

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.9 OF 2014

SANJAY JANARDAN DUKRE)
Aged about 43 years, Occupation : Service)
Residing at 2/6, C/o. Jaywant Surve,)
Bhagatram Sharma Chawl, Gamdevi Road,)
Bhandup, Mumbai – 400078)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA)
(At the instance of A.C.B.) Anti Corruption)
Bureau, Sir Pochkhanwala Road, Worli,)
Mumbai – 400 050)...RESPONDENT

Mr. M. J. Upadhyay, Advocate for the Petitioner.

Mr. A. R. Kapadnis, APP for the Respondent.

Mr. Shailendra Chavan, Police Inspector, Anti-Corruption Bureau,
present in Court.

CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.

DATE : 23rd JUNE 2022

JUDGMENT : (PER : V. G. BISHT, J.)

1 Rule. Rule made returnable forthwith. By consent, heard
finally at the stage of admission.

AVK

1/14

2 By this petition, the petitioner has made following prayers :

- “A] This Honourable Court be pleased to issue a writ of mandamus and call for records and proceeding from the file of Special Court, Mumbai in supplementary charge sheet bearing Special Case No. 78 of 2013 in Special Case No. 91 of 2001 in C. R. No. 18 of 2001 to consider the legality in prosecuting the petitioner for second time for the offences based on the same facts.
- B] This Honourable Court be pleased to issue an order to stay the retrial in the supplementary charge sheet bearing Special Case No. 78 of 2013 in Special Case no. 91 of 2001 covered under C. R. No. 18 of 2001 on the file of learned Special Court, Mumbai, pending the hearing and final disposal of this Writ Petition.
- C] This Honourable Court be pleased to set aside the process issued by the trial Court by taking cognizance after obtaining fresh sanction order dated 21.02.2012 and to prosecute the petitioner.

D] This Honourable Court be pleased to issue a writ of certiorari or an order in the nature of quashing the supplementary charge sheet bearing Special Case No. 78 of 2013 in Spl Case No. 91 of 2001 in C.R. No. 18 of 2001 filed by respondent against the petitioner.”

3 We would notice the facts of the present case, which are as under :

On 28th March 2001 complainant Mr. C. Bhaskar lodged a complaint against accused Rajiv Karshandas Bhatia (A-1), then working as a Manager with Indira Sahakari Bank Ltd., Dharavi Branch, Mumbai, for demanding the bribe amount of Rs.1,000/- from him for showing him favour in refunding the entire amount deposited in the saving bank account No.1235 of Indira Sahakari Bank Ltd., Dharavi Branch, Mumbai. The said accused also directed the complainant to pay Rs.1,000/- to another accused, namely, Sanjay Dukre i.e. the present petitioner. As the complainant did not want to give bribe, he lodged the First Information Report (FIR) on 28th March 2001 with Anti-

Corruption Bureau, Mumbai, against A-1. A pre-trap panchnama was prepared and later on official from the Anti Corruption Bureau Office, Mumbai, carried out raid. The prosecution alleges that at the instance of A-1, the present petitioner accepted the said amount of Rs.1,000/- and on verification was found in possession of the same. The petitioner's hands and clothes were examined in the light of ultraviolet lamp and the same reflected faint bluish glow of anthracene powder and also on his left side full pant pocket.

4 Investigation was carried out and after necessary sanction having been granted, chargesheet came to be laid against the A-1 and the present petitioner.

5 The learned Special Judge for Anti Corruption Bureau, Greater Mumbai, formulated following points for his determination, which are as under :

“POINTS :-

- 1 Does the prosecution prove that accused no.1 Rajiv Bhatia and accused no.2 Sanjay Dukare were the public servants as contemplated u/s. 2(c) of the Prevention of Corruption Act, 1988 ?

- 2 Whether there is a valid and legal sanction for the prosecution of the accused no.1 Rajiv Bhatia and accused no.2 Sanjay Dukare ?

