

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1106 OF 2004

The State of Maharashtra)....Appellant

V/s.

Shantaram Govind More)
 Age-41 years, occ. Service, Police Constable)
 Resident of Sane Guruji Wasahat, A-Ward)
 Kolhapur)....Respondent

Mr.Sagar Agarkar APP for appellant-State.
 Mr.Kiran Varma i/by Rajeev M.Sawant for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 3.3.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 28.4.2004 passed by the Special Judge, Kolhapur acquitting respondent (accused) of offences punishable under sections 13(1)(d) read with section 13(2) of Prevention of Corruption Act 1988 (P.C.Act 1988).

2. The trial Court has acquitted accused on merits by concluding that demand itself has not been proved. The trial Court has also observed that: (a) complainant-Maruti Dadu Terwade PW-1 himself had a criminal record and (b) the case of prosecution was

accused informed PW-1 that there was a warrant issued against him for arrest and accused would cancel the warrant. The sanctioning authority-R.K.Padmanabhan (PW-4) has in his cross-examination admitted that there was no such warrant even issued and in any event, accused could not have cancelled the warrant because it was for the Court to cancel any warrant issued. So, on merits accused has been acquitted.

3. The trial Court has considered the sanction granted by PW-4. Mr.Varma counsel for accused today submits that the sanction itself was defective and therefore, the Court need not have even gone into the merits of the case but should have discharged accused.

4. Learned APP Mr.Agarkar agrees that this Court in its appellate jurisdiction is empowered to analyze the entire evidence and come to its own independent views. Mr.Agarkar agrees with the Court that even though trial Court has not given its finding on the sanction, it is open to the appellate Court to consider whether the sanction itself was in order.

5. The sanctioning authority (PW-4) in his examination-in-chief admits that he received draft sanction though he says that he

studied all the papers, applied his mind and came to the conclusion that it was a fit case to grant sanction under the Prevention of Corruption Act. In his cross-examination PW-4 states “It is not true to say that, without applying my mind, I prepared the sanction order as per draft”. This would mean, in my opinion, that the sanction order has been prepared as per the draft but PW-4 says that he applied his mind as well.

6. I have to also note that the Maharashtra State Anti Corruption and Prohibition Intelligence Bureau has issued a manual of instructions. At the request of the court, learned APP, while hearing Criminal Appeal No.705 of 2000 on 22.1.2020 gave a copy of the revised 2nd edition of 1976. Learned APP was not aware whether any later edition has come and the website on that did not indicate any later edition. Chapter-12 of this manual deals with prosecution. On the sub-head of sanction to prosecute, it expressly provides, “.....*It should, however, be remembered that the question has to be formed and content of the sanction is matter within the discretion of the competent authority. It should not be requested to accord sanction in any particular form nor should draft sanction be sent to it.....*”. (emphasis supplied). Therefore, the manual expressly provides draft sanction should not be sent to the competent authority. In this case

admittedly a draft sanction was sent and PW-4 has prepared the sanction as per the draft. In my view, therefore, the sanction itself will get vitiated because it is contrary to the manual of instructions.

7. The sanctity of sanction has been considered and laid down by the Apex court in ***Balbhadra Parashar vs. State of Madhya Pradesh***¹. The Apex court held that grant of sanction is not empty formality and order of consent should not be construed in a pedantic manner and the purpose for which order of sanction is required to be passed should always be borne in mind, and there has to be application of mind in support of the sanction. Paras-5 & 6 read as under :-

“5. It is contended that the grant of sanction is not an empty formality and there has to be application of mind in support of the said sanction. We have been commended to Mansukhlal Vithaldas Chauhan v. State of Gujarat, 1997(4) R.C.R.(Criminal) 236 : (1997) 7 SCC 622 wherein a two-Judge Bench while dealing with grant of sanction has observed:-

"18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic

1 AIR 2016 SC 1554

evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also Jaswant Singh v. State of Punjab, AIR 1958 SC 124, and State of Bihar v. P.P. Sharma, 1991(2) S.C.T. 397 : 1992 Supp. (1) SCC 222.)

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

6. In State of Karnataka v. Ameerjan, 2007(4) R.C.R.(Criminal) 375 : 2007(5) Recent Apex Judgments (R.A.J.) 202 : (2007) 11 SCC 273, while dealing with the grant of sanction, it has been held thus:-

"9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act

by refusing to accord sanction for his prosecution or not.

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire 82 (2007) 11 SCC 273 records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."

