

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

**CRIMINAL WRIT PETITION NO. 539 OF 2016
WITH
CRIMINAL APPLICATION NO. 5085 OF 2016
AND
CRIMINAL WRIT PETITION NO. 881 OF 2016
AND
CRIMINAL APPLICATION NO. 540 OF 2016**

* * * * *

**CRIMINAL WRIT PETITION NO. 539 OF 2016
WITH
CRIMINAL APPLICATION NO. 5085 OF 2016**

The State of Maharashtra
Through Dy. S.P.,
ACB, Aurangabad,
Dist.Aurangabad.

.. Petitioner

Versus

1. Sanjivkumar Bapurao Wadikar
Age. 40 years, Occ. Service,
R/o. Flat No.1004, "C" Wing,
Tulshi Prerana Tower, Khanda Colony,
Navi Panvel, Dist. Raigad.
2. Shantilal Waru Gavit
Age. 50 years, Occ. Service,
R/o. Bhorte pada, Post. Brahmanwel,
Tal. Sakri, Dist. Dhule.
3. Suresh Balkrushna Shinkar
Age. 48 years, Occ. Service,
R/o. 2, Sushila Plaza Apartment,
Jaihind Colony, Deopur, Dhule.

.. Respondents

AND
CRIMINAL WRIT PETITION NO. 881 OF 2016

1. Shantilal Waru Gavit .. Petitioners
Age. 50 years, Occ. Service,
R/o. Bhorteпада, Post. Brahmanwel,
Tal. Sakri, Dist. Dhule.
2. Suresh Balkrushna Shinkar
Age. 48 years, Occ. Service,
R/o. 2, Sushila Plaza Apartment,
Jaihind Colony, Deopur, Dhule.

Versus

The State of Maharashtra .. Respondent
Through Dy. S.P.,
ACB, Aurangabad, Dist. Aurangabad.

AND
CRIMINAL APPLICATION NO. 540 OF 2016

Sanjivkumar Bapurao Wadikar .. Applicant
Age. 40 years, Occ. Service,
R/o. Flat No.1004, "C" Wing,
Tulshi Prerana Tower, Khanda Colony,
Navi Panvel, Dist. Raigad.

Versus

The State of Maharashtra .. Respondent

Mr.S.M.Ganachari, A.P.P. for the State.
Mr.C.P.Sengaonkar, Advocate for respondent No.1 in WP
No.539 of 2016 & for applicant in Cr.Apln No.540 of 2016.
Mr.V.B. Anjanwatikar, Advocate for respondent Nos.2&3 in
WPNo.539 of 2016 & for petitioners in WP No.881 of 2016.

CORAM : T.V. NALAWADE, J.**DATED : 17.04.2017****J U D G M E N T :-**

1. Rule. Rule made returnable forthwith. By consent of both the sides, heard for final disposal.

2. Writ Petition No.539 of 2016 is filed to challenge the order made at Exh.46, in Special Case No.84 of 2013 by the learned Judge of the Special Court, Dhule under the Prevention of Corruption Act, 1988. Writ Petition No.881 of 2016 is also filed to challenge the same order, but only part of the order is under challenge and the relief of discharge is also claimed in this petition by the accused. Similarly Criminal Application No.540 of 2016 is filed under section 482 of the Criminal Procedure Code by other accused for similar relief. Criminal Application No.5085 of 2016 is filed by the State for permission to amend the contentions made in Writ Petition No.539 of 2016. The State wants to make additional contentions in view of the original file of

sanction that was not brought before the Trial Court and as no contention is made in the petition about the said file.

3. Accused No.1 was working as R.T.O. in Dhule R.T.O. Office at the relevant time. Accused Nos.2 and 3 were working as Assistant Cashiers. Accused Nos.4 to 8 were working as R.T.O. Agents for accused Nos.1 to 3. There is allegation against accused Nos.1 to 3, the Public Servants that they were illegally collecting money from drivers and the transporters, when their vehicles were entering Maharashtra State at R.T.O. check-post Hadakhed, Tal. Shirpur, Dist. Dhule. They had given name to this illegal gratification as "Entry". The action was taken on the basis of complaint made by one Kuldipsingh against the accused persons. The said amount was demanded from him also. He made complaint and trap was led. There is allegation that accused No.4 - Agent, collected an amount of Rs.300/- from Kuldipsing on 01.12.2011. During action, when the amount already collected by these

persons at the spot was checked and the amount was verified with the receipt book showing amount legally received, it was noticed that an amount of Rs.14,400/- more was collected up to 15.40 hours by these persons on that day. After recording statements, preparing panchanama etc. and completion of the investigation, the matter was sent to the State Government for obtaining sanction under section 19 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "Act"), against accused Nos.1 to 3. As per the permission sought, the sanction came to be given in respect of offences punishable under sections 7,12,13(1)(d) read with section 13(2) of the Act. The case is also filed for offence punishable 120(B) of the Indian Penal Code, as per the sanction order.

