

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 228 OF 2006

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RAMCHANDRA
SANGAR

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State of Maharashtra

... Appellant

Versus

Gangadhar Raghunath Sandbhor

Age : 56 Years, Occu. : Service,

Resident of Kasarwadi,

Pune – 34.

... Respondent

Ms.S.S.Kaushik, APP for the Appellant – State.

Mr.S.B.Shetye a/w. Ms.Priyanka Chavan a/w Mr.Vikrant Dere, Advocate
for Respondent.

CORAM : S. M. MODAK, J.

DATED : 9nd DECEMBER, 2022

P.C. :-

1. The only issue involved in this Appeal is ; whether the findings given by the special Judge in respect of validity of sanction is proper or not and ; whether it requires interference. The special Judge, Pune while acquitting the Accused vide judgment dated 30th August, 2005, was pleased to hold that sanction given by Joint Commissioner of Police is defective for want of competence. So far as other aspects relating to demand and abusing his position as a public servant by the Respondent-Accused, those points were answered in the affirmative in favour of the Prosecution. The said judgment is challenged on behalf of the State.

2. I have heard learned APP Smt.S.S.Kaushik, for the Appellant-State and learned Advocate Shri.S.B.Shetye for the Respondent-Accused. The

Respondent-Accused was working as a Police Sub Inspector in Anti Corruption Cell, Crime Branch, Pune attached to the Office of Commissioner of Police. One Godane has filed a complaint against the complainant Vasant Waman Malusare in respect of abusing on account of caste and that complaint was sent for enquiry to the Respondent-Accused. During its enquiry, the complainant was called by the Respondent-Accused and he was threatened that the prosecution will be lodged under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act No.33 of 1989) and that is why, there was a demand. The Respondent-Accused accepted Rs.5,000/-. He was prosecuted by Office of Anti Corruption Bureau after the trap was successful on 24th July, 2002. After investigation, charge-sheet was filed against him for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

3. Sanction was given by PW No.1 – Maruti Shankarrao Maheshgauri, the then Joint Commissioner of Police, Pune, on 5th December, 2003. In fact, the Respondent-Accused was selected as a Police Sub Inspector by MPSC in the year 1993 and as such, appointed by Director General of Police. He is removable from the service only as per the order of Director General of Police. So, he was the Competent Authority to give sanction as contemplated under Section 19(1)(b) of the Prevention of Corruption Act, 1988 (49 of 1988). Whereas, sanction was given by Joint Commissioner of Police and the Prosecution claims that he received papers from the Office of Director General of Police and accordingly, the sanction is granted.

4. It is submitted by learned APP for the Appellant-State that there is

no defect in the sanction and the Sanctioning Authority was justified in giving the sanction particularly when he has received the papers from the Office of Director General of Police. It is contended that he had given sanction in exercise of delegated authority and there is no prejudice caused to the Respondent-Accused. My attention is also invited to the findings on other issues in favour of the Prosecution.

5. Whereas, according to learned Advocate Shri.S.B.Shetye, the objection as to competence of the Sanctioning Authority was taken at the beginning itself on 14th December, 2004. He invited my attention to the roznama dated 14th December, 2004, which makes a mention about filing of an application at Exhibit – 8. This also finds place in Para No.46 of the judgment. According to him, in order to support exercise of delegated authority, no papers were tendered in evidence through the Sanctioning Authority. What is the effect of defect in sanction on the trial, he relied upon the following two judgments :-

- (i) Ram Krishan Prajapati V/s. State of U.P. [(2000) 10 Supreme Court Cases 43]
- (ii) Nanjappa V/s. State of Karnataka [(2015) 14 Supreme Court Cases 186]

6. I have perused the provisions of Sanctioning Authority and the finding given by the trial Court. The Sanctioning Authority has admitted that Director General of Police is Head of the Police Department and all other Officers are subordinate to him. The witness claimed that being Joint Commissioner of Police, he is equated to the rank of Inspector General of Police. It is correct that the papers referred to by the witness were not tendered in evidence. Furthermore, any office order / circular

issued by the Office of Director General of Police thereby delegating the power to Inspector General of Police to grant sanction under Section 19 of the Prevention of Corruption Act, 1988, was also not produced. Whether such delegation can be granted or not is a different thing. Those papers were not produced in evidence.

7. The special Judge after considering the judgments cited before him, has held that sanction is defective. It is true that in case of ***Ram Krishan Prajapati (cited supra)***, the Hon'ble Supreme Court has observed that "*jurisdiction of special Judge is ousted if there is no valid sanction*". (Para No.10). Whereas, in case of ***Nanjappa***, there is an acquittal by the special Judge for want of valid sanction and the High Court has reversed that judgment and convicted the Accused. Whereas, it was set aside by the Hon'ble Supreme Court. There is discussion threadbare on the point of taking objection as to sanction at the earliest opportunity and discussion on the issue of causing prejudice.

8. It is true that as per Section 19(3) of the Prevention of Corruption Act, 1988, (no finding, sentence or order passed by a special Judge shall be reversed or altered by the Appellate Court when there is no error, omission or irregularity in the sanction). It can be reversed or altered by the Appellate Court when there is a failure of justice occasioned due to error, omission or irregularity. Section 19(4) puts a rider. Whether there is a failure of justice or not can be considered also by considering whether the objection was taken at the earlier stage and if the trial Court does not consider that objection and hold the sanction valid, the Appellate Court can certainly go into those findings and if it finds that there is failure of justice, it can certainly reverse the findings.

9. In case before us, this is not a situation. The situation contemplated under Section 19(3) and 19(4) will arise only when the question of reversing the findings given against the Accused arises. In case before us, the Respondent-Accused has already taken an objection and that is why, Sanctioning Authority has been examined first. So, the Accused has complied with the provisions of Section 19(3) and 19(4) of the Prevention of Corruption Act, 1988. In fact, in case of **Nanjappa**, even the Hon'ble Supreme Court has observed that *"if there is no valid sanction, even the accused can be discharged"*. However, in this case, it has not happened and the Accused has faced with the trial.

10. For the above discussion, I do not find that there is any merit in the Appeal. The contention about granting sanction by Joint Commissioner of Police in pursuance to the delegated authority cannot be accepted. Hence, no interference is warranted. Consequently, