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

CRIMINAL REVISION APPLICATION NO. 64 OF 2004

The State of Maharashtra

..APPLICANT

VERSUS

1. Ambadas s/o Saluji Tyade,
Age: 51 years, Occu: Dy. Engineer,
MSEB Power House, Sub Station,
Jubli Park, Aurangabad

2. Rajendra Pannalal Nahata,
Age: 30 years, Occu: Jr. Engineer,
MSEB, Power House, Sub Division,
Jubli Park, Aurangabad

..RESPONDENTS

Mr C. V. Dharurkar, Addl. Public Prosecutor for applicant;
Mr S. P. Shah, Advocate, holding for Mr Pushkar Shendurnikar, Advocate
for respondents

CORAM : N.W. SAMBRE, J.

DATE : 12th August, 2016

ORAL JUDGMENT :

The respondents-accused were tried for an offence punishable under section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under section 7 (1) (d) of the Protection of Civil Rights Act, 1955, in Sessions Case No.85 of 2003.

2. The present respondents moved an application under section 227 of the Code of Criminal Procedure, seeking discharge from the said crime, which came to be allowed by 4th Additional Sessions Judge, Aurangabad,

(2)

vide order dated 25th September, 2003. As such, present revision by the State.

3. It is required to be noted that, at the relevant time, respondent no.1 was working as Deputy Engineer, whereas respondent no.2 was working as Junior Engineer in the then Maharashtra State Electricity Board, Aurangabad. It is not in dispute that both the respondents are public servants. Complainant Narhari Shelke has also faced a prosecution in C.R. No.104 of 2002, for offences punishable under sections 353, 323, 504 read with section 34 of the Indian Penal Code and under sections 34 and 44 of the Indian Electricity Act, 1948, at the behest of respondent no.2 Ravindra Nahata. The said C.R. No.104 of 2002 has resulted into registration of Regular Criminal Case No.1185 of 2002 and the Chief Judicial Magistrate, Aurangabad, had issued process against complainant Narhari Shelke, who had preferred the complaint against the respondents herein.

4. The prosecution case, as appears from the record is that the respondents are the officers of the statutory board and it is claimed against them that the complainant who was working as a Deputy Collector, had purchased plot no.13 in Sahjivan colony, where he had started construction of a house. It is then claimed that he sought an electric connection for the purpose of construction and the present respondents demanded bribe. Since the demand for bribe was not adhered to, the respondents deputed Gadekar and Shinde, employees of the board on 22nd

(3)

March, 2002 at the site of construction, who had assaulted younger brother of complainant, namely, Bhagwan, who was required to be hospitalized. It is also claimed that the respondents uttered caste based insulting words against the complainant as he belongs to the Backward category, resulting into registration of the crime in question.

5. The respondents then moved an application for discharge, on the ground that they being public servants, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act contemplates a sanction against them, as the act alleged against them was arising out of discharge of their official duty and in absence thereof, i.e. sanction from the competent authority, they cannot be prosecuted and as such be discharged.

6. Learned Addl. Sessions Judge noted that the Investigating Officer had not obtained prior sanction from the appropriate authority for prosecuting both the accused. The learned Sessions Judge also noticed that the Investigating Officer Shri D.S. Chavan, Assistant Commissioner of Police, Aurangabad, on 2nd December, 2013, had informed the learned Sessions Judge that a sanction for prosecution was sought against the respondents, however, the same was not received and will be filed in due course. Learned Addl. Sessions Judge noted that since at the time of filing of the charge-sheet no sanction was placed on record and in view of the communication dated 31st January, 2003, issued by the Technical Director refusing to grant sanction, the respondents were discharged.

(4)

7. Mr Dharurkar, learned Addl. Public Prosecutor for the State, while trying to make out a case for showing indulgence, would urge that the learned Additional Sessions Judge ought not to have exercised powers under section 227 of the Code of Criminal Procedure for discharge, before the Court could have taken cognizance of the matter. He would then urge that the contents of the first information report rather depict that the alleged criminal act cannot be attributed to be one while discharging the official duty and as such, the order impugned is not sustainable and is liable to be set aside.

8. Mr Shah, learned Counsel appearing on behalf of the respondents would support the order of the learned Addl. Sessions Judge by pointing out that in categorical terms, the Executive Director, i.e. the competent authority to grant sanction for prosecution, has refused to accord sanction for prosecution of respondents-accused. As such, respondents-accused were rightly discharged. According to him, no case for interference, particularly in the revisional jurisdiction is made out, as nothing could be pointed out so as to demonstrate failure to exercise the jurisdiction or exercise of jurisdiction not vested with the court below and as such, according to him, the revision deserves to be dismissed.

9. It is required to be noted that admittedly, no charge was framed against respondents-accused, though they had appeared before the learned Additional Sessions Judge. It is also required to be noted that

(5)

complainant Narhari is also facing criminal trial in the court of Chief Judicial Magistrate, Aurangabad, for offences punishable under sections 353, 323, 504 read with section 34 of the Indian Penal Code and under section 44 of the Indian Electricity Act in C.R. No.104 of 2002, registered on the basis of the complaint lodged by respondent no.1-accused on 22nd March, 2002.

10. It is in this backdrop of the complaint lodged by respondent no.1 – accused against complainant Narhari, on the next day a complaint is lodged against the present respondents under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Protection of Civil Rights Act. Apart from delay of one day in lodging the first information report at the behest of complainant Narhari, particularly in the backdrop of registration of C.R. No.104 of 2002 against him, this Court is also required to take note of section 82 of the Electricity (Supply) Act, 1948 and 56 (2) of the Indian Electricity Act, 1910, which read thus :-

“82. No suit, prosecution or other legal proceeding shall lie against [any [member or officer or other employee] of the Board] for anything which is in good faith done or intended to be done under this Act.”

“56 (2).”No Court shall take cognizance of an offence under this Act, by a public officer except with the sanction -

(6)

(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in any other case, of the [State Government.]”

11. Upon perusal of both these provisions, it is *ex facie* clear that the respondents-accused ought not to have been prosecuted or charge-sheet should not have been filed against them, in absence of sanction for prosecution from the competent authority.

12. It is not in dispute that the Investigating Officer has already informed the learned Magistrate to grant permission to file supplementary charge-sheet against the accused, as soon as permission to prosecute the accused is accorded by the competent authority of the Maharashtra State Electricity Board. The competent authority of the Maharashtra State Electricity Board, vide communication dated 31st January, 2003, addressed to the said Investigating Officer, has refused to grant sanction in the matter; as the respondents-accused were performing their official duty.

13. Mr Shah, learned Counsel appearing on behalf of the respondents has rightly invited my attention to the judgment in the matter of **Rangesh Sharma & anr. vs. State of U.P. & anr.**, reported in **1990 Criminal Law Journal 861**, so as to demonstrate that the sanction before prosecution of an employee, like the respondents in the given set of facts, is mandatory.

(7)

14. For the aforesaid reasons, the claim as is sought to be put-forth by the learned Addl. Public Prosecutor, in my opinion, deserves to be rejected and is accordingly rejected. In view thereof, Criminal Revision fails and stands dismissed. Rule discharged.

(N.W. SAMBRE, J.)

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