IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 354 OF 2002

Madan s/o Pundlik More,
Aged about 37 years,
Occupation : service,
Resident of Nandura Kd.,
Taluka Nandura, District Buldana. .... **APPELLANT**

// **VERSUS //**

The state of Maharashtra
Through Police Station Officer,
Nandura, District Buldhana. .... **RESPONDENT**

Ms K.V. Sirpurkar, Advocate for appellant.
Shri I.J. Damle, A.P.P. for respondent.

CORAM : N.B. SURYAWANSHI, J.
DATE : 15/02/2021.

ORAL JUDGMENT: [PER: N.B. SURYAWANSHI, J.]

1. The appellant was convicted by the Additional Sessions Judge, Khamgaon in Special Anti Corruption Case No. 2 of 2000 for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- for the offence punishable under Section 7 and under

Section 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988 (PC Act for short), he was sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 500/-. Being aggrieved thereby, the appellant has filed present appeal.

2. Prosecution case in short is that the appellant-original accused was in the service of Municipal Council, Nandura as a Shift Engineer. Complainant Jagannath Itnare was resident of Nandura, he had filed an application in the Municipal Council for water tap connection. His application was allowed by the Chief Officer. When he met the Chief Officer, and inquired about the water tap connection, he was asked to meet the accused More - Shift Engineer. In meeting, the accused asked the complainant to pay water cess of Rs.150/- and Rs.50/- towards tap connection charges. He also demanded Rs. 300/- for himself. The complainant on 05/07/1999 went to Anti Corruption Bureau Office, Buldhana and lodged a complaint that the accused demanded bribe amount of Rs.300/- from the complainant for giving water tap connection to his house. Pre-trap Panchanama was prepared. During which the complainant produced three notes of Rs. 100/- denomination, which were to be given to the accused as bribe amount. Numbers of those notes were

noted. On taking search of the complainant, an amount of Rs. 304/- was found with him which was allowed to be kept by the complainant in his pocket. The three notes of Rs.100/- which were to be given as bribe amount were tainted with Phenolphthalein powder with the aid of cotton swab from both sides and those notes were folded and kept in the Payjama pocket of complainant by the Head Constable. After receiving instructions from the Deputy Superintendent of Police Shri Mahale, the complainant and panchas went to Nandura. However, on going to the Municipal Council Office, Nandura, the accused was not present as he had gone to Buldhana for meeting. Therefore, the complainant and the panchas returned back to Buldhana where the Payjama containing tainted notes was folded and kept in one paper bag which was duly sealed and labelled. Panchanama No.2 was prepared there.

On the next day morning, i.e. on 06/07/1999 again the complainant and panchas went to the office of A.C.B., Buldhana at 8.00 a.m. The bundle in which Payjama of complainant was kept in a sealed packet was opened and the said Payjama was given to the complainant for wearing. The tainted notes which were kept in the pocket of the Payjama were ascertained from outside. Again the search of complainant was taken and at that time the amount of

Rs.253.50/- was found in his pocket which he was allowed to keep with him. After completing the formalities the complainant and panchas proceeded to Buldhana. The complainant and panch No.1 went in the office of accused-Shift Engineer. On demand of the accused, the complainant handed over a bribe amount of Rs. 300/- to the accused. Thereafter pre-decided signal was given by the complainant to the raiding party which entered the office and raided the office and seized the bribe amount from the pocket of the accused. The traces of the said powder were found on the fingers of accused when they were dipped in the solution of Sodium Carbonate. On search of the accused, amount of Rs.500/- was found in the pocket of his shirt. After the solution of Sodium Carbonate was sprinkled on the notes, the spots on three notes on which the solution had fallen, become violet. The numbers of those three notes (bribe amount) were tallied with the notes mentioned in the panchanama No.1. The bribe amount as well as two other notes found with the accused were seized, they turned violet when the solution was applied. The inside of the shirt pocket of the accused also turned violet when the solution was sprinkled on it. Accordingly Seizure Memo (Exh.26) was prepared. The receipt book of the Municipal Council in respect of water tap connection was also seized vide Seizure Memo (Exh. 27). The explanation of the accused was sought and he had given his post trap explanation. After completing the formalities and investigation, charge-sheet came to be filed against the accused.

