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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) No. 737 of 2016.

Ashok Sadashiv Phalle	..	..Applicant.
Vs		
The State of Maharashtra & Ors	..	..Respondents.

Mr Satyavrat Joshi for the applicant.

Mr A.S. Patil, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 4th August, 2016

P.C.

1) The present application under section 482 of the Code of Criminal Procedure, 1973 the applicant has prayed for quashing and setting aside the Order of issuance of process dated 28/6/2016 passed by the learned Special Judge, Thane in Special Case No. 12 of 2016 under section 7 of the Prevention of Corruption Act, 1988.

2) During the course of hearing of the present application on earlier occasions, the learned counsel appearing for the applicant had raised the following grounds for quashing the order of issuance of process:-

- i) That the sanction granted by the Competent Authority dated 11/12/2015 which is at page 29 to the present application, is not competent to accord the sanction under section 19 of the Prevention of Corruption Act, 1999;
- ii) That the Appointing Authority of the applicant is the Director General of Police, Maharashtra State and the sanction dated 11/12/2015 is accorded by the Assistant Inspector General of Police (Law and Order) who is equivalent in the rank of the Superintendent of Police and is therefore not competent to grant sanction for taking cognizance;
- iii) That the Appointing and Removal Authority of the applicant is the Director General of Police and under the Bombay Police (Punishment and Appeals) Rules 1956, the Authority who has accorded the sanction, is also not competent to remove the applicant from the service and, therefore, the said sanction is bad in law;
- iv) That in view of above stated submissions, the sanction dated 11/12/2015, so accorded by the said Authority, is *non est* in the eyes of law and,

therefore, the applicant also deserves to be discharged from the case.

In support of his contention, the learned counsel for the applicant has relied upon the following two decisions of the Hon'ble Supreme Court:-

- (i) (2005) 8 SCC 370
State of Karnataka through CBI Vs. C. Nagraj Swamy;
- (ii) Criminal Appeal No. 1867 of 2012 Nanjappa Vs.State of Karnataka, dated 24/7/2015.

3) The learned APP, on instructions, from the Officer who is personally present in the Court, from the office of the Director General of Police, submitted that, as a matter of fact, after realizing the technical difficulty, the Director General of Police has subsequently accorded fresh sanction dated 29/6/2016 in the present case and, therefore, the submission of the learned counsel for the applicant loses its force. He produced, for my perusal, a photocopy of the said sanction dated 29/6/2016, accorded by the Director General of Police, Maharashtra State, Mumbai, under section 19 of the Prevention of Corruption Act, 1988.

4) In view of the fresh sanction accorded by the Competent Authority i.e. the Director General of Police, Maharashtra State,

Mumbai dated 29/6/2016, according to me, the provision of section 19 (1) (c) of the Prevention of Corruption Act, 1988 is properly complied with. By now, it is the settled position of law that grant of proper sanction by the competent authority is a *sine qua non* for taking cognizance of the offence. That ordinarily the question as to whether a proper sanction has been accorded for prosecution of the accused persons is not the matter which could be dealt with at the stage of taking cognizance. But, even if the cognizance of offence is taken erroneously, the same comes to the notice of the Court at a later stage, a finding to that effect is permissible and even such a plea can be taken for the first time before an Appellate Court.

5) Thus, in the present case, the applicant by filing the present application has brought to the notice of this Court that, the cognizance in the present case was erroneously taken by the Court of competent jurisdiction and in pursuance thereof the Competent Authority has now accorded a fresh sanction after complying with the necessary provisions of law. Therefore, the order of taking cognizance by the Trial Court dated 28/6/2016 is hereby quashed and set aside.

6) The respondents no. 1 and 2 are at liberty to submit additional

charge-sheet along with fresh sanction order dated 29/6/2016, as contemplated under section 173 (8) of Code of Criminal Procedure before the Trial Court and then seek fresh order of issuance of process against the applicant.

7) By reserving the liberty to the respondents no. 1 and 2, as aforestated, the application is allowed in terms of prayer clause (a).

(A.S. GADKARI, J.)