

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.53 OF 2015

Rajendra s/o Gangadhar Rane,
Age 51 years, Occupation Service,
Range Forest Officer,
R/o Muktai Nagar, Jalgaon
Tq. And Dist. Jalgaon.

...Petitioner.

VERSUS

- 1) The State of Maharashtra,
Revenue and Forest Department,
Mantralay, Mumbai -32,
Through the Principal Secretary.
- 2) Muktai Nagar Police Station,
Jalgaon Through The Police
Inspector. **(Deleted as Per Order
Dated 24-03-2015)**

...Respondents.

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Advocate for Petitioner : Mr. P. V. Mandlik, Senior Counsel
instructed by Mr. A. S. Gandhi and
Mr. P. P. Mandlik.
APP for Respondent : Mr. S. W. Munde.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 12-10-2020.

JUDGMENT :

1. Present petition has been filed invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge order dated 17-09-2014, passed by respondent No.1 by which

the respondent No.1 has accorded sanction for prosecution of the accused under Section 19 (1) (b) of the Prevention of Corruption Act, 1988. The petitioner has been added as an accused in Crime No.3002 of 2010, registered with Muktai Nagar, Police Station, Jalgaon, for the offence punishable under Section 7, 12, 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988.

2. Heard learned Senior Counsel Mr. P. V. Mandlik instructed by Advocate Mr. A. S. Gandhi and Mr. P. P. Mandlik, and learned Additional Public Prosecutor Mr. S. W. Munde for respondent. It will not be out of place to mention here that, the name of respondent No.2 has been deleted vide order passed by this Court on 24-03-2015, therefore there is only one respondent in this case.

3. It has been vehemently submitted by learned Senior Counsel Mr. Mandlik that, the petitioner is a Range Forest Officer who was involved in a false case. A complaint was filed by one Tukaram Govind Sonawane, resident of Kakoda Tq. Muktai Nagar Dist. Jalgaon on 16-01-2010 with Anti Corruption Bureau, Dhule. The trap was arranged and employee by name Ashok Dayaram Tayade, who is a Class-IV employee, was caught while accepting amount of Rs.10,000/- from the complainant. The present petitioner came to

be falsely involved. The petitioner had never demanded any amount from the complainant, on the contrary the petitioner had filed case against complainant for illegal cutting and transportation of forest produce. Petitioner was not even present when the raid was conducted. After the entire procedure was over, Anti corruption Bureau, Jalgaon had forwarded a proposal on 22-02-2010 to the Revenue and Forest Department of the Government of Maharashtra for grant of necessary sanction to prosecute petitioner. After perusing those documents which were sent and also on the basis of their own documents, the Revenue and Forest Department had refused to accord sanction to prosecute petitioner vide its order dated 15-03-2013. It was specifically mentioned that the complaint has been filed with malafide intention and an honest government officer is being tried to be falsely implicated. However, thereafter also the Anti Corruption Bureau Department through its Director General was bent upon to get the sanction, made correspondence to the Secretary, Revenue and Forest Department. In fact, when once the Government had exercised its power under Section 19 (1) (b) of the Prevention of Corruption Act, and passed the order of refusal to accord sanction, there was no question of reconsideration of the said decision. Interestingly when the initial order was passed about

refusal to accord sanction, it was by Pravinsingh Pardeshi, the then Principal Secretary to the Government of Maharashtra, however after the correspondence between the Forest Department and the Anti Corruption Department, especially the letter by Director General, Anti Corruption Bureau, Government of Maharashtra, Mumbai on 04-02-2014 and by Additional Director General, Anti Corruption Bureau, Government of Maharashtra, Mumbai dated 30-04-2014, the sanction order has been issued on 17-09-2014. This order dated 17-09-2014 is also signed by same then Principal Secretary to the Government of Maharashtra who had refused to grant the sanction on 15-03-2013. There is absolutely no provision for review of the order passed under Section 19 of the Prevention of Anti Corruption Act. The impugned order dated 17-09-2014 does not say as to what new material was produced before the sanctioning authority on the basis of which he had come to the conclusion that, there is a necessity to review the earlier order. In fact, the order dated 17-09-2014 is totally silent on the point of order of refusal to accord sanction passed earlier.

4. The learned Senior Counsel has relied on the decision in, *State of Himachal Pradesh v. Nishant Sareen*, reported in 2011 AIR (SC) 404 and

submitted that, it has been held that the Government has a power to review its own order, however there should be fresh material placed before it. He also relied on the decision in, *State of Punjab and Anr. v. Mohammed Iqbal Bhatti*, reported in 2010 AIR (SCW) 1186 : 2009 (17) SCC 92, wherein it has been held that, "the appellate authority or sanctioning authority does not have the power to review its own order provided fresh materials are placed before the sanctioning authority." The learned Senior Counsel, therefore, prayed for invoking the constitutional powers of this Court and prayed for quashing of the sanction order being illegal.

