

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

CRIMINAL APPEAL NO.296 OF 2013

Vijay s/o Namdeorao Mithpalle
age 43 years, Occu. Service,
R/o Mahendra Nagar,
Near Saptapadi Mangal Karyalaya,
Parbhani

... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on the
Public Prosecutor, High Court,
Bench at Aurangabad

... RESPONDENT

.....
Shri C.P. Sengaonkar, Advocate for appellant
Shri R.B. Bagul, A.P.P. for respondent – State
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 23rd March, 2022

Date of pronouncing judgment : 31st March, 2022

J U D G M E N T :

The challenge in this appeal is to the judgment dated 6/8/2013, passed by Special Judge (ACB), at Basmath, District Hingoli in Special Case (ACB) No.3/2010, thereby convicting the appellant for the offence punishable under Section 7 of the Prevention of Corruption Act (P.C. Act) and sentencing him to suffer rigorous imprisonment for one year

and to pay fine of Rs.3000/-. In default of payment of fine, the appellant is directed to suffer further rigorous imprisonment for one month.

2. Facts giving rise to the present appeal are as follows :-

P.W.1 Digambar (complainant) owned agricultural land in Gut No.213, at village Ranjala, Taluka Aundha, District Hingoli. The land was purchased from one Jayram. Jayram's brother Dinaji had raised a dispute about rights in the said land in 2008. A civil suit was, therefore, filed by the complainant. An injunction order was passed in his favour therein. A Soyabean crop was raised in the land. Dinaji and his family members forcibly took away riped Soyabean. Mother of complainant had obstructed them. She was, therefore, assaulted. A complaint was, therefore, lodged in that regard at Jawala Bazar Police Chowki. The appellant was serving as a P.S.I. with the said Police Chowki. The complainant had asked the appellant to register crime against Dinaji and others. The appellant made a demand of Rs.7000/- for registration of the crime. since the complainant did not want to pay a bribe, he approached Anti-Corruption

Bureau (A.C.B.), Hingoli and lodged the report Exh.25.

3. P.W.4 Shri Kakade, Dy. Superintendent of Police, A.C.B. secured presence of two Government employees to act as panch witnesses. It was decided to verify the demand and then lay a trap. The complainant accompanied by P.W.2 Kishan - shadow witness had, therefore, been to the Police Chowki on 2/12/2009. On request of the complainant to register a crime the appellant made a demand of Rs.7000/-. Both the complainant and shadow witness returned to the A.C.B. Demand verification panchanama (Exh.37) was drawn. It was, therefore, decided to lay a trap. Pre-trap panchanama was drawn. The complainant accompanied by shadow witness went to the Police Chowki. The appellant was not present there. They, therefore, went to his residence to find him to be not there as well. It was, therefore, decided not to lay a trap.

4. Since the appellant had made a demand of bribe and it being an offence punishable under Section 7 of the P.C. Act, P.W.4 lodged F.I.R. (Exh.55). Crime, therefore, came to be registered. It was investigated as well. Sanction for prosecution of the appellant was obtained and then he was proceeded against by filing a charge sheet.

5. The Special Judge framed the charge (Exh.08). The appellant pleaded not guilty. His case is of false implication.

To substantiate the charge, prosecution examined four witnesses and let in certain documents. On appreciation of the evidence in the case, learned Special Judge convicted and sentenced the appellant as stated above.

6. Heard. Learned counsel for the appellant would submit that, for verification of a demand, the complainant had conversation with the appellant on cell phone. In none of such conversations the appellant made demand of bribe. He would, therefore, submit that, when prior demand of money by the appellant was not proved, the rest of the prosecution case need to be read with great caution and circumspection. In support of his submission, he has relied on judgment of this Court in case of Avinash Sitaram Gaware Vs. State of Maharashtra [2008 All MR (Cri) 15]. He would further submit that, the panchanama is silent to state the appellant asked the complainant whether he had come prepared to pay Rs.7000/-. The learned counsel would further submit that,

everything is based on only oral testimony of the complainant and the shadow witness. No taperecorder was used for verification of the demand. The Special Judge ought not to have relied on the oral evidence of the complainant in whose company the shadow witness had been for a long.

7. On the question of grant of sanction for prosecution, learned counsel would submit that, the appellant was appointed by Director General of Police (D.G.). The sanction had, however, been granted by Special Inspector General of Police, Nanded (I.G.), subordinate to D.G. The sanction (Exh.46) therefore, suffers from the vice of being accorded by an authority not competent to accord the same. In this regard, the learned counsel has relied on Apex Court judgment in case of Nanjappa Vs. State of Karnataka [(2015) 14 SCC 186]. He ultimately urged for allowing the appeal in toto.

8. Learned A.P.P. would, on the other hand, submit that, the evidence of the complainant and shadow witness undoubtedly makes out a case of the appellant to have made a demand of illegal gratification. According to him, the evidence of the shadow witness in this regard has not been

specifically traversed in his cross-examination. Both these witnesses did not have any reason to grand an axe against the appellant. On the question of validity of the sanction for prosecution, learned A.P.P. relied on Section 25 of the Maharashtra Police Act (Police Act) to submit that, the Inspector General of Police has been authorised to impose penalty in the nature of removal from office, dismissal from service etc. He would, therefore, submit that, the sanction accorded by the I.G. was valid one. He, therefore, urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence relied on. Gone through the citations placed on record.

