

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.916 OF 2000**

|                                      |   |                 |
|--------------------------------------|---|-----------------|
| The State of Maharashtra             | ] | .... Appellant  |
| V/s.                                 |   |                 |
| Pundlik Ramchandra Powar,            | ] |                 |
| Age : 45 Yrs., Talathi, Kagni Sajja, | ] |                 |
| Tal. Chandgad, Dist. Kolhapur.       | ] | .... Respondent |

Ms. Rajeshree Gadhavi, A.P.P., for the Appellant.

Mr. Sagar A. Mane, i/by Mr. N.V. Bandiwadekar, for the Respondent.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 21<sup>ST</sup> AUGUST, 2015.**

**P.C. :**

1. This Appeal is preferred by the State challenging the Judgment dated 4<sup>th</sup> September, 2000 of Special Judge, Gadhinglaj in Special Case No.2 of 2000, thereby acquitting the Respondent for the offence punishable under Section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988.
2. Facts, as are necessary, for deciding this Appeal may be stated as follows :-

At the relevant time, Respondent was working as 'Talathi' in Village Kagni, Taluka Chandgad, District Kolhapur. The allegation against him, as made by prosecution, is that he has demanded, received and accepted the amount of Rs.800/- as bribe from PW-1 Jairam Irappa Kamble for doing an official act and he was caught red handed with the said bribe amount by Anti-Corruption officials. On due investigation, he was charge-sheeted and prosecuted before the Trial Court.

3. In support of its case, the prosecution has examined five witnesses, including the Sanctioning Authority, and on appreciation of their evidence, the Trial Court was pleased to hold the prosecution case as proved on all the factual aspects, except the Trial Court found that the Sanction Order issued for prosecution of the Respondent is not legal and valid and accordingly on this sole ground, the Trial Court acquitted the Respondent of all the charges levelled against him.

4. This Judgment of the Trial Court is challenged in this Appeal by the learned APP, whereas, supported by learned counsel for the Respondent. As referred above, the only point which is raised in the Appeal and on which the Trial Court has acquitted the Respondent is about the legality and validity of the Sanctioned Order.

5. It is needless to state that sanction, that too a valid and legal sanction, is the prerequisite for prosecution of the offence under the Prevention of Corruption Act. Section 19 of the said Act is mandatory to that effect. Sanction in order to be legal and valid is not necessarily to be accorded on due application of mind, but it is also required to be granted by the Competent Authority. Who can be the Competent Authority is also a

fairly well settled and well crystallized position. That the authority who is competent to remove the public servant from his office is the only Competent Authority to grant the sanction. Except for him, no other authority and definitely no subordinate authority can issue the sanction for prosecution of a public servant.

6. This is the law laid down by our own High Court also in the case of ***Sakharam Patil Vs. State of Maharashtra, 1993 MH.L.R. 276***, wherein it was held that, *“the requirement of Section 6(1)(c) of the Prevention of Corruption Act, 1947 is that, sanction to prosecute a public servant should be accorded by an authority, who is competent to remove from office, the said public servant concerned.”*

7. In the reported authority, the Accused was *Patwari*, appointed by the Collector. However, sanction to prosecute him was accorded by the Sub-Divisional Officer, an Officer subordinate to the Collector. Hence, it was held that, *“the Sub-Divisional Officer, being subordinate to the Collector, could not remove from service an Officer appointed by the Collector, without doing violence to Article 311(1) of the Constitution of India. The sanction to prosecute was, therefore, invalid on the ground that the Sub-Divisional Officer was not competent to accord such sanction.”*

8. In the present case also, as per admitted facts on record, the Respondent/Accused was promoted as 'Talathi' by the Collector by passing an order dated 22<sup>nd</sup> February, 1983 (Exhibit-35). He was promoted as 'Talathi' by Collector, whereas, the sanction to prosecute him is accorded by the Sub-Divisional Officer, Gadhinglaj. Therefore, it necessarily follows that the Collector, who is the appointing authority of

the Respondent, has not accorded the sanction, though he was the only Competent Authority to remove the Respondent from his office as 'Talathi'. The Sub-Divisional Officer, who has accorded the sanction, i.e. PW-4 Sanjay Chavan, being subordinate to the Collector, who has appointed the Respondent, the sanction accorded by him to prosecute the Respondent is neither legal nor valid. On the basis of such sanction, the entire case becomes vitiated and Respondent/Accused becomes as of right eligible to get the Judgment of acquittal.

9. In my considered opinion, therefore, the Trial Court has rightly acquitted the Respondent/Accused of the charges levelled against him for want of prosecution accorded by the Competent Authority. The Appeal holds no merit and hence stands dismissed.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**