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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.372 OF 2006**

The State of Maharashtra)
(ACB C.R. No.20/2002) ..Appellant

V/s.

Ramesh Khandu Salve)
R/o Ashok Van Co-op Hsg Society)
Subhash Tekadi, Ulhasnagar,)
Camp No.4, Dist. Thane) ..Respondent

Ms. P. N. Dabholkar, APP for State
Ms Meghana Gowalani i/b Ms Priya A. Patil for Respondent No.1

**CORAM : K.R.SHRIRAM, J.
DATED : 5th MARCH 2021**

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 23rd August 2005 passed by the Learned Special Judge, Bombay acquitting respondent (accused) of charges framed under Section 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988.

2 It is prosecution's case that accused was working as Inspector in the license department in "M" ward of BMC. Complainant, PW.-1 who was, an unlicensed fruit vendor, contacted accused on 26th April 2002 and requested for supplying forms required to be submitted for obtaining license. Accused did not have the required forms but informed PW.-1 that even without filling and submitting the forms accused can help him to get the license but for

that P.W.-1 will have to give him Rs.300/-. Therefore, on 29th April 2002, P.W.-1 approached ACB and lodged his report. The offence came to be registered and M. J. Patil- I.O. (P.W-4) investigated the same. Panch witnesses were arranged and it was decided to trap accused on 30th April 2002. Pre-trap formalities were completed and complainant with shadow panch were given instructions as to how accused should be trapped. Prosecution apprehended accused when he was found demanding and accepting the bribe of Rs.300/- from complainant and the tainted money was also recovered from accused. Investigation was commenced, papers were sent to the competent authority (P.W.3) for sanction and after the sanction was received, charge sheet came to be filed. Defence case is of total denial and of false implication.

3 To drive home the charge, prosecution examined in all 4 witnesses namely; Complainant P.W.-1 Mohd. Badre Alam Mohd. Yunus Shaikh, P.W.-2 Subhash Borkar, Panch Witness, P.W.-3 Karun Shirvastav and P.W.-4 I.O.- Manoj Janardhan Patil

4 Based on the evidence recorded, accused was acquitted by the judgment impugned in this appeal. One moot point the court observed was that the sanction obtained was invalid. P.W.-3 K.C. Shirvastav has admitted in the examination in Chief that he was provided draft sanction in a sealed cover for granting of sanction for prosecution. In his cross-examination, P.W.-3 also admits that before granting of sanction, he was aware of the provisions of P.C. Act for grant of sanction and in the entire papers that he

had perused, he did not come across any document that authorized a police inspector (PW-4) to investigate the case. PW-3 also admits that he was aware at the time he granted sanction, investigation in ACB case is required to be carried out by an officer of the rank of ACP. PW-3 after perusing Section 17(b) of P.C. Act, admits, in the city of Mumbai investigations under P.C. Act are not to be carried out by an officer below the rank of ACP. PW-3 also admits that he had not obtained any document from PW-4 authorising him to investigate the crime, nor he sought any clarification on that and alongwith papers he received draft sanction order. Trial Court came to a conclusion that the sanction, therefore, was not valid and it was granted without application of mind and in any case, investigation was not carried out by a competent officer as required under the law. The court also came to the conclusion that the sanction has been accorded without application of mind because PW-3 though claiming to be aware of the provisions of PC Act, with reference to grant of sanction and that the investigation in Bombay has to be carried out only by a person not below the rank of ACP, accorded sanction.

5 In *Dhonaji Vyankatrao Ghatge Vs. State of Maharashtra*,¹ the court held that sanction must not be mechanically granted and the sanction order, however, proved that would be, must indicate that the officer concerned carefully applied his mind to the material placed before him.

6 The sanctity of sanction has been considered and laid down by the

11994(2) Bom. C.R. 213

Apex court in ***Balbhadra Parashar vs. State of Madhya Pradesh***². 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 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)

²AIR 2016 SC 1554

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."

7 The Apex court in ***State of Maharashtra Vs. Mahesh Jain***³ 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.

8 The Apex court in *Mahesh Jain (supra)* has referred to ***Mohd. Iqbal***

3(2013) 8 SCC 119

Ahmed Vs. State of Andhra Pradesh⁴ 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.

9 The Apex Court in ***Nanjappa Vs. State of Karanataka***⁵ held that 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 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.

