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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.940 OF 2005

Ramesh Nilu Chavan] .. Appellant
vs.
State of Maharashtra] .. Respondent

Mr.Girish Kulkarni, Senior Advocate a/w Mr.Kripashankar
Pandey i/b Mr.Sachin Rajepandhare, for the Appellant.

Mr.S.R. Agarkar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 2nd November, 2023.

JUDGMENT :

1] The Appellant, a public servant, working as Forest Guard, came to be prosecuted for being in possession of property disproportionate to his known source of income during the check period from 09.03.1983 to 03.12.1994.

A complaint in the name of Deshbhakta of Solapur was preferred against the Appellant to the Superintendent of Police, Solapur, accusing him of being in possession of disproportionate worth and, accordingly, an inquiry was ordered by Superintendent of Police, Solapur. Thereafter, the matter was

transferred to Pune and the Superintendent of Police, ACB, directed an inquiry to be conducted.

On receipt of the inquiry report and on obtaining the necessary authorization, First Information Report was lodged on 02/12/1994 against the Appellant and his wife, original Accused No.2 at Wanwadi Police Station.

2] During the course of investigation, various searches were conducted in the house of the Appellant as well as his relations i.e. his father, brother and brother-in-law. A list of articles, gold and silver ornaments, furniture, fixed deposit, purchase bills etc. was prepared in order to assess his income and the expenditure. The competent authority accorded sanction to prosecute him under Section 13(1)e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, "P.C.Act"). The charge-sheet came to be filed against both the accused persons and for being tried in Special Case No.12 of 1996, where the accused persons faced the following charge:-

"(1) That you accused no.1 for the period 9/3/1983 to 3/12/1994 being a public servant in the Forest Department of the Government of Maharashtra were found in possession of the property disproportionate to the extent of Rs.3,19,928/- since

your total assets valued at Rs.5,55,842/- whereas your likely saving is Rs.2,35,914/- income from known sources during the period of your service is Rs.3,97,098/- as family expenditure during the period being Rs.1,51,184/- and thereby committed an offence punishable under section 13(1)(e) of Prevention of Corruption Act 1988 read with section 13(2) of the said Act or under section 13(1)(e) of and section 13(2) of the said Prevention of Corruption Act and within my cognizance.

AND

(2) That you accused no.2 being the wife of accused no.1 residing with him, you accused no.2 abetted the commission of offence of being in possession of property disproportionate to his known sources of income by accused no.1, an offence punishable under section 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988, which offence was committed in consequence of your abetment and that you thereby committed an offence punishable under section 109 of Indian Penal Code and section 13(1)(e) of Prevention of Corruption Act, 1988 and within my cognizance.”

3] Since both the accused pleaded not guilty, they were tried in Special Case No.12 of 1996.

In order to establish the charge, prosecution examined three witnesses, which included Mr.Anant Nithavare, the panch witness who accompanied the Investigating Officer, when a search was carried out in the house of the accused persons and the list of articles and household things alongwith it's valuation was prepared.

Mr.Shamrao Mohite, Police Inspector attached to ACB Office, Pune, who inquired into the complaint in respect of disproportionate income of Ramesh Chavan (Appellant) is examined as PW 2, whereas Mr.Vishwas Walke, the Deputy Conservator of Forest, the Appointing Authority of Accused No.1, who accorded sanction for his prosecution, is examined as PW 3.

4] I have heard the learned senior counsel Mr.Girish Kulkarni for the Appellant and the learned A.P.P. Mr.Agarkar for the State.

Mr.Kulkarni, at the outset, would submit that the sanction accorded in prosecuting the Appellant/public servant is invalid, as it has clearly surfaced through the evidence of PW 3 that there is no application of mind by the sanctioning authority, as the draft sanction order was received by him from the ACB Officer Mr.Mohite and he has only put his name and signature to convert the draft sanction order into a final sanction order.

This issue of invalidity of sanction, according to Mr.Kulkarni, goes to the root of the matter, apart from the huge loopholes in the case of the prosecution, which has failed to establish that the Appellant was in possession of property disproportionate to his known source of income.

According to him, the clear admissions appearing in the evidence of PW 1 and 2 establish that agricultural income yielding from the agricultural land alongwith the income of Accused No.2, his wife, from tailoring has not been taken into consideration.

