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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.6636 OF 2024

Chanda Kochhar .. Petitioner

Versus

Central Bureau of Investigation and Anr. .. Respondents

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- Mr. Abad Ponda, Senior Advocate a/w. Mr. Rohan Dakshini, Ms. Pooja Kothari, Mr. Nimit Bhimjiyani, Mr. Aditya Upadhyay and Mr. Parth Khubalkar, Advocates M/s. Rashmikant and Partners for Petitioner.
- Mr. Anil Singh, Senior Advocate a/w. Mr. Kuldeep Patil, Mr. Adarsh Vyas, Mr. Digvijay S. Kachare, Mr. Krishnakant Deshmukh, Mr. Sumitkumar Nimbalkar, Mr. Anay Joshi, Ms. Saili Dhuru, Ms. Saniki Joshi and Ms. Yukta Sawant, Advocates a/w. Limosine (DLA, CBI) for Respondent No.1.
- Ms. Rajeshree V. Newton, APP for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 18, 2026.

JUDGMENT:

1. Heard Mr. Ponda, learned Senior Advocate for Petitioner; Mr. Singh, learned ASG for Respondent No.1 and Ms. Newton, learned APP for Respondent No.2 – State.

2. Present Petition under Article 2226 of the Constitution of India and Section 482 of Code of Criminal Procedure, 1973 (for short "**CrPC**") is filed to quash and set aside sanction order dated 15.05.2023 granted under Section 19 of the Prevention of Corruption Act, 1988 (for short "**PC Act**") to prosecute Petitioner in CBI Special Case No.874 of 2023 titled as CBI Case No. RCBD1/2019/E/0001/BSFB, New Delhi

filed by Central Bureau of Investigation (for short "**CBI**").

3. Briefly stated, Petitioner was Managing Director of ICICI bank. On 08.12.2017, Respondent No.1 instituted Preliminary Enquiry No. PEBD1/2017/E0001 against Petitioner in respect of illegal gratification received indirectly by her on account of the Bank having sanctioned loan to Videocon Group of Companies. On 22.01.2019, Respondent No.1 registered FIR No. RC-BD12019E0001 – CBI/BS&FC/Delhi under the provisions of Sections 420 and 120B of Indian Penal Code, 1860 and Sections 7, 13(1)(d) and 13(2) of PC Act against Petitioner.

4. In September 2020, husband of Petitioner was arrested by Directorate of Enforcement in proceedings initiated under the Prevention of Money Laundering Act, 1988 (for short "**PMLA**") and his assets were attached on the basis of predicate offences in the present FIR registered by Respondent No.1. On 12.02.2021, Petitioner was arrested under provisions of PMLA and was enlarged on bail by Special Court. On 25.03.2021 this Court granted bail to husband of Petitioner observing that there was no loss caused to ICICI Bank on account of Petitioner's actions. On 06.07.2022, Petitioner received summons from Respondent No.1. On 15.07.2022, Petitioner received notice directing her to appear before Respondent No.1 on 19.12.2022. Petitioner appeared before Respondent No.1 on 23.12.2022 and she

was arrested on the ground of non – cooperation. Being aggrieved, Petitioner filed Writ Petition No.378 of 2023 seeking quashing of FIR and immediate release from custody of Respondent No.1. This Court passed order dated 09.01.2023 directing Petitioner and her husband to be released on interim bail. On 27.03.2023 Respondent No.1 addressed letter to ICICI Bank requesting grant of sanction under Section 19 of PC Act to prosecute Petitioner for offences under PC Act which was granted on 15.05.2023. On 28.03.2023 Chargesheet was filed against Petitioner. Petitioner filed present Petition to challenge the sanction dated 15.05.2023 on various grounds which are reiterated hereunder while noting the submissions of her Advocate.

5. Mr. Ponda, learned Senior Advocate appearing for Petitioner would submit that sanction dated 15.05.2023 under Section 19 of PC Act was granted pursuant to meeting of the Board of Directors of ICICI Bank, however the Board of Directors is not the Competent Authority to grant such statutory sanction to prosecute the Petitioner. He would submit that Respondent No.1 addressed letter seeking grant of sanction to the Board of Directors which is not the Competent Authority to grant sanction for prosecution under Section 19 of the PC Act. He would submit that Competent Authority as contemplated under Section 19 of PC Act in the Petitioner's case for grant of Sanction will be the Reserve Bank of India under Section 36AA of the Banking Regulation Act, 1949 (for short "**BR Act**"). He would submit that Board

of Directors of ICICI Bank failed to allude and identify the provision of law which empowered them to issue sanction to prosecute Petitioner under Section 19 of the PC Act.

5.1. He would submit that Petitioner was Managing Director and Chief Executive Officer of ICICI Bank and prosecuted for conspiring with other co-accused persons in sanctioning Term Loan of Rs.300 crores to Videocon Group. He would submit that Section 36AA of BR Act empowers the Reserve Bank of India to remove a Chairman, Director, Chief Executive Officer or other officer or employee of a banking company and therefore the Competent Authority to remove Petitioner is the Reserve Bank of India and not the Board of Directors of ICICI Bank. He would refer to and rely upon a decision of the Supreme Court in the case of ***M. Gopalakrishnan Vs. State*** [1] in support of this submission.

5.2. He would submit that Section 36AC of the BR Act overrides the Companies Act and any other law for the time being in force or ICICI Bank's own termination policy and Section 35B(1)(b) of BR Act comes into play, which states that the Reserve Bank of India must compulsorily approve appointments, re – appointments and terminations, therefore the Board of Directors of ICICI Bank is not the sole Competent Authority to remove the Petitioner and instead it is the sole prerogative of the Reserve Bank of India who is the sole

1 (2009) 3 SCC 681

Competent Authority to grant sanction under Section 19 of PC Act to prosecute the Petitioner. He would refer to and rely upon a decision passed by the Constitution Bench of the Supreme Court in the case of ***K. Veeraswami Vs. Union of India*** [2] in support of this submission. He would submit that Respondent No.1 themselves addressed letter dated 05.02.2019 to Reserve Bank of India seeking approval for Petitioner's termination as Managing Director and Chief Executive Officer of ICICI Bank and therefore the Board of Directors could never have granted sanction under Section 19 of PC Act. He would submit that sanction granted by authority not competent to grant such sanction is a jurisdictional issue required to be examined under Writ jurisdiction of this Court. He would refer to and rely upon a decision of this Court in the case of ***Ashok Shankarrao Chavan Vs. State of Maharashtra*** [3] in support of this submission.

5.3. He would submit that the impugned sanction is illegal and non – est since it fails to specify the offences for which it is granted. He would submit that sanction under Section 19 of PC Act must pertain to offences committed under PC Act and there can be no sanction without specifying the offences committed. He would refer to and rely upon a decision of this Court in the case of ***Gahininath Bhimrao Patekar Vs. State of Maharashtra*** [4] in support of this submission.

2 1991 SCC (3) 655
3 2017 SCC OnLine Bom 9434
4 1987 SCC OnLine Bom 443

5.4. He would submit that sanction and the Board Resolution merely attribute certain irregularities to Petitioner and the same cannot amount to offences committed nor does it amount to fulfillment of the ingredients of offences contemplated under PC Act. He would submit that sanction as well as the Board Resolution state that Petitioner received "undue advantage", however this term only came to be incorporated in the PC Act after the 2018 amendment and the alleged offences took place much before coming into force of the 2018 amendment, therefore sanction cannot be granted for offences that did not exist at the time of its commission and any contrary interpretation thereto would violate the mandate of Article 20(3) of the Constitution of India.

5.5. He would submit that Respondent No.1 failed to forward all material collected during investigation to the Board of Directors of ICICI Bank since the material may even tilt the scales of justice in favour of Petitioner. He would refer to and rely upon a decision of the Supreme Court in the case of ***State of Tamil Nadu Vs. M.M. Rajendran***[5] and ***Central Bureau of Investigation Vs. Ashok Kumar Aggarwal*** [6] in support of this submission.

