

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

CRIMINAL APPEAL NO.448 OF 2006

The State of Maharashtra,
Through Dy.S.P.
Anti Corruption Bureau, Jalna.

...APPELLANT
(Ori.Complainant)

VERSUS

1. Prakash s/o Uttamrao Kharat,
Age 39 years, occu.Service,
Telephone Mechanic, District Telecom
Office, Jalna Dist. Jalna.

...RESPONDENT
(Ori.Accused)

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Shri K.D.Mundhe, APP for appellant State.

Shri V.D.Gunale, Advocate, for respondent.

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CORAM: P.R. BORA, J.

DATE : February 26th, 2018

ORAL JUDGMENT:

1. The State has preferred the present appeal against judgment and order passed by the Special Judge (Anti Corruption), at Jalna, in Special Case No.7/2002, decided on 20th of December, 2005.

2. The respondent was prosecuted in the aforesaid Special Case No.7/2002, decided on 20th of December, 2005, for the offenses punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The learned Special Judge has acquitted the accused of all the offenses vide the impugned judgment.

3. Perusal of the impugned judgment reveals that learned Special Judge has held the sanction accorded in the subject case to be invalid and on that count has acquitted the respondent accused.

4. Shri K.D.Mundhe, learned A.P.P., submitted that the learned Special Judge has adopted too technical approach in deciding the issue of sanction which has resulted in unmeritorious acquittal of the accused. Learned A.P.P., taking me through the order of sanction, which is at Exh.27, submitted that the sanctioning authority has appropriately considered the relevant material and only thereafter has accorded the sanction to prosecute respondent accused. Learned A.P.P. submitted that merely because certain facts are admitted by the investigating officer as well as by the sanctioning authority in

their cross examinations, merely on that ground the sanction, which is otherwise valid, cannot be held to be invalid. Learned A.P.P. further submitted that on other aspects learned Special Judge has recorded the findings in favour of the prosecution holding that the prosecution has successfully proved the demand of bribe by respondent accused as well as acceptance of the said amount by him. Learned A.P.P., therefore, prayed for setting aside the finding recorded by the Special Judge on the point of sanction and, consequently, to hold the accused guilty for the offenses punishable under Section 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act and to sentence the accused with adequate punishment.

5. Shri V.D.Gunale, learned Counsel appearing for respondent accused, supported the finding recorded by the learned Special Judge on the issue of sanction. Learned Counsel submitted that law is well settled that if there is no valid sanction, the Special Court cannot even take cognizance of the case so filed and entire proceeding gets vitiated for want of proper sanction. In the circumstances, according to the learned Counsel, the Special Judge has not committed any error in holding that there was no valid sanction to prosecute the respondent accused and, as such, the entire proceeding was

vitiated. Learned Counsel, therefore, prayed for dismissal of the appeal.

6. In light of the submissions so made by the learned A.P.P. and the learned Counsel for the accused, I perused the discussion made by the learned Special Judge in paragraph nos. 10 to 16 of the impugned judgment which pertains to the issue of sanction. Apparently, I do not find any error in the observations so made and the conclusions so recorded by the learned Special Judge that there was no valid sanction to prosecute the respondent accused and, as such, the entire proceeding is vitiated.

7. The respondent accused was serving as a Telephone Mechanic under the control of Sub Divisional Engineer (No.II), Telecom Office at Jalna. He was, thus, public servant within the meaning of Section 2(c) of the Prevention of Corruption Act. It is further not in dispute that PW 3 Narayan Naik was the competent authority for according or refusing sanction as envisaged under Section 19(3) of the Prevention of Corruption Act for prosecuting respondent accused for the offenses under the Prevention of Corruption Act.

8. In his evidence before the Special Court, PW 3 Narayan Naik has deposed that on 27th of April, 2002, he had received a letter from Anti Corruption Bureau at Aurangabad wherein he was requested to accord sanction for prosecution of respondent accused. PW 3 Narayan Naik has also deposed that along with the request, one file was also received, containing necessary documents pertaining to the misdeed allegedly committed by respondent accused. It has also come in the evidence of said Shri Naik that after going through the said file, he reached to conclusion that there was sufficient evidence for trial against respondent accused and he, therefore, accorded sanction to prosecute the respondent accused for offenses punishable under the provisions of the Prevention of Corruption Act. During the course of his evidence before the Court, the order of sanction was duly proved and was marked at Exh.27.

9. In his cross examination, PW 3 Naik has denied the suggestion that the draft sanction order was sent to him and merely by inserting his name in his own handwriting in ink, he put his signature below the said draft sanction order and sent it back to the Anti Corruption Bureau. The learned Special Judge has, however, held that the draft sanction order was received to

PW 3 Narayan Naik and he just put his signature upon the said order without applying his mind to the facts and circumstances of the case.