Per contra, the learned APP Mr. Agarkar would support the case of the prosecution and the impugned Judgment by submitting that the prosecution has established its case of disproportionate assets against the Appellant by cogent and reliable evidence and since the Appellant has failed to satisfactorily establish that he has been in possession which was sourced from the known source of income, the impugned Judgment has rightly concluded that the acquisition of the property is disproportionate and, therefore, the offence has been made out.

5] I have perused the Judgment and the record placed before me. Dealing with the aspect of sanction, I am satisfied with the arguments advanced by the learned senior counsel that the Sanctioning Authority has not applied its mind, before it accorded the sanction to prosecute the Appellant, a public servant.

Vishwas Walke, working as Deputy Conservator, Forest in Pune Division, the witness examined by the prosecution as PW 3 has deposed that the accused Ramesh was working in Forest Department and the Deputy Conservator of Forest is his appointing authority and hence was an authority competent to accord sanction for his prosecution.

PW 3 depose that he received the investigation papers from the Superintendent of Police, ACB Pune, for prosecuting Mr.Chavan and on studying the papers, he was satisfied that prima-facie case was made out to accord sanction and accordingly the sanction was accorded by him on 24.06.1996 under his signature and the Sanction Order was forwarded to ACB.

In the cross-examination, PW 3 has clearly admitted that the schedules A, B, C, D of Sanction Order at Exhibit 77, which is forwarded to ACB are prepared by the ACB Officer and he merely signed the schedules. He categorically admit that he do not remember whether there were any documents in the papers received by him showing that brother of the accused No.1 has received certain amount from his mother. He also do not recollect upon any financial assistance provided to the Accused No.1 for construction of house from his brother, nor he is able to

recollect whether any property found at the house of Accused No.1 was included in the assets of the accused.

In para 3 of the cross-examination, the following admission has clearly emerged from his deposition :-

3. Alongwith proposal for sanction I had received draft sanction. All the contents of sanction order Exh. 77 except my name and signature were there in the draft sanction order received to me. Counter cheques for verifying the correctness of entries in schedule attached to sanction order were not available. In draft there was indication as to where the seal of my office to be put."

6] It is a trite position of law that the Sanctioning Authority who is expected to accord sanction under Section 19 of the Prevention of Corruption Act, must independently apply its mind before sanction is accorded to prosecute a public servant. The question of sanction goes to the root of the matter and its sole purpose is to avoid unjustified prosecution. A public servant cannot be prosecuted without such sanction being accorded and when the prosecution is frivolous or vexatious, by applying its mind to the facts, the Sanctioning Authority may refuse the sanction. It is mandatory to seek sanction for prosecution of a

public servant as contemplated under Section 19 of the PC Act and in absence of such sanction, the prosecution cannot continue. The grant of sanction is sine qua non for prosecution of a public servant under the PC Act.1988.

Whenever a sanction is contemplated from the Competent Authority, it contemplate application of mind to the facts of the case as the word 'Sanction' contemplate explicit permission or recommendation by one in authority that gives validity to the act of another person or body; something that authorizes confers or countenances.

7] As per the New Lexicons Webster's Dictionary sanction is explicit permission given by someone in Authority.

The legislature/enactments which contemplate 'Sanction', has given importance to the same as the sanction to prosecute is an important matter; it constitute a condition precedent to the institution of the prosecution and the Sanctioning Authority has an absolute discretion to grant or withhold a sanction.

A sanction given, by acting under dictate or without application of mind is no sanction in the eyes of law and amounts to an invalid sanction.

Before an Authority grants sanction, it is imperative that it applies its mind to the material placed before it and if there is non application of mind on the part of the Sanctioning Authority, the sanction is vitiated and such sanction is no sanction in the eyes of law.

The admission given by the Sanctioning Authority in Para 3 of the deposition is clearly reflective of non application of mind of the Sanctioning Authority. Apart from this, in Para 2 of the deposition the Sanctioning Authority is unaware of any niceties of the income and expenditure of the Appellant for whose prosecution, the sanction is granted. He claims complete ignorance as he did not recollect as to what was the basis of computing the assets as well as the income of Accused No.1 and whether it included income of his father or whether there was any amount which was given to the Appellant by his mother.

Thus, the sanction accorded to prosecute the Appellant suffers from the vice of arbitrariness as the Sanctioning Authority has clearly admitted that he received draft sanction order from the ACB and he merely signed the same, before it was treated as Sanction Order, indicating non application of mind by the sanctioning authority and necessarily the Prosecution based

on such sanction is highly inappropriate and thus invalid.

