

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 184 OF 2000

APPELLANT :- The State of Maharashtra

...VERSUS...

RESPONDENT :- Kalu Sitaram Mane,
Occ.: Govt. Service,
r/a Irrigation Colony, Room No. 3/5,
Class-2 Qrs., Svargate,
Pune.

Mrs. G.P. Mulekar, APP, for the Appellant/State.
None for the Respondent.

CORAM : S.B. Shukre, J.

DATED : 30th June, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 07.12.1999 rendered in Special A/C Case No. 6 of 1991 by the Special Judge, Pune, thereby dropping the prosecution case against the respondent initiated for the offence punishable under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (for short P.C. Act).

2. Briefly stated, facts of the case are as under :

(i) The respondent, who was an accused before the trial Court in Special A/C Case No. 6 1991 was working as Administrative Officer in the office of the Director of Education and Development, Maharashtra State, Pune. He was a public servant.

(ii) One Dattatraya Sankpal, who was the complainant in the present case, was at the relevant time serving as a watchman in Irrigation department of the office of Soil Survey, Svargate, Pune. His services as watchman were of temporary nature.

(iii) The complainant alleged that the respondent on learning about the temporary nature of service of the complainant approached him and threatening that the complainant may not be continued in service, he demanded an amount of Rs.4,000/- so as to continue the complainant in service. This happened about eight days prior to the lodging of the complaint against the respondent by the complainant on 5.11.1990. Complainant requested the respondent to spare him as he was too poor to afford payment of bribe of Rs.4,000/- to the respondent. But, the respondent was unrelenting and told the complainant that he should pay him Rs.1,000/- on 5.11.1990 either in his office or at the office of the complainant as first instalment and to pay remaining amount of Rs.3,000/- in December, 1990. The respondent also threatened the complainant that on his failure to fulfill the said demand, he would persuade his seniors to remove the complainant from

service. The complainant was, however, not willing to pay any bribe to the respondent and, therefore, he decided to approach Anti Corruption Bureau, Pune, against the respondent. Anti Corruption Bureau officials decided to entrap respondent while taking bribe of Rs.1,000/- from the complainant. Therefore, necessary arrangements for laying of the trap were made. Appropriate instructions were given to the complainant and both panchas. The complainant together with shadow panch witness, one Rajendra Yevge, met respondent at about 2-30 p.m. of 5.11.1990 in his office and on the demand made by the respondent, handed over tainted currency notes, numbering 20, of Rs.50/- denomination each, totalling to Rs.1,000/-, to the respondent. Respondent accepted the same and kept them in the right side pocket of his full pant. Complainant gave pre-determined signal to the members of raiding party and then the Investigating Officer together with other members of trap-party and second panch rushed to the spot of incident and recovered from the respondent tainted currency notes. Their numbers were found to be tallying with the numbers already noted in the first panchanama by the Investigating Officer. Necessary seizures were made. Statements of witnesses were recorded. After completion of the investigation, charge-sheet came to be filed against the respondent for the offence punishable under Sections 7 and 13 of P.C. Act.

(iv) Charge for the afore-stated offences was framed against the respondent. As the respondent pleaded not guilty to

the charge framed against him and claimed to be tried, he was tried in accordance with law. On merits of the case, learned Special Judge found that the sanction order accorded by the sanctioning authority, Mr. S.Y. Kulkarni, was invalid in law and, therefore, the entire trial against the respondent stood vitiated. Therefore, relying upon the law reported in the case of **State of Tamil Nadu v. M.M. Rajendran** reported in **1998 SCC (Cri) 1000**, dropped the prosecution of the respondent for the offences alleged against him by the judgment and order dated 8.12.1999. Being not satisfied with the same, the State is before this Court in appeal.

3. I have heard learned APP on behalf of appellant/State. Nobody appears on behalf of respondent. I have carefully perused the record of the case and also the impugned judgment and order.

4. Learned APP has submitted that it is well settled law that validity of sanction can be proved in either of the two ways, namely by examining as a prosecution witness the sanctioning authority or proving the application of mind from the contents of the sanction order itself. She submits that since the sanctioning authority, Mr. S.Y. Kulkarni, the then Director, Superintending Engineer, was bed ridden and unable to personally attend the Court for giving his testimony, the prosecution adopted the method of proving the facts relating to issuance of sanction and the

contents of the sanction order by examining P.W.4 Sham Kulkarni, the then Superintendent, working in the office of Director of Irrigation and Research at Pune. She submits that even though Mr. S.Y. Kulkarni directed P.W.4 Sham Kulkarni to go through the proposal received from Anti Corruption Bureau and submit his noting in the matter, Mr. S.Y. Kulkarni, who had issued the sanction order vide Ex. 44, did not use the noting at all and by carefully perusing all the papers that were forwarded to him along with the proposal of Anti Corruption Bureau, accorded the sanction vide Ex.44. In support, she has taken me through the contents of the sanction order vide Ex.44, which, according to her, disclose that there was application of mind on the part of Mr. S.Y. Kulkarni to the material facts of the case thereby exhibiting a proper satisfaction on his part for issuing the sanction order. Therefore, she submits that the learned Special Judge has committed a serious illegality in recording a finding that the sanction given in the present case was invalid.

5. Upon careful perusal of the evidence of P.W.4 Sham Kulkarni as well as the documents proved in evidence by the prosecution, namely proposal of Anti Corruption Bureau vide Ex.41, the directions issued by the sanctioning authority, Mr. S.Y. Kulkarni, to P.W.4 Sham Kulkarni about perusal of Anti Corruption Bureau proposal, and submitting his proposal vide Ex.42 and the sanction order vide Ex.44, I find no substance in the argument of

learned A.P.P.

