

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

Criminal Application No. 5342 of 2014

Sonu @ Venkatesh s/o. Ashokrao Sangewar,

Age : 30 years,

Occupation : Business,

R/o. Loha, District : Nanded.

.. Applicant.

versus

The State of Maharashtra.

.. Respondent.

.....

Mr. Vijay Sharma, Advocate, for the applicant.

*Mr. U.S. Mote, Additional Public Prosecutor, for
the respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 18TH APRIL 2015

PER COURT :

1. Heard Adv. Mr. Vijay Sharma for the applicant and learned APP Mr. U.S. Mote for the respondent - State.

2. The applicant herein is questioning the correctness and validity of the order dated 6th May 2014, passed by the Additional Sessions Judge, Kandhar, below Exhibit 243 in Sessions Case No. 47/2007.

3. The applicant is an accused in the said Sessions Case. The prosecution had filed an application under Section 311 of the Code of Criminal Procedure, 1973, to call Mr. Radheshyam Mopalwar, the District Magistrate, as a prosecution witness, and also to recall API Mr. Sanjay Patil for re-examination. The learned Additional Sessions Judge has considered that the accused is being prosecuted for offences punishable under Sections 353, 336, 186, read with Section 34 of the Indian Penal Code; Section 25 of the Arms Act, and Section 135 of the Mumbai Police Act. The prosecution had sought permission to examine the District Magistrate in order to prove the sanction order passed by him under the Arms Act. The sanction order was a part of the compilation of the charge sheet. However, the District Magistrate was not cited as a witness in the list of witnesses in the charge sheet. The prosecution had specifically averred that, at the time of examining the Investigating Officer who filed the charge sheet, inadvertently, he was not confronted with the sanction order passed by the District Magistrate and it was not exhibited at that stage and, therefore, the sanction order could not be proved. The accused had objected the said application on the ground that after recording of statement of the accused under Section 313 of Cr.P.C., and closing the evidence for the prosecution, the said application under Section 311 of the Cr.P.C. was filed at a belated stage only to fill up the lacuna in the trial.

4. It is a matter of record, that in fact, the sanction order was a part of the charge sheet. The charge under the provisions of the Arms Act could not have been said to be established unless there is a sanction order to prosecute the accused under the provisions of the Arms Act. The

Investigating Officer had obtained the sanction of the District Magistrate. The learned Counsel for the applicant fairly submits that, at least at this stage, there is nothing on record to indicate whether the said document was enlisted in the application under Section 294 of the Cr.P.C. and whether the accused was given an opportunity to admit or deny the existence of the said document and, therefore, all these aspects need to be considered at the time of final arguments and the judgment.

5. Section 294 of the Code of Criminal Procedure, 1973, reads thus :

“ No formal proof of certain documents. – (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed.

Provided that the Court may, in its discretion, require such signature to be proved. ”

Sanction to prosecute under the Arms Act is not an idle formality. Section 294 of Cr.P.C. contemplates a mandate that the particulars of every such documents shall be enlisted and the accused be given an opportunity to

admit or deny the genuineness of the document.

6. The prosecution need not examine the District Magistrate as unless the sanction order is produced under Section 294 of the Cr.P.C., for the accused to admit or deny the document, the question of examining the District Magistrate would not arise. In the eventuality, that the genuineness of the document is denied by the accused, the prosecution may then file an application to examine the District Magistrate. In any case, primarily, the said document / sanction order will have to be presented under Section 294 of the Cr.P.C. for the accused to admit or deny the existence of the said document. In view of this, the proceedings need not be stayed.

7. Hence, I pass the following order :

[A] The learned Sessions Court shall call upon the accused to admit or deny the sanction order passed by the District Magistrate under Section 294 of the Cr.P.C. In the eventuality, the accused denies existence of the said document, the learned Sessions Judge may then call upon the District Magistrate to prove the said sanction order. The District Magistrate be examined as a court witness.

[B] The learned Sessions Court may permit the prosecution to recall PW 8 API Sanjay Patil, who was the Investigating Officer and had filed the charge sheet, since he has obtained the sanction order under Section 39 of the Arms Act.

(5)

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8. Save and except above directions, the Criminal Application is rejected.

(SMT. SADHANA S. JADHAV)
JUDGE

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