- 3 Does the prosecution prove beyond reasonable doubt that accused no.1 Rajiv Bhata on 14.3.2001 at about 5.00 p.m. at the above referred Indira Sahakari Bank Ltd. at Dadar, Mumbai attempted to obtain Rs.2000/-, thereafter on 19.3.2001 agreed to accept Rs. 1,000/- at the above referred bank on 22.3.2001 at 5.00 p.m. and thereafter on 22.3.2001 at 5.00 p.m. at the above referred bank agreed to accept Rs.1,000/- on 28.3.2001 at 4.00 p.m. at the above referred bank and on 28.3.2001 at about 4.30 p.m. in the above referred bank attempted to obtain and accepted through accused no.2 Sanjay Dukare, an amount of Rs.1000/- as gratification other than legal remuneration for himself from the complainant Shri C. Bhaskar Parayar (PW.1) for doing official act

of issuing cheque of Rs.11,522/- towards balance amount in his savings account no.1237 in branch of the said bank at Dharavi, Mumbai – 17, on the application already made by him ?

- 4 Does the prosecution further prove beyond reasonable doubt that accused no. 2 Sanjay Dukare on 28.3.2001 at about 4.30 p.m. in the cabin of accused no.1 Rajiv Bhatia, Manager in the above referred bank at Dadar, Mumbai, abetted the commission of offence punishable un/s. 7 of the Prevention of Corruption Act, 1988 by the accused no.1 Rajiv Bhatia by intentionally aiding him by accepting an amount of Rs.1000/- from the complainant Shri C. Bhaskar Parayar (PW.1) on his behalf as gratification other than legal remuneration for doing an official act of issuing cheque in his favour of the amount of Rs.11,522/- towards the balance amount in his savings account no.1235 in branch of the said bank situated at Dharavi, Mumbai – 17, on his behalf and thereby committed an offence punishable u/s. 12 of the Prevention of Corruption Act, 1988 ?

5 Does the prosecution further prove beyond reasonable doubt that accused no.1 Rajiv Bhatia and accused no.2 Sanjay Dukare on 28.3.2008 at about 4.30 p.m. in the cabin of the accused no.1 Rajiv Bhatia, the Manager of the above referred bank at Dadar, Mumbai committed criminal misconduct by obtaining pecuniary advantage of Rs.1000/- from the complainant Shri C. Bhaskar Parayar (P.W.1) by corrupt or illegal means and by abusing his position as such public servant by issuing cheque in his favour of the amount of Rs.11,522/- towards the balance amount in his saving account no.1235 in the branch of the said bank situated at Dharavi, Mumbai – 17 and thereby committed an offence punishable u/s. 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 ?

6 In regard to Point Nos.1, 3, 4 and 5, the learned Special Judge returned the findings in the affirmative while in respect of Point No.2, in the negative. As far as Point No.2 is concerned, the learned Special Judge was of the opinion that the prosecution had failed to prove that Shri Mohd. Arif, Deputy Registrar (P.W.5) was competent to accord sanction for the prosecution of the

accused persons and therefore, sanction accorded by him vide sanction order dated 13.9.2001 is illegal and invalid. It appears that although the findings of guilt were held to be proved but on account of illegal and invalid sanction, the learned Special Judge was pleased to acquit the petitioner-accused and accused no.1 on 9th June 2008.

7 It further appears from the record that the prosecuting agency again obtained fresh sanction on 21st February 2012 and filed a supplementary chargesheet bearing Special Case No.78 of 2013 and the trial Court took the cognizance and summoned the petitioner. Therefore, the present petition.

8 Mr. Upadhyay, learned counsel for the petitioner, came down heavily on the prosecuting agency and submitted that once the petitioner-accused was acquitted by the learned Special Judge, re-summoning the petitioner-accused for retrial is perverse and unjustifiable. Moreover, the petitioner-accused was not heard on the point of legality or otherwise of the fresh

sanction before taking cognizance of the matter. Thus, for all these reasons, the petition deserves to be allowed in terms of prayer clauses, argued learned counsel.

