstances before he comes to the conclusion that the prosecution, in the circumstances, be sanctioned or forbidden. He is required to hold an inquiry to satisfy himself as to the truth of facts alleged. An order of sanction, by itself, does not have the effect of a conviction or imposing a penalty causing any injury of any kind on the accused. The accused will get full opportunity to defend himself in the trial Court. The trial itself takes place in accordance with the procedure established by law. Grant of sanction is purely an administrative act and affording of opportunity of hearing of the accused is not contemplated at this stage. Despite such being the legal position, the sanctioning authority has gone ahead with hearing the petitioner, who is a suspect in a case under the Act. While taking into account only the defence given by the suspect, order Annexure P-3 had been passed, denying sanction to prosecute, which renders it illegal and without consideration of relevant material. Circumstances emanating, therefore, required the prosecution agency to file application. On consideration of the relevant material, impugned order Annexure P-4 has been passed. The test laid down has been amply satisfied, when order Annexure P-4 is considered. The order Annexure P-4, on its face, indicates that all relevant material viz. FIR, recovery memos, statement of official witnesses, recovery of marked currency notes, which tallied with the numbers mentioned in the memo regarding taking into possession the currency notes, have been considered. After applying its mind and considering the relevant material, earlier order Annexure P-3 has been reviewed. No fault, under the circumstances, can be found with the impugned order Annexure P-4.

(Para 30)

Further held, that offences under the Prevention of Corruption Act are serious offences. The prosecuting Agency has been able to collect incriminating material indicating culpability of the petitioner. The petitioner being a public servant, is protected and sanction to prosecute is required to be obtained from the sanctioning/competent authority. If the authority proceeds in an illegal manner by way of referring only to irrelevant material so as to deny sanction to prosecute, will it not cause mainfest justice ? Would an accused not be given undue benefit of the prosecution ? The procedure cannot be allowed to be abused to give benefit to a person who is suspected of committing offences. Administration of criminal justice requires that offenders face trial before a court of law. Benefit of protection cannot be allowed to an offender by way of following an illegal procedure, as had been done in this case by way of passing order Annexure P-3. Impugned order Annexure P-4 has been passed while considering the relevant aspects of the case and in view of the above discussion also, it calls for no interference.

(Para 31)

J.S. Gill, Advocate, *for the petitioner(s).*

Ms. Charu Tuli, Senior D.A.G., Punjab.

AJAI LAMBA, J.

(1) The questions posed for determination by this Court are :—

(i) Whether an order passed refusing sanction to prosecute under the provisions of Section 19 of the Prevention of Corruption Act, 1988 (for short 'the Act'), can be reviewed ?

(ii) If answer to question No. 1 is in the affirmative, whether, in the facts and circumstances of the case, order (Annexure P-3), under which the Vigilance Bureau was refused the sanction to prosecute the petitioner, could be reviewed by way of granting sanction for prosecution *vide* subsequent order (Annexure P-4) ?

(2) This petition under Articles 226/227 of the Constitution of India has been filed by Shri Surat Ram Sharma praying for issuance of a writ in the nature of certiorari quashing order dated 6th July, 2007 (Annexure

P-4) *vide* which sanction for prosecution of the petitioner by the Vigilance Bureau, Ludhiana, which had earlier been refused, has been reviewed. Sanction to prosecute has been granted.

(3) From the pleadings, it is brought out that the petitioner joined as Junior Engineer in the Panchayati Raj Department on 29th January, 1981 on regular basis. The petitioner, thereafter, was confirmed on the said post and was promoted as Sub-Divisional Officer on 27th June, 1994. On 25th August, 2005, while the petitioner was posted as Sub- Divisional Officer, Panchayati Raj, Bassi Pathana, District Fatehgarh Sahib, an incident took place on account of which, F.I.R. No. 36, dated 25th August, 2005 for commission of offences under Sections 7, 13(2) of the Prevention of Corruption Act, 1988, was lodged at Police Station, Vigilance Bureau, Ludhiana, on the statement of Mohinder Singh, Sarpanch of Village Baahu Majra, Tehsil Khanna.

(4) The gist of allegations in the F.I.R. (Annexure P-1) is that grant of Rs. 1,50,000 and some wheat was released by the Government to the Village Sarpanch for being utilised for the benefit of the village/villagers. The grant was utilised and wheat was distributed to the labour, as required, in the presence of Junior Engineer (Panchayati Raj): namely, Shri Baljit Singh. Entries in the Measurement Book were made and signed on 18th March, 2005 and the said Measurement Book was handed over to the complainant-Mohinder Singh. Relevant entries in regard to the work were also made in the registers of the Panchayat.

