

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

CRIMINAL APPEAL NO.322 OF 2007

Kishan Irbhaji Waghmare,
Age : 45 years, Occ. Service,
r/o. Panbhosi, Tq. Kandhar,
Dist. Nanded

..Appellant

Vs.

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Bombay – 32

2. Deputy Superintendent of Police,
Anti Corruption Bureau,
Nanded

..Respondents

Mr.Joydeep Chatterji, Advocate for appellant
Mr.S.P.Sonpavale, APP for respondents

**CORAM : R.G. AVACHAT, J.
RESERVED ON : MARCH 03, 2022
PRONOUNCED ON : OCTOBER 03, 2022**

JUDGMENT :-

The challenge in this appeal is to the judgment dated 27.07.2007 passed by learned Special Judge, Nanded in Special (ACB) Case No.9 of 2004. Vide the impugned judgment, the appellant herein has been convicted for the offences punishable under Sections 7 and

13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ("P.C. Act", for short) and therefore, sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.3,000/-; and to undergo simple imprisonment for one year and to pay fine of Rs.4,000/-, respectively.

2. The facts in brief, giving rise to the present appeal, are as follows.

3. PW 1 – Ganesh (complainant) would run S.T.D. booth at village Mandvi, Tq. Kinwat, Dist. Nanded. His mother runs a licensed country liquor shop. He would assist his mother in running the said shop. Dharmendra, son of the complainant's brother, would assist the complainant in running S.T.D. booth. The complainant's brother – Jagannath is addicted to liquor. He had obtained permit for consumption of liquor. It so happened that Dharmendra and the complainant's servant – Arjun were proceeding on motorbike on 18.04.2004. They were carrying two box containing country liquor bottles. The appellant herein was serving as Head Constable with Mandvi Police Station. He, on 18.02.2004, intercepted both of them. Took them to police station and registered a crime. The complainant

had, therefore, been to the police station. The appellant told the complainant to have registered a crime for possession of illicit liquor and even proposed to file a chapter case. The complainant requested the appellant not to file the chapter case. The appellant, therefore, made demand of Rs.1,000/- as bribe. The complainant asked for four days' time to pay the appellant bribe. He (appellant) agreed.

4. On 25.02.2004, the appellant visited the complainant's S.T.D. booth and reminded him of his promise to pay him Rs.1,000/-. The complainant asked the appellant to come on the following day, since he did not have that much money to pay at once that time. Since the complainant did not want to pay the appellant bribe, he approached the Anti Corruption Bureau, Nanded.

5. PW 5 – Ashok was Deputy Superintendent, Anti Corruption Bureau. He recorded the complaint (Exh.22) lodged by the appellant. It was decided to lay a trap. Presence of two State Government employees was secured to act as panch witnesses. Pre-trap panchnama (Exh.27) was drawn. All the concerned were given due instructions. On the following day, i.e. on 27.02.2004, the complainant accompanied by PW 3 (shadow witness) came to the

complainant's S.T.D. booth. All members of the trap party remained around. The appellant came to the S.T.D. booth and made demand of bribe money. The complainant paid the same and then gave a pre-determined signal. The officials of the trap party arrived in no time. The sum of Rs.1,000/- (10 currency notes of Rs.100/-) came to be seized from the appellant. Seizure panchnama was drawn. Then, post-trap panchnama (Exh.28) was also drawn. PW 5 – Ashok lodged the FIR on behalf of the State (Exh.33). The papers of investigation were submitted to the then Superintendent of Police, A.C.B., Nanded (PW 2). He, in turn, granted sanction (Exh.25) for prosecution of the appellant. Thus, the appellant came to be proceeded against by filing charge sheet. Learned Judge framed Charge (Exh.12). The appellant pleaded not guilty. His defence is of false implication.

6. The prosecution examined five witnesses and produced in evidence certain documents in proof of the Charge. The trial Court, on appreciation of the evidence, convicted and sentenced the appellant, as stated above.

7. Mr.Chatterji, learned counsel for the appellant, would submit that the sanctioning authority granted sanction for the

appellant's prosecution mechanically. The Investigating Officer had supplied a draft sanction along with the papers of investigation. The sanctioning authority (PW 2) has admitted in his evidence that the sanction (Exh.25) was identical with the draft sanction forwarded to him. It has also been in his evidence that there is no reference to the police papers in the sanction order. Learned counsel, relying on the Apex Court judgment in the case of **Mohd. Iqbal Ahmed Vs. State of A.P., AIR 1979 SC 677** and **C.B.I. Vs. Ashok Kumar Aggarwal, AIR 2014 SC 827**, urged for allowing the appeal.

