IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.498 OF 1999

The State of Maharashtra)….Appellant
(Org.Complainant)

V/s.

1) Nandlal Babulal Sakhare)
Age-58, Occ.Executive Engineer)
Zone No.2, Sangamner, Dist.Ahmednagar)

2) Sau.Lata @ Latika Nandlal Sakhare)
Age-48, R/o Nahush Co-op.Housing)
Society, Flat No.17 & 18, Gangapur Road)
Nashik.)....Respondents
(Org.Accused)

Mrs.Anamika Malhotra APP for State.
Mr.S.B.Shetye for respondent nos.1 & 2.

CORAM : K.R.SHRIRAM,J
DATE : 2.11.2020

ORAL JUDGMENT :-

1. This is an appeal impugning an order and judgment dated 17.3.1999 passed by the Special Judge, Nashik acquitting respondents of offences punishable under Sections 13(1) (e) read with section 13(2) of Prevention of Corruption Act 1988 (PC Act) read with section 109 of the Indian Penal Code.

2. Prosecution's case in brief is that accused no.1 was working as an Executive Engineer, Irrigation Department, Sangamner from October-1988 to June-1993. Accused no.2 is the wife of accused no.1. The Anti-Corruption Bureau (A.C.B.), Maharashtra had directed secret inquiry with respect to property acquired by accused no.1 during his service period. Secret inquiry reveals that accused no.1 had accumulated assets disproportionate to his income and the assets were acquired either in his own name or in the name of accused no.2. Accused no.2 is charged with aiding and instigating accused no.1 to acquire properties beyond his source of income and also allowed her name to be used to acquire such properties. Additional Superintendent of Police submitted his report to the Director of A.C.B, Mumbai and director of A.C.B., relying on the said inquiry report, directed PW-28 Shrikrishna Rane, Addl. S.P., to lodge a complaint against both the accused. PW-28 accordingly lodged the complaint on 17.10.1992 at Sarkarwada police station, Nashik and also investigated the offence.

3. PW-28 took assistance of other A.C.B staff of Dhule and Jalgaon and took out search of various properties, including two flats being flat nos.17 & 18 belonging to accused. List of articles found

were prepared and valuation was prepared with the help of panch witness etc. under panchanama. A.C.B. officers also visited agricultural land of accused at village Pengalwadi where terracing work were noticed in 5 acres of land. Valuation of terracing was also done. Valuation of outhouse, pump house, two wells situated in the said land were also made under panchanama.

A.C.B officers then searched the house of brother of accused no.1, viz., Mr. R.B.Sakhare. List of articles found in the house was prepared and also valuation was made with the help of panch witnesses under panchanama. It is alleged that accused had entered into an agreement to purchase 4 plots of land and paid some advance but those lands were subsequently sold by the Vendor to two others. Valuation of articles found in the name of the brother of accused no.1 was taken, valuation of vehicles and articles found in the name of the accused and their children, expenditure made by accused towards education expenses of their children, grocery, taxi bills, telephone bills, electricity bills etc. were collected. Valuation of various other properties which the prosecution felt were in the name of accused no.1 or 2 or was connected to them was made.

After the investigation was over, the papers were forwarded to Deputy Secretary, Irrigation Department, Sureshchandra Sawant-PW-27 for according sanction to prosecute both the accused.

PW-27 Sureshchandra Sawant granted the sanction to prosecute the accused. After recording statements of witnesses and the sanction, charge-sheet was submitted to the trial Court on 3.1.1998. Charges were framed as noted above. The accused pleaded not guilty and claimed to be tried.

4. The prosecution has examined 29 witnesses to establish the guilt of accused. Besides oral evidence, prosecution has also produced number of documents. The accused were examined under Section 313 of Cr.P.C. The accused explained that A.C.B. officers have not valued the articles properly. The bills and sources of income have not been taken properly into account, even the annual returns filed by accused are not considered and sanction was granted without application of mind. Of course, accused have denied committing any offence.

5. I have considered the record & proceedings, evidence, and the impugned judgment with the assistance of the learned APP Mrs.Malhotra and Mr.Shetye appearing for respondents.

6. Before we go further, let us first consider whether the sanction has been properly granted.

7. It is indisputable that the Court cannot take cognizance of an offence punishable under Section 13 of the P.C Act except with the previous sanction under section 19 of P.C Act from the authority competent to remove accused from office. It is therefore, necessary for the prosecution to prove that a valid sanction has been granted by the sanctioning authority.

