

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

CRIMINAL APPLICATION NO.3456 OF 2013

The State of Maharashtra ... APPLICANT

VERSUS

Ambadas Chandrabhan Sathe ... RESPONDENT

.....
Shri D.V. Tele, A.P.P. for applicant / State
Shri N.V. Gaware, Advocate for respondent
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CORAM: A.I.S. CHEEMA, J.

DATED: 24th February, 2015.

ORAL ORDER :

1. Heard learned A.P.P. for the applicant/ State and learned counsel for respondent - original accused. Perused record. Learned A.P.P. submits that, in this matter under Prevention of Corruption Act, the trap was laid and accused was caught accepting amount of bribe. The learned A.P.P. submits that, the prosecution brought on record necessary oral evidence to prove the incident of demand and acceptance of illegal gratification, but still the trial Court has acquitted the accused on

the ground of sanction although the charge regarding demand and acceptance of illegal gratification is found to have been established.

2. Learned counsel for respondent - accused has taken me through the observations of the trial Court regarding sanction as well as the other charge regarding demand and acceptance of bribe. He submits that, there was evidence to show that when the post-trap panchanama was being drawn, the panchas were sitting in another room. Learned counsel submitted that, the trial Court considered the fact that for giving sanction, the Sub-Divisional Officer had consulted the draft sanction order. He submits that, the trial Court found that the accused was appointed by Collector and thus submitted that the sanction as given by the Sub-Divisional Officer was not valid. Learned counsel for respondent relied on the following reported cases :

- (i) State of Maharashtra Vs. Ramchandra Sudam Ingale (2008 (2) Bom.C.R. (Cri.) 380)
- (ii) Maruti Subrao Shinde Vs. The State of Maharashtra (2011 ALL MR (Cri.) 1968)
- (iii) State of Maharashtra Vs. Kashinath Shridhar Wani (2010 All M.R. (Cri.) 139)

Referring to the judgments, learned counsel for

respondent submitted that, sanction has to be by appointing authority and it has been held that the sanction order given by Sub-Divisional Officer is not valid when the appointment is either by the Assistant Collector or Collector. He submits that, the protection in the matter of Article 311 of the Constitution of India is available to the accused.

3. Learned A.P.P. relied on Section 13(4) of the Maharashtra Land Revenue Code, 1966 to submit that, the Sub-Divisional Officer performs all the duties and functions and exercises all the powers conferred upon a Collector by this Code or any law for the time being in force, in relation to the sub-division in his charge. Learned A.P.P. further relied on the case of Sharad Namdeorao Shirbhate Vs. State of Maharashtra, reported in 2007 (Supp.) Bom.C.R. 593 to submit that in that matter, this Court has held, relying on Section 13(4) of the Maharashtra Land Revenue Code, that the Sub-Divisional Officer has all the powers of Collector and, therefore, he is competent to grant sanction.

4. Looking to the submissions made and the judgments cited before me, there is arguable case to decide the concerned question regarding sanction. Leave is granted. Application is allowed. Application is converted into Criminal Appeal.

5. Appeal is **admitted**.
6. Mr. Gaware, learned counsel dispenses with notice for respondent after admission of appeal.
7. Paper Book be got prepared.
8. Action under Section 390 of the Code of Criminal Procedure be taken against the respondent - accused in the trial Court and brief report of compliance be called.
9. Liberty to mention for final hearing after Paper Book is prepared.

(A.I.S. CHEEMA, J.)