

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 60 OF 2019
NEW - CRIMINAL APPEAL NO. 144 OF 2020

The State of Maharashtra,
Through : Anti Corruption Bureau
Jalna

...Applicant
(Original Accused)

VERSUS

Bhikan Bismlla Maniyar,
Age : 53 years, R/o Tembhorni,
Tq. Jafrabad, Dist. Jalna.

...Respondent
(Original Accused)

....
Mr. A.P. Basarkar, APP for applicant-appellant-State
Mr. P.B. Bhosale, Advocate for respondent -Accused
....

CORAM : K.K. SONAWANE, J.

DATED : 16th DECEMBER, 2019.

JUDGMENT :-

The instant matter calls-in-question the legal issue of previous sanction as contemplated under Section 19(1)(c) of the Prevention of Corruption Act, 1988, therefore, leave to present an appeal under Section 378 of Code of Criminal Procedure is hereby accorded. The appeal be registered accordingly.

2. Heard the learned counsel for the parties.

3. **Admit.** The appeal is taken up for its finality on merit at the stage of admission, with consent of both sides.

4. The prosecution-State of Maharashtra, taking recourse of remedy under Section 378 of Cr.P.C, preferred the present appeal and put-in-controversy the validity and legality of the impugned Judgment and order of acquittal of respondent-accused for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, rendered by the Special Judge, Jalna in Special (PCA) case No. 12 of 2013 dated 29-08-2017.

5. The allegation nurtured on behalf of appellant-prosecution against the respondent-accused in short compass is that, the complainant Shri Dilip S/o Trimbakrao Pimple r/o Kalegaon, Ta. and District Jalna, on 01-01-2013, approached to ACB Sleuth, Jalna and lodged the grievances that he owned the land Gut No. 135 admeasuring 1H. 73 R at village Kalegaon. He was the small and marginal farmer. Therefore, the proposal to dig the well in his land under the MREGS was sanctioned in the year 2011 by the concerned revenue authority. Accordingly, the work of construction of well was completed in the year 2012. The complainant Shri Dilip Pimple was intending to get release the final bill of labour charges from the Government Authority for construction of well under employment guarantee scheme. Therefore, he was in need of 7/12 extract having mutation entry of well in it. He had also obtained the letter from Gram Panchayat addressed to concerned Talathi for mutation of his well in revenue record. Moreover, he was also intending to install electric meter on the well. Therefore, on 13-12-2012 he approached to the accused Shri Bhikan Bismilla Maniyar, Talathi of his village and requested him to take the entry of his well in 7/12 extract.

Accordingly, the requisite application accompanied with all relevant documents were given to the accused - Talathi under acknowledgment dated 13-12-2012. But, while meeting at Tembhurni bus stop, on 19-12-2012, the accused Talathi demanded the bribe of Rs. 1000/- for mutation of his well in revenue record. However, after negotiation he agreed to accept Rs. 500/- as bribe for showing favour in his work. The complainant Shri Dilip Pimple again contacted with the accused on 31-12-2012 on his cellphone. The accused asked the complainant to come with bribe amount of Rs. 500/- on Wednesday i.e. 2nd January, 2013 in between 10.00 to 11.00 at village Kumbharzari for 7/12 extract of his well. The complainant Shri Dilip Pimple was not willing to pay the bribe to the accused - Talathi. Therefore, he approached to concerned ACB sleuth on 01-01-2013 and filed the complaint. The Police personnel Dy.S.P. Mr. Girme, secured the presence of panch witnesses. The formality of pre-trap panchnama was complied with, and thereafter, the members of raiding party including complainant Shri Dilip Pimple proceeded to lay trap at village Kumbharzari, District Jalna. Accordingly, on 02-01-2013, respondent-accused was caught raid handed while demand and acceptance of the tainted currency notes as bribe from the complainant - Dilip Pimple. The post trap panchnama was drawn in presence of panchas. The tainted currency notes came to be recovered from the possession of respondent-accused. Thereafter, the Senior Police Personnel, Dy.S.P. Shri Girme lodged the FIR to the Police of Tembhurni P.S.

