

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.498 OF 2001

The State of Maharashtra
Through PSO Dhule City
Police Station Dhule.

...APPELLANT
(Ori.Complainant)

VERSUS

1. Bhaskar Shankar Wagh,
Age 39 (Cashier), M.I.D.Zilla Parishad,
Dhule, r/o Wadibhokar Road,
Deopur, Dhule, Dist. Dhule.
2. Sakharam Raoji Vasave, age 52,
Divisional Accountant, Z.P.Dhule,
r/o. Kalika Mata Colony, Dhule.
3. Mahbubkha Mahetabkha Pathan,
Age 51, Peon, Zilla Parishad, Dhule,
r/o. Deopur, Dhule, Dist. Dhule.

...RESPONDENTS
(Ori.Accused)

...

Mr. S.S.Choudhary, Special counsel for petitioner
/ State.

Mr. Satej Jadhav, Advocate, for respondent no.1
(appointed).

Mr N.B.Suryawanshi, Adv., for respondent no.2.

Mr.B.R.Warma, Adv., for respondent no.3.

...

CORAM: R.M.BORDE

AND

P.R.BORA, JJ.

Date of reserving
the judgment:24.6.2015
Date of pronouncing
the judgment: 6th July, 2015

JUDGMENT : (Per P.R.Bora, J.)

1. Aggrieved by the order passed in Special Case No.68/1996, on 17.8.2001 by the Special Judge, Dhule, the State has filed the present appeal.

2. Respondent nos. 1 to 3 were tried in the aforesaid Special Case for the offenses punishable under Sections 120-B, 409 read with Section 120B, 477 read with Section 120B of Indian Penal Code and under Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act. Respondent no.1 was working as Junior Assistant Cum Cashier in Minor Irrigation Division, Zilla Parishad, Dhule, whereas accused no.2 was working as Divisional Accountant Cum Assistant Accounts Officer, and accused no.3 was working as a Peon. At the time when the offense was registered, one B.J.Borse was also named as accused, however, he died before filing of the chargesheet.

3. The accused were charged for the offenses of criminal conspiracy, criminal breach of trust and falsification of accounts. In nutshell, it was the case of the prosecution that, in the period between 3.11.1987 to 14.11.1987, the accused, by entering into criminal conspiracy with each other, for committing misappropriation

of the Government amount, misappropriated public funds amounting to Rs.4,99,035/- by falsification of the accounts. Chargesheet was filed against them for the offenses punishable under Sections 409, 420, 465, 467, 468, 471, 477-A of Indian Penal Code and also for the offenses punishable under Section 13(1)(c)(d) and 13(2) of Prevention of Corruption Act. The learned Special Judge framed charges against the accused persons on 7th of June, 2001. Charges were framed against all the three accused for the offenses punishable under Section 120-B, 409 read with Section 120-B and 477-A read with Section 120-B of Indian Penal Code as well as under Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act read with Section 120-B of IPC. The accused did not plead guilty and claimed to be tried.

4. In order to prove the charges levelled against the accused persons, the prosecution examined as many as 16 witnesses. The defense of the accused persons was of total denial. Learned Special Judge, after having assessed the oral and documentary evidence brought before him, though held the charges under Section 120-B, 409 read with Section 120-B, 477 read with Section 120-B of Indian Penal Code and under Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act to have been proved by prosecution against accused nos. 1 and 2,

ultimately recorded the judgment of acquittal for want of legal and valid sanction against the accused for prosecuting them for the offenses they were charged with.

5. Shri S.S.Chaudhari, learned Special Counsel appearing for the appellant State, submitted that the trial Court has grossly erred in recording a conclusion that there was no valid sanction for prosecuting the accused before it i.e. respondent nos. 1 to 3 in the present appeal. Learned Counsel further submitted that Shri P.D.Aher (PW 12) was competent to accord sanction to prosecute the accused persons. Learned Counsel submitted that relying upon some stray admissions given by PW 12, the trial Court has recorded a wrong finding. Learned Counsel submitted that while working as Chief Executive Officer of Zilla Parishad, Dhule, PW 12 was competent to accord sanction to prosecute the accused persons. Learned Counsel further submitted that in his testimony before the Court, PW 12 has stated that the entire documents pertaining to the offenses charged against the accused persons were placed before him and after having gone through and studied the said documents, he had reached to the conclusion that a prima facie case is made out against accused persons to prosecute them for the offenses charged against them and in the circumstances, he