10 The Apex Court in ***Dinesh Kumar Vs. Airport Authority of India***⁶ held that validity of sanction depends on materials placed before the sanctioning authority and consideration thereof implies application of mind by the

4(1979) 4 SCC 172

5(2015) 14 Supreme Court Cases 186

6(2012) 1 SCC 532

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.

11 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.

12 The Apex Court in *State of Maharashtra through Deputy Superintendent of Police ACB Nagpur Vs. Devidas s/o Narayanrao Bobde*⁷ also held that signing on draft sanction order submitted by ACB, would indicate non application of mind.

I agree with the conclusions of the Trial Court in holding that the sanction accorded was invalid.

13 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*⁸ 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 Ms Gowalani submitted, since the incident happened on 30-4-2002 and 19 years have passed since then, no purpose would be served by

⁷ 2014 SCC Online Bom.1045
⁸ 2019 SCC Online Bom 1020

resuming the proceedings over and again. Ms Gowalani submitted that even considering the evidence, which was recorded by the court, there appears to be no merit because the demand and acceptance have not been proved. Hence the matter be given a quietus.

15 In the case at hand, the incident happened on 30th April 2002. The case was sent for sanction on 30th August 2002 and received by P.W.-3 on 3rd September 2002. Thereafter, charges were framed on 15th January 2005. It was decided on 23rd August 2005 and the appeal was lodged on or about 15th December 2005 and admitted on 17th March 2006. Accused, I am told is now retired and of 70 years of age.

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 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP and Ms Gowalani. 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.

17 In so far as the offence under Section 7 of PC Act is concerned, it is settled position in law that demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. This position has been well laid down in several judgments of the Apex Court and all other High Courts including Bombay High Court (***B. Jayaraj V/s. State of Andhra Pradesh***⁹).

18 Moreover, even on the merits of the case, I agree with the conclusions of the Trial Court. There are contradictions in the evidence of P.W-1 and P.W.-2. The Trial Court has listed various such contradictions but I would highlight only some of them.

P.W-1 in his evidence says that he was taken in one room alongwith panchas where one person applied powder on one sheet of paper, which was shown to him upon which, he did not notice anything but had seen blue glow when the paper was seen under U. V. Lamp. P.W.-1 says that powder was applied on the money to be used for trapping and then it was shown to

9(2014) 13 SCC 55

him under U. V. Lamp and he noticed blue glow, after which money was kept in his shirt pocket with instructions from P.W.-4 not to touch the notes till P.W-4 gave instructions. P.W-2 does not reveal any such demonstration because according to him he was taken by one constable in the room where he was explained about the anthracene powder used in trapping case.

Though P.W.-2 has deposed about the instruction given to complainant not to touch the notes and to pay on demand, the evidence of complainant is silent on this aspect because complainant says after he was instructed not to touch the notes unless he was told to, they proceeded with raiding party to the office of accused.

Similarly, the evidence of P.W.-2 about the instructions given to him by P.W-4 as deposed by him does not find corroboration from the evidence of P.W-1, who according to prosecution was also one of the members of raiding team. I also find the evidence of P.W.-1 not corroborating the events alleged to have taken place on the spot after the incident. Though complainant is not a panch but since the prosecution has taken him as one of the members of the raiding team and whose personal search was obtained by Investigating Agency on the spot, his evidence is totally silent and is not corroborating to the contents of post trap panchnama.

19 P.W-1 says accused accepted Rs.300/- by both the hands and kept the amount in his pant pocket. P.W.-2 in his cross-examination admits about the commission of acceptance. P.W.-1 says after the incident, accused was taken to the first floor. But P.W.-2 and P.W-4 say accused was taken to the second

floor. P.W.-1 says after accepting the bribe amount, accused counted the money with both hands. But P.W.-2 and P.W.-4 say anthracene powder was found only in the right palm of accused. If it was counted with both hands, then why did they did not find any anthracene powder in the left hand.

20 The Apex Court in ***Ghurey Lal Vs. State of U.P.***¹⁰ 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.

2. The accused is presumed innocent until proven guilty.

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.

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 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

¹⁰(2008) 10 SCC 450

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***¹¹ 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-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.

¹¹(2014) 5 SCC 730

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*¹² 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.

21 I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

22 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 his acquittal, the presumption of his innocence is further reinforced, reaffirmed and

¹²1996 SCC (cri) 972

strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

23 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.

Appeal dismissed.

24 The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from the date of receiving 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 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 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 order. Certified copy expedited.

(K.R. SHRIRAM, J.)