

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

925 CRIMINAL REVISION APPLICATION NO.72 OF 2020

**SAMADHAN S/O. WAMANRAO INGLE
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Sachin S. Panale, Advocate for the applicant
Mr. S. W. Mundhe, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 06th October, 2022

P. C.

1. Heard learned advocates for the parties. By consent heard finally.

2. The applicant has challenged common order dated 17-10-2019, passed by the learned Special Judge (P. C. Act), Aurangabad rejecting an application below Exh.7, 14 and 15, only to the extent of rejection of application Exh.7. The applicant had filed application Exh.7 seeking discharge on the ground that the Government has specifically refused sanction to prosecute this applicant for the offences punishable under

Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act. Learned Advocate submits that in view of specific order refusing to grant sanction to prosecute this applicant, the applicant cannot be tried. The applicant had therefore, filed an application for discharge/ to close the file to the extent of this applicant.

3. Learned APP opposed the application saying that there is material on record collected by the Investigating Officer which is sufficient to frame charge against the applicant and to prosecute him for the offences punishable under the Prevention of Corruption Act.

4. It is seen from the record that by order dated 10-01-2018, the Government passed an order and refused a sanction to prosecute the applicant for the reasons that there is no sufficient evidence against the applicant. While passing the order, the Joint Secretary, State of Maharashtra has considered the documents produced before him. He has also considered clause

No.2 point No.2 from the Central Vigilance Manual and has specifically recorded that there is no sufficient evidence.

5. Learned APP relies upon a Government Resolution dated 12-02-2013. On perusal it is seen that it only prescribes the procedure to be followed by the sanctioning authority while considering the aspect of granting of sanction to prosecute as required under Section 19 of the Prevention of Corruption Act. It is seen that the learned trial Judge has considered an opinion given by Deputy Secretary (Law). In the said opinion, it is stated that there is sufficient material on record to prosecute the present applicant. This letter is, however, before the letter of refusal of sanction. Even otherwise this opinion will not prevail upon the requirement of Section 19 of the Prevention of Corruption Act. This opinion also cannot be taken into consideration when there is specific order of refusal of sanction.

6. Learned advocate for the applicant also produced on record the judgment of this court delivered in criminal revision

application No.326 of 2017 where in similar circumstances, revision application was disposed off by considering the judgment of the Hon'ble Apex Court in the case of Mansukhlal Chauhan Vs. State of Gujrat reported in (1997) 7 SCC 622, wherein it is 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. Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but a shield for the guilty. It also needs to be kept in mind that the formality of granting sanction is not an empty formality. While granting or refusing the sanction, the authorities are expected to apply mind. It is clearly seen in this case that while refusing the sanction, the authority has applied its mind and by speaking order has specifically refused to grant sanction.

7. Considering this aspect, there would be no meaning in prosecuting the applicant in absence of sanction. Therefore,

this court records that the application below Exh.7 ought to have been allowed. The learned Special Judge should have taken into account that the sanction under Section 19 is required as per the mandate of the law and it was necessary to allow the application Exh.7 in Special Case (ACB) No. 17/2018. Hence the following order:-

ORDER

- a] Criminal Revision Application No. 72/2020 is allowed.
- b] Order dated 17-10-2019, passed in Special Case (ACB) No.17/2018 by the learned Special Judge (under P. C. Act), Aurangabad to the extent of application Exh.7 is set aside.
- c] Application Exh.7 in Special Case (ACB) No. 17/2018 is allowed.
- d] Revision Application is disposed off.

[KISHORE C. SANT, J.]