

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

APPEAL NO. 666 OF 2013

The State of Maharashtra ..Appellant

v/s.

Priyanka Satyawar Kalsekar ..Respondent/s

Mrs. G.P. Mulekar, APP for the Appellant-State.
Mr. Sugandh Deshmukh for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : JULY 12, 2021.**

P.C.

1. This is an appeal under Section 378 (3) filed by the State challenging the judgment and order of acquittal dated 29.02.2012, passed by the learned Special Judge, (Anti Corruption) Thane in Special Case No. 2 of 2006. By the impugned judgment, the learned Judge has acquitted the Respondent-accused of offences under Section 7, 13(1)(d) r/w. 13(2) of Prevention of Corruption Act.

2. The case of the prosecution in brief is that the first informant Rakeshkumar Jain, who was running a factory in the name and

style of 'Sara Chemicals India Pvt. Ltd'; had received notice relating to payment of Cess for the year 1999 to 2003. The first informant approached the Respondent, who was working as Superintendent/Cess Officer in Cess Department, Koparkhairane, Navi Mumbai Municipal Corporation, Thane. The first informant claims that the Respondent had stated that she would impose penalty of 5% instead of 1% cess and wanted to know how much money he would pay for not imposing the penalty and cess. After negotiations, the first informant agreed to pay Rs.13,000/- on the next date and balance amount of Rs.5000/- after completion of work. The Respondent thereafter prepared Order of Cess for two years and handed over the same to the first informant and stated that she would give Orders for remaining two years on payment of Rs.13,000/- on the following day.

3. The first informant approached the office of ACB, Thane. A pre-trap panchanama was prepared and the first informant was given currency notes of Rs.13,000/-, which were smeared with anthracene powder in presence of panchas. It is stated that the Respondent had received currency notes of Rs.13,000/- (Rupees

Thirteen Thousand Only) and kept the same on the file on her table. Her hands were checked in ultra violet light and green coloured rays were found on her hand. The post-trap panchanama was drawn and the currency notes were seized in presence of panchas. Accordingly the crime was registered and Respondent was arrested for committing the aforesaid offence.

4. Prosecution examined 6 witnesses. After considering the evidence on record, the learned Special Judge acquitted the Respondent of the offences under Section 7, 13(1)(d) r/w. Section 13(2) of Prevention of Corruption Act interalia on the ground that there is discrepancy as regards demand and acceptance of bribe amount and for want of valid sanction. Being aggrieved by the said order of acquittal, the Appellant State has preferred this Appeal.

5. Heard Mrs. G.P. Mulekar, APP for the State and learned Counsel Mr. Sugandh Deshmukh for the Respondent. I have perused the records.

6. It is not necessary to dwell on the merits of the case as the appeal must succeed on a short point of law i.e. want of valid sanction by the Sanctioning Authority. It is not in dispute that the Respondent is a public servant and that she was drawing salary of more than Rs.1000/-. Sub Clause (a) of Section 56 of Bombay Provincial Municipal Corporation Act, 1949, as it stood prior to 2011 amendment, stipulated that no Municipal Officer or servant whose monthly salary, exclusive of allowances exceeded one thousand rupees, could be dismissed by the Commissioner without the previous approval of the Standing Committee.

7. In the instant case, P.W. 4, the Municipal Commissioner has admitted in his cross examination that he had not obtained previous approval of the Standing Committee before granting sanction under Section 56(a) of the Bombay Provincial Municipal Corporation Act. He has also admitted that the papers at Exhibit 11 and 12 and several documents, reference to which is made on post trap panchanama, were not forwarded to him and that he had no occasion to see the said papers.

8. It is thus evidence that the relevant documents were not placed before the Sanctioning Authority. Hence there was no occasion for the Sanctioning Authority to peruse and examine the full facts before granting the sanction. It need not be emphasised that grant of sanction is not an empty formality, but is an obligation to be discharged, only after having full knowledge of the material facts and with due application of mind. In the instant case, the Sanctioning Authority has granted sanction without considering the relevant documents, which reflects non application of mind. The Id. Judge has taken note of this fact and has rightly held that the sanction is invalid. Moreover, the dismissal is without prior approval of the Standing Committee as mandated by Section 56 of the Act.

9. Considering the above facts and circumstances, this is not a fit case to interfere with the order of acquittal. The appeal has no merits and is accordingly dismissed.

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(ANUJA PRABHUDESSAI, J.)