5.6. He would submit that Respondent No.1 recorded witness

5 (1998) 9 SCC 268
6 (2014) 14 SCC 295

statements and filed Chargesheet on 28.03.2023 on the basis of which sanction was granted, however Respondent No.1 filed Supplementary Chargesheet on 04.12.2023, perusal of which show that certain witnesses statements were infact recorded before grant of sanction, therefore Respondent No.1 concealed and suppressed the same from the Authority by appending selective information in the first chargesheet. He would submit that the list of "unrelied upon documents" furnished by Respondent No.1 in the Trial Court on 13.06.2024 would show that crucial documents pertaining to ownership of Flat No.45 situated at CCI Chambers, Dinshaw Waccha Road, Mumbai – 400020 show that the said flat stood in the name of Petitioner's husband since 1996 till date, whereas it is Respondent No.1's case that the said flat was owned by Videocon Group and was transferred to Petitioner's husband as illegal gratification which is *prima facie* preposterous on the face of record. He would submit that these documents and many more such documents produced by Respondent No.1 in the Trial Court were not forwarded to the Authority neither does the Authority acknowledge receipt of the same.

5.7. He would submit that though the Authority received certain material from Respondent No.1, whether the entirety of that material was put before the Board of Directors of ICICI Bank for consideration and grant of sanction for prosecution is doubtful since the Minutes of Meeting of the Board of Directors only record that copy of letter

addressed by Respondent No.1 was circulated amongst the Board of Directors. He would submit that Competent Authority cannot grant sanction merely on the basis of Respondent No.1's Report as it is an merely an opinion of the Investigating Officer. He would refer to and rely upon three decisions of the Supreme Court in the cases of ***Rajesh Yadav Vs. State of Uttar Pradesh*** [7] ; ***Dablu Kujur Vs. State of Jharkhand*** [8] and ***State of Rajasthan Vs. Dev Kant Meena*** [9] in support of this submission.

5.8. He would submit that Competent Authority must apply its own independent mind and be satisfied that a case for grant of sanction is made out and if its discretion is affected by extraneous consideration or under compulsion or coercion to grant sanction. He would argue that if Authority does not apply its mind and grants sanction merely for the asking which has happened in the present case, the sanction so granted is bad in law and ought to be set aside. He would submit that the sanction must *ex – facie* disclose that Competent Authority has considered the material placed before it for grant of sanction since it is a very drastic action. He would refer to and rely upon the following decisions of the Supreme Court in the cases of ***Mansukhlal Vithaldas Chauhan Vs. State of Gujrat*** [10] and ***Central Bureau of Investigation Vs. Ashok Kumar Aggarwal*** [11] in support of this

7 (2022) 12 SCC 200
8 2024 SCC OnLine SC 269
9 2026 SCC OnLine SC 1401
10 (1997) 7 SCC 622
11 2014 14 SCC 295

submission. He would submit that Competent Authority i.e. Board of Directors has in the present case not expressed any *prima facie* finding on the basis of material forwarded by Respondent No.1, rather the impugned sanction is granted merely because Respondent No.1 levied allegations of irregularities and receipt of undue advantage against Petitioner in her capacity as Managing Director and Chief Executive Officer of ICICI Bank which is simplicitor accepted rather obliged by the Board. He would refer to and rely upon a decision of the Supreme Court in the case of ***State of Karnataka Vs. Ameerjan***[12] in support of this submission. Both the learned Senior Advocates have taken me through this decision to which I will advert to later in this Judgment.

5.9. He would submit that sanction as well as Board Resolution in the instant case both state that there was no wrongful loss caused to the Bank on account of the 6 loans advanced to Videocon Group and due process of ICICI Bank's policy, rules and regulations were duly followed, while it is Respondent No.1's case that ICICI Bank suffered heavy loss as a result of the loans advanced, hence there is a direct contradiction in the stand taken by the Bank and Respondent No.1. He would submit that Petitioner was a member of the committees along with other functionaries and Board members responsible for sanctioning of only two out of the six loans advanced to Videocon Group and the entire decision making and loan sanctioning process

12 (2007) 11 SCC 273

was structured in a way that Petitioner could never have unilaterally sanctioned any such loan without approval of other members of the committees, yet Members of the Committees are not indicted in the present case at all. He would submit that all six loans disbursed to Videocon Group were duly repaid back to ICICI Bank in 2012 well before registration of Respondent No.1's FIR and this is a strong circumstance which needs consideration. He would submit that the Adjudicating Authority under PMLA, this Court and Supreme Court have all confirmed the finding that Petitioner's husband was not involved in any money laundering and that the Rs.64 crore allegedly bribe paid to Petitioner was not linked in any way to the Term Loan of Rs.300 crore sanctioned to Videocon Group.

5.10. He would submit that present case falls within the Writ jurisdiction of this Court since sanction under Section 19 of PC Act must be granted by the Competent Authority for prosecution to commence against the accused person. He would submit that the question of alternative remedy as argued by the prosecution does not arise and cannot preclude this Court from entertaining the present Petition. He would refer to and rely upon a decision of the Supreme Court in the case of ***Maharashtra Chess Association Vs. Union of India***[13] in support of this submission and submit that the question as to validity of sanction of the Competent Authority if raised, then the

13 (2020) 13 SCC 285

Court charged with trying the offence must deal with this question at the threshold. He would submit that absence of a valid Sanction under Section 19(1) of PC Act goes to the root of prosecution and prevents Special Court from taking cognizance of offences against the Petitioner.

5.11. Mr. Ponda has also referred to and relied upon the statutory scheme of the BR Act, 1949 and more specifically Sections 35-B(1)(b), 36-AA(1), 36-AC and a plethora of decisions of the Supreme Court in support of his factual and legal submissions that the Board of Directors of ICICI Bank is not the authority competent to grant sanction in respect of Petitioner under Section 19 of PC Act, that the impugned sanction by the Board of Directors is no sanction in the eyes of law, that the impugned sanction is granted without considering the material provided by CBI to the Board of Directors, and that it *exfacie* discloses non-application of mind. Both the learned Senior Advocates have referred to and relied upon the aforesaid statutory provisions in great detail in the course of their respective submissions.

6. ***PER CONTRA*** Mr. Singh, learned ASG appearing for Respondent No.1 - CBI would submit that present Petition is not maintainable before this Court and on this ground itself the Petition ought to be dismissed. He would submit that Petitioner was Managing Director of ICICI Bank and arraigned as Accused No.4 in Special Case

No.874 of 2023 pending before Special CBI Court, Mumbai for offences under the Indian Penal Code and PC Act.

6.1. He would submit that between June 2009 and October 2011 Petitioner in her capacity as Managing Director of ICICI Bank, sanctioned Rupee Term Loans amounting to Rs.1875 crores to Videocon Group of Companies. He would submit that she sanctioned these loans while having knowledge that her husband had business dealings with Mr. Venugopal Dhoot, Managing Director of Videocon Group. He would submit that Petitioner failed to comply with provisions of Chapter 5.2 of the Credit Policy of ICICI Bank which state that the Chairman and / or Managing Director and / or any Director who is directly or indirectly concerned or interested in any proposal should disclose the nature of his interest to the Board and remain absent during discussions on such proposal since she was one of the member of the committee that sanctioned two out of the aforesaid six loans to Videocon Group of Companies. He would submit that after a loan of Rs.300 crores was sanctioned in favour of M/s. Videocon International Electronics Ltd., Petitioner received an amount of Rs.64 crores through a company i.e. M/s. NuPower Renewable Ltd. where her husband was a director. He would submit that Petitioner at that time was residing in the flat owned by Videocon Group without consideration and after the aforesaid loans were sanctioned, the said flat which was valued at Rs.5.25 crore in 1996 was transferred to the

family trust of Petitioner's husband for a meagre amount of Rs.11 lakhs as a *quid pro quo.*

6.2. He would submit that CBI prepared a detailed report including statements of witnesses and placed it before the Board of Directors of ICICI Bank for seeking grant of Sanction under Section 19(3) of PC Act. He would submit that due to Petitioner's actions, wrongful loss of Rs.1033.39 crores was caused to ICICI Bank and after considering the material on record, Board of Directors of ICICI Bank held a Board Meeting on 22.04.2023 and accorded sanction to prosecute the Petitioner. He would submit that the Special Court took cognizance of offences against Petitioner and other accused persons and Supplementary Chargesheet dated 04.12.2023 was filed. He would submit that loans disbursed to Videocon Group were not repaid out of their own funds, however they were paid out of additional loans availed from ICICI Bank and these additional loans are still outstanding to the tune of Rs.1033.39 crores, hence causing wrongful loss to ICICI Bank.

6.3. He would vehemently argue that Board of Directors is the Competent Authority to grant Sanction to prosecute the Petitioner. He would submit that the Board of Directors of ICICI Bank were briefed about Petitioner's role and findings resulting from investigation conducted by CBI in present offence after which a summary of findings

was circulated to the Board. He would submit that the Board of Directors of ICICI Bank consulted an eminent jurist whose opinion was also circulated amongst the Board of Directors and only thereafter the Board found substance in the allegations of bribery and corruption against Petitioner which resulted in grant of sanction.