8] As far as merits of the case are concerned, the Investigating Officer PW 2 has admitted that an inquiry was initiated on receipt of the complaint from an unknown person referring himself as Deshbhakt, who had made a complaint that the Appellant was holding assets disproportionate to his income.

The Appellant was in service in Forest Department as a Forest Guard from 1983 to 1993 and the said period was taken for calculating his income, expenditure and assets.

The Investigating Officer has referred to the agricultural land purchased by the father of the Appellant, which was partitioned between him and his 3 brothers in the year 1993 and 3H 18R land was allotted to the share of the Accused and he was also having share in the Well.

In his cross-examination, PW 2 has admitted that though he had visited the land, no Panchanama was prepared and he did not assess whether it is yielding any income and that can be construed as a source of income of the accused. The income which was computed for the purpose of determining the disproportionate assets included the income of the accused from

the salary. income of his wife from tailoring business, and income from agricultural land and loan taken by the accused and his wife. However, the agricultural income per year is not accurately calculated, though PW 3 deposed that he had collected some papers pertaining to the land, but he did not ascertain the crop statement as regards the land which had come to the share of the Appellant. Admittedly no inquiry was made by the Investigating Officer about the agricultural yield from the said land which had come to the share of the Accused. Though he deny the suggestion that the income of Accused No.1 from the agricultural land of his share of Rs.52,297/- is not the actual income and it is shown very less than the actual income.

The Investigating Officer did not bother to record the statements of the father and brothers of accused No.1, who were actually cultivating the land and in respect of the agricultural income from 1955 till date.

9] As far as the specific stand of the Accused No.2 that she was having a tailoring business and since the investigation revealed that s sewing machine was found in the house, her net income was computed as 91,480/-. It is thus clear that Accused No.2, wife

of the Appellant was having a source of income from the tailoring activity which she used to undertake. Apart from this, PW 2 had deposed that he had purchased 16 Acres 20 Gunthas of land in the year 1989 and the income was also recorded, but the investigating Officer did not pay visit to this land, which had yielded income of Rs.91,777/- from the year 1989 to 1993.

When PW 2 was confronted with the income from this land, he denied the suggestion that the income from agricultural land shown in the chart is not correct. A specific admission from the said witness is to the following effect :

“ I could have obtained the correct information about the agricultural income of the accused from the said land from the BDO.”

Another important admission is to the following effect :-

“It is true that as per information received from the accused, his co-brother C.M. Pawar and the contractor to whom the contract of construction of the said house, the cost of construction of the part of house of accused No.1 was Rs.65,000/-. It is not true to say that the valuation of the house of the accused at Solapur shown in Chart A, valuation of furniture and household articles is shown as Rs.79,827/-. The said furniture and household articles were found in the house where father

and brother of the accused were residing.”

10] Another important aspect about receipt of certain amount in pursuance of an Agreement to Sale of house at Ghorpadi has also not been considered and in para 16 following admission has come on record :

16. It was not revealed during investigation that both the accused had entered into agreement to sell house at Ghorpadi with Chintamani Naik. I do not know if the accused had entered into an agreement dated 15.1.1992 with Chintamani Naik and they received Rs.45,000/- as earnest amount and whether they had received the balance amount of Rs.35,000/- on 13.4.1993. I do not know whether the accused had sold their house for Rs.1,05,000/- and whether they had received Rs.80,000/-, during said period. It is not true to say that during investigation agreement of sale of house was produced but I deliberate concealed that.”

11] In the wake of the aforesaid, apart from the issue of sanction, as the sanction is accorded by the Sanctioning Authority without application of mind and is tilted by bias, as it is the ACB who prepared sanction order and placed it before the

Sanctioning Authority for signature, from the other material which has surfaced through the cross-examination of the Investigating Officer that certain income has not been taken into account, the prosecution has failed to make out a case of Appellant being in possession of disproportionate assets.

The finding recorded in the impugned Judgment, therefore, cannot be sustained.

Resultantly, the Appeal is allowed.

The impugned Judgment and order dated 29.08.2005 is quashed and set aside.

The Appellant stands acquitted of the offence under Section 13(1) (e) punishable under Section 13(2) of the Prevention of Corruption Act, 1988. His bail bond is cancelled.

[BHARATI DANGRE, J]