6. Pursuant to FIR of Shri Girme, the Crime No. 3001 of 2013 was registered and the investigation was set in motion. IO recorded

statements of witnesses acquainted with the facts of the case. He collected the relevant documents of the revenue department and also obtained prosecution sanction from the competent authority. After completion of procedural formalities, IO filed the charge-sheet against respondent-accused vide Special Case (PCA) No. 12 of 2013.

7. The learned trial Court framed the charge (Exhibit-9) against the accused for the offence punishable under Section 7, 13(1)(d) read with section 13(2) of P.C. Act. The respondent-accused pleaded not guilty and denied the charges. He claimed for trial. The prosecution examined in all six witnesses to prove charges against the accused. His statement under Section 313 of Cr.P.C. also recorded by learned trial Court. After considering the evidence adduced on behalf of prosecution, the learned trial Court concluded that the prosecution failed to prove the charges against the accused beyond all reasonable doubt. Therefore, the learned trial Court exonerated the respondent-accused for the charges pitted against him and rendered the impugned Judgment and order of acquittal, the propriety, validity and legality of which is agitated in this appeal on behalf of prosecution for redressal.

8. The learned APP assailed that the impugned judgment and order of acquittal is erroneous, illegal and bad-in-law. The learned trial Court did not appreciate the evidence of prosecution witnesses in proper manner and committed error in acquitting the accused in this case. According to learned APP, the prosecution has proved the circumstances of demand of bribe and its acceptance by the accused. The factum of demand of bribe was verified in presence of panch witnesses. The tainted currency notes were recovered from the

possession of accused. Therefore, in view of presumption under Section 20 of PC Act, the respondent-accused was required to be held guilty for the charges pitted against him. The PW 1- Dilip Pimple was the complainant and his evidence was corroborated by shadow panch PW4- Ravindra Gharpade. The PW-5 Peeraji Sormare accorded the prosecution sanction being Competent Authority as per law. The learned trial Court ought to have held the respondent-accused guilty for the offence levelled against him.

9. The learned counsel appearing for respondent-accused raised the objection and vehemently submitted that the learned trial Court has correctly appreciated the prosecution evidence on record in its proper perspective. The conclusion drawn by the learned trial Court about the failure of prosecution to bring home guilt of the accused is to be upheld. According to learned counsel, the factum of demand was not proved by the prosecution. There was verification of demand on cell phone, but no CDR documents were produced on record. There are material discrepancies in the evidence of prosecution witnesses. The learned counsel submits that the alleged mutation work of the well of complainant was already completed on 01-11-2012 and it was forwarded to Superior Authority for approval on 15-11-2012. There was no work of mutation pending with the accused on the day of trap. Therefore, no question arises for demand of bribe. Prosecution did not examine any independent witness, who were found present in the office at the time of trap. The learned counsel harped on the circumstances that when the prosecution failed to prove the demand of bribe, the circumstances of mere recovery of tainted currency notes would not

sufficient for adverse inference against the respondent accused. According to learned counsel, the Assistant Collector Jalna was the appointing authority of the respondent accused for the post of "Talathi". He produced the appointment letter on record. According to learned counsel, the Assistant Collector was the competent authority to accord prosecution sanction in this case. But, the Sub-Divisional Officer has granted prosecution sanction and being sub-ordinate officer, the prosecution sanction issued in this case is illegal, invalid and erroneous one. The learned counsel kept reliance on the ratio laid down in ***Maruti Subrao Shinde Versus State of Maharashtra*** reported in ***2011(2) MhLJ(Cri) 555, Sakharam Trymbak Patil Versus State of Maharashtra*** reported in ***1993(1) Bom.C.R. 134 and Bhaurao Marotrao Manekar Versus State of Maharashtra*** reported in ***1980 Mh.L.J. 445***.