6.4. He would submit that sanction under Section 17A of PC Act was granted by ICICI Bank and that the language of Sections 17A and 19 of PC Act is identical to the extent of which they identify the Competent authority to remove the public servant from office. He would submit that till date, Petitioner failed to challenge grant of sanction under Section 17A of PC Act.

6.5. He would submit that Petitioner filed Additional Affidavit dated 04.09.2024 wherein additional grounds outside those raised in the present Petition are argued afresh which is contrary to law. He would submit that these grounds ought to have been pleaded and substantiated in the Writ Petition in the first instance. He would submit that filing of Additional Affidavit cannot be used to fill the lacunae in the grounds raised in the Writ Petition. He would refer to and rely upon a decision of the Supreme Court in the case of ***Bharat Singh Vs. State of Haryana*** [14] in support of this submission wherein it is held that Writ Petitioner must plead and prove the facts by evidence which must appear from the Writ Petition and if Petitioner fails in this duty then

14 (1988) 4 SCC 534

Court cannot entertain the Petition. He would submit that the Affidavit in Rejoinder filed by Petitioner on 04.09.2024 cannot be considered as pleading to improve the case of Petitioner and can at best be used to support the pleadings of the Petitioner. He would refer to and rely upon a decision of this Court in the case of ***Proctor and Gamble India Limited Vs. Endolabs Limited*** [15] in support of this submission. He would submit that Petitioner has in the Petition admitted and accepted that the sanction Order is issued by the Competent Authority and therefore she cannot now take a contrary stand in her Additional Affidavit dated 04.09.2024.

6.6. He would submit that there is a clear distinction between absence of sanction and invalid sanction due to non–application of mind and if such invalidity is challenged it can only be decided at trial after leading evidence and not at the threshold as argued by the Petitioner. He would submit that grant of sanction under Section 19(1) of PC Act is a matter of procedure and does not go to the root of the matter. He would submit that it is trite law that notwithstanding the allegation that Competent Authority did not grant sanction, the crux of such prosecution is to determine if there was a failure of justice.

6.7. He would submit that evidence led at trial would show the nature and details of documents placed before the Competent Authority which included deliberations of the Competent Authority

15 2000 (3) Bom CR 136

and evidence of the officer who placed such material on record for grant of sanction as well as Petitioner's evidence to show whether other relevant material was placed before the Competent Authority. He would submit that adjudication on the validity of sanction is to be determined at trial only where parties may adduce evidence to prove or disprove that the authority who granted sanction was competent to do so or otherwise. He would refer to and rely upon a decision of the Supreme Court in the case of ***Dinesh Kumar Vs. Chairman, Airport Authority of India***[16] in support of this submission. He would submit that the issue as to whether Board of Directors of ICICI Bank are the Competent Authority to grant sanction is not purely a question of law and to determine this issue, evidence, documentary and oral will have to be led at trial and therefore it cannot be decided at the threshold in proceedings for quashing of sanction as such determination would be contrary to law and prejudicial to both parties. He would refer to and rely upon following decisions of the Supreme Court in the cases of ***Parkash Singh Badal Vs. State of Punjab***[17] and State of ***Madhya Pradesh Vs. Virendra Kumar Tripathi*** [18] in support of his above submission.

6.8. He would submit that Petitioner held office of Managing

16 (2012) 1 SCC 532
17 (2007) 1 SCC 1
18 (2009) 15 SCC 533

Director and hence the power to appoint and remove the Managing Director vests with the Board of Directors as per Clause 151(a) of Articles of Association of ICICI Bank. He would submit that Managing Director is defined under Section 5(h) of BR Act and it states that Managing Director is elected by Board of Directors by virtue of its Memorandum of Association and / or Articles of Association. He would submit that Section 35B(1)(b) of BR Act is concerned with termination and not removal of Managing Director. He would submit that a conjoint reading of the above unassailably concludes that Board of Directors of ICICI Bank was vested with the power to grant sanction for prosecution and removal of Petitioner as Managing Director.

6.9. He would submit that there is no material placed on record to show that there is any defect, error, omission or any irregularity in grant of sanction which may include competency of the authority to grant sanction and it cannot be fatal unless it results in a failure of justice and this can only be raised at trial by leading evidence. He would submit that in order to decide validity of sanction order, it is necessary to test whether Petitioner was prejudiced by grant of sanction which is essentially a question of fact and therefore it needs to be decided at trial. He would submit that since Trial Court has taken cognizance against Petitioner, this Court ought to leave the question of validity of sanction open for consideration by Trial Court and Petitioner cannot question validity of sanction before this Court. He

would refer to and rely upon the decisions of the Supreme Court in the cases of ***CBI Vs. Ashok Kumar Aggarwal*** [19] and ***Parkash Singh Badal Vs. State of Punjab*** *(supra)* in support of his aforesaid submission.

6.10. He would submit that Resolution dated 22.04.2023 passed by the Board of Directors clearly states that on the basis of allegations of bribery and corruption, sanction under Section 19 of PC Act is granted. He would submit that sanction order cannot be vitiated on the mere ground that offences under which Petitioner is charged with are not mentioned therein or if there is any irregularity in the sanction unless it has resulted in failure of justice. He would refer to any rely upon a decision of the Supreme Court in the case of ***Fuleshwar Gope Vs. Union of India***[20] in support of this submission.

6.11. He would submit that Petitioner's reliance on PMLA proceedings against her is completely misplaced since PMLA proceedings were in respect of receipt of proceeds of crime and present proceedings pertain to charge of corruption and bribery. He would submit that Petitioner relies on a Press Note dated 28.03.2018 issued by ICICI Bank justifying sanction of loans to Videocon Group, however sanction under Section 19 of PC Act is granted subsequently and only after perusal of the material gathered against the Petitioner. He would submit that at the time of issuance of Press Note, Petitioner

19 (2014) 14 SCC 295
20 2024 SCC OnLine SC 2610

was still the Managing Director of ICICI Bank and the Board of Directors did not possess any material to indict the Petitioner at that time.

6.12. In support of CBI's case that question of validity of sanction is to be dealt with at the time of trial and it cannot be decided summarily at the threshold, Mr. Singh has taken me through the following decisions / citations :-(i) ***SKG Pulp and Paper Mills Pvt. Ltd. Vs. Assistant Provident Fund Commissioner*** [21]***;*** (ii) ***State of Chhattisgarh Vs. Aman Kumar Singh*** [22]***;*** (iii)***State of Maharashtra Vs. Mahesh G. Jain*** [23] ***;*** *(iv)* ***Ashok Tshering Bhutia Vs. State of Assam*** [24]**;** (v)***State of Bihar Vs. Rajmangal Ram*** [25] **;**(vi)***CBI Vs. Pramila Virendra Kumar Agarwal*** [26]**;** (vii) ***State of Karnataka Vs. S. Subbegowda*** [27]**;** (viii) ***CBI Vs. Jagat Ram***[28]**;** (ix) ***CBI Vs. G. Easwaran***[29]**;** (x) ***Romesh Mirakhpur Vs. State of Maharashtra***[30] **;** (xi) ***Sushil Kumar Vs. CBI*** [31]**;** (xii) ***Padmakar Narhar Deshpande Vs. CBI***[32] **;**(xiii) ***Pradeep Singh Jadon Vs. State of Madhya Pradesh***[33] **;**(xiv) ***S.S. Agnihotri Vs. State of MP***[34] **;** (xv) ***Durga Dutt Tripathi Vs. State of Uttar Pradesh***[35] **;** (xvi) ***Rajeev Kumar Singh Vs.***

21 2021 SCC OnLine Cal 436
22 (2023) 6 SCC 559
23 (2013) 8 SCC 119
24 (2011) 4 SCC 402
25 (2014) 11 SCC 388
26 (2020) 17 SCC 664
27 (2023) 17 SCC 699
28 2024 SCC OnLine 3675
29 2025 SCC OnLine SC 643
30 2017 SCC OnLine Bom 9552
31 Criminal Writ Petition No.4050 of 2021 decided on 09.06.2023
32 2024 SCC OnLine Bom 2073
33 2015 SCC OnLine MP 4930
34 I.L.R [2016] MP 2396
35 2021 SCC OnLine All 1590

State of Uttar Pradesh[36] ;(xvii) *Magonjoy Thaosen Vs. State of Assam*[37]; (xviii) *CBI Vs. Ashok Kumar Raheja*[38]; (xix) *T.K. Lathika Vs. Seth Karsandas Jamnadas*[39] ; (xx) *Securities & Exchange Board of India Vs. Manglore Stock Exchange*[40]; (xxi) *Chitra Ramkrishna Vs. Union of India and Anr.*[41]; (xxii) *Paul Varghese Vs. State of Kerala & Anr.* ;(xxiii) *Director Central Bureau of Investigation and Anr. Vs. Ashok Kumar Aswal and Anr.*[42]

7. I have heard the learned Advocates appearing for the respective parties and with their able assistance perused the record of the case. Submissions made by learned Advocates at the bar have received due consideration of the Court.