8. 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 an 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 622wherein a two-Judge Bench while dealing with grant of sanction has observed:-*
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> > *"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*

1 AIR 2016 SC 1554

other material placed before it. This fact can also be established by extrinsic 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."*

9. 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 litigation. Grant of sanction is an administrative function and the sanctioning authority is required to prima facie, reach the satisfaction that relevant facts would constitute the offence. Satisfaction of the sanctioning authority is essential to validate an order granting sanction.

10. 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.

2 (2013) 8 SCC 119
3 (1979) 4 SCC 172

11. The Apex Court in ***Nanjappa Vs. State of Karnataka***[4] submitted that section 19 of the PC Act which provides that no Court shall take cognizance of an offence punishable under Sections 7, 11,13 & 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 alleged sanction, the Court is not competent to take cognizance of the case and the trial itself will be void ab-initio. Therefore, the trial based on invalid sanction is null and void. At the same time there is no bar on prosecution after obtaining fresh sanction to pray for retrial. If the sanction is invalid, in my view, the trial Court cannot come to conclusion of acquitting or convicting the accused as it was not competent to take cognizance of the alleged offence. With an invalid sanction, the trial will be non-est in the eyes of law. The trial court could have discharged the accused and parties, relegate the parties to a position where prosecution can be initiated after obtaining sanction afresh from the competent authority.

12. The Apex Court in ***Dinesh Kumar Vs. Airport Authority of India***[5] submitted that validity of sanction depends on materials placed before the sanctioning authority and consideration thereof implies

4 (2015) 15 SCC 186
5 (2012) 1 SCC 532

application of mind by the sanctioning authority. As there is a distinction between absence of sanction and invalidity of sanction, the challenge to sanction as regards invalidity due to non-application of mind, has to be raised during the trial.

13. I have considered the evidence of PW-27 Sureshchandra Sawant. PW-27 has not stated on oath that he was the authority competent to remove accused no.1 from his office. No other evidence is produced to appreciate that PW-27 is the authority competent to remove accused no.1 from his office. PW-27 has also deposed that he received proposal to accord sanction on 4.6.1997. According to him he and officers from irrigation department have examined those inquiry papers. He has then referred those papers to Law & Judiciary Department to ascertain whether it was a fit case to prosecute the accused. He received opinion from Law & Judiciary Department in the month of August-1997 and Law & Judiciary Department opined that it was a fit case to prosecute the accused. Irrigation Department then referred those papers to the Chief Minister of Maharashtra State. PW-27 then deposed that he received sanction from the Chief Minister in the month of October-1997. He has then issued sanction order dated 21.11.1997 which is at Exh.225. In his cross-examination PW-27 admitted that 4 officers were engaged for scrutiny of inquiry

papers. PW-27 has also admitted that he did not consider income tax returns of the accused while according sanction. PW-27 has further stated that collective decision was taken by himself and his officers including Law & Judiciary Department and Home department for according sanction. PW-27 could not state whether he had considered the salary of 26 months of accused no.1, G.P.F and T.A bill to ascertain income of accused no.1 while according sanction. PW-27 has further admitted discrepancies with respect to levelling charges as stated in the complaint and in the charge-sheet because in the complaint amount shown is Rs.1,80,000/-, whereas in the charge-sheet it is shown as Rs.55,000/-. PW-27 has admitted in his cross-examination that decision to accord sanction was taken by Law & Judiciary Department, Home Department, Chief Minister of Maharashtra as Government and irrigation department. Therefore, it is obvious that sanction was accorded not by PW-27 individually but it was a collective decision. Even the evidence does not indicate actually who applied his mind to accord sanction or who was actually satisfied that it was a fit case for sanction. There is also no evidence that PW-27 could remove accused no.1 from his office.

14. In view of the admission of PW-27 that he has granted sanction in consultation with the Law & Judiciary Department, Home

Department, Chief Minister and Irrigation department, shows non-application of mind. As held in ***Mansukhlal Vs. State of Gujarat***[6] 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 advice from anybody else because, as held in *Mansukhlal (supra),* 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 acting upon it to take the decision one way or the other. For e.g., If anyone seeks legal adviser's advice and he advises that sanction ought to be given, the sanctioning authority will be under pressure to grant the sanction. The sanctioning authority will find it absolutely difficult to go against legal advise and refuse the sanction, like in this case the irrigation department officers, Law & Judiciary department, Home department and even Chief Minister had advised. It is, therefore, necessary that the discretion to grant or not to grant the sanction, should be vested

6 1997 (7) SCC 622

purely and absolutely in the sanctioning authority. The sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned.

15. In the circumstances, the sanction accorded based on consultation with various departments including Chief Minister of the State, Law & Judiciary Department, Home department etc. will have to be invalid. It could not assist the sanctioning authority to say that even he has applied his mind independently though I do not find him saying that in his evidence.