(5) Pre-audit was to be done by the petitioner. The complainant repeatedly visited the office of the petitioner at Bassi Pathana and requested him to do the pre-audit of the work got done by the Panchayat so that the Utilisation Certificate could be obtained from the Block Development and Panchayat Officer, Khanna. The petitioner, however, put off the matter on one pretext or the other and said that he would not do the pre-audit and sign the Measurement Book until and unless he was given Rs. 6,000 as illegal gratification. The complainant met the petitioner a number of times and made repeated requests, on which the petitioner agreed to accept Rs. 4,500.

(6) The petitioner promised the complainant on 23rd August, 2005 that he (the petitioner) would come to the house of the complainant on 25th August, 2005 to receive the money. As the complainant did not want to pay the illegal gratification for legal work, the matter was reported to the Vigilance Bureau, Unit-2, Ludhiana. It seems that the F.I.R. was lodged. The currency notes in the sum of Rs. 4,500 of the denomination of Rs. 500 each were marked. The action taken by the police, which forms part of Annexure P-1, indicates that the currency notes were treated with a chemical and were handed over to the complainant after conducting his personal search, as per procedure. A trap was laid.

(7) From the pleadings, it transpires that the petitioner was apprehended while taking illegal gratification of Rs. 4,500. When his fingers were got washed, the colour of water turned pink. The relevant memos were prepared in the presence of witnesses.

(8) The petitioner has given his defence in para 3 of the petition with the plea that the complainant was inimical towards the petitioner. The petitioner had already been posted out of the area and he was not required to conduct pre-audit and, thereofore, could not have been implicated.

(9) For consideration of the questions posed, other details in relation to the criminal case of defence or the petitioner are not relevent. Suffice it to say that the petitioner was arrested and was, thereafter, released on regular bail. The services of the petitioner were suspended on 25th October, 2005 and he was reinstated on 12th June, 2006.

(10) It seems that the Vigilance Bureau could collect material and evidence and, thereafter, formulated an opinion that there was sufficient evidence/material to try the petitioner. The Vigilance Bureau moved the employer/department of the petitioner for grant of necessary sanction for prosecuction, as required under the provisions of Section 19 of the Act.

(11) The petitioner filed a representation pleading that sanction to prosecute be refused as the petitioner was innocent. The petitioner was also personally heard, whereupon order Annexure P-3 was passed thereby refusing to grant sanction to prosecute the petitioner.

(12) It has been pleaded on behalf of the petitioner that there was a reshuffle in the Punjab Government in February, 2007. Although the competent/sanctioning authority had refused to grant sanction to prosecute the petitioner, however, the Vigilance Bureau, *vide* letter dated 14th March, 2007, again, wrote to the department to reconsider the decision and grant sanction to prosecute the petitioner. Upon the Vigilance Bureau again approaching the authorities, order Annexure P-3 has been reviewed *vide* impugned order Annexure P-4.

(13) Learned counsel for the petitioner has argued that the appropriate authority having applied its mind and having given a decision that there was no ground to grant sanction to prosecute *vide* order Annexure P-3, the same could not have been reviewed by the same authority thereby giving sanction to prosecute the petitioner. In this regard, learned counsel for the petitioner has referred to the judgment rendered by this Court in C.W.P. 16402 of 2004 (Mohammed Iqbal Bhatti *versus* State of Punjab and another) decided on 22nd December, 2005 and placed on record as Annexure P-5.

(14) Learned counsel for the petitioner has also contended that an inquiry was conducted. Finding no truth in the allegation, the same was filed as is evident from Annexure P-2. It is, thus, clear that the petitioner cannot be proceeded against.

(15) Learned counsel for the respondent-State has argued that the relevant facts and circumstances of the case were not taken into account while passing order Annexure P-3. The relevant facts and circumstances emanating from the material/investigation file having not been considered, it was opon to the competent authority to review the earlier order, the same being baseless. It has further been pleaded that there are serious charges against the petitioner and by virtue of subsequent letter dated 14th March, 2007, placed on record as Annexure R-1, it was pointed out that the facts required to be considered while dealing with the issue of grant of sanction to prosecute had not been considered while passing order Annexure P-3.

(16) I have heard the learned counsel for the parties and have gone through the decuments to which my attention has been drawn.

(17) Before proceeding further and considering the legality of action of the respondents, it is required to be seen whether an order refusing to grant 'sanction' can at all be reviewed.

