

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2207 OF 2013

1] Sanjiv V. Anaokar.
2] N. P. Mane.
3] Sudhakar Mahajan.

..Petitioners.

Versus

Director General, Anti Corruption Bureau
and Others.

..Respondents.

Mr. Shirish Gupte, Shirish Gupte with Mr. Sachin Shetye, H. C. Pimple
i/b U. N. Hedar for the Petitioners.

Mr. K. V. Saste, learned APP for the State.

Mr. Chaitanya Pendse for Respondent No. 2.

Coram : RANJIT MORE &
R. G. KETKAR, JJ.

Date : **October 27, 2015.**

Oral Judgment (Per Ranjit More, J.):

1. Heard. Rule. Rule made returnable forthwith. Since issue involved in the matter is in narrow compass, by consent of the learned Counsel appearing for the respective parties, petition is immediately taken up for final hearing.

2. The Petitioners are the employees of the Municipal Corporation for Greater Mumbai. Thus, the Petitioners are "*public servants*" within the meaning of section 21 of the Indian Penal Code, 1860 and also within the meaning of clause (c) of

section 2 of the Prevention of Corruption Act, 1988 [for short "*the PC Act*"].

3. By this writ petition, the Petitioners are challenging the order passed by the designated Special Judge under the PC Act whereby the directions have been given to carry out investigation under section 156(3) of the Code of Criminal Procedure, 1973 [for short "*the Code*"]. The order is issued on the private complaint filed by the Respondent–Complainant seeking directions to the Anti Corruption Bureau [for short "*the ACB*"] to carry out investigation.

4. The short question which arises for our consideration in this writ petition is whether sanction as contemplated under section 19(1)(c) of the PC Act is required to be obtained from the Competent Authority before issuance of direction for investigation under section 156(3) of the Code.

5. The order passed directing ACB to investigate is sought to be quashed and set aside on the sole ground that prior sanction as contemplated under section 19(1)(c) of the PC Act is not obtained before issuance of the order under section 156(3) of the Code.

6. The substratum of allegations in the private complaint filed before the Special Judge is that Petitioners are alleged to have committed various offences in discharge of their official duties.

7. In order to buttress his contention that without prior sanction from the Competent Authority, order directing investigation under section 156(3) of the Code will not stand the scrutiny of law, the learned Senior Counsel appearing for the Petitioners heavily relied upon the following decisions :

- 1] *Anil Kumar & others v. M. K. Aiyappa* [2013(10) SWCC 705
- 2] *Priyanka Srivastava v. State of Up* [2015(6) SCC 287]
- 3] *D.T. Virupakshappa v. Subash* [2015 Cr.L.J.2589]
- 4] *Pandharinath Narayan Patil v. State of Maharashtra* [2015(2) BCR (Cri) 338]

8. The learned Counsel appearing for the Respondent – original complainant contested the petitions very vehemently. Though the learned Counsel appearing for the Complainant has not disputed that the Petitioners herein are the public servants - employees of the Municipal Corporations and the offences are alleged to have been committed by them in discharge of their official duties, he submitted that order under section 156(3)

cannot be quashed. In support of his submission, he heavily relied upon the recent decision of the Apex Court in Lalita Kumari v. Govt. of UP [2014(2) SCC 1].

. He submitted that section 156(3) of the Code is alternative to section 154 of the Code, therefore when no sanction is required for action under section 154 of the Code for registration of FIR, no sanction can be read into section 156(3). He lastly relied upon the decision of the Apex Court in K. Kalimuthu v. State [(2005) 4 SCC 512].

9. Before we proceed to deal with the contentious issue, it would be apt to have a look at section 19 of the PC Act, which provides that previous sanction is necessary for prosecution of the public servants. For ready reference, said section is reproduced hereinbelow :

“19. Previous sanction necessary for prosecution.-

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in Lokpal and Lokayuktas Act 2013],-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the

sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact

whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

10. By catena of decisions, it is now well settled principle that before prosecuting any public servant, previous sanction under section 19 of the PC Act is necessary. The Apex Court in Anil Kumar's case (supra) has held thus :

“11. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in *Maksud Saiyed case* [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views

is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

21. Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases .

22. Further, this Court in Army Headquarters v. CBI [(2012) 6 SCC 228] and opined as follows:

82. *Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him..*

83. *If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the*

entire action may be rendered void ab-initio.
.....”

11. Recently, the Apex Court in *Priyanka Srivastava's* case (supra) has reiterated the earlier view in Anil Kumar's case and has further observed that :

“29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.”

