

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Revision Application No. 307 / 2019

Prashant Jankar

Age : 35 years, Occ.-Service,

Residing at F2/102, Vinayak Thakur Complex,

Opp. Vimal Diary, Navghar Fetak Road,

Bhaindar (East) – 401105.

.. Applicant

Versus.

The State of Maharashtra

.. Respondent

Mr. Sunil Kale i/by Mr. Omkar Nagwekar, Advocate for the Applicant.

Mr. A.R. Patil, APP for State.

CORAM : SANDEEP K. SHINDE J.

RESERVED ON : 26th NOVEMBER, 2021.

PRONOUNCED ON : 14th DECEMBER, 2021.

Judgment : -

1. Rule.

2. Rule made returnable forthwith. Heard. finally with the consent of the parties.

3. This Revision Application under Section 397 read with 401 of the Code of Criminal Procedure, 1973 questions correctness and legality of the order dated 3rd April, 2019 below Exhibit – 7 in Special ACB Case No. 21/2013 passed by the Additional Sessions Judge, Thane.

4. Background facts :

Applicant is accused in Special ACB Case No. 21/2013. He was an employee of Mira Bhaindar Municipal Corporation. Anti Corruption Bureau has prosecuted him for alleged commission of offence under Section 7 r/w 13(1) (d) and 13 (2) of the Prevention of Corruption Act (PC Act for short). Applicant would assert that being a Public Servant, the cognizance offence under the P.C. Act can be taken, only upon prior sanction by the authority competent to remove him from the office, as contemplated under Section 19 (3) of the P.C. Act. His contention is that sanction dated 7th October, 2013 accorded by the Commissioner, Mira Bhaindar Municipal Corporation, was not a valid sanction. Reason is, that Commissioner is not an authority to remove the Applicant from the office. His case is that though Section 53 of the Maharashtra Municipal Corporation Act (said Act for short) has been amended, but there is no corresponding amendment to Section 56 of the said

act, which provides for imposition of penalties including the penalty to remove from the office. On this premise, he moved an application and urged before the trial Court, that since issue as to validity of sanction goes to the root of the matter and affects the jurisdiction of the Court to try the accused, it was desirable to decide the issue at the threshold. As such the Applicant prayed ; that “Prosecution be directed to lead evidence to prove the sanction and question as to validity of sanction, be decided first before deciding any other question.”

5. As to competency of Commissioner, Mira Bhaindar Municipal Corporation, to grant sanction under Section 19 of the P.C. Act, it may be stated that a combined reading of Sub-section (3) and (4) of Section 19 of the P.C. Act, 1988, makes the position clear that, notwithstanding anything contained in the Code of Criminal Procedure, 1973; no finding, sentence and order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. Clause (b) of Sub-section 3 of Section 19 shows that ‘no court shall

stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice'. The "explanation" for the purposes of Section 19 is that error includes 'competency of authority to grant sanction.' (emphasis supplied)

6. Here in this case, Applicant would contend that since 'validity of sanction' can be decided at any stage of the proceedings, it be decided' at the threshold, before deciding any other question. Applicant's contention requires no consideration. It is to be rejected for the following reasons;

(i) in terms of clause (b) of Section 3 of Section 19 read with explanation 'error' includes incompetency of authority to grant sanction and incompetency must result in failure of justice;

(ii) whether incompetency of authority to grant sanction has resulted in a failure of justice or not, cannot be decided at threshold and therefore more appropriate stage for reaching the said conclusion would be only after evidence in the case, as held in case of **State of Bihar and Others Vs. Rajmangal Ram**; (2014) 11 SCC 388.

(iii) In the case of **Prakash Singh Badal Vs. State of Punjab** (2007) 1 SCC 1;

the Hon'ble Apex Court has held that Section 19(1) of the P.C. Act is a matter of procedure and does not go to the root of jurisdiction.

(iv) In fact three Judge Bench, in the case of **State of M.P. Vs. Virendra Kumar Tripathi**, (2009) 15 SCC 533; while considering the issue, namely the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, the Hon'ble Apex Court has held that in view of Section 19(3) of the P.C. Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the Court reaches the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction.

(v) that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and the evidence is led.

7. In that view of the matter and for the reasons above, Criminal Revision Application deserves no consideration. It is dismissed. Rule is discharged.

(SANDEEP K. SHINDE, J.)

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by MOHAMMAD
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