(18) To make a reference to the judgement relied upon by the learned counsel for the petitioner in **Mohammed Iqbal Bhatti's case** *(supra)*, this Court has dealt with a situation wherein *vide* earlier order dated 15th December, 2003, sanction to prosecute was refused to the department. *Vide* subsequent order dated 30th September, 2004 impugned in **Mohammed Iqbal Bhatti's case** *(supra)*, sanction to prosecute was granted, on review of the earlier order. After making a reference to the earlier order in extenso, this Court has observed that the competent authority had asked the prosecution for production of the material in support of their case. In this regard, correspondence ensued between both the departments for almost 3 years. Despite opportunity given to the Vigilance Department, it failed to submit clarification as aksed for.

(19) In subsequent order dated 30th September, 2004, impugned before the Court, deficiencies in earlier order dated 15th December, 2003, refusing sanction to prosecute, were not indicated. Having considered the contents of both the orders, it has been observed that it is not the case of the prosecution that new facts had come to surface, which had been examined by the competent authority while granting sanction for prosecuting the petitioner, under the subsequent order. The following needs to be extracted from the judgment in **Mohammed Iqbal Bhatti's case** *(supra)*, for adjudicating the issue :—

> "Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible. The Government is expected to act consciously and cautiously while taking such serious decisions. The perusal of the record shows that pointed queries had been raised to be answered by the Vigilance Bureau but no answer was forth coming nor any had been submitted subsequently which culminated into passing of the later order dated 30th

September, 2004. We refrain ourselves from mentioning the queries which had been raised but it would suffice to say that the queries were never answered at the relevant time when the order dated 15th December, 2003 had been passed nor the same were ever commented upon as no answers were placed before the competent authority for passing the impugned order dated 30th September, 2004. The Government cannot act in a manner which may cause harassment to an employee or any person. Though the orders required to be passed while exercising the powers under Section 19 of the Act and Section 197 of the Code of Criminal Procedure cannot be termed as quasi judicial order, yet the orders have to be passed consciously and cautiously by applying the mind accordingly. In the present case, the impugned order has been passed in a very casual manner whereas the previous order had been passed after due deliberations and when the Vigilance Bureau was unable to give answers to the queries raised, the sanction had been declined. We have no reason to accept the contention of learned Additional Advocate General, that the subsequent order i.e. order dated 30th September, 2004 was passed by due deliberations and upon the basis of the new facts disclosed or by way of applying mind for holding that the present impugned order is in supersession of the previous order." (Emphasis supplied).

(20) It seems that against the judgment in **Mohammed Iqbal Bhatti's case** *(supra)*, the State of Punjab went up in appeal before the Hon'ble Supreme Court of India. The judgment entitled **State of Punjab and another** *versus* **Mohammed Iqbal Bhatti (1).** The question considered by the Hon'ble Supreme Court of India is—"The short question which arises for consideration in this appeal is as to whether the State has any power of review in the matter of grant of sanction in terms of Section 197 of the Code of Criminal Procedure 1973 ? In the context of the first issue being considered by this Court, the following has been said by the Hon'ble Supreme Court of India :—

"22. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made

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out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to.

23. The High Court in its judgement has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise."

(21) Taking a cue from the above extracted portion from the judgment of the Hon'ble Supreme Court of India, by implication, it follows that an order denying sanction to prosecute can be reviewed where fresh material is placed before the sanctioning authority. It can also be reviewed if the sanctioning authority had failed to take into account a relevant fact or had taken into consideration an irrelevant fact. Hon'ble Supreme Court of India, while consideration the facts of the case before it, has observed that there was nothing to show as to why reconsideration became necessary at all. On what premise such a procedure was adoped was not made known to the Court. The subsequent order was without application of mind and did not disclose the necessity for reconsideration or review of the earlier order.

(22) Considering the above, question No. 1 posed before the Court in this case, is answered in the affirmative. It is held that when fresh relevant material is placed before the sanctioning authority and the facts and circumstances warrant, order refusing sanction to prosecute can be reviewed. Further, in case, while dealing with the issue in the earlier order, the sanctioning authority fails to take into consideration relevant facts or takes into consideration irrelevant facts, the order can be reviewed. It is, however, required that reason for reconsideration of earlier order is shown to the

sanctioning authority. It is an administrative order and if it is passed dehors the relevant considerations it is required to be reviewed. Such an order has serious legal implication in so much as protection given to a public servant is likely to be abused if the first order passed by the sanctioning authority is illegal. An offender is required to face trial before a court of law and the process cannot be allowed to be frustrated by way of abuse of the procedure provided for giving sanction to prosecute.