8. Petition seeks to challenge grant of sanction for prosecution of Petitioner under Section 19 of PC Act for allegedly accepting illegal and improper consideration in her capacity as Managing Director of ICICI Bank for grant of Rupee Term Loans to Videocon Group of Companies. The questions formulated for adjudication in the present Petition are (i) Whether this Court is possessed with jurisdiction to adjudicate the present matter? ;(ii) Whether the Board of Directors of ICICI Bank were possessed with power to grant sanction under Section 19(1) of PC Act to prosecute the Petitioner? and (iii) Whether the

36 2021 SCC OnLine All 58
37 2025 SCC OnLine Gau 2464
38 2026 SCC OnLine Del 423
39 (1999) 6 SCC 632
40 (2005) 10 SCC 274
41 2026 SCC OnLine Del 5031
42 (2020) 17 SCC 699

impugned sanction granted by the Board of Directors of ICICI Bank to prosecute Petitioner prejudiced her rights in law?

9. In order to adjudicate the present *lis*, it is necessary to refer to and interpret the wordings of Section 19 of PC Act which provide sanction for prosecution to be issued against the public servant sought to be prosecuted.

> *"**19. Previous sanction necessary for prosecution**.—(1) No court shall take cognizance of an offence punishable under [Sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013],—*
>
> > *(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence 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, or as the case may be, was at the time of commission of the alleged offence 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.*
>
> *[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—*
>
> > *(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and*
> >
> > *(ii) the court has not dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973 (2 of 1974)6 and directed the complainant to obtain the*

sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression "public servant" includes such person—

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(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)7,—

(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."

10. From the above it is seen that, the provisions of Section 19(3) and (4) of PC Act do not bar jurisdiction of this Court since Section 19(3) of PC Act only applies itself to the Court which sits in appeal, confirmation or revision of the matter. In the present case, Petitioner has invoked the inherent power under Writ Jurisdiction of this Court under Section 482 of Code of Criminal Procedure, 1973 to seek quashing of the impugned sanction granted by the Board of Directors of ICICI Bank to prosecute the Petitioner. This Court is not sitting in appeal, confirmation or revision of any judgment passed by

the Special Court, instead this Court is called upon to adjudicate whether the impugned sanction granted by the Board of Directors of the Bank is valid and deserves to be quashed and set aside in accordance with law.

11. It is seen that Section 19(4) directs that absence, errors, omissions and irregularities in grant of sanction are to be taken up in the first instance. In the present case, impugned sanction was granted on 15.05.2023, Special Court took cognizance of the Chargesheet on 12.07.2023 and present Petition is filed on 04.12.2023. Trial is at the stage of framing of charge.

12. Therefore, it is seen that Petitioner has approached this Court four months after cognizance was taken by Special Court well before framing of charge or at the time of evidence, hence fulfilling the condition of “at any earlier stage in the proceedings” as contemplated by Section 19(4) of PC Act. A careful reading of Section 19(4) of PC Act would show that Petitioner seeks to take assistance of Section 19(4)(a) of PC Act by pleading that the Competent Authority which granted sanction, i.e. Board of Directors of ICICI Bank, did not possess the power in law and was incompetent to do so leading to grave failure of justice which severely prejudiced her rights in law. Mr. Ponda would submit that Petitioner has pleaded this ground in her Additional Affidavit dated 04.09.2024 which was filed with the leave of this

Court.

13. Mr. Singh resists this submission by referring to the decisions of the Supreme Court and Calcutta High Court in the cases of ***Proctor and Gamble India Limited*** *(supra)* and ***SKG Pulp and Paper Mills Pvt. Ltd.*** *(supra)* to contend that Petitioner cannot improve her case by filing the Additional Affidavit especially when there is no such ground pleaded by her in the Petition. I have perused the Petition and the exhibits appended thereto. I cannot countenance the submissions of Mr. Singh, learned ASG since perusal of the decision passed in the case of ***Proctor and Gamble*** *(supra)* does not discuss a factual scenario where parties question the jurisdiction of the High Court in cases of grant of sanction under Section 19 of PC Act and perusal of the decision in the case of ***SKG Pulp and Paper Mills*** *(supra)* also cannot come to the assistance of Respondent No.1's case either since it is seen that Petitioner in the instant case pleads nullity of sanction in Ground "K" of the Petition. The impugned sanction granted by the Board of Directors of ICICI Bank is appended to the Petition at Exhibit "A", page No. 34. Therefore, both above decisions referred to by Mr. Singh do not come to the aid of Respondent No.1 as they stand on a completely different factual footing from that in the present case. In furtherance to the above, Additional Affidavit dated 04.09.2024 in the present case was filed by Petitioner with the leave of this Court. Coupling these facts with the law laid down by the decisions of the Supreme Court

and the provisions of the PC Act, Petitioner is not precluded from raising the question of validity in grant of sanction under Section 19(4) of PC Act. Therefore this Court is possessed with the jurisdiction to decide the present issue and I answer this question in the affirmative at the threshold itself.

14. Further perusal of Section 19(1)(c) of PC Act reproduced above, would show that sanction for prosecution must be granted to prosecute the public servant alleged to have committed offences under PC Act and this sanction must be granted by the authority Competent to remove him (public servant) from office. It is seen that both the above requirements are procedural conditions precedent to be met before the Special Court takes cognizance of the offence against the accused person.

15. In order to determine whether the Board of Directors was the Competent Authority to grant sanction, it is trite to consider the fact that Petitioner was Managing Director of ICICI Bank, a banking company, which is governed under the provisions of BR Act and Companies Act, 1956. However since ICICI Bank is registered as a "Private Sector Bank" in the Official Directory maintained by Reserve Bank of India, it is necessary to allude to Sections 5(h), 5A, 35B(1), 36AA, 36AC of the BR Act vis-a-vis Section 2(54), 169(1) and 203 of Companies Act, 2013 and Clause 151(a) of Articles of Association of

ICICI Bank to understand their application to Petitioner's case. The above provisions are reproduced hereinbelow for ease of reference:-

Applicable provisions of the BR Act as argued by Petitioner:-

> ***5. Interpretation-***
>
> *[(h) "managing director", in relation to a banking company, means a director who, by virtue of an agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called:]*
>
> ***5-A. Act to override memorandum, articles, etc.**— Save as otherwise expressly provided in this Act,—*
>
> *(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies (Amendment) Act, 1959; and*
>
> *(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.]*
>
> ***35-B. Amendments of provisions relating to appointments of managing directors, etc., to be subject to previous approval of the Reserve Bank.—***
>
> *(1) In the case of a banking company—*
>
> *(a) no amendment of any provision relating to [the maximum permissible number of directors or] the [appointment or reappointment or termination of appointment or remuneration of a chairman, a] [managing director or any other director, whole-time or otherwise] or of a manager or a chief executive officer by whatever name called, whether that provision be contained in the company's memorandum or articles of association, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors shall have effect unless approved by the Reserve Bank;*

[(b) no appointment or reappointment or termination of appointment of a chairman, a managing or whole-time director, manager or chief executive officer by whatever name called, shall have effect unless such appointment, reappointment or termination of appointment is made with the previous approval of the Reserve Bank.]

[Explanation.— For the purposes of this sub-section, any provision conferring any benefit or providing any amenity or perquisite, in whatever form, whether during or after the termination of the term of office [of the chairman or the manager] or the chief executive officer by whatever name called or the managing director, or any other director, whole-time or otherwise, shall be deemed to be a provision relating to his remuneration.

(2) Nothing contained in Sections [268 and 269, the proviso to sub-section (3) of Section 309, Sections 310 and 311, the proviso to Section 387, and Section 388] (in so far as Section 388 makes the [provisions of Sections 269, 310] and 311 apply in relation to the manager of a company) of the Companies Act, 1956 (1 of 1956), shall [apply to any matter in respect of which the approval of the Reserve Bank has to be obtained under sub-section (1)].