12. In *D.T. Virupakshappa's case's (supra)*, the Appellant public servant was alleged to have exceeded his power during investigation of a criminal case and assaulted the Respondent in order to extract some information with regard to the death of one Sannamma. The Respondent Complainant filed private before the Magistrate. The learned JMFC took cognizance of the case and registered Criminal Case No. 74 of 2009 and issued summons against the Appellant for the offence punishable under sections 323, 324, 326, 341, 120, 114 and 506 read with 149 of the IPC. The main contention before the Apex Court was that learned

Magistrate could not have taken cognizance of the offence without there being sanction under section 197 of the Code. In dealing with the contention, the Apex Court has held that :

“In the case before us, the allegation is that the appellant exceeded in exercising his power during investigation of a criminal case and assaulted the respondent in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 of CrPC, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary.”

13. The Division Bench of this Court in *Pandharinath's case (supra)*, in paragraph 32 has made following observations :

“In the case of *Anil Kumar*, the Apex Court after considering the principles laid down by the Constitution Bench in the case of *State of UP v. Parasnath Singh* and in *Subramaniam Swami v. Manmohan Singh* has held that the word “cognizance” has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. The Apex Court has held that the Special Judge/Magistrate cannot refer the matter under section 156(3) against a public servant without a valid sanction order. In the instant case undisputedly, there is no such sanction order hence, the learned Magistrate was not justified in issuing order under section 156(3) of the Code.”

14. In the light of above mentioned principles of law laid down by the Apex Court as well as by this Court and considering

the admitted facts on record that the Petitioners are the public servants within the meaning of section 21 of the Indian Penal Code, 1860, we are of the view that the provisions of section 19 of PC Act are attracted in their case. Before passing order under section 156(3) of the code, sanction under section 19 of the PC Act is mandatory and without prior valid sanction order, the Special Judge cannot pass order under section 156(3) of the Code. Admittedly, no sanction as contemplated under Section 19 of the PC Act was obtained by the Complainant. Therefore, the Special Judge has no jurisdiction to pass order under section 156(3) of the Code.

15. The decision in Lalita Kumari's case (supra) and K. Kalimuthu's case (supra) on which the learned Counsel appearing for the Respondent No.2 has heavily relied upon, have no application to the facts and circumstances of the present case. The issue before the Apex Court in Lalita Kumari's case (supra) is whether the police officer is bound to register an FIR upon receiving any information relating to the commission of cognizable offence under section 154 of the Code or the police officer has authority to carry out preliminary enquiry in order to

test the veracity of allegations before registering the FIR. The question whether sanction under section 197 of the Code or section 19 of the PC Act is required to be mandatorily obtained prior to passing of order under section 156(3) of the Code did not arise for consideration before the Supreme Court in Lalita Kumari's case.

16. The question which fell for consideration before the Apex Court in K. Kalimuthu's case (supra) was about the applicability of section 197 of the Code. The Apex Court held that expression "*any offences alleged to have been committed by public servant while acting or purposing to act in the discharge of his official duty*" and "*official duty*" imply that the act or omission must have been done by the public servant in the course of his service or duty and that it would fall within the scope and range of his official duty. In the present case, it is not disputed by the Respondent-Complainant that the offence alleged to have been committed by the Petitioners are in discharge of their official duties. Therefore, this decision has no application to the facts and circumstances of the present case.

. As stated earlier, the Petitioners are employees of the Municipal Corporation for Greater Mumbai. The Respondent- Complainant has alleged that they have committed offences under various provisions of the PC Act and IPC. So far as the employees of the BMC are concerned, they are covered by the provisions of section 19(1)(c) of the PC Act and therefore for their prosecution, sanction is required to be obtained from the Authority who is competent to remove them from the office.

17. In the light of above discussion, it is clear that sanction from the Competent Authority is required to be obtained at pre-investigation stage also.

18. It is contended by the learned Counsel appearing for the Respondent-Complainant that the Petitioners- employees of the BMC are alleged to have committed offences not only under the PC Act but also under the IPC and, therefore no sanction for the offences concerning IPC is required. It is true that in the case of employees of Municipal Corporation, they are covered by section 19(1)(c) of the PC Act. Therefore, so far as the employees of Municipal Corporation are concerned, no sanction is required to be obtained for their prosecution in respect of the offences

punishable under the provisions of IPC. However, in the instant case, the complaint against the employees of Municipal Corporation is filed before the Special Judge designated under the PC Act, who has no jurisdiction to pass an order under section 156(3) of the Code against the employees of BMC in relation to offences punishable under the IPC. Therefore, order directing investigation made by the Special Judge, designated under the PC Act, against the employees of Municipal Corporation is required to be quashed and set aside.

19. In the result, petition is allowed in terms of prayer clause (a) and the impugned order is quashed and set aside qua the Petitioners only.

[R. G. KETKAR, J.]

[RANJIT MORE, J.]