3. The accused was charged for the offences punishable under Section 7, 13(1)(d) r/w 13(2) of the PC Act. He denied the charges and his defence was that the amount of Rs. 300/- was towards miscellaneous charges for giving water tap connection and not as a bribe. He denied the prosecution case. The learned Trial Court after recording the evidence convicted the appellant. Hence the present appeal.

4. Heard the learned Advocate for the appellant and the learned Additional Public Prosecutor for the respondent-State. The learned Advocate for the appellant strenuously urged that the sanction given in the present case reflects total non application of mind and on that ground alone the appeal deserves to be allowed. By taking me through the evidence of Atmaram Chavan (PW 3) the sanctioning authority, he submitted that the witness has categorically admitted that he has mechanically signed the order

therefore, the sanction is vitiated on the ground of non application of mind. In support of his contentions, he relied on the following authorities:

> ***(i) Central Bureau of Investigation Vs. Ashok Kumar Aggrawal (2014) 14 SCC 295.***
> ***(ii) Romesh Lal Jain Vs. Naginder Singh Rana and others (2006) 1 SCC 294.***
> ***(iii) Mohd. Iqbal Ahmed vs State of Andhra Pradesh (1979) 4 SCC 172.***

5. He further submitted that the amount of bribe of Rs. 300/- was never sent to chemical analyzer and only the notes of 200/-denomination were forwarded. There is difference in the number of notes in the pre- trap panchanama and post-trap panchanama. The amount of Rs. 200/- was the legal charges which were deposited by the complainant towards his water tap connection. Hence, the prosecution has failed to prove the acceptance of the amount. He further submitted that Sanjay Lahane (PW4) has admitted in evidence that there was no seal attached to the articles sent for chemical analysis. He further pointed out that though the receipt book was attached, the Investigating Officer has failed to attach the counter foils of the receipt book. The receipt

book fortifies the defence herein of payment of legal amount of Rs. 200/-. He therefore, submitted that the prosecution has failed to prove the charges levelled against the appellant and therefore the appellant deserves acquittal. The appeal therefore may be allowed.

6. Per contra the learned Additional Public Prosecutor supports the judgment of the learned Trial Court submitting that the prosecution has proved the charge by leading cogent and reliable evidence of the complaint, the sanctioning authority, the panchas and the Investigating Officer and hence the learned Trial Court has rightly convicted the appellant by giving cogent reasoning. He submitted that there is no substance in the appeal and the same may be dismissed.

7. Heard the learned Advocate for the appellant and the learned Additional Public Prosecutor at length. Perused the record.

8. For ascertaining the validity of sanction, the evidence of Atmaram Chavan (PW3), the sanctioning authority is required to be taken into consideration. He deposed that he was the Nayab Tahasildar, Chikhali and at the relevant time was holding charge of Chief Officer of Nandura Municipal Council between September

1999 to June 2000. He deposed that in the month of May 2000, he received papers relating to the investigation of Anti Corruption case against the accused for according sanction. There were 1 to 90 papers of xerox and request was made by the accompanying letter to accord sanction. He read the papers and he was satisfied that it was a fit case to accord sanction. Hence he granted sanction (Exh.30).

During the cross-examination he admitted that he did not go through the papers relating to the appointment of the accused at the time of according the sanction. He deposed that he had received proforma order of sanction with papers. He had only filled in his name in the proforma which was sent along with the papers and put his signature below it. At that time he was satisfied. The sanction order was bearing signature of the Head Clerk besides the signature of PW3. The Head Clerk had approved the order of sanction and put his signature and thereafter PW3 put his signature on the order.