[(2-A) Nothing contained in Section 198 of the Companies Act, 1956 (1 of 1956) shall apply to a banking company and the provisions of sub-section (1) of Section 309 and of Section 387 of that Act shall, insofar as they are applicable to a banking company, have effect as if no reference had been made in the said provisions to Section 198 of that Act.]

(3) No act done by a person [as chairman or a managing or whole-time director] or a director not liable to retire by rotation or a manager or a chief executive officer by whatever name called, shall be deemed to be invalid on the ground that it is subsequently discovered that his [appointment or reappointment] had not taken effect by reason of any of the provisions of this Act : but nothing in this sub-section shall be construed as rendering valid any act done by such person after his [appointment or reappointment] has been shown to the banking company not to have had effect.]

***36-AA. Power of Reserve Bank to remove managerial and other persons from office**.— (1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a banking company being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of any banking company it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, [any chairman, director,] chief executive*

officer (by whatever name called) or other officer or employee of the banking company.

(2) No order under sub-section (1) shall be made [unless the chairman, director] or chief executive officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Reserve Bank against the proposed order :

Provided that if, in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors, the Reserve Bank may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that, pending the consideration of the representation aforesaid, if any, [the chairman or, as the case may be, director or chief executive officer] or other officer or employee, shall not, with effect from the date of such order—

(a) [act as such chairman or director] or chief executive officer or other officer or employee of the banking company;

(b) in any way, whether directly or indirectly, be concerned with, or take part in the management of, the banking company.

(3) (a) Any person against whom an order of removal has been made under sub- section (1) may, within thirty days from the date of communication to him of the order, prefer an appeal to the Central Government.

b) The decision of the Central Government on such appeal, and subject thereto, the order made by the Reserve Bank under sub-section (1) shall be final and shall not be called into question in any court.

(4) Where any order is made in respect of 6 [a chairman, director] or chief executive officer or other officer or employee of a banking company under sub-section (1), he shall cease to be 7 [a chairman or, as the case may be, a director], chief executive officer or other officer or employee of the banking company and shall not, in any way, whether directly, or indirectly be concerned with, or take part in the management of, any banking company for such period not exceeding five years as may be specified in the order.

(5) If any person in respect of whom an order is made by the Reserve Bank under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

(6) Where an order under sub-section (1) has been made, the

Reserve Bank, may, by order in writing, appoint a suitable person in place of 8 [the chairman or director] or chief executive officer or other officer or employee who has been removed from his office under that sub-section, with effect from such date as may be specified in the order.

(7) Any person appointed as 9 [chairman, director or chief executive officer] or other officer or employee under this section, shall—

(a) hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) not incur any obligation or liability by reason only of his being a 10[chairman, director or chief executive officer] or other officer or employee or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

(8) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the removal of a person from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.

***36-AC. Part II-A to override other laws.**— Any appointment or removal of a director, chief executive officer or other officer or employee in pursuance of Section 36-AA or Section 36-AB shall have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or any other law for the time being in force or in any contract or any other instrument.]*

Applicable provisions of Companies Act, 2013 as argued by CBI:-

2. Definitions. -

(54) "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of

share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

169. Removal of directors.-

(1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

[1][Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:]

[2][Provided further that] nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation."

203. Appointment of key managerial personnel.-

(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—
(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
(ii) company secretary; and
(iii) Chief Financial Officer :

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—
(a) the articles of such a company provide otherwise; or
(b) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

[1][(5)If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.]

Applicable provisions of Articles of Association of ICICI Bank as argued by CBI:-

151(a).- *Subject to the provisions of the said Acts and these presents, the Board of Directors of the Company shall be entitled to appoint from time to time, one or more of the Non-Rotational Directors to act as the Whole time or Executive Chairman and Managing Director or Part time Chairman or Whole Time Chairman(hereinafter referred to as the Executive Chairman) or a Managing Director or Managing Director(s) and/or Whole-time Director or Whole-time Director(s) of the Company (hereinafter referred to as the Managing Director) for such term not exceeding five years at a time as the Board of Directors may think fit to manage the affairs and business of the Company and may from time to time (subject to provisions of any contract between him and the Company) may remove or dismiss him or them from office and appoint any another in his place".*

Both the learned Senior Advocates have laboured on the above legal provisions in support of their respective submissions.

16. From a collective perusal of the aforementioned statutory provisions, it is seen that Section 5A of BR Act gives an overriding effect of the BR Act over the Companies Act, therefore at the outset itself, it is seen that all provisions of the BR Act pertaining to termination of officers from banking companies, override those contained in the Companies Act and therefore alluding to the provisions of the Companies Act with respect to grant of sanction to prosecute the Petitioner as argued by Respondent No. 1 cannot come to the aid of Respondent No.1.

17. The first thrust of Respondent No. 1's argument, as advanced by Mr. Singh is that the Petitioner can be removed from her office by the Board of Directors as per the Memorandum and Articles of Association of the Bank as per the Companies Act, which vests all such powers in the Board of Directors of the said bank. Reliance is placed by him on the definition of *"*managing director*"* in the Companies Act r/w Section 203 thereof. It is argued that RBI is the Banker's Bank and Regulatory Authority and it can exercise such power of removal in 3 contingencies only and this power vested with RBI is in addition to and not in derogation to the powers conferred with any authority under the Companies Act, 2013 as specified in Section 2 of the BR Act. It is

argued that both Acts viz. Companies Act and BR Act authorise appointment of "managing director" by a resolution passed by the Board of Directors. Respondent No. 1 has therefore justified the sanction order passed by the Board of Directors of ICICI Bank as having been correctly passed by them in accordance with law. This argument of Respondent No. 1 is unacceptable and cannot be countenanced since it is contrary to the statutory provision envisaged by Section 5-A of the BR Act. Section 5-A(a) categorically states that the provisions of the BR Act shall (*emphasis supplied*) have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company ... or in any resolution passed by the banking company in general meeting or by its Board of Directors (*emphasis supplied*) ... Section 5-A(b) further provides that any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of the BR Act, become or be void, as the case may be.

18. If I have to accept Mr. Singh's submissions, it will render Section 5-A(a) and 5-A(b) and Section 36-AC of the BR Act completely otiose and redundant.

19. In view of the aforesaid statutory provision, the effect of Section 35-B(1)(b) therefore comes into play in the present case. Section 35-B(1)(b) states that no appointment or reappointment or

termination of appointment of a chairman, a managing or whole-time director, manager or chief executive officer by whatever name called, shall have effect unless such appointment, reappointment or termination of appointment is made without the previous approval of the Reserve Bank (*emphasis supplied*).

20. The aforesaid provision is fortified further by Section 36-AA of the BR Act. Section 36-AA(1) categorically states that when the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a banking company being conducted in a manner detrimental to the interest of the depositors or for securing proper management of any banking company it is necessary to do so, the Reserve Bank may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any Chairman, Director, Chief Executive Officer by whatever name called, or other officer or employee of the banking company. Thus the power of removal vests with RBI and RBI only. Section 36-AA(2) further categorically states that no order under sub-section (1) shall be made unless the Chairman, Director or Chief Executive Officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Reserve Bank against the proposed order.

21. The aforesaid provisions are extremely critical rather

squarely applicable in the facts and circumstances of the present case. They have not been applied / considered by the Board of Directors of ICICI Bank. There is no sanction order passed by the Competent Authority which is the RBI. No reasons are given by the RBI for removal of the Petitioner for that matter for issuing sanction order. Reasons for removal / sanction order are not recorded in writing by the RBI. There is no order of removal passed by the RBI with effect from such date as specified in the order pertaining to the Petitioner and most importantly if at all any such order is required to be passed by the RBI, the valuable statutory right of Petitioner to have been given a reasonable opportunity of making a representation to the RBI against the proposed order has been lost altogether.

22. Section 36-AC categorically states that any appointment or removal of a director, chief executive officer or other officer or employee in pursuance of Section 36-A or Section 36-AB shall have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 or any other law for the time being in force or in any contract or any other instrument. This statutory provision alongwith Section 5-A(a) and 5-A(b) *prima facie* answers the submissions advanced by Respondent No. 1 when it is argued that the Board of Directors of ICICI Bank have power under the Companies Act in addition to the statutory provisions of the BR Act. In the Brief argument note dated 13.10.2026 submitted on behalf of CBI-

Respondent and argued by Mr. Singh the above submission is stated in paragraph No. 8.5 thereof. The same stands to be rejected in view of the aforesaid reasons.