5. The learned Additional Public Prosecutor has vehemently submitted that, though a decision was earlier taken on 15-03-2013 for not according sanction to prosecute the petitioner, yet it was then pointed out by the Director, Anti Corruption Bureau, which was in consultation Law and Judiciary Department as to how the view taken by the Secretary was not correct and how in fact *prima facie* case has been made out against the petitioner to accord sanction. The Anti Corruption Bureau vide its letter dated 04-02-2014 and 30-04-2014 had clarified the points raised by the Government under which the proposal for sanction to prosecute petitioner was refused,

the Government was then requested to reconsider its earlier decision, and taking into consideration the said clarification, sanction has been finally accorded to prosecute the petitioner. The said order cannot be said to be illegal. Further there is a reviewing power vested with the Government when the material has been placed. The learned Additional Public Prosecutor also relied on the same Judgment in *State of Himachal Pradesh v. Nishant Sareen (Supra)* in which it was held that, such reviewing power is with the sanctioning authority.

6. Here in this case we are not required to see in detail as to what was the prosecution case, however an overview of the same would be necessary. Original complainant Tukaram Sonawane filed complaint with Anti Corruption Bureau stating that, he is in the profession of Carpentry. He used to purchase wood for his business through auction held by the Forest Departments as well as from the tribes in the area. Some officers of the Forest Department had raided his house on 09-01-2010 and had seized teak wood, panchanama was drawn and it was told to the complainant that, he should come to the Forest Office. Accordingly when he went to Forest Office and met accused, at that time the accused had

threatened him that he should pay amount of Rs.50,000/- otherwise he would see that his business is closed down. When complainant expressed his inability to pay that amount, it appears that there was settlement and an amount of Rs.10,000/- was demanded. It is the further prosecution story that the complainant had then lodged report with Anti Corruption Bureau. The raid was arranged. One Ashok Dayaram Tayade was caught while accepting that amount of Rs.10,000/-.

7. Taking into consideration the said prosecution story the further fact which is coming on record is that, offence against complainant was already registered on 09-01-2010. The complaint was filed by the complainant Sonawane on 16-01-2010, however the trap was arranged on 18-01-2010. It appears from the communication that has been produced on record that, Sonawane has suppressed the action taken by the accused against him in particular way and when documents were forwarded to the sanctioning authority to accord sanction to prosecute petitioner by a detailed order, it came to be refused on 15-03-2013. It was specifically observed in the said order that the complaint has been filed with malafide intention and it is affecting the honest officer.

8. After the said order was passed on 15-03-2013 it appears that the Anti Corruption Department made communication through its Director to the Principal Secretary. In fact when the order is passed, if the Anti Corruption Bureau was aggrieved by the same, it could have challenged it by the legal permissible mode. Indulging in communication and praying for reconsideration of the same, cannot be said to be legal step. It appears from the record that, opinion was also called from the Law and Judiciary Department and again communication having clarification has been given on 30-04-2014 by Anti Corruption Bureau Department. Thereafter, the impugned order has been passed by learned Principal Secretary to the Government of Maharashtra on 17-09-2014. Perusal of the said sanction order would show that, there is absolutely no reference to his own earlier order dated 15-03-2013. Said order dated 15-03-2013 was never revoked or set aside nor superseded. The sanction order dated 17-09-2014 gives an impression that, it is the first sanction that is accorded to prosecute petitioner. If this order dated 17-09-2014 was a review order then reasons ought to have been given in the said order itself as to why the same authority is reviewing its earlier order. It should include what material was produced afresh before the same authority. The affidavit-in-reply

filed by the Dattatray Laxman Thorat, Joint Secretary (Forest), Revenue and Forest Department, Mantralaya, Mumbai would show that, on the basis of communication from Anti Corruption Bureau dated 04-02-2014 and 30-04-2014, the earlier order dated 15-03-2013 has been reviewed. Surprisingly, the sanctioning authority has not clarified it in its order. The Joint Secretary Mr. Thorat has not stated that, any fresh material was placed before the sanctioning authority after 15-03-2013 which prompted the review of the order. The communication by Anti Corruption Bureau Office dated 04-02-2014 and 30-04-2014 are in fact interpretation of the same material by Anti Corruption Bureau Office which was contrary or clarificatory (as per their own statement) than what was mentioned in the sanction order dated 15-03-2013. Therefore, the sanction order dated 14-09-2014 is without application of mind and cannot be taken as the order issued under reviewing powers.

9. In case of *State of Himachal Pradesh v. Nishant Sareen (Supra)* Hon'ble Supreme Court has observed that,

“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.”

10. In *State of Punjab and Anr. v. Mohammed Iqbal Bhatti's case (Supra)* also the Hon'ble Supreme Court has held that,

“The appellate authority or sanctioning authority does not have the power to review its own order provided fresh materials are

placed before the sanctioning authority.”

Definitely the law expects that, when a reviewing authority is reviewing its earlier order then it should contain the material on which such decision is being arrived at or what prompted the authority to review its own order and the basis for such action. The review of an order cannot be at the wish of a party. When it should be within the four corners of law then all the legal parameters are required to be observed. Those legal parameters are absent in the sanction order dated 17-09-2014, and therefore, the said sanction order is not sustainable. When the statutory authority has acted contrary to the legal provisions then definitely case is made out to invoke the constitutional powers of this Court under Article 226 of the Constitution of India. The writ petition deserves to be allowed, accordingly it is allowed in terms of prayer Clause 'B'.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.