

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

CRIMINAL APPLICATION NO. 6831 OF 2016

Vikas Rangnathrao Ghatge,
Age : 53 years, Occu. Service as
Maintenance Surveyor / Nimtandar,
in the office of Dy. Supdt. of Land Records,
Ambajogai, Dist. Beed,
R/o C/o Dy. Supdt. of Land Record,
Behind Bus Stand, Ambajogai,
Dist. Beed.

... Applicant

VERSUS

1. The State of Maharashtra,
Through the Supdt of Police,
Nanded Zone, Nanded.

2. The Dy. Director of Land Records,
Damadi Mahal, Near Collectorate,
Aurangabad.

... Respondents

.....
Mr Ajay S. Deshpande, Advocate for the applicant
Mr S. P. Deshmukh, APP for respondents No. 1 and 2
.....

**CORAM : S. S. SHINDE &
A. M. DHAVAL, JJ.**

RESERVED ON : 28.08.2017.
PRONOUNCED ON : 14.09.2017.

JUDGMENT (Per A. M. Dhavale, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. This is an application under Section 482 of the Code of Criminal Procedure for quashing and setting aside of the order dt. 14.07.2016 passed by respondent No. 2 and the prosecution launched on the basis of the same on the ground that, sanction was earlier refused and without any change in circumstance new order according sanction has been passed.

3. Heard Shri. Ajay S. Deshpande, learned counsel for the applicant and Shri. S. P. Deshmukh, learned APP for respondent/State. Perused the record produced.

4. The applicant - Vikas Ghatge was serving as a Land Surveyor in the office of Dy. Superintendent of Land Records, Latur. One Laxman Gude approached him on 18.01.2014 and requested for recording entry of his bank loan of Rs. 5,00,000/- on the property card. It is alleged that the applicant told him that he would require one and half months' time to get his work done but if he was in need of urgent entry, he should pay bribe of Rs. 2500/-. After negotiation, the bribe amount was reduced to Rs. 1000/-. Laxman Gude was called after 15 days along with bribe amount. Laxman met the applicant for 5-6 times but the applicant avoided to complete the

work. Thereafter, there was again demand of Rs. 1000/- and Laxman reported the same to Anti Corruption Bureau, Latur (hereinafter referred to as "ACB") on 05.03.2014. Pursuant to his report, a trap was laid. Thereafter, following the due procedure, Mr Gude handed over Rs. 1000/- to the applicant and the applicant accepted the same and the ACB caught the accused red handed. The ACB made a request to Dy. Director, Land Records, Aurangabad, for grant of sanction.

5. The Dy. Director, after considering the material before him in detail, passed an elaborate order dt. 14.08.2014, thereby refusing to grant sanction. He inter alia relied on the fact that, on 10.02.2014, the entry regarding loan was taken on the property card much before the date of trap. Besides, it was not acceptable that once there was negotiation reducing the bribe amount from Rs. 2500/- to Rs. 1000/- on 18.01.2014, the same thing could have been repeated again on the date of trap. He also found that, the conversation recorded in the voice recorder did not disclose any demand of Rs. 1000/-. It was the case of Laxman Gude that the demand was made by signs of fingers and, therefore, there was no clear material about the demand. The alleged demand for taking entry in the property card was not acceptable as the entry was already taken. The conversation

recorded in the spot panchanama shows subject of providing of certified copies and the informant himself was confused for what purpose the alleged bribe was demanded.

6. We find that the Dy. Director has applied his mind and has considered all the material facts placed before him and thereafter came to the conclusion that it was not a fit case for grant of sanction. Pertinently, he has relied on the digital voice recorded conversation without raising any doubts about the identity of the voices.

7. Police Inspector, ACB, Latur, on 29.06.2016, produced a letter with report of Forensic Science Laboratory regarding voice identity & panchanama of voice samples before the Settlement Commissioner, District Inspection of Land Records, Pune and Dy. Director, Land Records Office, Aurangabad Region, Aurangabad, for review of the sanction order. On the basis of the same, on 14.07.2016, an order of sanction was issued by Arvind Girgosavi, Dy. Director, Land Records, Aurangabad Region, Aurangabad. This order does not refer to the earlier order refusing to accord sanction but refers to the material produced in the form of digital voice recording and the report of Forensic Science Laboratory regarding identification of the voices.

8. The reply of Satish Bhosale, the Dy. Superintendent of Land Records, Aurangabad, justifies the second order of grant of sanction on the basis of the report of voice identification received from Forensic Science Laboratory, State of Maharashtra, Home Department, Mumbai, on 18.06.2015 as a change of circumstance.

9. Learned counsel for the applicant placed reliance on the judgments in the cases of **State of Punjab and Another Versus Mohammed Iqbal Bhatti (2009) 17 SCC 92** & **State of H.P. v. Nishant Sareen AIR 2011 SC 404**. In *State of H.P. v Nishant*, in para 12 thereof, it is held as under:

12. *It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known*

to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course."

10. After carefully considering the arguments advanced, we find that no fresh material of such a nature as would permit the authority to review its earlier order of rejection of sanction was produced. In the earlier order dt. 14.08.2014, the sanction was not granted on the grounds viz. (i) the work for which the alleged bribe was demanded was already over much before the date of trap. (ii) There was no material showing demand of bribe.

11. In the said order dt 14.07.2016, no suspicion was raised about the digital voice recording and the conversation therein. The said order was passed on assumption that the present applicant's voice was there in the conversation. In such situation, subsequent receipt of report of Forensic Science Laboratory, Mumbai showing voice identification cannot be the fresh material to reconsider or

review the earlier order. We find that the person holding the post of competent authority to grant sanction was changed and the new person had a different opinion and, therefore, the sanction was granted. The report of Forensic Science Laboratory is shown as a ground to justify the review of the order. Such a review on the ground of change of opinion is not permissible. There was no fresh material on the basis of which the earlier order of rejection of sanction could be reviewed. Hence, the subsequent sanction is not legal and valid. Therefore, the prosecution initiated on the basis of the same is not tenable.

12. The Criminal Application, therefore, deserves to be allowed and same is accordingly allowed. The order dt. 14.07.2016 passed by respondent No. 2 granting sanction and the prosecution launched on the basis of the same are quashed & set aside.

13. Rule is made absolute in the above terms with no order as to costs.

[A. M. DHAVAL]
JUDGE

[S. S. SHINDE]
JUDGE