

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 41 OF 2016

SHRI. SANJAY HARMALKAR.,

... Petitioner

Versus

STATE OF GOA, THR. THE PUBLIC
PROSECUTOR AND 5 ORS.,

... Respondents

Mr. Shailendra Gurudas Bhobe, Advocate for the Petitioner.
Mr. Pravin N. Faldessai, Additional Public Prosecutor for
Respondent No.1.

Coram:- C. V. BHADANG, J.

Date:- 18th October, 2016

ORAL ORDER:

The petitioner is challenging the order dated 30.06.2016 passed by the learned Special Judge at Panaji in Criminal Miscellaneous Application No. 1/2016. By the impugned order, the objection raised by the State (respondent no. 1) to the maintainability of the application under Section 156(3) of Cr.P.C. filed by the petitioner, has been upheld and consequently, the criminal miscellaneous application filed by the petitioner, has been rejected. The main ground on which the application is rejected is want of sanction under Section 19 of the Prevention of Corruption Act, as one of the co-accused is stated to be still in service.

2. It is submitted by the learned Counsel for the petitioner that the petitioner had applied for grant of sanction on 04.04.2016. It is submitted that if, the application is not processed and no decision is

taken within a period of 90 days, there is grant of deemed sanction as held by the Hon'ble Supreme Court in the case of SUBRAMANIAN SWAMY VS. MANMOHAN SINGH AND ANOTHER, (2012) 3 SCC 64 and several other cases. It is submitted that the petitioner could not raise this ground before the learned Special Judge as the period of 90 days has expired after the impugned order was passed. The learned Counsel therefore, seeks remand of the matter to the learned Special Judge.

3. The learned Additional Public Prosecutor, on instructions, states that an application for grant of sanction is received by the State Government, however, he is not in a position to make any statement as to whether any decision is taken on the same. The learned Additional Public Prosecutor fairly states that keeping the rival contentions open, appropriate order be passed.

4. In the circumstances and the submissions made and by consent of the parties, the following order is passed:

O R D E R

- (a) The criminal revision application is partly allowed.
- (b) The impugned order dated 30.06.2016, is hereby set aside.
- (c) The Criminal Miscellaneous Application No. 1/2016 is remitted back to the learned Special Judge, for deciding it afresh in accordance with law.
- (d) Needless to mention that the rival contentions are left open.

(e) The criminal revision application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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