10. It has not been disputed before this Court that the complainant had been to the Jawala Bazar Police Chowki to have a crime registered against one Dinaji and his family members in connection with an offence that took place over a land dispute. The appellant was P.S.I. with the said police station. Since he allegedly made a demand of a bribe for registration of the crime, the complainant had approached the A.C.B. It is in the evidence of the complainant that P.W.4

Bharat Kakade, Dy. S.P., A.C.B. had decided to verify the demand. He, therefore, made cell phone calls to the appellant in his presence. During 2 - 3 telephonic conversations the appellant did not make any demand of a bribe for registration of a crime. The learned counsel for the appellant, therefore, may be justified to submit that subsequent evidence in that regard had, therefore, to be read with caution and circumspection. There is, however, evidence that the complainant accompanied by a shadow witness, had met the appellant on 2/12/2009 at the concerned police station. The complainant opened up the talk. He requested the appellant to take appropriate action in regard of theft of Soyabean crop. The appellant asked whether he had made preparation for Rs.7000/-. The shadow witness also gave evidence in this regard. He testified that the appellant told the complaint that he would do his work for Rs.7000/- as agreed earlier. The same has been reflected in demand verification panchanama (Exh.39). There is nothing to suggest the complainant and the panch witness to have any reason to falsely implicate the appellant. As such, based on the evidence of the complainant and the shadow witness the fact that the appellant had made a demand of illegal gratification for registration of a crime was made out.

11. The question is whether the prosecution of the appellant for the offence punishable under Section 7 of the P.C. Act had been validly sanctioned. Before advertng to factual matrix in this regard, the relevant provisions of the P.C. Act need to be referred to. Section 19 of the Prevention of Corruption Act reads :

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 1 save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014) :-

(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.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by

the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) 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;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to

grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

12. The extract of the Service Book of the appellant is on record. There is an entry therein indicating the appellant to have been appointed by D.G., Maharashtra. The sanction for his prosecution (Exh.46) has been accorded by P.W.3 Sandip Bishnoi, I.G., Nanded. Admittedly, post of I.G. is subordinate to the post of D.G. Article 311(1) of the Constitution of India mandates :-

“311(1). No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.”

13. As against the constitutional provision, a reliance by the learned A.P.P. on Section 25 of the Police Act would be inconsequential. Reference to Section 25 is also misconceived since sub-section (3)(b) of Section 25 reads that, nothing in sub-section (1)(1-a) and (2) shall entitle any authority subordinate to that by which the police officer was appointed,

to dismiss or remove him. As such, the authority competent to remove the appellant was D.G. and none else. The sanction, therefore, ought to have been accorded by D.G. himself. The investigating officer has rightly made a communication with the office of D.G. to obtain sanction for prosecution. The D.G., however, forwarded the said communication to the I.G., Nanded to do the needful. The I.G. in turn accorded the sanction. Since the I.G. was not the appointing authority of the appellant, the sanction accorded by him is invalid.

14. The Special Judge had found the sanction to have been accorded by person not competent to accord the same. It, however, held that, merely because sanction was accorded by a person not competent to accord it, there was no failure of justice. No injustice was caused to the appellant. Therefore, defect in according sanction is not fatal to the prosecution, observed the Special Judge.

15. In case of Nanjappa (supra), it has been observed thus :

“22. The legal position regarding the importance of

sanction under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

23.

23.1.

23.2. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section(3) has no

application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.3. . . .

23.4. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused.

23.5. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been

raised at the trial stage instead of being urged in appeal or revision.

24. In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. The trial Court held that the authority who had issued the sanction was not competent to do so, a fact which has not been disputed before the High Court or before us. The only error which the trial Court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case.”

16. In view of the Apex Court’s observations in Nanjappa’s case, this Court holds that the prosecution of the appellant was bad in law for want of valid sanction. The case dates back to 2009. 13 years have passed thereafter. Evidence in the case might have disappeared. As a result of the conviction, the appellant appears to have been dismissed from service. Considering the nature of offence and peculiar facts and circumstances of the case, this Court is not inclined to discharge the appellant with the direction to the prosecution to obtain the sanction from the competent authority and proceed against the appellant afresh, if so desired.

17. For the reasons given hereinabove, the appeal succeeds. Hence the order :

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The judgment and order of conviction and sentence, dated 6/8/2013, passed by Special Judge at Basmath, District Hingoli in Special Case No.3/2010 is hereby set aside. The appellant is acquitted of the offence punishable under Section 7 of the Prevention of Corruption Act.
- (iii) Bail bonds of the appellants are cancelled.
- (iv) Fine amount, if paid, be refunded to the appellant.

**(R. G. AVACHAT)
JUDGE**

fmp/-