23. The above propositions are further reinforced by Section 36AC of BR Act which more particularly states that in matters of appointment and termination of Directors, Chief Executive Officer or any other officer in banking companies, Section 36AA and 36AB shall have overriding effect over the provisions of the Companies Act or any other law.

24. Section 36AA of the BR Act explicitly states that when Reserve Bank of India is satisfied that working of banking company is to the detriment of investors, Reserve Bank of India may pass a reasoned order to remove Chairman, Chief Executive Officer, Director or any other officer from that banking company. Therefore, in the present case, it is seen that charges under PC Act were levied against Petitioner for allegedly receiving improper consideration while exercising her powers as Managing Director of ICICI Bank and therefore Respondent No.1 sought grant of sanction to prosecute Petitioner from Board of Directors of ICICI Bank, however power to remove Managing Director, any Director or officer from the banking company vested solely with Reserve Bank of India and with no other body, entity or authority including the Board of Directors of the

banking company.

25. It is seen that overriding powers granted to Reserve Bank of India exist in absolute derogation to other laws in force and even supersedes ICICI Bank's Memorandum of Association, Articles of Association, Regulations, Policies or any other such document of like regard in terms of appointment and termination of the Chairman, Chief Executive Officer, Director or any other officer in the banking company, in the present case, ICICI Bank.

26. Mr. Singh, learned ASG on behalf of Respondent No.2 has forcefully argued that Petitioner herself has averred that Board of Directors is the Competent Authority in paragraph No.1 of the Petition and therefore she is precluded from now contending that Board of Directors is not the Competent Authority to grant sanction to prosecute her. This is a very naive submission and deserves to be rejected in *limine*. I cannot countenance it since it is trite law that no party can claim estoppel against statutes and it cannot be used to bypass, waive, or override applicable statutory provisions. Even if a party makes an admission which is untenable in law, it cannot be blindly accepted especially if the law speaks to the contrary. In the present case, even though it may be Petitioner's averment that Board of Directors is the Competent Authority, the same has to be read with caution since such statement is a mere reference to events that took place viz. Board of

Directors acting as Competent Authority to grant sanction and nothing more. It is a case of improper drafting by the draftmans of the Petition. The law however stands as it is. Moreover as discussed above, since provisions of BR Act clearly override those of the Companies Act, the Board of Directors is not / cannot be possessed of jurisdiction to grant sanction under Section 19 of PC Act. Therefore, Respondent No.1 cannot pounce on the statement / averment of Petitioner in paragraph No.1 of the Petition without reading the same in context with the grounds in the Petition.

27. Attention in this regard is drawn to a decision of the Supreme Court in the case of ***K. Veeraswami Vs. Union of India*** *(Supra)* wherein it was held that the expression "authority competent to remove" in Section 6(1)(c) of PC Act implies that authority without whose sanction the public servant cannot be prosecuted and sanction not granted by such authority will not operate *proprio vigore* against the accused person. The relevant paragraph No.45 is reproduced herein below for reference:-

> ***"45.*** *In Craies on Statute Law, [6th edn., p. 531] it is stated that "the distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules …. They are construed now with reference to the true meaning and real intention of the legislature". The construction which would promote the general legislative purpose underlying the provision in question, is to be preferred to a construction which would not. If the literal meaning of the legislative language used would lead to results which would defeat the purpose of the Act the court would be justified in disregarding the literal meaning and adopt a liberal*

> *construction which effectuates the object of the legislature. Section 6, with which we are concerned indeed, requires to be liberally construed. It is not a penal provision but a measure of protection to public servants in the penal enactment. It indicates the authorities without whose sanction a public servant cannot be prosecuted. It is sufficient that the authorities prescribed thereunder fall within the fair sense of the language of the section. The expression "the authority competent to remove" used in clause (c) of Section 6(1) is to be construed to mean also an authority without whose order or affirmation the public servant cannot be removed. In this view, the President can be considered as the authority to grant sanction for prosecution of a Judge since the order of the President for the removal of a Judge is mandatory. The motion passed by each House of Parliament with the special procedure prescribed under clause (4) of Article 124 will not proprio vigore operate against the Judge. It will not have the consequence of removing the Judge from the office unless it is followed by an order of the President."*

28. When the above proposition is applied to the facts of the present case, it is clear in my mind that upon uncovering the alleged irregularities committed by Petitioner in her capacity as Managing Director of ICICI Bank and in their undying need to prosecute her for offences under the PC Act, Respondent No.1 ought to have approached the Reserve Bank of India to seek grant of sanction under Section 19(1) of PC Act to prosecute her rather resorting to seeking sanction from the Board of Directors of ICICI Bank. There is no doubt that Petitioner is subject to internal departmental inquiry on the basis of ICICI Bank's own rules, regulations and code of conduct, however I am of the firm unwavering opinion that when prosecution under penal law, rather anti corruption law i.e. PC Act is concerned, especially when sanction for prosecution is required to be granted against Bank officials namely the Managing Director cum C.E.O. of the Bank, the

law governing banks i.e. provisions of BR Act explicitly bar application of laws governing companies i.e. Companies Act, then in such cases where banking companies are concerned, like so in the present case, the authority of any body constituted under the provisions of Companies Act, i.e. Board of Directors of ICICI Bank in the present case, is clearly barred from granting sanction for prosecution under PC Act and the sole Competent Authority to grant sanction for prosecution under provisions of Section 19 of PC Act is the Reserve Bank of India in this case. Therefore I answer this question in the aforementioned terms.

29. Next question to be answered is whether this Court is possessed with jurisdiction to entertain the issue of absence of sanction and whether absence of sanction would prejudice Petitioner's rights in law. In this regard, it is necessary to allude to the decisions of the Supreme Court in the case of ***Parkash Singh Badal*** *(Supra)* and ***State of Karnataka v. C. Nagarajaswamy*** [43] both of which discuss the aforementioned issue and have held thus:-

Parkash Singh Badal Vs. State of Punjab

> *"**48.** The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."*

State of Karnataka v. C. Nagarajaswamy

43 (2005) 8 SCC 370

> *"**14.** Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.*
>
> ***15.** Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regards sanction may be determined at an early stage. (See Ashok Sahu v. Gokul Saikia [1990 Supp SCC 41 : 1990 SCC (Cri) 611] and Birendra K. Singh v. State of Bihar [(2000) 8 SCC 498 : 2001 SCC (Cri) 17 : JT (2000) 8 SC 248] .)*
>
> ***16.** But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court. (See B. Saha v. M.S. Kochar [(1979) 4 SCC 177 : 1979 SCC (Cri) 939] SCC para 13 and K. Kalimuthu v. State [(2005) 4 SCC 512 : 2005 SCC (Cri) 1291] .)"*

30. From the above, it is seen that when sanction is granted to prosecute persons under PC Act, and the accused person raises a question of validity or absence of valid sanction, the same has to be decided by the Court at the threshold itself. Question as to validity of sanction can be raised at trial and parties may lead evidence in respect of such question, however when the question of absence / existence of valid sanction is raised, then the same has to be decided at the threshold itself. In the present case, Petitioner has raised a question as to whether there was a valid sanction to prosecute her in the first instance. The aforementioned decision explicitly states that sanction must mandatorily be granted by the Competent Authority in order for Court to take cognizance of the offence and any question with regard to the same can be raised at any stage of trial. However, if there is

absence of sanction from the Competent Authority and if such a question is raised, then can the submission of CBI to relegate the Petitioner to trial be accepted by the Court. In my considered opinion the answer to this question / argument is in the negative. This is in fact squarely answered by the Supreme Court in the cases of ***Shankar Moitra v. Sadhna Das***[44] in paragraph Nos. 11 and 21 thereof, ***Abdul Wahab Ansari v. State of Bihar***[45] in paragraph numbers 1, 6, 7 and 8 thereof, and ***Najappa v. State of Karnataka***[46] in paragraph Nos. 7, 10, 18 and 20 to 22 thereof. Absence of a valid sanction would oust the jurisdiction of the Magistrate or Trial Court or Special Court to take cognizance of offences to which Section 19 of the PC Act applies. This is a pure jurisdictional fact. If I have to countenance the submission advanced by Respondent No. 1 that absence of a valid sanction will have to be relegated to trial, this will lead to a disastrous consequence. In my opinion, once the validity of a sanction order is questioned at the inception and such validity relates to absence of a valid sanction, the same will have to be considered at the threshold in order to determine whether there is a valid sanction or not. Questions regarding the validity of a sanction order should be considered at the earliest stage and ideally prior to taking of cognizance. This is the plea in the present Writ Petition. The public servant cannot be compelled to go through a trial / prosecution in the case of a sanction which is *void ab*

44 (2006) 4 SCC 584
45 (2000) 8 SCC 500
46 (2015) 14 SCC 186

initio in the absence of a valid sanction. This is so because it is a well-settled proposition of law that an issue of inherent lack of jurisdiction must be raised and the Court should consider it at the earliest possible stage to save harassment to the public servant and also to save valuable judicial time.