9. It thus transpires from the evidence of PW3, the sanctioning authority that he had granted sanction in mechanical manner by signing the sanction order by filling the proforma.

Though in the examination in chief, he stated that he had applied his mind while granting sanction, the same is not believable in view of the admissions given by him in the cross-examination. From the admissions given by him in the cross-examination, it is clear that only because the Head Clerk had approved the sanction order and signed it, PW3 put his signature thereon. The sanction appears to be granted on irrelevant considerations. The sanction order is therefore, vitiated for non application of mind.

10. In *Central Bureau of Investigation's* case (supra), the Hon'ble Supreme Court laid down following legal propositions in respect of sanction -

> *16. In view of the above, the legal prepositions can be summarized as under :*
> *16.1 The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.*
> *16.2 The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts*

before grant of sanction while discharging its duty to give or withhold the sanction.
16.3 The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.
16.4 The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.
16.5 In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

11. In *Romesh Lal Jain's* case (supra) the Hon'ble Supreme Court held that:

"an order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority. If the complainant or the accused can demonstrate such an order granting or refusing sanction to be suffering from non-application of mind, the same may be called in question before a competent court of law."

12. In *Mohd. Iqbal Ahmed's* case (supra) the Hon'ble Supreme Court held that:

"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".*

13. If the above mentioned ratios are applied to the facts of the present case, it is clear that there was no complete and conscious scrutiny of the whole record by PW3. The sanction order was not preceded by application of mind on the part of PW3. Therefore, it has to be held that the sanction granted by the PW3 is vitiated and on this ground alone, conviction of the appellant is liable to be set aside.

14. Apart from that there is also discrepancy in the prosecution evidence in respect of seizure of the bribe amount of Rs.300/- recovered from the appellant during trap. This amount of Rs. 300/- , allegedly recovered as bribe amount from the appellant, was never forwarded to the Forensic Laboratory. According to the complainant-PW1, Rs.300/- were demanded as a bribe amount. He handed over the bribe amount in the form of three currency notes of Rs.100/- denomination bearing numbers (i)1CL539618 (ii) 0AL080837 (iii) 6AN907286. What was sent to Forensic Laboratory was two notes of Rs.100/- denomination bearing numbers (I) 6HM-

317866, (ii)9HV-346009, which were found with the appellant and which were admittedly the legal charges paid by the complainant to the appellant.

15. The Chemical Analysis report shows that phenolphthalein was detected on the said notes and other articles forwarded for chemical analysis. PW4 the Police Constable who carried the articles to the forensic laboratory has admitted that no seal was attached to the articles sent for Chemical Analysis. In that view of the matter, the prosecution version about the acceptance and recovery of the bribe amount from the appellant becomes doubtful.

16. The learned Trial Court has failed to appreciate the evidence on record in the proper perspective. The learned Trial Court has ignored the material discrepancies in the prosecution case and the fact that the sanction order was vitiated on account of non-application of mind on the part of the sanctioning authority (PW3). The learned Trial Court has failed to appreciate that the prosecution has failed to prove the charge levelled against the appellant beyond reasonable doubt. The impugned judgment of conviction passed by

the learned Trial Court therefore is unsustainable in law and facts of the case and the same is liable to be set aside.

17. Hence the following order :

(i) Criminal Appeal No. 354 of 2002 is allowed.

(ii) The impugned order of conviction passed by Additional Sessions Judge, Khamgaon, in Special Case No. 2 of 2000 is hereby set aside.

(iii) The appellant is acquitted of all the charges levelled against him.

(iv) Fine amount, if any, paid by the appellant be refunded to him.

(v) The appellant to execute personal bond of Rs.15,000/- with one solvent surety in the like amount in terms of sanction 437-A of the Code of Criminal Procedure, before the learned Trial Court.

JUDGE