REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).398/2016
(Arising out of SLP(CRL.) No. 6508/2013)

STATE THROUGH CBI/ACB,HYDERABAD A.P **APPELLANT(S)**

VERSUS

DHARMANA PRASED RAO **RESPONDENT(S)**

J U D G M E N T

A.K. SIKRI,J.

Leave granted.

This appeal is filed by the State through CBI, ACB, Hyderabad questioning the validity of the order dated 29.04.2013 passed by the High Court in Criminal Revision Petition which was filed by the respondent herein under Sections 397 and 401 of the Code of Criminal Procedure,1973 (herein referred to as "the Code"). The said revision petition was filed by the respondent challenging the order dated 21.01.2013 passed by the Court of Principal Sessions Judge for CBI cases, Hyderabad by which cognizance of the offence under Section 13 of the Prevention of Corruption Act (hereinafter referred to as "the PC Act") was taken against the respondent (A-5 in the Trial Court).

Without stating the prosecution case in detail, suffice it to mention that the appellant/CBI has filed charge sheet in the

Special Court against 14 accused persons including the respondent herein (A-5) under Section 13(2) read with Section 13(1)(C)(D)of the PC Act. They were also charged for various offences under Sections, 420,409,467,468,471 and 120B etc. of the Indian Penal Code. Accused Nos. 4 and 5 were the Ministers. After the filing of the charge sheet, the Special Court passed an order dated 13.09.2012 whereby all these accused persons, under the various provisions of the Indian Penal Code, were summoned. Insofar as A-4 to A-8, including the respondent herein, are concerned, the Trial Court directed the Investigation Officer to file sanction orders contemplated under Section 19 of the PC Act without which no cognizance can be taken for the said offences against these accused persons. The appellant, thereafter, filed an application before the Special Judge pointing out that no such sanction was required and insofar as A-4 and A-5 are concerned, cognizance against them in respect of offences under Section 13 of the PC Act should also be taken. On this application the Trial Court passed the order summoning these accused persons including the respondent herein taking cognizance of the offences under the PC Act as well. This order was challenged by the respondent by filing the aforesaid criminal revision petition under Sections 397 and 401 of the Code raising issues two folds:

> **"(1) Having refused to take cognizance of the offence under the PC Act against the respondent, in the first instance, the Special Judge should not have taken cognizance thereafter on the application filed by the CBI as it amounted to review and the Special Judge did not have any power;**

> **(2) In any case, no cognizance to be taken for want of sanction which was mandatorily required under Section 19 of the PC Act."**

The High Court has addressed itself the first issue and finding substance in the contention of the respondent allowed the revision and set aside the order of the Trial Court on the ground that it amounted to review.

After hearing the counsel for the parties, we are of the view that the High Court has erred in taking the aforesaid view. Section 362 of the Code is the material provision, which reads as under:

> **"362. Court not to alter judgment:- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."**

The aforesaid provision debars the Court from altering or reviewing the judgment only in those cases when it has signed its judgment or when it has passed final order disposing of a case. In the instant case, as mentioned above, the Trial Court on the earlier occasion had simply deferred taking cognizance under the impression that the sanction under Section 19 of the PC Act is required. There was no final order passed disposing of the case inasmuch as had the sanction been brought, (cognizance would have been taken in any case), the Trial Court is authorised to take cognizance which is not disputed by the learned counsel for the respondent as well. The question whether a sanction is required or

not would be a different matter. We may point out here that the Trial Court was not oblivious of the aforesaid aspect while taking cognizance of offences under the PC Act against the respondent and others. It specifically recorded that it does not amount to reviewing its own decision. Vide order dated 13.09.2012 passed by the Trial Court earlier, it had merely asked the Investigation Officer to file sanction orders against A4 to A8 and deferred the order of cognizance against them. There was no decision much less conclusive decision taken by the Court. The Trial Court rightly pointed out that it was only in the nature of reminding the duty of the Investigation Officer to meet certain requirements for taking cognizance of offence under the PC Act. However, when the Investigation Officer brought to its notice, on the subsequent date, that no such sanction was required, the Trial Court finding it to be correct position in law took cognizance. By this, the Trial Court was not reviewing any order. According to us order dated 13.09.2012 could not be construed as final order, more so, when there was no final determination of the issue regarding requirement of sanction for prosecution against the respondent herein.

The aforesaid view of the High Court is, therefore, clearly erroneous and the impugned order is hereby set aside. Further as the High Court has not gone into the other issue viz. whether there was a necessity of having prior sanction under Section 19 of the PC Act or not, we, thus, remand the case back to the High Court to

consider the case afresh.

The appeal is, accordingly, allowed.

.....J.
[A.K. SIKRI]

.....J.
[R.K.AGRAWAL]

NEW DELHI;
APRIL 26, 2016.