had accorded the sanction to prosecute the said accused by recording elaborate reasons therefor. Learned Special Counsel took us through the order of sanction to demonstrate that a well reasoned order was passed by PW 12. Learned Counsel further submitted that having considered the evidence on record, no such finding could have been recorded by the Special Court that there was no application of mind by PW 12 while according sanction. Learned Special Prosecutor relied upon the judgment of the Hon'ble Apex Court in the case of Kootha Perumal Vs. State Tr.Inspector of Police, Vigilance and Anti Corruption (AIR 2011 SC 356), to substantiate his contention. Learned Special Counsel further submitted that the finding recorded by the learned Special Judge on the point of sanction needs to be set aside and the accused persons need to be punished for the offenses charged against them.

6. Shri Satej Jadhav, Counsel appointed to represent respondent no.1, Shri N.B.Suryawanshi, learned Counsel for respondent no.2, and Shri B.R.Warma, learned Counsel appearing for respondent no.3, opposed the submissions advanced by the learned Special Counsel. The Counsel for respondents supported the finding recorded by the trial Court on the point of sanction. Shri Suryawanshi submitted that PW 12 Shri Aher himself has admitted that he

was not having any authority to remove even a Peon of the Zilla Parishad, Dhule. In such circumstances, according to learned Counsel, PW 12 Shri Aher was not competent to accord sanction to prosecute any of the accused in Crime No.321/1991. Shri Suryawanshi submitted that the trial Court has rightly held that PW 12 Shri Aher was not having any authority to accord the sanction. Taking us through the evidence of Shri Aher, Shri Suryawanshi further submitted that a candid admission was given by PW 12 Shri Aher in his cross examination that the contents of the sanction order were written by the staff of the Zilla Parishad and after reading over the said contents, he put his signature on it. Shri Suryawanshi further brought to our notice the other discrepancies in the order of sanction and submitted that the evidence which has come on record clearly suggests that without any application of mind, Shri Aher had mechanically granted the sanction to prosecute the present respondents. Learned Counsel, therefore, submitted that no interference is required in the conclusion recorded by the learned Special Judge in regard to the order of sanction. Shri Suryawanshi relied upon the judgment of the Apex Court in **Mohd.Iqbal Ahmed v. State of A.P. (AIR 1979 SC 677)**, to substantiate the contentions raised by him.

7. Shri Satej Jadhav and Shri B.R.Warma adopted the arguments advanced by Shri Suryawanshi. Shri Warma placed reliance on the judgment of the Hon'ble Apex Court in the case of **A.K.Roy and others Vs. State of Punjab and others (AIR 1986 SC 2160)**, to urge that Shri Aher who was working as In Charge Chief Executive Officer of Zilla Parishad, Dhule, was not competent to accord sanction to prosecute the accused named in Crime No.321/1991.

8. We have carefully considered the submissions made on behalf of learned Special Counsel and the learned counsel for the respondents. We have also gone through the impugned judgment and the record of the case. The learned Special Judge has held the sanction to be invalid on two grounds; first, that Shri Aher was not having any authority to grant such sanction and the other that even if it is held that he was having such authority, the sanction accorded by him was mechanically accorded without any application of mind and hence is invalid.

9. In so far as the authority or competence of Shri P.D.Aher, the sanctioning authority, is concerned, the learned trial Court seems to have relied upon the admissions given by said Shri Aher. As mentioned hereinbefore, Shri Aher (PW 12) has admitted in his cross examination that

his name was not published in the official gazette as the Chief Executive Officer. He has further admitted that only full-fledged Chief Executive Officer can or could have removed accused no.3 (respondent no.3 in the present appeal). Referring to the admission so given by said Shri Aher, the trial Court has drawn the conclusion that Shri Aher was not competent to remove accused no.3. The trial Court has further drawn an inference that the person who was not competent to remove a Peon i.e. the lowest person in the cadre / hierarchy, he could not have removed accused nos. 1 and 2 who were working as the Cashier and Assistant Accountant, respectively.

