

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

*CRIMINAL APPELLATE JURISDICTION*CRIMINAL WRIT PETITION NO. 4658 OF 2018

- | | | | |
|----|----------------------------------|---|----------------|
| 1. | Anirban Roy of Mumbai, Indian |] | |
| | inhabitant, aged 52 years |] | |
| | Occupation Practicing Advocate |] | |
| | residing at Flat 502, Arpan |] | |
| | Gaurav Arpan Darpan |] | |
| | Cooperative Housing Society |] | |
| | Kanyapada, Gokuldham, |] | |
| | Goregaon (East), Mumbai 400 063. |] | ...PETITIONERS |

VERSUS

- | | | |
|----|---|---|
| 1. | Mr. Gautam Sukumar Chatterjee |] |
| | of Mumbai, Indian inhabitant |] |
| | aged 62 years, IAS (Retired), |] |
| | Ex Chief Executive Officer, Slum |] |
| | Rehabilitation Authority, Mumbai |] |
| | Currently having his residential |] |
| | address at Flat No. 602, Amaltas, |] |
| | Char Bungalow, Juhu Varsova Link |] |
| | Road, Andheri (West), Mumbai |] |
| | 400058 and having his email ID |] |
| | as gaucha1@rediffmail . Com and |] |
| | contact number as 9833033710. |] |
| | |] |
| 2. | Mr. Vijay Bhayyaji Mathankar, of |] |
| | Mumbai, Indian inhabitant, aged |] |
| | about 72 years, IAS (Retired), Ex |] |
| | Chief Executive Officer, Slum |] |
| | Rehabilitation Authority Mumbai |] |
| | currently having his residential |] |
| | address at Flat No. C/29, Sangam |] |
| | CHS, Char Bungalow, Juhu Varsova |] |
| | Link Road, Andheri (West), Mumbai |] |
| | 400058 and having his contact number |] |
| | as 9819482824. |] |
| 3. | Mr. Ramesh Mahadeo Ubale, of |] |

- Mumbai, Indian inhabitant, aged about 70 years, IAS (Retired), Ex Chief Executive Officer, Slum Rehabilitation Authority, Mumbai currently having his residential address at 203, Charleville, A-Road Churchgate, Mumbai 400020 having his contact number 02222821440.]
4. Mr. Ujjwal Uke, of Mumbai Indian inhabitant, aged about 60 years, IAS, Ex Chief Executive Officer, Slum Rehabilitation Authority, Mumbai, currently having his residential address at 23-Belheban, New Marine Lines, Mumbai- 400020 and having his email ID as Ujjwaluke@gmail.com and his contact number as 9821082820.]
5. Mr. Debashis Chakrabarty, of Mumbai, Indian inhabitant, aged about 56 years, IAS Ex Chief Executive Officer, Slum Rehabilitation Authority, Mumbai, currently having his residential address at Flat No. 4, 1st Floor, Yashodhan, Opposite CCI Club, Dinshaw Waccha Road, Mumbai 400020 and having his email ID as dchaks62@yahoo.com and contact number as 9820734569.]
6. Sambhaji Sadashiv Zende, of Mumbai, Indian inhabitant, aged about 61 years IAS, Ex Chief Executive Officer, Slum Rehabilitation Authority, currently having his residential address at 1, Ground Floor, Cliffet Building, Sir Pochkhanwala]

- Road, Worli Mumbai 400030 and
 having his email ID as
sszende@rediffmail.com and
 contact number as 9821033776.
7. Ravi Ashish Land Developers
 Limited, a public limited
 company incorporated under the
 Companies Act, 1956 and having
 its registered office at 1st Floor,
 Laxmi Palace, 76, Mathuradas
 Road, Bhagat Colony, Kandivali
 West, Mumbai, 400067 having
 contact numbers as 022 61397633,
 022 61937644.
8. Jayesh Thokarshi Shah of Mumbai,
 Indian inhabitant, aged about 58
 years, occupation Director of Ravi
 Ashish Land Developers Limited and
 having his office address at 1st Floor
 Laxmi Palace, 76, Mathuradas Road,
 Bhagat Colony, Kandivali West,
 Mumbai, 400067 having contact
 numbers as 022 61937633,
 022 61937644.
9. Ketan Thokarshi Shah of Mumbai,
 Indian inhabitant, aged 53 years,
 Occupation Director of Ravi Ashish
 Land Developers Limited and having
 his office address at 1st Floor, Laxmi
 Palace, 76, Mathuradas Road,
 Bhagat Colony, Kandivali West,
 Mumbai, 400067 having contact
 numbers as 022 61937633,
 022 61937644.
10. State of Maharashtra
- ...RESPONDENTS

APPEARANCES-

***Mr. Bhavesh Parmar a/w. Mr. Rahul Gaikwad, for Petitioner.
Mr. A.R. Patil, APP for Respondent-State.***

**CORAM : S. S. SHINDE J.
DATE : 21st August 2019.**

JUDGMENT

1 Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2 This writ petition is filed with following prayers:-

(a) That this Hon'ble Court be pleased to quash and set aside the order dated August 16, 2018 passed by the Hon'ble Sessions Court, Fort Mumbai dismissing the Private Criminal Complaint filed by the Petitioner and numbered as ACB Miscellaneous Application No. 1020 of 2018.