31. Hence I am of the clear opinion that postponing a question regarding the validity of a sanction order to a later stage at trial would allow a public servant to be put to the ignominy of a trial that might later be vitiated on the grounds of the sanction order being held to be invalid. Adopting such a course would effectively defeat the very purpose of the bar on cognizance under Section 19 of the PC Act. The effective purpose of Section 19 of the PC Act is to prevent a public servant from being harassed with vexatious prosecution and with the safeguard for the innocent.

32. Though Mr. Singh has laboured extremely hard in attempting to convince me that the judgments of the Supreme Court in the case of ***Parkash Singh Badal***, ***Dinesh Kumar and Ashok Kumar Aggarwal*** be considered by me as settled law and the issue of validity of sanction be relegated to trial, I am unable to accept his submission in view of the authoritative view of a three-Judge Bench in the case of ***Abdul Wahab Ansari (supra)***. Also, it needs to be noted that the present case is a case of absence of valid sanction as has been argued

by the Petitioner. The issue of want of valid sanction in my opinion goes to the root of the matter and goes to the jurisdiction which the Court is required to decide as a question of law.

33. In the case of ***Nanjappa v. State of Karnataka (supra)***, it is held that a valid sanction under Section 19(1) is a condition precedent to the competence of the Special Judge to take cognizance and to try the accused. It is further held that when the sanction is not one granted by the Competent Authority, the Court trying the offence has no jurisdiction and the trial is *non est*, and the question may be raised at any stage. In an earlier decision in the case of ***State of Goa v. Babu Thomas***[47], it was held that absence of a valid sanction under Section 19(1) goes to the very root of the prosecution, the provision prohibiting any Court from taking cognizance of the specified offences against a public servant except with the previous sanction of the Competent Authority.

34. The aforesaid reasoning governs the facts of the present case in hand. Sanction which is issued by the Board of Directors which has no power to remove the Petitioner is *prima facie* void from the beginning and nothing which has come afterwards can validate such sanction.

47 (2005) 8 SCC 130

35. The thrust of Respondent No. 1's argument rests upon the decision in the case of ***Parkash Singh Badal (supra)***. However, both the learned Senior Advocates representing the rival parties have argued that the decision in ***Parkash Singh Badal (supra)*** was itself considered by the Supreme Court in the case of ***State of Karnataka v. Ameerjan***[48], and in that decision the Supreme Court held that the decision in ***Parkash Singh Badal (supra)*** was not an authority for such a broad proposition that it cannot save a sanction which is a nullity by reason of total non-application of mind. In the case of ***Ameerjan (supra)***, the Supreme Court held that where the sanctioning authority has not applied its mind at all and has acted only upon the conclusion of the investigating agency, the same cannot be sustained. Similar is also the position in the present case when the sanction order issued by the Board of Directors on 15.05.2023 and the precursor application letter dated 27.03.2023 seeking sanction issued by Respondent No. 1 a/w CBI Report as contained in the Extract of the minutes of the 291st meeting of the Board of Directors held on 27.03.2023 are seen by the Court. Both the documents are appended as Exhibits "A" (page No. 36) and Exhibit "A1" (page No. 38) to the Petition. The sanction letter dated 15.05.2023 does not give any reasons whatsoever and merely refer to the CBI Report and letter. Interestingly both the above documents state that there is no financial loss caused to the Bank

48 (2007) 11 SCC 273

which has been the Bank's stand all throughout. On reading the aforesaid two documents, it is clearly reduced that there is absolutely no application of mind or reasons given by the Board in the sanction order to prosecute the Petitioner.

36. In the present case, Petitioner's case is not that the sanction granted by the Board of Directors is defective, but it is argued that the said sanction is invalid in law and a nullity in law because the authority which has granted it does not have the power to grant it. It is Petitioner's case that the Board of Directors of ICICI Bank do not have rather never had the power to remove her from the post of Managing Director at all, and therefore the sanction order dated 15.05.2023 issued by the Board of Directors cannot be a valid sanction under Section 19(1)(c) in the first instance and it is therefore *non est*, void, and a nullity. This is precisely the ground pleaded by the Petitioner in ground (K) of the Petition. In my opinion, it is a pure question of law to be decided by the Court at the threshold.

37. In view of the above, it is argued by the Petitioner that there is no sanction at all in the eyes of law and therefore the stage of Section 19(3) has not reached. Though both the sides have also argued on submissions relating to failure of justice, I need not detain myself any further in view of my above observations and findings with those submissions any further since in view of the aforesaid findings, I have

come to the definite conclusion that there is a clear absence of valid sanction in the present case. Absence of valid sanction being a jurisdictional fact goes to the root of the matter and is an issue of law to be decided at the threshold. In the facts and circumstances of the present case, power to remove the Managing Director and Chief Executive Officer of the ICICI Bank exclusively belongs to and is in the domain of the Reserve Bank of India alone under Section 36-AA of the BR Act, a power which Section 36-AC places above any other law, contract and instrument, and which Sections 5-A(a) and 5-A(b) r/w 35-B(1)(b) confirms by requiring the Reserve Bank of India's previous approval for terminating or ending the appointment of such an officer. In that view of the matter, Board of Directors of ICICI Bank cannot be the authority competent to remove the Petitioner, and therefore accord sanction for prosecution and hence the document of sanction for prosecution issued by the Board dated 15.05.2023 is not a valid sanction under Section 19(1)(c) of the PC Act. It is seen that there is no statutory provision which confers power on the Board of Directors to issue such a sanction. Such power of the Board has not been identified in the sanction which has been issued, nor in the Board resolution which has been passed by the said Board, nor in the CBI's request letter issued to the Board of Directors, copy of which is extracted in the Board Resolution, and neither in the CBI's affidavit-in-reply nor in their written submissions. Further, once it is the case of the

Bank itself that there was no financial loss whatsoever caused to the bank, then in the background of such a stance adopted by the Bank, the indictment of the Petitioner cannot be sustained. This is a very important stance of the Board reproduced in the sanction order as well as its Extract of the Minutes of Meeting. The CBI cannot therefore approbate and reprobate at the same time in such facts.

38. Once the CBI itself records the alleged Competent Authority's submissions that the rules and policies of the bank were not contravened whatsoever in disbursement of the 2 loan amounts to Videocon Group of Industries by the Committee of which Petitioner was one of the Members and that no wrongful loss whatsoever was caused to the bank, then the impugned sanction order by the Board of Directors is even otherwise unsustainable in law. Petitioner was not the sole member of the Committee which granted the two loans to Videocon Group of Industries.

39. It is trite law that sanction is the basis of prosecution of accused person under Section 19 of PC Act and absence of such sanction, makes the entire trial *non est* in the eyes of law. In the present case it is seen that Petitioner raised a question on the properness of the sanction granted. Petitioner was the Managing Director of ICICI Bank, a banking company governed by the provisions of the BR Act and Respondent No.1 seeks to prosecute Petitioner for

offences under the PC Act which admittedly requires grant of sanction from the Competent Authority. However, as I have held above, the Board of Directors of ICICI Bank is not the Competent Authority to grant sanction since it is a body constituted under the provisions of Companies Act, 1956 whose power is specifically overruled by the provisions of the BR Act which have been discussed and enumerated herein above. Since sanction in the present case is granted by an incompetent authority, such sanction *ipso facto* becomes illegal and a nullity as a result of which cognizance taken by the Special Court of the offence under the PC Act is illegal and deserves to be set aside.

