

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4839 OF 2014**

Vikas Maruti Pansare ... Petitioner

V/s.

The State of Maharashtra and Ors ... Respondents

Mr. Ujwal R. Agandsure a/w. Mr. Ashish S. Gaikwad a/w. Ms. Anjali Kolapkar a/w. Ms. Bhavana R. Khichi for the Petitioner.

Ms. Geeta Mulekar-APP for the State.

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : SEPTEMBER 24, 2021.

PC. :

. Heard. Rule. Rule made returnable with the consent of the parties.

2. The petitioner herein was working as a Resident Deputy Collector at District-Ahmednagar. On 31st October 2010, Crime No. II-126-2010 was registered against the petitioner for the offence punishable under section 7, 12, 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988 at the behest of one Anil Lalchand Takale-Complainant. It appears that the principle allegation against the petitioner was that he had given written directions to the subordinate authority to initiate legal action against the fire cracker shops which were running without licence or were conducting illegal activities

without prior permission of the appropriate authority vide letter dated 22nd October 2010. The complainant was also an owner of a fire cracker shop.

3. It is submitted by the learned counsel for the petitioner that after due investigation, the investigating agency had forwarded a proposal to the Department of Revenue and Forest, Mantralaya, Mumbai for seeking sanction to prosecute the petitioner. The proposal was forwarded on 13th September 2011. The Revenue and Forest Department after due scrutiny and an application of mind had refused to grant sanction to prosecute the petitioner vide an order dated 28th December 2012 and the communication was made on 4th March 2013. The said communication was not communicated to the petitioner and hence he was constrained to file an application under the Right to Information Act, 2005. He had received the information that the sanction to prosecute has been refused.

4. It appears from the record that on 2nd August 2013, a subsequent proposal was sent seeking sanction to prosecute the petitioner and vide letter dated 19th September 2013, a communication was made by the Additional Secretary of Revenue and Forest Department had communicated to the Director General, Anti-Corruption Bureau that the sanction to prosecute has been refused since there is no new material which has surfaced on record.

5. It further appears from the record that the Department of Anti-Corruption Bureau had once again filed a proposal before the

Revenue and Forest Department seeking sanction to prosecute the petitioner.

6. By letter dated 31st July 2014, the Additional Secretary of Revenue and Forest Department, Mantralaya, Mumbai had communicated to the Additional Director General of the Anti-Corruption Bureau sanction to prosecute the petitioner was refused on the earlier occasion and once again it is refused. The communication was received on the same date i.e. 31st July 2014. The petitioner apprehends that the Anti-Corruption Bureau is bent upon seeking sanction to prosecute the accused / petitioner and hence had filed the proposal to seek sanction to prosecute repeatedly. The apprehension seems to be well justified, on the basis of the earlier record.

7. It is a settled law that once a sanction is refused there would arise no occasion to review the said order unless new material is placed before the sanctioning authority.

8. The learned counsel for the petitioner has placed before us the Government Resolution dated 31st January 2015, wherein, there are specific directions by the Additional Chief Secretary (Service), Government of Maharashtra to the effect that once the appropriate authority refused sanction to prosecute the accused, there shall not be a further proposal for sanction unless there is new material placed on record which would entitle the appropriate authority to look into the matter and accord sanction after proper application of mind. It is specifically observed that, there shall be no review of either grant of

sanction or refusal for sanction. We hold that the Government Resolution is in consonance with Section 19 of the Prevention of Corruption Act, 1988, which reads thus:

19. Previous sanction necessary for prosecution.-

(1) No Court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

9. The Supreme Court in the case of *Mohd. Iqbal Vs. State of Andhra Pradesh*¹ has observed as follows :-

“The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned ”.

10. In a catena of decision the Supreme Court has held that granting sanction to prosecute a public servant is not an idle formality.

1 AIR 1979 SC 677

It is presumed that on the very first occasion there has been an application of mind and therefore, the sanction to prosecute or refusal for prosecute does not call for review.

11. In view of the above discussion, it is clear that proceedings against the petitioner under the Prevention of Corruption Act, 1988 need to be necessarily dropped for want of sanction as contemplated under Section 19 of the Prevention of Corruption Act, 1988.

12. Rule is made absolute.

13. The Writ Petition stands disposed of.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)