

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 641 OF 2016

Dilip Yeshwant Mukane .Applicant
Age : 47 yrs, Occu : Police Officer,
Residing at B-4, Kanchan Colony CHS,
Katemanevali, Kalyan (E),
District – Thane.

Vs.

1. The State of Maharashtra .Respondents
(Through Director General and Inspector
General of Police), Maharashtra State,
Having office at Maharashtra Police Head
Quarters, Shahid Bhagatsingh Marg,
Mumbai.
2. The Commissioner of Police, Thane
Having office at Office of the Commissioner
of Police, Thane,
District – Thane.
3. The Deputy Commissioner of Police, Zone-II,
Having office at Office of the Deputy
Commissioner of Police, Zone-II, Bhiwandi,
District – Thane.
4. The Superintendent of Police
Anti Corruption Bureau,
Thane.
5. Bhoiwada Police Station
At Bhiwandi,
District – Thane.
6. Momin Imran Gulam Dastagir
Residing at House No. 182 / 17,
4th floor, Nissarwali Bldg.,

Gauripada, behind Nishad Library,
Bhiwandi,
District – Thane.

Mr. Satyavrat Joshi, Advocate, for the Applicant
Mr. V. Chate, APP, for the Respondent Nos. 1 to 5 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 13.02.2018

ORAL ORDER

- . Heard learned counsel for the parties.
2. Rule.
3. Rule is made, returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission.
4. By this Application, the Applicant seeks quashing & setting aside of the Order of issue process dated 30.07.2015 passed by the learned Sessions Judge, Thane in Special Case No. 39 of 2015. The learned Judge vide the said order was pleased to issue process as against the Applicant, for the alleged offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act.
5. Learned counsel for the Applicant submits that the

Applicant being a Head Constable, the competent authority to grant sanction was the Addl. Commissioner of Police, he being the appointing authority. He submitted that in the present case, sanction has been accorded by the Deputy Commissioner of Police to prosecute the Applicant and hence, the said sanction is bad in law. Learned counsel relied on the Orders dated 04.08.2016 passed by this Court (Coram : A. S. Gadkari, J.) in Cri. Appln. Nos. 94, 142 & 737 of 2016 (similar cases).

6. Learned APP does not dispute the fact, that the competent authority was the Additional Commissioner of Police, Thane and not the Deputy Commissioner of Police. He further submits that a fresh proposal has been sent to the Addl. Commissioner of Police, Thane, the competent authority, for obtaining sanction and that the same is pending.

7. Perused the papers. Admittedly, the sanctioning authority in the present case is the Additional Commissioner of Police, Thane, since the Applicant, a Head Constable, was appointed by the Additional Commissioner of Police, Thane. Admittedly, in the present case, the sanction was accorded on 22.07.2015 by the Deputy Commissioner of Police (and not by the Addl. Commissioner of Police), to prosecute the

Applicant. It is settled 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 the sanction has been properly accorded for prosecuting the accused person or not is not required to be dealt with at the stage of taking cognizance. In the present case, since cognizance was taken by the trial Court, the aforesaid Application was filed in this Court. It is urged that cognizance in the present case was erroneously taken by the Court of competent jurisdiction. It is informed that the prosecution is in the process of obtaining fresh sanction from the competent authority. Considering the aforesaid, the Order taking cognizance dated 30.07.2015 passed by the learned Special Judge, Thane is quashed & set aside. Respondent Nos. 2 & 4 are at liberty to file additional charge-sheet alongwith fresh sanction order before the trial Court and thereafter, seek fresh order of issuance of process against the Applicant.

8. Accordingly, the Application is allowed in the aforesaid terms.

Rule is made absolute in terms of prayer clause (a).

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)