(b) That this Hon'ble Court be pleased to restore the aforesaid Private Criminal Complaint to file.

(c) That in the event this Hon'ble Court is of the view that Section 19 of the Prevention of Corruption Act, 1988,

as it existed before the coming into force of the Prevention of Corruption (Amendment) Act, 2018, is applicable to the aforesaid Private Criminal Complaint, this Hon'ble Court be pleased to direct the Hon'ble Sessions Court to proceed with the aforesaid Private Criminal Complaint without requiring the obtaining of "Sanction for Prosecution".

(d) That in the event this Hon'ble Court is of the view that the new Sanction 19 of the Prevention of Corruption Act, 1988, as it exists after the coming into force of the Prevention of Corruption (Amendment) Act, 2018, is applicable to the aforesaid Private Criminal Complaint, this Hon'ble Court be pleased to direct the Hon'ble Sessions Court to proceed with the aforesaid Private Criminal Complaint and require the obtaining of "Sanction of Prosecution" only after it has made up its mind issue process under Section 204 of CrPC and proceed further in the matter.

3 The relevant facts disclosed in the memo of the petition, for filling

the present petition are as under:-

It is the case of the Petitioner that, on 01.08.2018 a Private Criminal Complaint (for short “the said complaint”) numbered as (Miscellaneous Application No. 1020 of 2018), was filed by the Petitioner before the Hon'ble Sessions Court, Fort Mumbai against Respondent Nos. 1 to 9, Respondent Nos. 1 to 6 being public servants and Respondent Nos. 7, 8, and 9 being private entity/individuals. The said complaint was filed under the erstwhile Section 13(1) (d) of Prevention of Corruption Act, 1988 (for short “POCA”) (as it existed at the time of commission of the offences) despite its repeal by virtue of Section 6 of the General Clauses Act, 1897. Applying Section 19 of the POCA, as it stood before coming into force of POCA 2018 Amendment, the Petitioner did not obtain “Sanction for Prosecution” before filing the said Complaint since Respondent Nos. 1 to 4 and 6 are retired public servants and Respondent NO. 5 though serving public servant does not hold the post which he held when the offences complained against were committed. The said complaint was taken up for consideration on 08.08.2018. On 16.08.2018 the said complaint was dismissed in limine by the Sessions Court, Fort, Mumbai solely on the ground that “Sanction for Prosecution” had not been obtained before filing the said complaint. It was further held that, the Maharashtra Act No. XXXIII of 2016 amended the CrPC with effect from 30.08.2016 and pursuant thereto, “Sanction for Prosecution” under

Section 19 of POCA was required for all Private Criminal Complaints filed under Section 190 of Cr.P.C., whether the same related to Retired Public Servants or Serving Public Servants. Hence, the present writ petition is filed on 10.10.2018 challenging the order dated 16.08.2018 passed by Sessions Court, Fort, Mumbai.

4 Learned counsel appearing for the Petitioner made following submissions:-

(a) It is submitted that, in respect of Private Criminal Complaint filed by the Petitioner before the Hon'ble Sessions Court, Fort, Mumbai and numbered as ACB Miscellaneous Application No. 1020 of 2018, which is a complaint seeking issuance of process filed under the erstwhile Section 13(1)(d) of POCA read with Section 6 of the General Clause Act, 1897, Section 19 of POCA, as it stood before the coming into force of POCA of 2018 Amendment, is applicable on the aspect of "Sanction for Prosecution".

(b) That Section 19 of POCA, as it stood before the coming into force of POCA 2018 Amendment, did not require "Sanction for Prosecution" for a Retired Public Servant or a Serving Public Servant, who no longer held the post, which he held when the offences complained against were committed.

(c) It is further submitted that, the Maharashtra Act No. XXXIII of 2016 did not change the law relating to “Sanction for Prosecution” under Section 19 of POCA, as it existed prior to the coming into force of POCA 2018 Amendment, in any manner whatsoever and no “Sanction for Prosecution” is required to be obtained in respect of the aforesaid Private Criminal Complaint merely on account of the passing of the Maharashtra Act No. XXXIII of 2016.

5 In support of aforesaid contention learned counsel appearing for the Petitioner invites attention of this Court to the following judgment:-

State of Punjab Vs. Labh Singh¹, Subramanian Swamy Vs. Manmohan Singh & Anr², Lalu Prasad Yadav Vs. State of Bihar³, Narayana Swamy Vs. State of Karnataka & Ors⁴ and Dr. Subramanian Swamy Vs. Director, CBI⁵.

