

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

CRIMINAL APPEAL NO. 834 OF 2005

Rustum Narayanrao Jadhav
Age: 39 years, Occu.: Police Constable,
B.No.538, attached to City Chowk Police
Station, Aurangabad

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. M.A. Tandale and Ms. S.L. Awchar, Advocates for appellant
Mr. S.P. Sonpawale, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT, J.
RESERVED ON : 04th JANUARY, 2022
PRONOUNCED ON : 13th APRIL, 2022**

JUDGMENT :

1. The challenge in this appeal is to the judgment and order dated 23rd November, 2005 passed by the learned Judge, Special Court, Aurangabad in Special Case No. 4 of 2004, whereby the appellant has been convicted of the offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act ('P.C. Act'), and therefore, sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/- on each count. In default of payment of fine, he has been sentenced to suffer simple imprisonment for three months.

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

2. The appellant was serving as a Police Constable with Commissionerate of Police, Aurangabad. P.W.2 – Sanjay Bhalkar was in the business of transporting and selling of sand. He would carry sand from Paithan to Aurangabad. It so happened that on 19th September, 2003 P.W. 2 – Sanjay carried sand in his tractor attached with trolley from Paithan to Jadhavwadi. It was about 04.00 p.m. The sand could not be sold. He was, therefore, on his way back home. The appellant met him at Central Naka. He stopped him and made demand of Rs.50/- as entry fee. Since P.W.2 – Sanjay did not have that much amount, he paid Rs.10/- for tea. The appellant asked him to pay him Rs.100/- on the next day as entry fee of two days. Since P.W.2 – Sanjay did not want to pay the appellant bribe, he approached the Anti-Corruption Bureau, Aurangabad ('A.C.B.'). P.W.5 – Rameshwar, Police Inspector, A.C.B. Aurangabad recorded the statement-cum-complaint lodged by P.W.2 – Sanjay. He decided to lay a trap. He, therefore, secured presence of two government officials to act as panch witnesses. A pre-trap panchanama was drawn. All the concerns were given requisite instructions. P.W.3 – Premanand (shadow witness) was asked to accompany P.W. 2 – Sanjay as a witness for payment of bribe. Accordingly, on 20th September, 2003 the appellant met P.W.2 – Sanjay and P.W.3 – Premanand near Nutan Vidyalaya near Central Naka. The appellant made demand of the bribe money. P.W.2 – Sanjay, therefore, paid him Rs.100/- and then gave a pre-

determined signal. The raiding party arrived in no time. The appellant was overpowered. The said note of Rs.100/- came to be seized from him under the post-trap panchanama. P.W.5 – Rameshwar lodged the First Information Report (Exh.34) on behalf of the State. He recorded the statement of persons acquainted with the facts and circumstances of the case and obtained the sanction for prosecution of the appellant. The appellant then came to be proceeded against by filing the charge-sheet.

3. The learned Judge of the Special Court framed the charge (Exh.6). The appellant pleaded not guilty. His defence is of false implication. It is his case that he had acquaintance with P.W.2 – Sanjay. He had lent P.W.2 – Sanjay a sum of Rs.500/- as hand loan. There was some quarrel between the two. With a view to take a revenge, the appellant has been falsely implicated. The prosecution examined five witnesses to bring home the charge and produced in evidence certain documents. On appreciation of evidence in the case, the trial Court convicted the appellant and sentenced him as stated above.

4. Heard. Learned counsel for the appellant would submit that the appellant was appointed by the Commissioner of Police. The sanction for his prosecution was accorded by the Deputy Commissioner of Police. As such, the sanction for prosecution (Exh.9) was invalid. According to learned counsel, there was no verification of demand. P.W.3 – Premanand, shadow

witness, did not stand by the prosecution. As such, the prosecution failed to bring home the charge beyond reasonable doubt. He, therefore, urged for allowing the appeal.

5. Learned A.P.P. would, on the other hand, submit that the Deputy Commissioner of Police Head Quarters was the appointing authority of a police constable. Sanction accorded by him was, therefore, valid one. On the question of evidence of the shadow witness, it was submitted that in the post-trap panchanama, it has specifically been mentioned that the appellant made demand of bribe money and he was paid the same. The shadow witness was confronted there with. He admitted the same. Learned A.P.P. supports the impugned judgment.

