

Vidya Amin.

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

**CRIMINAL REVISION APPLICATION NO. 524 OF 2017**

|                                 |     |             |
|---------------------------------|-----|-------------|
| Balaji Namdevrao Suryakar       | ... | Applicant   |
| VS.                             |     |             |
| The State of Maharashtra & Anr. | ... | Respondents |

Mr. Hrishikesh Mundargi i/b. Shradha Sawant, Advocate for the applicant.

Mrs. Veera Shinde, APP for the respondent/State.

Mr. Murlidhar L. Patil, Advocate for respondent no. 2.

**CORAM: Mrs.MRIDULA BHATKAR, J.**

**DATED: 13<sup>th</sup> February, 2019**

**P.C. :**

In this Criminal Revision Application, the order dated 6<sup>th</sup> September, 2017 passed by the learned Additional Sessions Judge, Nashik rejecting the discharge under section 227 of Cr. P.C. from Special Case No. 07 of 2017 for the offences punishable under sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act is challenged.

2. The short issue involved in this Revision Application is whether the sanctioning authority has power to review its own decision taken under section 19 of the Prevention of Corruption Act.

3. The learned counsel for the applicant has pointed out that the applicant, who was working as Junior Engineer in Nashik Municipal Corporation, was prosecuted for the offences punishable under the Prevention of Corruption Act, however, the Nashik Municipal Corporation, who is the competent authority to give sanction to prosecute, has refused to give sanction to prosecute the applicant/accused earlier. The learned counsel pointed out that first refusal was on 24<sup>th</sup> May, 2011 by Mahasabha by Nashik Municipal Corporation and thereafter there was repetitively refusal to give sanction to prosecute the applicant/accused by Mahasabha and so also by the Commissioner of Nashik Municipal Corporation. Despite these refusal, the Commissioner of Nashik Municipal Corporation granted sanction by its order dated 2<sup>nd</sup> February, 2017 under section 19 of Prevention of Corruption Act. According to the learned counsel, such sanction cannot be granted, however, it was not accepted by the learned Sessions Judge and rejected the said argument, therefore, this Revision Application. In support of his submissions, the learned counsel relied on the judgment of Supreme Court in Criminal Appeal No. 2353 of 2010 arising out of SLP (Cri) 2239 of 2010 in the case of **State of Himachal Pradesh**

**vs. Nishant Sareen, which was decided on 9<sup>th</sup> December, 2010.**

4. Learned APP appearing for the State and the learned counsel appearing for Nashik Municipal Corporation both conceded that there is no other judgment where the power to review is given to the sanctioning authority. It is further pointed out by the learned counsel that Section 59A was enacted which states about the sanction for prosecution of officer and servants of the Corporation and by virtue of this section, the power to give sanction under section 19 of Prevention of Corruption Act vests with the Commissioner of Corporation, however, section 59A was inserted by Maharashtra Act no. XXIX of 2011, w.e.f., 12<sup>th</sup> September, 2011.

5. Considered the submissions. In the case of **State of Himachal Pradesh vs. Nishant Sareen** (*supra*), the Supreme Court has held as follows:

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.

13. Insofar as the present case is concerned, it is not

even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.”

6. Thus, the Hon’ble Supreme Court held that in the absence of express power of review, the order passed by the authority under section 19 of Prevention of Corruption Act cannot be reviewed. However, the Supreme Court has put one rider, i.e., said order can be reviewed or reconsidered if at all the additional material or evidence is place on record before the Competent Authority. Thus, the issue before the Court is *res-integra* and it holds the field.

7. Due to amendment of Section 59A of the Maharashtra Municipal Corporations and Municipal Councils Act, the power to give sanction for prosecution of the officers and servants of the Corporation was shifted from Mahasabha to the

Commissioner and the said section came into force w.e.f., 12<sup>th</sup> September, 2011.

8. In the present case, the first refusal was on 29<sup>th</sup> May, 2011 and it was given by Mahasabha. Thereafter, second refusal was on 17<sup>th</sup> November, 2011 by Mahasabha, however, admittedly at the time of second refusal due to amendment of Section 59A, Mahasabha was not the Competent authority to refuse or grant any sanction under section 19 of the Prevention of Corruption Act. However, the next Commissioner further refused to grant sanction on 3<sup>rd</sup> November, 2012. Thus, it was refusal by the Commissioner, who was competent to consider sanction by virtue of amended Section 59A of Maharashtra Municipal Council Act.

9. In the present case, there is nothing to show on record that additional material was placed before the Commissioner which led him to take decision of giving sanction to prosecute the petitioner on 2<sup>nd</sup> February, 2017. In view of this, Criminal Revision application is allowed. The order dated 6<sup>th</sup> September,

2017 is set aside and the Applicant is discharged from Special Case No. 7 of 2017 from the offences punishable under section 7, 13(1)(d) r/w. 13(2) of Prevention of Corruption Act.

**(MRIDULA BHATKAR, J.)**