4. The charge is framed. At Exh.7, application was moved by accused No.1 and at Exh.8 application was moved by accused Nos.2 and 3 for deciding the validity of sanction order produced along with the charge-sheet. The

prayer was made to decide the point as a preliminary point. The learned Judge of the Trial Court allowed the application and decided to record the evidence on sanction first and take decision on it. Both the sides were allowed to lead evidence on this point. The prosecution examined the Joint Secretary, Home Department of the State Government and he is cross-examined by the defence counsel. The Trial Court Judge has held that the sanction is not valid and the operative part of the Trial Court decision is as follows :-

"1] Sanction accorded by P.W.No.1 against the accused Nos.1,2 and 3 is not found legal, valid and proper.

2] However, the competent authority i.e. the Secretary is hereby permitted to issue fresh sanction order against accused No.1, and Transport Commissioner is hereby permitted to issue fresh sanction order against accused nos.2 and 3 and proceed afresh against accused Nos.1,2 and 3 from the stage of taking cognizance of the offence and in accordance with the law.

3] The competent authority shall comply the above order within the period of three months from the date of this order."

5. The Joint Secretary has given evidence that as

per Article 166 of the Constitution of India, he had accorded sanction. He has mentioned the material which was placed before him for consideration like original complaint, pre-trap and post-trap panchanama and statements of witnesses. The sanction is proved at Exh.30 and it is dated 17.08.2013. In cross-examination, this witness has denied that only the Chief Secretary of the Home Department has power to accord the sanction as accused No.1 is a Gazetted Officer of Class-I. He has denied that he had no power to issue sanction order.

6. The learned Judge of the Special Court has held that the sanction is invalid for following two reasons:-

(i) That P.W.1-Joint Secretary has not specifically stated in the evidence that he has power to remove accused No.1 from service and;

(ii) That the Transporter Commissioner is the competent authority to accord sanction in respect of accused Nos. 1 and 2.

7. The learned Judge of the Trial Court has further held that only the Secretary could have accorded sanction in respect of accused No.1. The learned Judge has considered one circumstance like in a proceeding which was filed by the accused in the High Court in the past, it was submitted for the investigating agency that the matter was sent for getting sanction to the Secretary. On the basis of this circumstance, he held that only the Secretary is competent to accord sanction. Thus, the point involved in the present matter is only the competency of the Sanctioning Officer and this point is being decided in the present matter.

8. In Criminal Application No.5085 of 2016 filed by the State Government, it is contended that the State Government had already issued directions for issuing sanction order. The Government Resolution dated 12.02.2013, which was of General Administration Department (copy of the Government Resolution is produced on record), shows that procedure is laid down to place

the matter before the Competent Authority for the purpose of sanction and various authorities are named for according sanction in respect of various classes of public servants. For Gazetted Officer, Class-I, having basic pay of more than Rs.10,650/-, as per old pay scale, the Chief Minister is shown as the sanctioning authority. The Minister of the concerned department was shown as the sanctioning authority for other Gazetted Officers of Class I, having pay scale less than Rs.10,650/-. The record produced shows that at the relevant time, the Transport Department was with the Hon'ble Chief Minister. The Secretariat of this Department had placed the matter along with the file and submissions made by various officers of different stages like, Desk Officer, Joint Secretary and Principal Secretary (Transport). All these authorities had made their submissions and record was placed before the Chief Minister. The record produced in the present matter shows that the Chief Minister had approved proposal of the sanction. Thus, in the present matter, the Hon'ble Chief Minister has accorded sanction

and not the Joint Secretary of said Department. In view of this record, which is now made available, there is no meaning in the so called oral admission given by the Joint Secretary that he had accorded the sanction. The record needs to be referred in this regard. Thus, in the present matter, sanction was not accorded by the Joint Secretary, but it was accorded by the State Government and the order only was signed by the Joint Secretary.

9. The submissions made and the reasoning given by the Trial Court show that it is unfortunate that the learned Judge of the Trial Court has not taken care to call original record of sanction. This Court has no hesitation to observe that in a case like present one, such step needs to be taken by the Trial Court judge. Even at present stage, such step can be taken for such purpose. To bring such circumstances on record, application is filed by the State Government bearing Criminal Application No.5085 of 2016 and request is made to allow to amend the contents of Writ Petition No.539

of 2016. In view of these circumstances, Criminal Application No.5085 of 2016 needs to be allowed and it is allowed accordingly.

