

**GOVERNMENT OF KERALA**

No:VIG-E3/145/2021-VIG
Vigilance (E) Department
Thiruvananthapuram,
Dated:29/07/2021

CIRCULAR

Sub: Vigilance Department - Summoning of prosecution sanctioning/ signing /authenticating authority for personal evidence- legal position -clarification issued- reg.

Ref: Office Memorandum No. 142/22/2007-AVD.I dated 10/11/2008 issued by Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training, Government of India.

The investigating agencies generally and normally include the name of the prosecution sanctioning / 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 officer concerned 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. However, in many cases examination of the sanctioning authority may not be necessary. Even then in a mechanical way, the prosecution used to examine the sanctioning authority in a routine manner. This is totally unwarranted. 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.

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 Vs. 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.

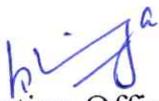
Sanction order is an official act of the authority who accords sanction and the court may presume the fact that the judicial and official acts have been regularly performed in terms of Section 114(e) of the Indian Evidence Act, 1872. Sanction order is a public document within the meaning of Section 74 of the Evidence Act and it may be proved on its production or adducing evidence that all the facts are placed before the authority and satisfaction arrived by it. As per Section 294 of Criminal Procedure Code, 1973, if the genuineness of the sanction order is not disputed it can be marked and admitted in evidence without proving the signature of the authority. Therefore, it is clear that if sanction is given by the competent authority by issuing a speaking order by application of mind and contains the facts constituting the offence, there is no need for the prosecution to summon and examine the sanctioning authority before the court. However, this will depend on the validity of the prosecution sanction order issued by the authority and the nature of objection raised from the defence side.

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/ 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.

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 PC to summon the sanctioning/ signing/ authenticating authority.

All the Government Law Officers and Legal Advisors/ investigating agencies may keep the above settled legal position in mind 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.

Forwarded / By order, MINIMOL T, AS (E) VIG, O/O AS VIGILANCE-E


Section Officer.

To:

All Departments in Government Secretariat
including Law and Finance
All sections in Vigilance Department
Advocate General , Kerala
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