(23) So as to deal with the second question, the contents of the orders Annexures P-3 and P-4 and the request of the prosecution Annexure R-1 are required to be considered.

(24) A perusal of order Annexure P-3 indicates that respondent No. 1, while refusing sanction to prosecute, has considered the defence of the petitioner, who is the suspect, as the main basis for passing order Annexure P-3. It has been concluded that "Shri Mohinder singh, Sarpanch under some conspiracy has got Shri Surat Ram Sharma S.D.O. (P.R.) involved in a bribery case from the vigilance department by calling him to his house. Keeping in view the situation the Government has taken a decision to refuse the sanction to prosecute Shri Surat Ram Sharma S.D.O. (P.R.) as asked by the Vigilance Department for presenting challan in the Court". The investigation file or relevant material indicating *prima facie* commission of offence has not been considered at all.

(25) In Annexure R-1, it has been pleaded on behalf of the Vigilance Bureau that there were serious legal infirmities and violation of Government instructions had been made, while passing order Annexure P-3. The main stand of the respondents in Annexure R-1, is that the decision to grant or deny sanction to prosecute has not been taken while referring to the investigation file. The authority has preferred to hear the suspect and not the witnesses of the case. It is only an administrative function as per judgments rendered by the Hon'ble Supreme Court of India, which require the evidence collected during investigation to be placed before the competent authority, which is, then, to *prima facie* satisfy itself as to whether or not relevant facts constitute an offence. To the contrary, a parallel departmental inquiry had been launched by way of giving personal hearing to the suspect. The conclusion drawn by the authority while denying sanction to prosecute could only be drawn by the court of law after reference to evidence led

by the prosecution and defence. It has been pointed out that in such cases of trap, relevant material for consideration would be the statements of the complainat, shadow witness and official witnesses, whether hand wash was taken and whether chemical report of hand wash is positive, which have not been considered by the authority while passing order Annexure P-3. It has further been pointed out that the comments of the Investigation Officer were required to be referred to which, *prima facie*, establish commission of offence. The comments of the Investigating Officer have been reproduced in Annexure R-1. The original challan file, running into 73 pages, was resubmitted to the competent authority.

(26) A perusal of the impugned order Annexure P-4 indicates that while granting sanction to prosecute, the competent/sanctioning authority has based the decision on the investigation file. The case, as set up by the complainant in the F.I.R., has been noticed. The proceedings carried out by the Investigation Agency before laying the trap; including the role of each witness in the process, has been considered. The order Annexure P-4 further considers that details of recovery, recovery memos and the material and evidence collected during the course of investigation. It has, thereafter, been *prima facie* concluded that the act of the petitioner falls within the scope of offences committed under Sections 7 and 13(2) of the Act, whereupon sanction to prosecute the petitioner has been granted.

(27) So as to deal with the judgment cited on behalf of the petitioner in the context of second question in **Mohammed Iqbal Bhatti's case** *(supra)*, suffice it to say that the facts are distinguishable, as noticed in earlier part of the judgment, while dealing with the first question. The judgment, as confirmed by the Hon'ble Supreme Court of India, does not any where hold that review of order cannot be made. Rather, the judgments indicate the conditions under which order denying sanction to prosecute may be reviewed.

(28) The facts of the present case speak otherwise. A perual of the order Annexure P-3 indicates that the authority has only taken into account the defence put forth by the petitioner, although as per the judgment rendered in **Mohammed Iqbal Bhatti's case** *(supra)*, relied on by the petitioner himself, the petitioner was not even required to be heard. In this context, the following has been observed in **Mohammed Iqbal Bhatti's**

case *(supra)*, by this Court :—

> **".....It is correct that the sanction required to be granted under Section 19 of the Act and Section 197 of the Code of Criminal Procedure, is not a quasi judicial order and that opportunity of being heard was not required to be granted to the petitioner."**

(29) Reference to and consideration of the relevant record of investigation is absent. Faced with the situation that the order Annexure P-3 had been passed without consideration of relevant material, rather had been passed on consideration of irrelevant material, application Annexure R-1 was made, while pointing out the relevant aspects of the case required for consideration, whereupon the order (Annexure P-4) has been passed, after due consideration of the material available on the investigation file.