40. Perusal of the impugned sanction and Extract of Board Resolution would show that only the letter addressed by Respondent No.1 and its Report was circulated to the Board of Directors and the material so collected by Respondent No.1 was never placed before the Board of Directors for its perusal and consideration for grant of sanction under Section 19 of PC Act. Attention is drawn to the case of ***Ashok Kumar Aggarwal*** *(supra)* wherein it was held that grant of sanction is not a mere idle formality but a sacred procedure to be followed which shows that the Competent Authority granted sanction to prosecute under Section 19. The relevant paragraph Nos.15 and 16 (wherein substantial legal propositions have been summarized for the exercise of sanction) of the above decision in the context of grant of sanction and parameters to be considered is reproduced below for ease

of reference:-

> *"**15**. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge-sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter alia on the ground that the order suffers from the vice of total non-application of mind. (Vide Gokulchand Dwarkadas Morarka v. R. [(1947-48) 75 IA 30 : (1948) 61 LW 257 : AIR 1948 PC 82] ; Jaswant Singh v. State of Punjab [AIR 1958 SC 124 : 1958 Cri LJ 265] , Mohd. Iqbal Ahmed v. State of A.P. [(1979) 4 SCC 172 : 1979 SCC (Cri) 926] , State v. Krishanchand Khushalchand Jagtiani [(1996) 4 SCC 472 : 1996 SCC (Cri) 755] , State of Punjab v. Mohd. Iqbal Bhatti [(2009) 17 SCC 92 : (2011) 1 SCC (Cri) 949] , Satyavir Singh Rathi, ACP v. State [(2011) 6 SCC 1 : (2011) 2 SCC (Cri) 782] and State of Maharashtra v. Mahesh G. Jain [(2013) 8 SCC 119 : (2014) 1 SCC (Cri) 515 : (2014) 1 SCC (L&S) 85] .)*
>
> ***16.** In view of the above, the legal propositions can be summarised as under:*
>
> ***16.1.** The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.*
>
> ***16.2.** The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.*
>
> ***16.3.** The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.*
>
> ***16.4.** The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had*

applied its mind to all the relevant material.

16.5. *In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."*

41. None of the aforesaid legal propositions which are summarized have been followed by the Board of Directors of ICICI Bank while allowing sanction to prosecute the Petitioner neither the order of sanction makes it so evident that there was application of mind to all relevant material. In the present case, neither was the authority that granted such sanction to prosecute competent to do so but further it only had the opportunity of perusing the letter and a Report addressed by Respondent No.1 for seeking grant of sanction to prosecute the Petitioner. Therefore there is an inherent lack of application of mind on part of the Board of Directors of ICICI Bank as they ought to have called for the supporting material , if any, collected by Respondent No.1 in pursuance of its investigation of Petitioner. It is seen that no material disclosing commission of offences under the PC Act was placed before the Board of Directors of ICICI Bank and sanction was granted only on the basis of allegations contained in the letter addressed by Respondent No.1 and the Report circulated by CBI mechanically without giving any reasons whatsoever, hence such sanction cannot be termed as sanction under Section 19 of PC Act, therefore it can be said that there never was any sanction issued to prosecute Petitioner for offences under the PC Act.

42. It is seen that there is total non compliance of the directions laid down in paragraph Nos.15 and 16 of the aforementioned decision which has inevitably led to severe prejudice of Petitioner's rights in law and hence leading to a total failure of justice. There is not an ounce of evidence to show that the sanctioning authority considered any material collected by Respondent No.1, if any, in its investigation of Petitioner. There is not a whisper of any discussion on the evidence against Petitioner, if any, neither in the Minutes of Meeting of Board of Directors nor in the sanction granted therefrom, instead a mere conjecture and allegation is stated therein which cannot form a reasonable basis to prosecute the Petitioner even otherwise.

43. The aforementioned position is further reinforced by the law laid down by the Supreme Court in the case of ***Ameerjan*** *(supra)* wherein it was held that before passing order granting sanction for prosecution, the entire material collected against the accused must be placed before the Sanctioning / Competent authority for grant of sanction. The relevant paragraph No.10 thereof is reproduced below for ease of reference:-

> ***"10.*** *For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said*

> *report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."*

44. The words of the Supreme Court deserve reiteration in the present case as it is seen that the impugned sanction clearly shows no application of mind on the part of the alleged Competent Authority save and except mere mention of allegation against Petitioner engaging in bribery and corruption. The sanction order does not discuss witness statements neither does it allude to exhibits or documents that point to Petitioner's complicity in the offences under the PC Act. It is seen that the impugned sanction is granted merely on the basis of Respondent No.1's report, letter seeking grant of sanction and unsubstantiated allegation of bribery and corruption, therefore interference of this Court is warranted in the facts of the present case.

45. In addition to the above, in the present case, Board of Directors of ICICI Bank is not the Competent Authority to grant sanction for prosecution under Section 19 of PC Act, instead it is the Reserve Bank of India which ought to have granted such sanction. Attention in this regard is drawn to a decision of the Supreme Court in

the case of ***Baij Nath Prasad Tripathi Vs. State of Bhopal*** [49] wherein it was held that no Court can take cognizance of the offences in question without a legal sanction and trial conducted in pursuance of such illegal cognizance is null and void. The relevant paragraph is reproduced hereunder for ease of reference:-

> *"**9.** The learned counsel for the petitioners invited our attention to Sections 190, 191, 192, 529 and 530 of the Criminal Procedure Code and submitted that in certain circumstances the Code drew a distinction between "jurisdiction" and "taking cognizance". The whole fabric of the argument of the learned counsel was founded on this distinction. Assuming, however, that in certain cases one Magistrate may take cognizance and another Magistrate may try an accused person, it is difficult to appreciate how any court can try the petitioners of these cases in the absence of a sanction in view of the mandatory provisions of Section 6 of the Prevention of Corruption Act, 1947. If no court can take cognizance of the offences in question without a legal sanction, it is obvious that no court can be said to be a court of competent jurisdiction to try those offences and that any trial in the absence of such sanction must be null and void, and the sections of the Code on which the learned counsel for the petitioners relied have really no bearing on the matter. Section 530 of the Code is really against the contention of the learned counsel, for it states, inter alia, that if any Magistrate not being empowered by law to try an offender, tries him, then the proceedings shall be void. Section 529(e) is merely an exception in the matter of taking cognizance of an offence under Section 190 sub-section (1) clauses (a) and (b); it has no bearing in a case where sanction is necessary and no sanction in accordance with law has been obtained."*

46. As a sequitur to this position, the Special Court ought not to mechanically have taken cognizance of the chargesheet in Petitioner's case and instead ought to have carefully perused the impugned sanction to understand whether the authority that granted it was competent to do so in law in the present case. In view of the above

49 (1957) 1 SCC 338

findings, the Board of Directors of ICICI Bank is not the Competent Authority to grant the sanction and that power vests with the RBI. Further whether the sanction showed application of mind and due consideration of the material placed before it while deciding grant of sanction for prosecution on perusal would show that there is no discussion whatsoever of the material placed before the sanctioning Authority nor any reasons assigned by the Sanctioning Authority for grant of sanction. In the present case, the Special Court did neither, causing great prejudice to Petitioner's rights in law. Though it is true that trial has not commenced, the very fact that cognizance is taken on the basis of the impugned defective sanction itself nullifies all past and future procedure followed by the Special Court. Nullity of sanction goes to the root of prosecution's case in proceedings under the PC Act as it is a jurisdictional foundational fact and it would stand on the same pedestal as an absent sanction.

47. In view of the aforementioned findings and observations, it is writ large on the face of record that the impugned sanction dated 15.05.2023 is illegal and deserves to be set aside on the grounds that the authority that granted the same is not the Competent Authority and it completely failed to apply its mind to the material, or lack thereof, placed before it while granting sanction thereby warranting interference of this Court. In that view of the matter, the sanction order dated 15.05.2023 is unsustainable in law being a nullity and is

quashed and set aside. Writ Petition is allowed in the above terms and in terms of prayer clauses (a) and (b) as prayed for in the Petition which read thus:

> *"(a) issue appropriate writ(s), order(s) and/or directions(s) whereby this Hon'ble Court may be pleased to Quash the Sanction under Section 19 of the Prevention of Corruption Act dated 15.05.2023 to prosecute the Petitioner in Case No. RCBD1/2019/E/0001/BSFB, New Delhi;*
>
> *(b) Issue appropriate writ(s), order(s) and/or directions(s) whereby this Hon'ble Court may be pleased to and consequentially quash and set aside the consequential actions taken pursuant to the Impugned Sanction Order by the Learned Special Court for CBI at Greater Bombay in CBI Special Case No. 874 of 2023 titled as CBI CASE NO. RCBD1/2019/E/00001 Versus M/s. Videocon International Electronics Ltd. & Ors"*

48. Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

49. After this Judgement is pronounced, Mr. Patil, learned Advocate appearing on behalf of Respondent No.1 – CBI persuades the Court to grant stay to the present Judgement for a period of eight (8) weeks to enable the Respondent No.1 to challenge the legality and validity of this Judgement. I have considered the request made by Mr. Patil, however in view of the reasons which are given in the aforesaid Judgement, the said request for grant of stay stands declined.

[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR
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