8. Learned APP would, on the other hand, submit that the marked currency notes came to be seized from the appellant. Presumption under Section 20 of the Prevention of Corruption Act gets attracted. It was for the appellant to rebut the presumption. As regards the alleged sanction for prosecution, learned APP would submit that the sanctioning authority has testified on oath to have had perused all the papers of investigation before issuing the sanction order. The Investigating Officer has testified to have had forwarded all the papers of investigation to the sanctioning authority. According to learned APP, one of the cases relied by the appellant, pertains to disproportionate assets. Earlier, record was not before

the sanctioning authority in that case. Whatever observations have been made in the citations relied on, were factual in nature. According to learned APP, there is no cross-examination on this point. Learned APP, therefore, urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence in the case. Gone through the authority relied on. The appellant was serving as Head Constable at the relevant time. The complainant would assist his mother in running the country liquor shop. His nephew was apprehended by the appellant herein while he (nephew) was carrying two box containing country liquor bottles. The question is whether, the complainant is a witness of truth. In the complaint (Exh.22), it has been stated that Dharmendra, nephew of the complainant, was carrying country liquor bottles for consumption by his father – Jagannath. Jagannath held permit for consumption of liquor. It is just difficult to imagine that two box containing 96 bottles of liquor were being carried by Dharmendra for consumption by his father. Be that as it may.

10. Admittedly, the appellant herein had registered a crime against Dharmendra for carrying illicit liquor. A chapter case was

also proposed to be initiated against him. The same suggests the complainant to have an axe-to-grind against the appellant.

11. The Investigating Officer appears to have not taken pains to verify of the demand of bribe. In view of this Court, though the demand verification may not be a condition precedent in each and every case, the facts and circumstances of the case may warrant the concerned Police Officer before going ahead to lay a trap, to have the demand verified. The same has not been done in the present case.

12. The Court do not propose to refer to the evidence of the complainant and the shadow witness in detail, since the same has not been taken exception to. It has, therefore, to be taken that on the given date, i.e. 27.02.2004, the appellant visited the complainant's S.T.D. booth at about 12.30 p.m. and made demand of illegal gratification. The complainant gave the bribe money to the appellant in the presence of a shadow witness. In no time, the officials of trap party arrived. The bribe money came to be seized from the appellant under the panchnama.

13. The bone of contention of learned counsel for the appellant is that the sanction for prosecution of the appellant was granted mechanically. Section 19 of the P.C. Act speaks of previous sanction necessary for prosecution. Sub-section (3)(a) thereof speaks - notwithstanding anything contained in the Code of Criminal Procedure, no finding, sentence or 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.

14. Admittedly, the sanction for prosecution of the appellant was taken exception to before the trial Court itself. In **Mohd. Iqbal Ahmed** (Supra), it has been observed by the Hon'ble Supreme Court:-

“ 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.”

While in **C.B.I. Vs. Ashok Kumar Aggarwal** (Supra), it has been observed thus:-

“ Sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the Government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must therefore 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. 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. 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. 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. 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.”

15. In view of this Court, the validity of sanction for prosecution goes to the root of the matter. The sanctioning authority, on perusal of all the police papers, may even find it to be not fit case to grant sanction for prosecution. It has also been observed in **Mohd. Iqbal Ahmed** (Supra) as under:-

“ It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show the facts placed before the Sanctioning Authority and the satisfaction arrived at by it.”

16. In the case in hand, PW 2 – Anupkumarsinh was examined in proof of sanction (Exh.25). It is in his evidence that on going through the papers of investigation, he was satisfied that there was sufficient evidence to lodge the prosecution against the appellant. He, therefore, accorded sanction (Exh.25). In response to the question put to him during cross-examination, he testified to have had received the draft sanction along with the papers of investigation. A copy of the draft sanction was with him when he was cross-examined. He admitted that the draft sanction and the

sanction (Exh.25) were identical. In paragraph 8 of the draft sanction, a space was left for writing name of the sanctioning authority. The same is there in the sanction (Exh.25) and his name is written there in handwriting.

17. Perusal of sanction (Exh.25) indicates that there is no reference to the police papers referred to and relied on for grant of sanction. Learned counsel for the appellant was, therefore, justified in contending that the sanctioning authority has accorded sanction mechanically. This Court is in agreement with the submissions made by learned counsel for the appellant. The trial Court simply relied on the oral evidence of PW 2 – Anupkumarsinh that he had gone through the papers of investigation and accorded sanction (Exh.25). This Court is not at one with the findings recorded by the trial Court in this regard. The same leads this Court to interfere with the impugned order of conviction and sentence. Eighteen years have passed post date of offence. Evidence might have disappeared by now. The appellant might have crossed the age of superannuation. This Court, therefore, acquits the appellant instead of giving discharge.

18. In the result, the appeal succeeds. Hence, the following order:-

- (i) The appeal is allowed.
- (ii) The impugned judgment of conviction and order of sentence dated 27.07.2007 passed by learned Special Judge, Nanded, in Special (ACB) Case No.9 of 2004, is set aside.
- (iii) The appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.
- (iv) His bail bonds stand cancelled.
- (v) Fine amount deposited by the appellant, if any, be refunded to him.

[R.G. AVACHAT, J.]

KBP