(30) The authority giving sanction is required to, *prima facie* consider the evidence and all attending circumstances before he comes to the conclusion that the prosecution, in the circumstances, be sanctioned or forbidden. He is required to hold an inquiry to satisfy himself as to the truth of facts alleged. An order of sanction, by itself, does not have the effect of a conviction or imposing a penalty causing any injury of any kind on the accused. The accused will get full opportunity to defend himself in the trial court. The trial itself takes place in accordance with the procedure established by law. Grant of sanction is purely an administrative act and affording of opportunity of hearing to the accused is not contemplated at this stage. Despite such being the legal position, the sanctioning authority has gone ahead with hearing the petitioner, who is a suspect in a case under the Act. While taking into account only the defence given by the suspect, order Annexure P-3 had been passed, denying sanction to prosecute, which renders it illegal and without consideration of relevant material. Circumstances emanating, therefore, required the prosecution agency to file application Annexure R-1. On consideration of the relevant material, impugned order Annexure P-4 has been passed. The test laid down has been amply satisfied, when order Annexure P-4 is considered. The order Annexure P-4, on its face, indicates that all relavant material viz. F.I.R., recovery memos, statement of official witnesses, recovery of marked currency notes, which tallied with the numbers mentioned in the memo regarding taking into possession the

currency notes, have been considered. After applying its mind and considering the relevant material, earlier order Annexure P-3 has been reviewed. No fault, under the circumstances, can be found with the impugned order Annexure P-4.

(31) Another aspect needs to be considered in such cases. Offences under Prevention of Corruption Act are serious offences. The Prosecuting Agency has been able to collect incriminating material indicating culpability of the petitioner. The petitioner, being a public servant, is protected and sanction to prosecute is required to be obtained from the sanctioning/ competent authority. If the authority proceeds in an illegal manner by way of referring only to irrelevant material so as to deny sanction to prosecute, will it not cause manifest injustice ? Would an accused not be given undue benefit of the protection ? The procedure cannot be allowed to be abused to give benefit to a person who is suspected of committing offences. Administration of criminal justice requires that offenders face trial before a court of law. Benefit of protection cannot be allowed to an offender by way of following an illegal procedure, as had been done in this case by way of passing order Annexure P-3. Impugned order Annexure P-4 has been passed while considering the relevant aspects of the case and in view of the above discussion also, it calls for no interference.

(32) So far as reference to Annexure P-2 is concerned, it is de hors the issue of grant or refusal to grant sanction to prosecute. Only the report of investigating agency and material available thereon is relevant. Annexure P-2 is an order that seems to have been passed in some departmental inquiry, therefore, cannot be relied upon to say that on its basis, no case for grant of sanction to prosecute is made out.

(33) Considering the above, on the second question, I hold that the facts and circumstances of the case warranted the review of order Annexure P-3, I am of the considered opinion that Annexure P-4 is an order that is legally tenable and calls for no interference.

(34) The petition is, accordingly, dismissed with no order as to costs.

R.N.R.

Before Augustine George Masih, J.

GURMEET KAUR.—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER.—*Respondents*

Crl. M. No. 27561/M of 2008

10th August, 2009

Code of Criminal Procedure, 1973—S. 319—Trial Court ordering to summon petitioner to face trial along with other co-accused—Mere existence of prima facie case against accused does not fulfil requirement of higher standard set up for purpose of invoking jurisdiction u/s 319 Cr.P.C.-Test of prima facie case to proceed against accused may be sufficient for taking cognizance of offence at stage of framing of charge in terms of S. 227 and for summoning person who may have been kept in Column No. 2 of the Challan—Merely because accused have been named in F.I.R., in statement u/s 161 Cr. P.C. and thereafter before trial Court by prosecution witness and some involvement in commission of offence is shown, would not give jurisdiction to Court to invoke its powers u/s 319 Cr. P.C.—Material brought before Court must be of such a nature as would satisfy Court that it would reasonably lead to conviction of person sought to be summoned—No satisfaction recorded by trial Court justifying exercise of powers u/s 319 Cr. P.C. invoked by Court—Order passed by trial Court not sustainable and deserves to be quashed.

Held, that a perusal of the order dated 4th June, 2008 passed by the Chief Judicial Magistrate, Fatehgarh Sahib does not fulil the requirement of exercise of extraordinary powers conferred on the Court, which is required to be used very sparingly under Section 319 Cr. P.C. Mere existence of *prima facie* case against the accused does not fulfil the requirement of higher standard set up for the purpose of invoking the jurisdiction under Section 319 Cr. P.C. by the trial Court. The test of prima facie case to proceed against the accused may by sufficient for taking cognizance of the offence at the stage of framing of charge in terms of