10. We, however, find it difficult to agree with the inferences drawn and conclusions recorded by the learned Special Judge. In the examination in Chief, Shri Aher has deposed that he was working as Chief Executive Officer of Zilla Parishad, Dhule, from 13.11.1992 onwards for next 45 days. He has further deposed that the Chief Executive Officer is the appointing and removing authority for all the accused. Though some admissions are obtained by the accused persons in the cross examination of Shri Aher to which we have referred hereinabove, none of the accused has given any candid suggestion to the said witness, denying his authority to accord

sanction to prosecute the accused. It is further not the case made out by any of the accused that at the relevant point of time Shri Aher was not working as the Chief Executive Officer of Zilla Parishad, Dhule. Though an argument was advanced before us that the person holding charge of the post of Chief Executive Officer was not competent to accord the sanction, nothing has been brought to our notice in support of the said contention.

11. An attempt was made by Shri Warma, learned Counsel appearing for original accused no.3 to refer to the provisions of Prevention of Food Adulteration Act, more particularly, Section 20 of the said Act to buttress his contention that Shri Aher since was not Chief Executive Officer but was only holding charge of the post of Chief Executive Officer, Zilla Parishad, Dhule, was not competent to grant sanction to prosecute the accused. To substantiate his said contention, Shri Warma relied upon the judgment of the Hon'ble Apex Court in the case of **A.K.Roy and another Vs. State of Punjab and others (AIR 1986 SC 2160)**. However, the said judgment may not be of any help to take further the case put forth by the accused persons since the relevant provision in the Food Adulteration Act is altogether different than Section 197 of Cr.P.C. and Section 19 of the Prevention of the

Corruption Act. In the said matter, the prosecutions were launched by the Food Inspector under Section 21, under the purported authority given to him by the Food (Health) Authority by a notification to that effect but there was no written consent by the Central or the State Government for such prosecution and in such circumstances, the prosecutions were held illegal. It has been held by the Honourable Apex Court that though the State Government had delegated its power under Section 20(1) to the Food (Health) authority, the terms of Section 20(1) of the Food Adulteration Act do not postulate further delegation by the person so authorized. In the instant case, no such case is made out by the accused nor any such material is brought on record by them. In absence of any such material brought on record, no such inference can be drawn that the person who was working as In Charge Chief Executive Officer was not competent to accord the sanction in his said capacity to prosecute the accused for whom the Chief Executive Officer, Zilla Parishad, was the appointing as well as the removing authority.

The respondents have also not brought to our notice any such provision requiring publication of the name of the Chief Executive Officer in the official gazette. In the above circumstances, we do not find any force in the argument advanced

by the Counsel for the respondents that Shri Aher was not competent to accord sanction for prosecuting the accused persons i.e. the respondents herein.

12. Now, regarding another objection raised against the sanction accorded by Shri Aher to have been accorded mechanically and without application of mind. As mentioned earlier, the trial Court has upheld the argument advanced before it by the Counsel for the accused in that regard and has recorded a finding that the sanction accorded by Shri Aher was without any application of mind and hence invalid.

13. Since all the three accused were the Government servants, sanction was undisputedly required for prosecuting them under the offenses of Indian Penal Code as well as the Prevention of Corruption Act. Where the law prescribes sanction as a condition precedent to a prosecution, the Court must not only be satisfied that the required sanction has been accorded but also that the sanctioning authority has accorded it after applying its mind to the facts constituting the offense. In such cases, the prosecution carries a burden not only to procure the order sanctioning prosecution of an offender but also to satisfy the Court that the said order was given after the sanctioning authority had fully

applied his mind to the facts on the basis of which a charge was levelled against the offender. As held by the Hon'ble Apex Court way back in 1979 in the case of **Mohammad Ahmad Iqbal Vs. State of A.P. (AIR 1979 SC 677)**, the grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act and, therefore, must be strictly complied with before any prosecution can be launched against a public servant concerned.

14. The record of the trial Court reveals that in order to substantiate their objection that the sanction accorded by PW 12 Shri Pandit Aher was accorded mechanically and without application of mind, the accused have brought on record certain admissions in the cross examination of PW 12 Shri Aher. Following facts have come on record in the cross examination of Shri Aher.

i) That the order of sanction (Exh.73) was typed in October, 1982.

(ii) That, in the said typed order, somebody else's name was typed, and subsequently that is scored and his name is inserted at the said place in ink.

(iii) That, the name which was earlier typed is of Shri Shrivastav.

(iv) That at the bottom of the sanction order also name of said Shrivastav was typed as the sanctioning authority and subsequently it is scored and name of Shri P.D.Aher is written by ink.