6. A perusal of the sanction order vide Ex.44, as rightly submitted by learned APP, indicates that the sanctioning authority, Mr. S.Y. Kulkarni, had gone through the case papers and after considering the material present in the case papers, he had accorded his sanction. This is the impression one gets on perusal of the sanction order vide Ex.44. But, this impression gets blurred when one considers the evidence of P.W.4 Sham Kulkarni as well as the directions issued by Mr. S.Y. Kulkarni, the sanctioning authority, below the proposal of Anti Corruption Bureau vide Ex.41. These directions are hand written and appear in blue ink under the signature of Mr. S.Y. Kulkarni. They read thus :

(१) परिच्छेद ३ ते ८ पाहावे व अभ्यासावेत 'क्ष' भाग विशेष रित्या पाहावा.

(२) ३ व व ८ मधील बाबी योग्य असतील तर त्याप्रमाणे प्रस्ताव सादर करावा.

सही (अस्पष्ट)

१६/१/९१

Loosely translated, these directions indicate that the Superintendent was directed to see paragraphs 3 to 8 and study properly "X" portion of paragraph 8. They also show that Mr. S.Y.Kulkarni, the sanctioning authority, further directed P.W.4 Sham Kulkarni, to examine the contents of paragraphs 3 and 8 and

if found proper, also to submit his proposal accordingly.

Ex.42 is the office note dated 18.1.1998 submitted by P.W.4 Sham Kulkarni and this note discloses that the Office Superintendent simply summarized the contents of paragraphs 3 and 8 of Anti Corruption Bureau proposal vide Ex.41 and did nothing more.

7. Now, a question arises as to why a need for directing an Office Superintendent working under the control of the sanctioning authority to examine the contents of Anti Corruption Bureau proposal and if found it to be in order, to submit yet another proposal for issuance of sanction, arose for the Director or the sanctioning authority. Answer to this question cannot be found in the evidence of P.W.4 Sham Kulkarni. Learned APP submits that issuance of aforesaid direction below the proposal of Anti Corruption Bureau vide Ex.41 was an act of seeking of assistance by the sanctioning authority of his office subordinate so that he could apply his mind properly to the facts of the case and reach an appropriate conclusion as regards giving or refusing of sanction to prosecute the respondent. She submits that there is nothing illegal about seeking of such an assistance from a subordinate staff. I must say, as a matter of fact, this answer ought to have been provided by P.W.4 Sham Kulkarni, but he has not. The learned APP, however, has done it, which can be taken to be borne from common experience.

8. To the extent the common experience is drafted in, one can accept the fact that many a times superior officers, who are over burdened with the office work and who struggle for availability of sufficient time in personally looking into such matters, indeed take assistance from their office staff or subordinates. There is no prohibition in law in seeking such assistance from the office staff as long as the responsibility for reading the relevant facts and reaching satisfaction based on such reading is not shifted or transferred to the subordinate staff. Therefore, the distinguishing factor in such a case is of seeking assistance and blindly relying on it one hand and seeking mere assistance and using it by application of one's own mind in reaching the requisite satisfaction on the other. If one blindly accepts the advice given then it would be a case of mechanical sanction. But, if the advice is considered in the light of entire material on its careful perusal and by applying mind to it, a conclusion is reached, the sanction would not be rendered invalid only because some assistance was taken. Therefore, it was necessary for the prosecution to explain as to why in the first place the said direction was given and how the assistance worked in the decision making process, in the sense, whether it was blindly accepted or was only considered as a tool in better understanding the facts by the sanctioning authority. But, one can see from the prosecution evidence that no explanation in this regard has been given. As a matter of fact, the

prosecution ought to have explained that even though afore-said direction was issued, and office note in compliance with that direction was submitted by the subordinate of the sanctioning authority, the sanctioning authority either ignored it or considered it together with all relevant material for applying his own mind to the facts of the case, and accordingly reached his satisfaction in the matter. Such an explanation could have been given in the sanction order vide Ex.44 itself. But, the sanction order makes no mention about the same. Suppression of this fact, a material fact in the facts and circumstances of this case, in the sanction order vide Ex.44 creates a doubt about proper application of mind to the facts of the case by the sanctioning authority and as no satisfactory explanation has been offered by the prosecution with regard to issuance of said direction, absence of any reference of that direction in the sanction order and as to how the assistance was used, an adverse inference would have to be drawn against the prosecution. The adverse inference would be that no explanation has been given by the prosecution and no mention of the afore-stated facts have been made in the sanction order vide Ex.44 only because the sanctioning authority did not apply his mind and that the sanction order was issued mechanically.

9. The above referred conclusion is also fortified by the fact that the draft sanction order itself has been used by the sanctioning authority by simply typing his name in the blank left in

the draft sanction order and putting his signature below the draft sanction order.

10. The learned Special Judge, in the circumstances pointed out above, was right in recording a finding that the sanction given by the sanctioning authority for prosecution of the respondent for the offences punishable under Sections 7 and 13 of P.C. Act was invalid and, therefore, the whole trial of the case against the respondent stood vitiated. He was right in dropping the case initiated under the afore-stated provisions of P.C. Act. No case has been made out for making any interference with the impugned judgment and order. The appeal deserves to be dismissed.

11. The appeal stands dismissed.

JUDGE

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