8. The Apex court in ***State of Maharashtra Vs. Mahesh Jain***²

has held that grant of sanction is a sacrosanct act and is intended to provide safeguard to a public servant against frivolous and vexatious litigations. Grant of sanction is an administrative function and the sanctioning authority is required to prima facie, reach the satisfaction

² (2013) 8 SCC 119

that relevant facts would constitute the offence. Satisfaction of the sanctioning authority is essential to validate an order granting sanction.

9. The Apex court in *Mahesh Jain (supra)* has referred to ***Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh***³ where the Apex court held “it is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void, ab initio”.

10. The validity of sanction depends on the application of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation. It necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction, where prosecution has to be sanctioned or not. The sanctioning authority, since has a discretion to grant or not to grant the sanction, cannot rely on advise from anybody else because, as held in ***Mansukhlal Vs.State of Gujarat***⁴, its discretion should be shown to have not been affected by any extraneous consideration, nor should the sanctioning authority be under pressure from any quarter, nor should any external affairs be

3 (1979) 4 SCC 172

4 1997 (7) SCC 622

acting upon it to take the decision one way or the other. It is, therefore, necessary that the discretion to grant or not to grant the sanction, should be vested purely and absolutely in the sanctioning authority. The sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction where prosecution has to be sanctioned or not. It is precisely for this reason the manual referred to in Para-6 above expressly provides : it should not be requested to accord sanction in any particular form nor should draft sanction be sent.

11. The Apex Court in *Nanjappa Vs. State of Karanataka*⁵ says Section 19 of P. C. Act which provides that no court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15, alleged to have been committed by a public servant, without the sanction was couched in mandatory terms and acts as complete bar to prosecution without previous sanction. In the absence of valid sanction the court is not competent to take the cognizance of the case and the trial itself will be void-ab-initio. Therefore, the trial based on invalid sanction is null and void and there is no bar on prosecution after obtaining fresh sanction, can pray for re-trial. If the sanction itself is invalid, the Trial Court cannot come to the conclusion of

⁵ (2015) 14 Supreme Court Cases 186

acquitting or convicting accused, as it was not competent to take cognizance of the alleged offence. With an invalid sanction, the trial itself will be nonest in the eyes of law. In that case the Trial Court must discharge accused and parties may be relegated to a position where prosecution can be initiated after obtaining sanction afresh from the competent authority.

12. Therefore, in my view, the Court need not have even gone into the merits of the case because in my opinion there is no valid previous sanction.

13. The Learned Single Judge of this Court in *Laxman through the legal heirs and another vs. State of Maharashtra*⁶ relying upon *Nanjappa (Supra)* observed in that case time of 20 years had lapsed as the incident happened in March 1999 and concluded that no purpose could be achieved by directing a fresh trial.

14. In the case at hand also, almost 20 years has lapsed as the incident happened on 18.10.2000. The case was received by the Sessions Court on 20.3.2001 when the charge-sheet was filed. The judgment impugned was given on 28.4.2004. This appeal was lodged

⁶ 2019 SCC Online Bom 1020

on 15.9.2004 and was admitted on 10.1.2006.

At the relevant time, accused, I am informed, was about 38 years old which means today the accused would be close to his retirement age and probably even would have retired. Mr.Varma for accused says accused has retired from police service.

15. Should I set aside the order and permit the launch of fresh prosecution against accused at this distinct point of time, is what we have to consider next. In my view, putting the clock back at the stage when the prosecution witnesses themselves may not be available, would serve no purpose. That apart, the trial Court had, even upon appreciation of the evidence, although it was not required to do so, had held that the prosecution has failed and acquitted accused.

16. The Apex Court in many other judgments including *Murlidhar & Ors. Vs. State of Karnataka*⁷ has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the trial Court. Apex Court also held that merely because the appellate court on re-

⁷ (2014) 5 SCC 730

appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

17. The Apex Court in *Ramesh Babulal Doshi Vs. State of Gujarat*⁸ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

18. I have perused the impugned judgment, considered the evidence and also heard Mr.Agarkar, learned APP and Mr.Varma. I do

⁸ 1996 SCC (cri) 972

not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment in its consideration on the merits of the case. The views expressed by the trial Court that prosecution has failed to prove beyond reasonable doubt, cannot be faulted and it is settled law that if one of the two views are possible, the appellate Court should not interfere.

19. In the circumstances, I feel no purpose will be served to resume the proceedings over and again. Accused and his family would have already suffered ignominy of allegations and trial. They need not go through that again.

20. In the circumstances, appeal is dismissed.

21. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from today, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against accused and will factor in all promotions and increments that accused would have been

entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/ Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this judgment. Certified copy expedited.

(K.R.SHRIRAM,J)