10. In the cross examination, PW 3 Naik had asserted that he himself had dictated the order of sanction to his subordinate and the same was transcribed and print out was taken in his office only. After having perused the sanction order, which is at Exh.27 in the record of the trial Court, the fact so deposed by PW 3 Naik on oath before the Court, apparently, appears to be incorrect and unbelievable. Had the said order been dictated by PW 3 and had it been really transcribed and printed in his office as deposed by him, there was no reason for keeping a blank space for inserting his name in the said space which appears to have been inserted by PW 3 Naik in his own handwriting by a ink pen. Similarly, PW 3 would never have asked to type the word "नाव" and his name also could not have been left to be written in the hand writing. Thirdly, the word "मोहर" is also appearing below the date. All the above circumstances show that it was a draft sanction order received to PW 3 Narayan Naik and was not dictated by him in his office. Learned Special Judge has analyzed the aforesaid evidence in paragraph Nos. 15 and 16 of the impugned

judgment. I deem it appropriate to reproduce the entire said discussion which reads thus:

" Narayan PW 3 has stated during his cross-examination at the beginning that he had not received draft sanction order in the file sent to him by Anti Corruption Bureau. This appears to be not true. Because, during the cross examination Investigating Officer Mahendra Bhokare PW 7 has stated that he has seen all the correspondence that took place between his Superintendent of Police and the Competent Authority before filing the charge sheet and it was mentioned in the copy of letter dated 27.4.2002 addressed by his Superintendent of Police to the Competent Authority that the Superintendent of Police had sent three copies of sanction order (draft) to the Competent Authority. During further cross-examination in paragraph No.4 of his deposition, Narayan PW.3 has further stated that he had not received the three copies of draft sanction order as mentioned in paragraph No.6 of the letter dated 27.4.2002 from Anti Corruption Bureau. He had made correspondence many times with the Anti Corruption Bureau after receipt of the above letter, but he did not inform to Anti Corruption Bureau at any time regarding non receipt of three copies of draft sanction order as mentioned in the letter dated 27.4.2002. Coming to the sanction order at Exh.27 it appears that it is a draft prepared by somebody else and not by the Competent Authority or his office, as the last portion of this order shows that spaces of place of order and date of order were left blank. Not only this, in paragraph No.7 of the Marathi sanction order the name of the Competent Authority was also found to be left blank as well as at the end of the order about designation just it was mentioned in words, "name" but the name was not printed as the rest of the order was printed. The word "Mohar" (seal) is also appearing below the date. All this shows that it was a draft sanction order received by Narayan PW 3, was it really prepared on the dictation of Narayan PW 3 then such things would not have appeared in this sanction order. He would have stated his name to be printed in paragraph No.7 as well above his designation and below his signature on this order, so also the place of order and

date of order. However, that has not happened. There was no reason to mention the words "Mohar" and "Nav" (name) in this order, if this was really prepared on the dictation of the Competent Authority Narayan PW 3. This shows that it was a draft sanction order received by Narayan PW 3 and he is suppressing the fact for the best reason known to him.

16. Moreover, in paragraph No.5 of the Marathi sanction order it is mentioned that by going through the papers sent to him and studying them he was satisfied that the offences punishable under Sections 7 and 12(1) (d) read with Section 13 (2) of the P.C.Act are committed in this case. In fact, there is no Section 12(1)(d) in the P.C.Act, 1988 nor Section 12 has any relevance in this matter. However, during the cross-examination in paragraph No.3 of his deposition Narayan PW 3 has reiterated before the Court also that he had seen Section 12 (1) (d) of P.C. Act, 1988 prior to passing this sanction order. But he is unable to say as to what is the offence under Section 12 (1) (d) of P.C.Act. He has also stated before the Court that he was confirmed by studying and perusing all the papers of investigation sent to him in this case by Anti Corruption Bureau that accused Prakash had committed the offence under Section 12 (1) (d) of P.C.Act and hence he has mentioned accordingly in paragraph No.5 of his sanction order Exh.27. This shows that this witness Narayan has not at all applied his mind nor studied the case papers nor gone through such provision in the Law Book, least to say. This is sufficient to come to the conclusion that the sanction order passed by Narayan PW 3 is signed without studying the papers or applying his mind to the facts and circumstances of the case. It appears that he has just signed the draft sanction order sent to him, but now he is saying something else which cannot be believed considering his own evidence. The entire evidence of Narayan PW 3 and this sanction order at Exh.27 do not show that Narayan ever studied the papers carefully or applied his mind before signing the sanction order. Section 12 of P.C.Act has no relevance in this case. It is not the case of Narayan PW 3 that he mistakenly mentioned Section 12(1)(d) instead of Section 13(1)(d) of P.C.Act in paragraph No.5 of the sanction order. He has reiterated before the Court also that he had seen Section 12(1)(d) of the P.C.Act, 1988 prior to passing this sanction order.

This shows to what extent this witness can go. Considering the entire evidence on record it is clear that the Sanctioning Authority or Competent Authority had not applied its mind to the facts of the case and just signed blindly the draft sanction order sent to him. If this is so, such an order cannot stand under law. It cannot be said to be legal. It is illegal and hence the prosecution must fall on ground on this count alone. The entire proceeding gets vitiated. In this view point No.1 is answered in the negative."

After having read the observations as made by the learned Special Judge in the light of the evidence on record, it does not appear to me that any error has been committed by the learned Sessions Judge in holding the order of sanction to be invalid. Learned A.P.P. could not point out any infirmity in the observations made and conclusions recorded by the Special Judge which I have reproduced hereinabove.

11. After having scrutinized the evidence on record, I fully agree with the finding recorded by the learned Special Judge. The Criminal Appeal filed by the State is devoid of any merit and deserves to be dismissed and it is accordingly dismissed.

(P.R.BORA)
JUDGE

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