10. I have given anxious consideration to the arguments advanced on behalf of both sides. I have also delved into the evidence of prosecution witnesses adduced on record. I find that the contentions propounded on behalf of respondent-accused are much more formidable and appreciable one. It is not in dispute that the respondent-accused was appointed for the post of Talathi in the year 1992. His appointment letter was produced on record (Exh.32). It was issued under the signature of Shri Joshi, Assistant Collector, Jalna. These documents were brought on record in the evidence of PW-5 Shri Piraji Sormale. He deposed that during the relevant period of the year 2012-2013 he was the Sub-Divisional Officer, Jalna and being competent authority he accorded prosecution sanction (Exh.31) against respondent-accused in this case. According to prosecution, PW-5 Shri

Piraji Sormale was the Sub-Divisional Officer and the authority competent to remove the accused Talathi from his Office. Therefore, there is no legal infirmity in the prosecution sanction (Exh.31) accorded in this case. The learned APP relied upon the observations of learned single Judge of this Court in the case of *Appasaheb Narayan Jadhav Vs. State of Maharashtra*, reported in *2013 ALL MR (Cri.) 3813*, *Vikas Baburao Marathe Vs. State of Maharashtra*, reported in *2015 ALL MR (Cri.) 2988* and *Dattatraya Laxman Bagadi Versus State of Maharashtra* reported in *2017(5) Mh.L.J.(Cri) 277*.

11. Admittedly, the provision of Section 19(1) of Act, 1988, put an embargo on the powers of the Court to take cognizance of an offence committed by public servants punishable under Sections 7, 11, 13 and 15 of the Act, 1988. The sub-clause (c) of Section 19(1) contemplates that in the case of any other public servants other than described in clause (a) and (b), the previous sanction for prosecution of public servant shall be accorded by the authority competent to remove him from his office. In the matter in hand, it was the contention of the prosecution that the PW-5 Piraji Sormale was the Sub Divisional Officer (S.D.O.) at the relevant period and he had an authority to remove the accused Talathi from his office. Therefore, being competent authority, the previous sanction accorded by PW-5 Piraji Sormale was valid and legal one.

12. The pivotal issue to be ponder over in this matter is in regard to validity and legality of the previous sanction (Exhibit-31) accorded by the PW-5 Piraji Sormale for prosecution of the present accused –

Talathi. As referred above, respondent-accused was appointed as "Talathi" under order (Exhibit-32) issued and signed by Assistant Collector, Jalna. However, the previous sanction (Exhibit-31) was accorded by PW-5 Piraji Sormale, who was the S.D.O. during relevant period of 2012-13. He deposed that he had an authority to remove the accused – Talathi from his office, and therefore, being competent authority he accorded sanction. In this context, it would imperative to advert to the constitutional protection guaranteed by Article 311(1) of the Constitution of India, 1949, to civil employees which reads as under :-

*"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State
(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed."*

13. It is to be borne in mind that the word "subordinate" used in the Article 311 would mean subordinate in rank and not of function; otherwise, the protection referred to in Article 311 would remain illusory one. [Emphasis supplied on the *Privy Council decision in N. W. Frontier P. Versus Suraj Narain Anand*, reported in *AIR 1949 Privy Council, 112*]. It is also worth to mention that the safeguard provided to the public servant under Article 311 being an constitutional right, the violation of the right guaranteed under Article 311 would vitiate the entire trial conducted on the basis of invalid sanction. The Honourable Apex Court in *Moti Ram Deka Versus General Manager, N.E.F., Railway*, reported in *AIR 1964 SC 600*, held that the constitutional protection offered by Article 311 (1) cannot be taken away by any legislation.

The rule making authority under Article 309 cannot validly exercise its power so as to curtail or affect the right guaranteed to public servant under Article 311. Therefore, the power of legislature to make law regulating condition of services of Public Servant cannot override the powers of President or the Governor under Article 310 of the Constitution read with Article 311 thereof. The pleasure of the President or Governor under Article 310 as the tenure of an office cannot be fettered except by the provision of Article 311 and accordingly cannot be fettered by ordinary legislation.

14. The provision of Section 19(1)(c) of Act, 1988 stipulates that the removing authority will be the competent authority to accord prosecution sanction. In view of Article 311(1), the removing authority would not be the subordinate-in-rank to the appointing authority and as such by necessary implication the removing authority may be higher in rank to the appointing authority. In the instant case, the sanction was accorded by S.D.O. and undisputedly he was subordinate in rank to the Assistant Collector, Jalna, who appointed the accused - Talathi vide letter (Exhibit-32). Therefore, the prosecution sanction (Exhibit-31) accorded by the S.D.O., who was sub-ordinate officer to the appointing authority i.e. Assistant Collector was to be held invalid and violative of the provision of Article 311 of the Constitution.

