

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.42 OF 2020

Devanand Raghunath Lonare,
Aged about 57 years, Occ. Service,
r/o. Police Control Room, Washim,
Tq. and District Washim,
Permanent address : J.N.Park,
Opp. Maruti Showroom, Lohara,
Yavatmal, Tq. and District
Yavatmal.

..... **PETITIONER**

// VERSUS //

1. Chief Secretary,
Home Department, Mantralaya,
Mumbai (Maharashtra State).
2. Director General of Police,
Mumbai (Maharashtra State)
through Subodh K. Jaiswal.

3. Deputy Superintendent of Police,
Anti Corruption Bureau,
Chandrapur, Tq. Chandrapur,
Distt. Chandrapur.

..... **RESPONDENTS**

Mr. A.A. Dhawas, Advocate for the petitioner.
Mr. S.M. Ghodeswar, A.P.P. for Respondent Nos. 1 to 3.

CORAM : SUNIL B. SHUKRE &
AVINASH G. GHAROTE, JJ.

DATE : 2.3.2021.

ORAL JUDGMENT (Per Sunil B. Shukre, J) :

1. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. The petitioner is being prosecuted for the offences punishable under Sections 7, 12, 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988.

3. It so happened that when the charge sheet was filed for these offences and the petitioner was made one of the accused persons therein, the prosecution did not have with it any sanction to

prosecute the petitioner. The petitioner, therefore, filed an application for discharge before the learned Special Judge, Warora, District Chandrapur and since there was no sanction available on record, learned Additional Sessions Judge was pleased to allow the application and discharge the petitioner from that case. The complainant obtained some information regarding the issue of sanction and he learnt that sanction was refused by the order passed on 10.3.2014 and that such refusal to grant sanction was reiterated by passing another order on 23.6.2015. The Complainant challenged both these orders by filing Writ Petition bearing Criminal Writ Petition No.917 of 2017.

4. In the said Criminal Writ Petition, the petitioner was made respondent no.5. After hearing the matter, the co-ordinate Bench of this Court passed an order on 22.3.2019 thereby quashing the decision taken by the Authority i.e. Director General of Police on 10.3.2014 and 23.6.2015 refusing to grant sanction to prosecute the petitioner. This Court, however, did not finally dispose of the petition and directed that the petition would be heard for further consideration on 8.7.2019. Prosecution was further directed to place on record the decision that may be taken by the Authority in

pursuance of the order so passed by the Court. Thereafter, decision was taken by the Authority on 27.6.2019 and this time, it was about granting sanction to prosecute the petitioner. When that petition came up for final hearing, the petitioner protested against grant of fresh sanction, but this Court confirmed its earlier decision and observed that this Judgment would not come in the way of the petitioner in challenging the order dated 27.6.2019, by which sanction came to be accorded for his prosecution.

5. In the present petition, this sanction order dated 27.6.2019 is in question. It is the contention of the learned Counsel for the petitioner that, in view of law laid down by the Hon'ble Apex Court in the case of **State of H.P. vs. Nishant Sareen**, (2010) 14 SCC 527, fresh sanction could not be granted by the Sanctioning Authority once the sanction was refused as, in his opinion, grant of fresh sanction amounts to reviewing the earlier order of refusal to grant sanction. Mr.S.M.Ghodeswar, learned A.P.P. submits that, in this case, what happened was not review of the earlier order, but passing of fresh order in view of fact that earlier orders refusing to grant sanction were quashed and set aside by this Court.

6. The argument submitted by Mr.Ghodeswar, learned A.P.P. carries weight. This is not the case of review of earlier orders by which sanction was refused twice. The earlier orders dated 10.3.2014 and 21.3.2015, by which the sanction for prosecuting the petitioner, had been refused were quashed and set aside by this Court in Criminal Writ Petition No.917 of 2017 on 22.3.2019, which order was confirmed on 19.9.2019. While quashing the earlier orders, this Court had directed the Sanctioning Authority to take a fresh decision and accordingly, fresh decision was taken and this is how the sanction to prosecute the petitioner came to be granted on 27.6.2019. It is clear that no review of the earlier orders has taken place and therefore, the principle of law laid down in the case of Nishant Sareen (supra) would have no application to the facts of the present case. In the result, we find no merit in the petition. The petition stands dismissed.

However, we make it clear that, by this order, we have not taken away the right of petitioner to question validity of sanction so granted, on merits of the matter.

JUDGE

JUDGE

[jaiswal]

Suraj
Jaiswal

Digitally signed
by Suraj Jaiswal
Date: 2021.03.03
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