

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 275 OF 2018**

Balu Dasu Rathod

.....Applicant

Vs.

The State of Maharashtra & Ors.

....Respondents.

Mr. Satyavrat Joshi for the Applicant.

Mr. Ameet Palkar APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 4th SEPTEMBER, 2018.****P.C.:-**

By the present Application under Section 482 of the Code of Criminal Procedure, the Applicant has impugned the Order dated 17th February 2018, rejecting his Application below Exhibit-11 for his discharge from the case bearing Special Case A.C.B. No. 16 of 2015, pending on the file of the learned Additional Sessions Judge, Thane.

2 During the course of the argument, Mr. Joshi the learned counsel for the Applicant submitted that, the Appointing Authority of the Applicant was the Director General of Police and on behalf of the Director General of Police, the Special Inspector General of Police had issued letter of appointment dated 16th July 2013. That, the sanction to prosecute the Applicant, as contemplated under Section 19 of the

Prevention of Corruption Act, 1988 has been accorded by the Additional Commissioner of Police and the Deputy Inspector General of Police, Western Region, Thane, which according to him is a defective sanction in the eyes of law. He further fairly conceded to the fact that, the Applicant has not raised the said issue before the Trial Court in the Application for discharge filed below Exhibit-11, wherein the impugned order is passed.

3 The Hon'ble Supreme Court in the case of *State of Karnataka through CBI Vs. C. Nagarajaswamy* reported in (2005) 8 S.C.C. 370 in paragraph No. 15 has held as under-

“15. Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage.

[See Ashok Sahu v. Gokul Saikia (1990 Supp SCC 41 : 1990 SCC (Cri.) 611) and Birendra K. Singh v. State of Bihar (2000) 8 SCC 498 : 2001 SCC (Cri.) 17]

4 The Supreme Court in *Nanjappa Vs. State of Karnataka*, reported in (2015) 14 SCC 186, while following the ratio laid down in the case of *C. Nagarajaswamy (Supra)* in paragraph Nos. 20 and 22 has held as under-

“20. What is important is that, not only was the grant of a valid sanction held to be essential for taking cognizance by the Court, but the question about the validity of any

such order, according to this Court, could be raised at the stage of final arguments after the trial or even at the appellate stage. This Court observed:- (C. Nagarajaswamy case)

“14. Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefore or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

15 Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage.

16 But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court.”

“22. The legal position regarding the importance of sanction Under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of Clauses (a), (b) and (c) to Section 19(1). The question

regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

5 In view thereof, the learned counsel for the Applicant, on instructions from the Applicant, who is personally present in the Court, seeks leave to withdraw the present Application with liberty to file an Application before the learned Trial Court, questioning the validity and/or correctness of the sanction Order dated 29th April 2015.

Leave and liberty granted.

6 If the Applicant prefers the said Application within a period three weeks from today, the learned Additional Sessions Judge, Thane seized of the Special Case A.C.B. No. 16 of 2015, is hereby directed to decide the said Application, in view of the observations made by the Supreme Court in the case of *C. Nagarajaswamy (Supra)* and *Nanjappa (Supra)*.

It is made clear that this Court has not adjudicated the

issue involved in the present Application on merits.

7 Application is accordingly disposed off, with aforesaid liberty.

All the concerned to act on the basis of an authenticated copy of this Order.

(A.S. GADKARI, J.)

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