16. Therefore, there is no valid previous sanction. The Learned Single Judge of this Court in ***Laxman through the legal heirs and another vs. State of Maharashtra***[7] 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.

17. In the case at hand, the investigation began on or about 7.10.1992. The case was received by the Sessions Court on 3.1.1998 and was registered on the same day. It was decided on 17.3.1999.

7 2019 SCC Online Bom 1020

The appeal was lodged in this Court on or about 17.9.1999 and was admitted on 16.9.2003. Accused was, at the time the complaint was registered, about 58 years of age and accused no.2 was 48 years of age. Accused no.1 now would be approximately 80 years and accused no.2 will be 70 years old.

I say whether fresh prosecution against accused be launched at this point is what we have to consider.

18. In my view, putting the clock behind on the set when the prosecution witnesses may not be available would serve no purpose. That apart, the trial Court had even upon appreciation of evidence, although it was not required to do so, held that the prosecution has failed and acquitted the accused.

19. I have also considered the evidence that was recorded. There appears to be no merit because the prosecution has not done the valuation of the assets seized, properly. For example, PW-15 Omkar Chaudhary, PW-20 Ramchandra Chache and PW-24 Chandrakant Bankar were part of the raiding party when they raided two flats of the accused and prepared panchanama of articles, ornaments etc. found therein. PW-15 in his cross-examination has admitted that the prices of the articles were roughly estimated and

actual price of each article may be less than what was estimated. He also admits some of the articles were very old and some were gift articles. He has also admitted that valuation of the property shown in Annexure-1 & 6 may be half of the estimated costs. PW-20 another pancha witness has admitted in his cross-examination that valuation is to be made of the articles considering the year of purchase but the valuation was made based on the cost prevailing in the year 1992. He has also admitted that he cannot tell the price of gold prevailing 1974 or 1992. While the gold was seized, no goldsmith has been called as a pancha witness. PW-20 also stated that he could not independently estimate price of any articles and no information was collected as to when those articles were purchased.

20. PW-24 the other pancha witness in his cross-examination has also admitted that they did not carry any price list of any articles to estimate the prices, which year the articles were purchased, valuer had not accompanied to estimate the value and lot of articles were domestic articles. Though in the evidence they say accused no.2 gave rough estimate of the valuation, panchanama does not indicate anywhere that accused no.2 estimated price of the articles.

21. As regards the agricultural land, agricultural equipment

and expenses incurred, prosecution has valued them at about Rs.7,25,000/- and examined 4 witnesses, i.e., PW-3 Raghunath Patil, PW-4 Anil Jadhav, PW-6 Sunil Kulkarni and PW-26 Nitin Metkar. PW-3 was examined to value the terracing of the agricultural land and he has estimated the cost at Rs.55,000/-. In his cross-examination he admits that the area which was terraced and the expenditure incurred for terracing was approximately estimated.

Similarly, PW-4 in his cross-examination has admitted that valuation was approximate, he was not aware of prevailing rate, he did not mention quality and quantity material used, well could have been dug and constructed at a cost lower than what was shown in the valuation. PW-6 in his cross-examination states he was not present at the spot when panchanama was drawn as he was taken to a hospital due to injury sustained while entering the field. Similarly, the other witnesses have also in effect stated the valuation based on which, the prosecution was commenced, were ever used. Even regarding the raid in the house of accused no.1, the evidence clearly shows that brother of accused no.1 was residing separately and no attempt has been made to prove that the articles which were found at the house of the brother of accused no.1 were actually belonging to the accused no.1 and /or 2.

22. The trial Court has listed many other points to arrive at its conclusion that prosecution's case was devoid of merits. For the sake of brevity I do not wish to go into so many details. Suffice to say, I agree with the findings of the trial Court.

23 The Apex Court in ***Ghurey Lal Vs. State of U.P.***[8] has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

> *72. The following principles emerge from the cases above:*
> *1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*
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> *2. The accused is presumed innocent until proven guilty.*
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> *The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
>
> *3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.*
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> *73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*
>
> *1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial*

8 (2008) 10 SCC 450

and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

The Apex Court in many other judgments including ***Murlidhar & Ors. Vs. State of Karnataka***[9] 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

9 (2014) 5 SCC 730

Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-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.

The Apex Court in ***Ramesh Babulal Doshi Vs. State of Gujarat*** [10] 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.

10 1996 SCC (cri) 972

24. I do 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. 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.

25. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured their acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

26. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

27. Appeal dismissed.

28. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from the date respondents file a copy of this order, 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 the 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 the accused and will factor in all promotions and increments that the 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 respondents.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above.

All to act on authenticated copy of this order. Certified copy expedited.

(K.R.SHRIRAM,J)

KJ