15. At this juncture, the learned APP gave much more emphasis on the provision of Section 19(3) and (4) of the Act, 1988 which would be reproduced as under :-

"(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

16. The learned APP also heavily relied upon the Judgment of co-ordinate bench of this Court in ***Appasaheb Narayan Jadhav Versus State of Maharashtra***, reported in ***All M. R. (Cri) 3813*** and ***Vikas Baburao Marathe Versus State of Maharashtra*** reported in ***2015 All M.R. (Cri.) 2988***. The learned APP submits that the Revenue and Forest Department published the notification dated 30th May 1994 and provided powers to S.D.O. for appointment and removal of public servant as "Talathi" in the State. The notification (gazette) was issued

by exercising powers under Article 309 of the Constitution of India. Therefore, the S.D.O. has an statutory right to remove the accused Talathi being competent authority under Section 19(1)(c) of Act, 1988.

17. The close scrutiny of aforesaid decisions relied on behalf of learned APP, reveals that the learned Single Judge in the Appasaheb's case referred above, unwittingly overlooked the basic provision of Article 311 of the Constitution of India. He gave much more emphasis upon the Government Notification issued on exercising the powers under Article 309 as well as provisions of Section 19(3)(a) and (4) of Act, 1988, and Maharashtra Land Revenue Code. Eventually, learned Single Judge arrived at the conclusion that the previous sanction accorded by S.D.O. was valid and proper one. However, he did not pay attention that the Government Notification issued under Article 309 of the Constitution or any other legislation related to service condition of public servant does not curtail the right guaranteed to the public servant under Article 311 of the Constitution.

18. Moreover, in the case of **Vikas Baburao Marathe** referred supra, the learned Single Judge in paragraph No. 24 of the Judgment observed that -

"24. The aforesaid provision of section 19 and more particularly section 19(1)(c) shows that the authority competent to remove the public servant from his service can accord sanction. Thus, in the new Act, the position has changed and there is no necessity that only appointing authority should accord sanction. With due respect, this Court needs to observe that this position of law is not discussed in the recently decided case by this Court. The Sub Divisional Officer who accorded sanction in the present case had the power to remove the appellant from the service and so, it cannot be said that the sanction was not given by the competent authority."

19. It would be discernible from the aforesaid findings that the learned Single Judge made attempt to draw distinction between the provisions for prosecution sanction of public servants under old Prevention of Corruption Act, 1947, and the newly amended Act, 1988. In the old Act of 1947, the powers for previous sanction were elucidated in Section 6(1), as under -

"Section 6 (1)-No Court shall take cognizance of an offence punishable under Section 161 or 164 or Section 165 of the Indian Penal Code or under sub-section (2) or sub-section (3-A) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office."

20. In the newly amended Act, 1988, the provision of Section 19(1) contemplates that no court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 of the Prevention of Corruption Act, committed by the public servant without previous sanction. The Section 19(1)(c) prescribed that prosecution sanction should be accorded by the authority competent to remove the public servant from his office. It is perceivable from both the provisions prescribed under Old Act 1947 and New Act 1988 for prosecution sanction that there was no any change in the legal provision relating to status of competent authority to accord sanction. The Section 6(1)(c)

of Act of 1947 did not specify that only the appointing authority can accord sanction, but it was contemplated that the authority competent to remove the public servant from his office was empower to accord sanction. The relevant provision of sanction under the Old Act, 1947 were identical and consistent with the provisions as envisaged under the New Act, 1988. Therefore, attempt to draw the distinction by learned Single Judge in **Vikas Marathe's** case referred supra with utmost respect appears to be rests on misconception of law. The learned Single Judge failed to take into consideration the constitutional right of the public servant guaranteed under Article 311 of the Constitution of India, which cannot be taken away by any legislation as discussed above. Moreover, in the case of **Sampuran Singh Versus State of Punjab**, reported in **(1982) 3 SCC 200**, the Honourable Apex Court made it clear in paragraph 25 that :-

"25. In view of the proposition laid down in the case no law by the Parliament or by the State legislature could abrogate or modify to impinge upon the overriding power conferred on the President or the Governor under Article 310 read with Article 311 of the Constitution."