(v) That the original sanction order was in the record of Zilla Parishad and the copy of the same was forwarded to the Police and the State Government.

(vi) That he is not aware as to who has typed the order of sanction.

(vii) That the contents of the order of sanction were written by the staff of the Zilla Parishad and he read over the same and signed it.

(viii) That there are initials on the order of sanction indicating that the same was checked by the subordinate staff and they had put their initials in that regard.

(ix) That the names of the persons to whom the copies of the sanction order were sent are written in the below portion and the date mentioned thereat is 4/11.

(x) That the date typed in the order of sanction was of October 1992 and by scoring the same, the date of 18th November, 1992, is written thereon in ink.

On noticing the facts mentioned as above which have come on record through cross examination of PW 12 Shri Aher, it apparently appears to us also that the sanction accorded by PW 12 Mr.Aher is without any application of mind. As admitted by PW 12 Mr. Aher, the order of sanction was typed in October, 1992. Shri Aher started working as the Chief Executive Officer, admittedly, from 13.11.1992 onwards. It is thus evident that in October, 1992, when the order of sanction was typed, somebody else, and possibly, Mr. Shrivastav, was the Chief Executive Officer, of Zilla Parishad, Dhule. The endorsement which is appearing below the said order of sanction (Exh.73), showing the names of the authorities to whom the copies of the order of sanction were forwarded, demonstrates that such endorsement was made on 4.11.1992. The said fact has also been admitted by PW 12 Shri Aher. On 4.11.1992 also, PW 12 Shri Aher was admittedly not working as Chief Executive Officer of Zilla Parishad, Dhule. As such, neither in October, 1992, nor on 4.11.1992, there was any reason for PW 12 Shri Aher to look into the papers of Crime No.320/1991 on the basis of which the sanction is stated to

have been accorded.

Further, PW 12 Shri Aher has given the most vital admission that the contents of the sanction were written by the staff of the Zilla Parishad, he read over the same and signed it. The candid admission so given by PW 12 Shri Aher coupled with certain other admissions to which we have referred herein-above, there is every reason to believe that the previously typed sanction order was brought before PW 12 Shri Aher by the subordinate staff of Zilla Parishad, Dhule, and Shri Aher mechanically signed the same. We, thus, find that the observations made by the trial Court in this regard and the inferences drawn by it holding that Shri Aher granted the sanction without application of mind are properly recorded and do not deserve any inference by this Court.

15. Since the validity of sanction depends on the application of mind by the sanctioning authority to the facts of the case as also the material and the evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for generation of genuine satisfaction whether prosecution has to be sanctioned or not.

16. In the instant case, in view of the facts recorded hereinabove, it does not appear to us that PW 12 Shri Aher had independently applied his mind to the facts of the case as well as to the material and evidence collected during the course of investigation before according his sanction. As held by the Hon'ble Apex Court in the case of Mohd.Iqbal, cited supra, any case instituted without a proper sanction must fail because that being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. The trial without a valid sanction is a trial without jurisdiction. As such, we do not find any error in the finding recorded by the trial Court that the sanction accorded by Shri P.D.Aher (PW 12) was without any application of mind and hence invalid.

17. In the above circumstances, though we have not approved the finding recorded by the trial Court as regards to the competence of Shri Aher for according the sanction, since we do not find error in the finding recorded by the trial Court that the sanction accorded by the sanctioning authority was without any application of mind, ultimately, the sanction has to be held invalid. We, therefore, decline to interfere in the judgment of acquittal recorded by the trial

Court. In the result, the appeal fails and is accordingly dismissed.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

...

AGP/498-01cr.a

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.498 OF 2001

Date of decision: 6/7/2015

For approval and signature

HON'BLE MR.JUSTICE R.M.BORDE

HON'BLE MR.JUSTICE P.R.BORA

- | | |
|--|--------|
| 1. Whether the Reporters of Local Papers may be allowed to see the Judgment ? | Yes |
| 2. To be referred to the Reporter or not ? | Yes/No |
| 3. Whether Their Lordships wish to see the fair copy of the Judgment ? | No. |
| 4. Whether this case involves a substantial? question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ? | No. |
| 5. Whether it is to be circulated to the Civil Judges ? | No. |
| 6. Whether the case involves an important question of law and whether a copy of the Order should be sent to Bombay, Goa and Nagpur Office ? | No |

Private Secretary
AGP/498-01cr.a