6. Considered the submissions advanced. Perused the evidence relied on.

7. The question is whether the prosecution of the appellant has 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 P.C. 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.”

8. At the relevant time, the appellant was serving as Police Constable with City Chowk Police Station. His order of appointment dated 19th March, 1993, has been placed on record. Same indicates him to have been appointed by the Police Commissioner, Aurangabad. Admittedly, the sanction for prosecution (Exh.9) has been accorded by P.W.1 – Shantaram Waghmare, Deputy Commissioner of Police Headquarter. Admittedly he is

subordinate to the Commissioner of Police. 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.”

9. In case of ***Nanjappa Vs. State of Karnataka, (2015) 14 SCC 186***, 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.

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23.1.

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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.

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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.”

10. In the case in hand, the sanction for prosecution has been accorded by the Deputy Commissioner of Police Headquarters. His authority to grant sanction for prosecution has been challenged before the Special Court itself. Since the Commissioner of Police was the appointing authority of the appellant herein, the Deputy Commissioner of Police Headquarters did

not have authority to remove the appellant from service. Sanction for prosecution in terms of Section 19(1)(c) of the P.C. Act is required to be obtained from the authority competent to remove the accused from his service. As such, the sanction for prosecution was not valid one.

11. On the other factual matrix, it is to be stated that it was a demand of Rs.100/- as bribe for allowing P.W.2 – Sanjay, the complainant to enter Aurangabad city with his tractor and trolley carrying sand. Admittedly, there is no evidence to indicate P.W.2 – Sanjay to have been doing excavation of sand and transporting it authorisedly. Be that as it may. The appellant allegedly made demand of Rs.100/- as an entry fee to enter the limits of Aurangabad. When P.W.2 – Sanjay approached the A.C.B., Aurangabad, for the reasons best known to P.W.5 – Rameshwar, no exercise of verification of demand was undertaken.

12. After lodging of complaint, it was decided to lay a trap. Pre-trap panchanama was drawn. Presence of two government officials was secured to act as panchas. All the concerns were given due instructions. P.W.3 – Premanand was asked to accompany P.W.2 – Sanjay to act as shadow witness. On the following day, i.e. 20th September, 2003, they met the appellant at Central Naka. It is in the evidence of P.W.2 - Sanjay that the appellant made demand of Rs.100/-. There upon he held the money in his

hand. The appellant received the same. Then he give pre-determined signal. The raiding party arrived and necessary procedure of post-trap panchanama was followed.

13. P.W.3 – Premanand, the shadow witness did not stand by the prosecution. It is in his evidence that when they met the appellant, P.W.2 – Sanjay offered the appellant money. The appellant was not ready to accept the same. P.W.2 - Sanjay, therefore, kept the amount in the appellant's pocket. The appellant returned the money to P.W.2 - Sanjay. P.W.3 – Premanand was, therefore, subjected to cross-examination by the learned A.P.P. He was confronted with post-trap panchanama and particularly the recitals therein regarding demand of bribe by the appellant and payment there of by P.W.2 - Sanjay. P.W.3 - Premanand categorically stated that the contents in the post-trap panchanama were not dictated by him. In any case, the post-trap panchanama cannot be a substantive evidence as regards factum of demand of bribe and acceptance thereof.

14. As such, it is a case wherein sanction for prosecution of the appellant has not been accorded by an authority not competent to remove him from his office. The case dates back to 2003. Moreover, the independent panch witnesses did not stand by the prosecution. The alleged demand of bribe was not verified. In these circumstances, the learned Judge of the Special Court was not justified in convicting the appellant. This Court is,

therefore, not at one with the impugned judgment and order. The appeal, therefore, succeeds.

15. Criminal appeal is allowed. The impugned judgment and order dated 23rd November, 2005 passed by the learned Judge, Special Court, Aurangabad in Special Case No. 4 of 2004 is hereby quashed and set aside. The appellant is acquitted of the offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act. Fine amount be paid back to the appellant.

(R.G. AVACHAT, J.)

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