9 Per contra, Mr. Kapadnis, learned APP, on the other hand, has opposed the submissions by contending that once the learned Special Judge found that a proper order of sanction was not passed, it had no jurisdiction to acquit the accused and as such, the judgment passed in Special Case No. 91 of 2001 shall be illegal and of no effect and in that view of the matter, subsequent trial with proper sanction is not barred. The learned APP placed reliance in the decision given in **State of Karnataka through CBI vs. C. Nagarajaswamy**¹.

10 In the case of **State of Karnataka through CBI (supra)**, the Hon'ble Supreme Court held as under :

“The essential conditions for invoking the bar under Section 300(1) Cr.P.C. are :

(i) the court had requisite jurisdiction to take

¹ (2005) 8 Supreme Court Cases 370

cognizance and tried the accused; and

(ii) the court has recorded an order of conviction or acquittal, and such conviction/ acquittal remains in force.

Section 19 of the Prevention of Corruption Act, 1988 mandates that no court shall take cognizance of offence punishable under the provisions specified therein except with the previous sanction by the authorities specified therein. Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage, a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate Court.”

11 Admittedly, in terms of Clause (2) of Article 20 of the Constitution of India, no person can be prosecuted and punished for the same offence more than once. Section 300 of the Code

was enacted having regard to the said provision. The essential conditions for invoking the bar under said provision are:

- (i) the court had requisite jurisdiction to take cognizance and tried the accused; and
- (ii) the court has recorded an order of conviction or acquittal, and such conviction/ acquittal remains in force.

12 We may usefully refer the decision of Federal Court in *Basdeo Agarwalla vs. King Emperor*² wherein it is held that if a proceeding is initiated without sanction, the same would be null and void.

13 It may not be out of place to mention here that in the case of **State of Karnataka through CBI (supra)**, the Hon'ble Apex Court after taking a survey of number of decisions of the Apex Court and as also of Federal Court, came to the conclusion that it is not possible to agree with the decision of the High Court that the trial Court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was

² AIR 1945 FC 16

not valid. The Hon'ble Apex Court went on further to hold that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Cr.P.C. as, even then, it would be held to have been rendered illegally and without jurisdiction.

14 In the case in hand, the principle enunciated by the Hon'ble Apex Court squarely and with full vigour applies and it is not possible for us to agree with the learned counsel for the petitioner that the prosecuting agency was wrong in obtaining the fresh sanction and prosecuting the petitioner-accused again. We are very much clear in our minds that even if a judgment of acquittal is recorded by the trial Court but that was without jurisdiction in as much as the learned Special Judge himself held that the sanction was illegal and invalid, and this being so, the cognizance of the offence at the first blush could not have been taken. Needless to say, in this obtaining situation, neither the provisions of Section 300 Cr.P.C. nor Article 20 are applicable. The impugned judgment and order of acquittal rendered by the

learned Special Judge is per se illegal, null and void, in as much as the sanction was illegal and invalid.

15 As far as the submission of learned counsel for petitioner-accused that he was not heard on the point of legality or otherwise of the sanction before taking cognizance of the matter is concerned, the same does not have merit of candour, in as much as it is for the concerned Court to apply his/her mind in such type of case before taking cognizance of the matter. Even otherwise, everything has not been lost and this aspect can very well be agitated by the petitioner-accused at the time of the trial or at the time of the final hearing of the matter.

16 We cannot be oblivious of the fact that the petitioner-accused will have to face trial once again and his right for his speedy trial, having regard to the provisions contained in Article 21 of the Constitution of India should be appreciated. Moreover, a person's fate may not be kept hanging for a long time, and therefore, we would propose to give necessary directions to the learned trial Court.

17 Keeping in view the aforesaid principles and having regard to the facts and circumstances of the case, we are not inclined to allow the petition, and hence, pass the following order :

ORDER

- i) Writ petition is dismissed.
- ii) However, we are of the opinion, that the interest of justice shall be subserved if the trial Court is requested to dispose of the matter at an early date preferably within six months from the date of communication of this order, subject ofcourse to rendition of all co-operation of the petitioner-accused.
- iii) Interim stay dated 1st September 2014 stands vacated.
- iv) Rule stands discharged accordingly.

(V. G.BISHT, J.)

(REVATI MOHITE DERE, J.)