6 Learned counsel appearing for the Petitioner invites attention of this Court to Section 19 of the POCA, and in particular proviso to Section 19(1) of the POCA, so also, Clause (i) and (ii) of the Section 19 (c) of the POCA and submits that, under the first proviso to the new Section 19 (1), as it stands after the coming into force of POCA 2018 Amendment, a request for “Sanction for

1 (2014) 16 SCC 807

2 (2012) 3 SCC 64

3 (2007) 1 SCC 49

4 (2016) 9 SCC 598

5 (2014) 8 SCC 682

Prosecution” cannot be made by a private person unless he has filed a complaint in a competent court and the competent Court, has not dismissed the complaint under Section 203 of Cr.P.C. and has directed the complainant to obtain such “Sanction for Prosecution” for further proceeding. In other words, the requirement for obtaining “Sanction for Prosecution” would actually arise after filing of the complaint and after taking cognizance and after the Court decides to issue process upon hearing of the complaint on merits and upon the court directing the complainant to obtain “Sanction for Prosecution” for proceeding further. To this extent, the new Section 19 (1) as it stands after the coming into force of POCA 2018 Amendment, has modified the concept of cognizance and has pushed it down from the stage of Section 200 of Cr.P.C. to the state of Section 204 of Cr.P.C. On the aspect of “Sanction for Prosecution” in respect of the said complaint, whether section 19 of POCA, as it stood before the coming into force of POCA 2018 Amendment, is applicable or whether the new Section 19 of POCA, as it stands after the coming into force of POCA 2018 Amendment, is applicable.

7 By way of alternate submission learned counsel appearing for the Petitioner submits that, in the event it is held that, the new Section 19 of POCA, as it stands after coming into force POCA 2018 Amendment, is applicable to the

said Complaint and it is necessary to obtain “Sanction for Prosecution” in respect thereof, such a “Sanction for Prosecution” was not required to be obtained at the threshold and before filing of the said Complaint. As set out in detail herein above, under the first proviso to the new Section 19 (1) of POCA, the requirement for obtaining “Sanction for Prosecution” would arise only after filing of complaint after taking cognizance and after the court decides to issue process upon hearing of the complaint to obtain “Sanction for Prosecution” for proceeding further. Learned counsel submits that, POCA is a special Act and the new Section 19 of POCA as it stands after coming into force of POCA 2018 Amendment, would prevail over the general provisions of Section 190 of Cr.P.C. and accordingly, The Maharashtra Act XXXII of 2016, would not, in any manner whatsoever, affect the stage and procedure for obtaining “Sanction for Prosecution” under the new Section 19 of POCA as set out herein above. Learned counsel appearing for the Petitioner relying upon the pleadings in the petition, grounds taken therein, annexures thereto submits that, petition may be allowed. Learned counsel further submits that, if this Court is not inclined to accept the statement of the Petitioner that, “Sanction for Prosecution” is not required to prosecute the Public Servant in that case, the Petitioner is satisfied if the relief in terms of prayer clause (a) is granted.

8 On the other hand learned APP submits that, the Petitioner has no locus to file the complaint without prior sanction of the competent authority in view of the amended provision, and the public servant cannot be prosecuted without having prior sanction. He invites attention of this Court to the reasons assigned by the Trial Court while rejecting the complaint filed by the Petitioner and submits that, petition may be rejected.

9 Heard learned counsel appearing for the Petitioner and learned APP appearing for Respondent-State. With their able assistance perused pleadings and grounds taken in the petition, annexures thereto and impugned order challenged in this petition. It appears that, the learned Special Judge (under the Prevention of Corruption Act), Greater Mumbai, held that, consent to prosecute proposed Accused No. 1 to 6 has not obtained by the complainant or any other State agency to prosecute them till this date. Therefore, the Court cannot take cognizance of the said complaint in view of provisions of Section 3 of the Amendment Act.

10 At the outset, it needs to be clarified that, this Court has not inclined to accept the contention of the Petitioner that, no sanction is required to prosecute the Accused. This Court has considered only alternate submission of the learned counsel for the Petitioner that, the learned Magistrate has not properly considered the contention of the Petitioner i.e. complainant, that in view of

proviso to Section 19(1), as it stands after coming in force 2018 Amendment, a request for “Sanction for Prosecution” cannot be made by private person unless he has filed complaint in the competent Court and the Competent Court has not dismissed the complaint under Section 203 of Cr.P.C. It appears that, learned Magistrate has not properly considered the proviso to Section 19 (1) of POCA.

In that view of the matter without entering upon the merits of the case, and keeping open all the legal issues so also issue of requirement of sanction before taking the cognizance of the complaint, the ends of justice would be met in case, if the petition is partly allowed in terms of prayer clause (a), and complaint is restored to its original file, for a fresh consideration by the learned Special Court. Hence following order:-

i) The impugned order dated 16.08.2018 is quashed and set aside and the private complaint filed by the Petitioner is restored to its original file.

ii) The Court of Special Judge (Under the Prevention of Corruption Act), Greater Mumbai, if it is permissible in law and keeping in view the relevant procedure, may direct the Petitioner on his prayer to obtain “Sanction for Prosecution”. It is made clear that,

it is for the concerned Special Court to take appropriate decision, whether to direct the Petitioner to obtain “Sanction for Prosecution” or otherwise.

11 Rule made absolute in above terms. Writ Petition stands disposed of accordingly.

[S.S. SHINDE, J.]