

No. 142/22/2007-AVD.I
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi, North Block
Dated, the 1st November, 2008

OFFICE MEMORANDUM

Subject: Prosecution sanction – evidence of sanctioning/signing/authenticating authority.

The undersigned is directed to say that investigating agencies generally include the name of the sanctioning authority/signing/authenticating authority in the list of prosecution witnesses for the purposes of proving the validity of the sanction accorded under Section 19(1) of the Prevention of Corruption Act, 1988 or under Section 197(1) of the Criminal Procedure Code, 1973 for prosecution of government servants. It is observed that summons for recording of evidence for proving the sanction are usually received long after the concerned officer has vacated the post and, many a times, long after the said officer has retired from Service. The process of recording of evidence/cross examination also involves a number of visits to the Courts. The officers who have retired have to make their own arrangements for travel /stay and then are required to claim reimbursements from the concerned Departments/organizations subsequently. This puts the sanctioning/signing/authenticating authority to a considerable inconvenience. A question has been raised whether personal evidence of sanctioning/signing/authenticating authority is a legal requirement for proving the sanction or whether the same can be proved otherwise.

2. The question whether a personal evidence of sanctioning/signing/ authenticating authority is a legal necessity to prove the validity of the sanction accorded u/s 19(1) of the Prevention of Corruption Act, 1988 or under Section 197(1), CrPC has been examined in consultation with the Ministry of Law & Justice (Department of Legal Affairs).

3. The Hon'ble Supreme Court in the case of Md. Iqbal Ahmed vs. State of AP 1979 Cr LJ 633 (SC) and in the case of State of Rajasthan Vs. Dr. A.K. Dutta AIR 1981 SC has held that the requirement of proving the sanction can be done in any two ways- either by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or by adducing evidence aliunde to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it. In the case of CBI, Hyderabad vs. P. Muthuraman 1996 Cr LJ 3638, it was held that signature on the sanction should be proved either by the sanctioning authority or by his subordinate officer or clerk who has seen the sanctioning authority or who is acquainted with the signature of the sanctioning authority. Once the signature is proved and if the sanction order is a speaking order, then the matter ends there; otherwise evidence should be adduced to prove that the sanctioning authority had perused the material before according sanction which may not be in a particular form. In the case of Babarali Ahmedali Sayed V. State of Gujarat 1991 Cr.LJ 1269 (Guj) it was held that if facts appear on the face of sanction then there is no question of proving it by leading evidence of authority who has accorded sanction to prosecute. No separate evidence is required to be led to show that relevant facts were placed before the authority. If the facts are not appearing on the face of the sanction, then it can be proved by independent evidence that sanction was accorded after those facts had been placed before the sanctioning authority.

In the case of State Vs K. Narasimhachary (2006 Cr.LJ 518 SC) , the Apex Court has held that the prosecution sanction order being a public document, there may not be a need to summon sanctioning authority as prosecution witness provided the prosecution proves that all the relevant material was placed before the sanctioning authority and the sanction was accorded thereafter. There are several other judgements of the Hon'ble Supreme Court and other High Courts reiterating the above legal position.

4. Therefore, in the light of the catena of judgements on the subject, it is evident that if the sanction is accorded by the competent sanctioning authority and it contains the facts constituting the offence and the grounds of satisfaction , there is no requirement for the prosecution to summon the sanctioning/signing/authenticating authority for their personal evidence to prove the validity of the sanction. If at all necessary, the same can be corroborated by producing the original sanction and by examining the person conversant with the signature of the sanctioning authority/signing/authenticating authority . Accordingly, there is no requirement for the prosecution to insist on personal evidence of sanctioning/signing/authenticating authority for proving the validity of sanction as the same can be proved adequately otherwise.

5. However, if the prosecution sanction is challenged by the defence on the grounds of competence of the sanctioning authority or non- application of mind and if a prima-facie case for doubting the validity of the sanction is made out by the accused, the trial court would be within its powers under the provisions of section 311 of the Cr.P.C. to summon the sanctioning/signing/authenticating authority

6. All the concerned authorities/investigating agencies may keep the above settled legal position in view while taking steps for proving the validity of the sanction and ensure that the Sanctioning/signing/authenticating authority may not be routinely included in the list of witnesses for the Prosecution.



(Vijay Kumar)

Under Secretary to the Government of India

To

1. All Ministries/Departments of the Government of India.
2. All State Governments/Union Territory Administrations.
3. Copies to all concerned authorities as per standard list.
4. CBI , Policy Division, 27, North Block .
5. Director, NIC, North Block with the request to put this O.M. on the website under head ' circulars' vigilance
6. 100 spare copies.



(Vijay Kumar)

Under Secretary to the Government of India