10. Thus, there is evidence to show that the Chief Minister has accorded sanction and in-fact, the Joint Secretary had not accorded the sanction and so there is no necessity to direct the State Government to reconsider the matter for according fresh sanction.

11. A copy of Rules of Business framed by His Excellency the Hon'ble Governor of this State under Article 166 of the Constitution of India is produced on record. Rule 13 of these Rules shows that every order or instruction of the State Government needs to be signed by any of the officers of the Government like Secretary, Additional Secretary, Joint Secretary, Dy. Secretary or Asstt. Secretary. This order also shows that any other officer, who is specially authorized in this regard can also sign such order or instruction.

12. As per the aforesaid rules, in the present matter, the power to accord sanction was with the Hon'ble the Chief Minister and it was accorded by Hon'ble the Chief Minister and the sanction order was signed by the Joint Secretary. Thus, the Joint Secretary had only signed the order on behalf of the Government and it was not sanctioning authority. In view of this circumstance, in such a case, it is immaterial that the Officer signing the sanction order is not of higher rank than the public servant against whom the sanction is accorded. In any case, it is not defence of accused No.1 that he is of higher rank than the Joint Secretary, who has signed the order.

13. In the evidence of the Joint Secretary, the original file can be produced before the Trial Court. If the defence disputes that record, the signature of Hon'ble the Chief Minister can be proved in the evidence of any Officer including the Joint Secretary, who had

processed the matter and had placed the matter before the Hon'ble Chief Minister. The signature on the original file can also be proved by examining any other officer who is familiar with the signature of Hon'ble the Chief Minister.

14. The other contention of the accused that only Transport Commissioner is competent to accord sanction in respect of accused Nos.2 and 3 has no force in law. In the cases of such Government Servants, the Government is not only appointing authority, but it is ultimate disciplinary authority. Thus, in respect of accused Nos. 2 and 3 also, the State Government had the power to accord the sanction. When in a case, more public servants are involved and sanction in respect of one of these public servants needs to be granted by the State Government, the entire matter can be considered by the State Government and it is also desirable to do so. This Court has no hesitation to observe that in such case, the superior authority can accord sanction in respect of all

the public servant involved in such incident.

15. The learned A.P.P. for the State has placed reliance on observations made by the Apex Court in the case of V. Sejappa Vs. State, AIR 2016 SC 2045. This case is on the point involved in the present case. In this case, the Apex Court has made it clear that when the order of the Government is signed by the Secretary or the under Secretary and when the Minister was sanctioning authority, it cannot be said that the sanction is invalid.

16. Learned Counsel for the respondent/accused placed reliance on the observations made by the Apex Court in the case of Mohd. Iqbal Ahmed Vs. State of A.P., AIR 1979 S.C.677. This was appeal filed against the conviction. The Apex Court held that the sanction was not valid. The case was in respect an incident of the year 1968 and in view of circumstances of the case, the Apex Court held that at that stage opportunity cannot be

given to the prosecution to fill lacuna, which was with regard to legality of sanction. Thus, the facts were different. In the present matter, at the request made by the accused persons, this point is being considered at initial stage of the case and the case is not yet disposed of.

17. The aforesaid discussion shows that the Trial Court could not have made order of aforesaid nature. At the cost of repetition, this Court is observing that it is duty of the Trial Court Judge to see that the original file in such matter is brought before it. Such original record can help either to the prosecution side or the defence side. For proper adjudication and just decision of the matter, such record needs to be brought before the Court. The possibility that the Government Officers are likely to help their colleagues, though from other department, can never be ignored by the Court. The Court needs to exercise its power in this regard.

18. In view of the aforesaid discussion, this Court for present purpose holds that the sanction was accorded by the competent authority, the Chief Minister of the State and the sanction is legal and valid in respect of all the three accused. Thus, the order made by the learned Judge of the Special Court cannot sustain in law. For the same reasons, there is no question of discharge of the accused. The witness already examined for proving the sanction can be recalled and original record can be brought before the Trial Court. So, the following order :-

(i) Writ Petition No.539 of 2016 is allowed. The judgment and order passed by the Special Court at Exh.46 in Special Case No.84 of 2013 dated 06.11.2015 is hereby set aside.

(ii) Criminal Application No.5085 of 2016 is allowed. The amendment as sought to the contents of Writ Petition No.539 of 2016 is allowed and it is to be shown in the

petition by the petitioner.

(iii) Other two proceedings filed by the accused stand dismissed.

(iv) Rule made absolute in Writ Petition No.539 of 2016 and it is discharged in the other proceedings filed by the accused.

[T.V. NALAWADE, J.]