21. Therefore, the aforesaid observations of the learned Single Judge in **Vikas Marathe's** case found not amenable within the purview of law. The rule of law postulate that no any legislation have override effect on the constitutional right of the public servant guaranteed under Article 311 of the Constitution. It would fallacious to appreciate that under the New Act, 1988, the position has been changed and there is no necessity that only appointing authority should accord sanction. It is worth to mention that the powers to remove the public servant from his office is an essence to determine competency of the authority to

accord prosecution sanction. But, it should be subject to condition that the competent authority must not be subordinate in rank to the authority by which the public servant concerned was being appointed. In the matter in hand, the S.D.O. was obviously the officer subordinate in rank than the Assistant Collector i.e. appointing authority of the accused Talathi. Therefore, the prosecution sanction (Exhibit-31) accorded by subordinate officer was totally bad-in-law and invalid one. In the aftermath, the trial conducted on the basis of such invalid sanction required to be vitiated and struck-down.

22. The legal propositions laid down in the cases of *Sakharam Patil*, *Bhaurao Marotrao Mankar* and *Maroti Subrao Shinde* relied upon on behalf of respondent-accused *referred supra*, in my opinion, would definitely proved to be lighthouse for guidance while determining the issue of validity and legality of prosecution sanction under the Prevention of Corruption Act, 1988. However, the Judicial precedent in the case of Dattatraya Bagdi, relied upon by learned APP would not much mean for the prosecution. In the case of Dattatraya, the concerned SDO was only the appointing and removing authority of the accused - Talathi. There was no issue of Article 311 for consideration of the learned Single Judge. Therefore, same is misplaced in the matter in hand.

23. In addition to aforesaid legal aspect of the matter, the provisions of sub-sections (3) and (4) of Section 19 of the Prevention of Corruption Act, 1988 do not permit to reverse the findings recorded by Special Judge in appeal on the ground of the absence of or error, omission or irregularity in the prosecution sanction required under sub-

section (1) of Section 19 unless it caused failure of justice. In the matter in hand, learned trial Court has correctly appreciated the circumstances on record and arrived at the conclusion that impugned previous sanction (Exhibit-31) accorded by PW-5 Piraji Sormale was not within purview of law. Therefore, learned trial Court found reluctant to proceed further on the basis of such invalid prosecution sanction in this matter.

24. Moreover, the evidence adduced on behalf of prosecution also found incredulous, dubious and do not inspire confidence on the material issue of demand of bribe. The learned trial Court has rightly observed that there was an attempt to verify the demand of bribe on the part of respondent-accused on cellphone. But, there are no any document of CDR produced on record to buttress the allegation of demand of bribe by respondent-accused. It would unsafe to fasten the guilt on the accused for demand of bribe bare on the sole version of complainant - Shri Dilip Pimpale. It has also brought on record that at the time of trap there were other independent witnesses present in the office nearby the spot of raid. But, no any independent witness came forward to favour prosecution case on the important aspect of demand and acceptance of money as bribe on the part of accused - Talathi. It is also significant to note that the entire procedure of mutation work of the complainant has already been complied with by the respondent-accused on 01-11-2012 and it was forwarded to superior authority for approval on 15-11-2012 i.e. much prior to trap conducted by ACB (Sleuth). In such circumstances, there is force in the contentions propounded on behalf of respondent-accused that when the work of

mutation was not pending with the accused, no question arises for demand of bribe from the complainant.

25. It is rule of law that demand of illegal gratification is *sine-quo-non* to constitute offence under Section 7 and mere recovery of currency notes is not sufficient to prove the offence unless prosecution succeed to prove beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe. In the instant case, the basic issue of demand of bribe on the part of respondent-accused appears to be suspicious and doubtful. There is no cogent and dependable evidence available on record to prove that accused demanded bribe for mutation work of the complainant. The absence of proof of demand of illegal gratification creates serious dent in the prosecution case. The learned trial Court has correctly appreciated the circumstances on record and drawn the conclusion to exonerate the accused from the charges pitted against him. The findings of acquittal appears to be just, proper and reasonable. Hence, interference at the behest of prosecution in it, is totally unwarranted. There is no perversity or illegality in the impugned findings of acquittal of the accused-respondent in this case. In such circumstances, appeal filed on behalf of prosecution being devoid of merit deserves to be dismissed.

26. Accordingly, appeal fails and stands dismissed. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE