

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 404 OF 2014

Prashant Kashinath Zaware

Applicant

-VERSUS-

Smt. Rubal Gupta (Agrawal) and others

Respondents

Mr. P.B. Vikhe Patil, Advocate for the Applicant.

Mr. S.T. Shelke, Advocate for Respondent Nos.1 to 3.

Mr. S.G. Karlekar, APP for Respondent No.10/State.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/06/2016

PER COURT :

1. The Applicant is aggrieved by the judgment and order dated 21.10.2013 delivered by the learned Additional Session Judge, Ahmednagar by which Criminal Revision Application No.119 of 2013 has been partly allowed.

2. The grievance of the Petitioner is that the order passed by the learned Magistrate under Section 156(3) has been interfered into by

the Revisional Court to the extent of accused Nos. 7 to 9 who are Petitioner Nos. 1, 2 and 3 before the Revisional Court, on the misconception that a sanction for prosecuting the said accused under Section 197 of the Code of Criminal Procedure was mandated even at the pre-investigation stage.

3. I have heard the strenuous submissions of the learned Advocates for the petitioner and the respondents. With their assistance, I have gone through the petition paper book.

4. The Hon'ble Supreme Court in the matter of *Anil Kumar and other Vs. M.K. Aiyappa and another*, **(2013) 10 SCC 705** has concluded that sanction under Section 19(1) of the Prevention of Corruption Act, 1988 is a pre-condition even for ordering investigation against a public servant in dealing with a complaint under Section 156(3) of the Code of Criminal Procedure. It is further concluded that such sanction is required even at the pre-cognizance stage. The Hon'ble Supreme Court has held that this would also apply to all complaints under Section 200 of the Code of Criminal

Procedure.

5. Considering the said ratio, this Court had called upon the Petitioner to make his submissions.

6. Though Mr.Vikhe Patil learned Advocate for the applicant has strenuously canvassed that no such sanction is required at the pre-cognizance stage or at the pre-investigation, I do not find that the submissions would be sustainable in the light of the above observations of the Honourable Supreme Court.

7. Paragraph Nos. 8, 9, 11, 12, 13 14, 51 and 21 of the *Anil Kumar* (Supra) judgment read as under :-

“8. The learned Senior Counsel further submitted that the High Curt also committed an error in holding that the sanction was necessary even while the court was exercising its jurisdiction under Section 156(3) CrPC. The learned Senior Counsel submitted that the order directing investigation under Section 156(3) CrPC would not amount to taking cognizance of the offece. Reference was made to the judgments of this Court in Tula Ram v. Kishore Singh and Srinivas Gundluri v. SEPCO Electric Power Construction Corpn.

9. Shri Uday U. Lalit, learned senior counsel appearing for the respondents, on the other hand, submitted that the question raised in this case is no more *res integra*. Reference was made to the judgment of this Court in *Subramaniam Swamy v. Manmohan Singh and another* (2012) 3 SCC 64. The learned senior counsel submitted that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duties. The purpose of obtaining sanction is to see that the public servant be not unnecessarily harassed on a complaint, failing which it would not be possible for a public servant to discharge his duties without fear and favour. Learned Senior Counsel also placed reliance on the judgment of this Court in *Maksud Saiyed v. State of Gujarat and Others* (2008) 5 SCC 668 and submitted that the requirement of application of mind by the Magistrate before exercising jurisdiction under Section 156(3) Cr.P.C. is of paramount importance. Learned Senior Counsel submitted that the requirement of sanction is a prerequisite even for presenting a private complaint under Section 200 Cr.P.C. and the High Court has rightly quashed the proceedings and the complaint made against the respondents.

11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* case (*supra*) 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.

12. We will now examine whether the order directing investigation under Section 156(3) Cr.P.C. would amount to taking cognizance of the offence, since a contention was raised that the expression “cognizance” appearing in Section 19(1) of the PC Act will have to be construed as post- cognizance stage, not pre-cognizance stage and, therefore, the requirement of sanction does not arise prior to taking cognizance of the offences punishable under the provisions of the PC Act.

13. The expression “cognizance” which appears in Section 197 Cr.P.C. came up for consideration before a three-Judge Bench of this Court in State of Uttar Pradesh v. Paras Nath Singh, and this Court expressed the following view: (SCC pp.375 6)

“6.10.....And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon

information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means

'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

14. *In State of West Bengal and Another v. Mohd. Khalid and Others (1995) 1 SCC 684, this Court has observed as follows:*

"13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the

initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.” The meaning of the said expression was also considered by this Court in Subramaniam Swamy case (supra).

15. *The judgments referred to herein above clearly indicate that the word “cognizance” has a wider connotation and not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C. and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.*

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 (supra)."

8. Considering the view taken by the Hon'ble Apex Court in the above judgment, it is apparent that the contention of the Petitioner is misplaced.

9. The Petitioner has not been able to persuade this Court on the basis of the available material that the said public servants were not performing their duties in their official capacity and that there was no requirement for obtaining a sanction under Section 197. The material on record indicates that the conduct of the concerned public servants is in connection with their duties being performed in their official capacity and as such, the learned Revisional Court, in my view, has rightly caused an interference in the matter.

10. Considering the above, I do not find any merit in this Application and the same is, therefore, rejected.

(RAVINDRA V. GHUGE, J.)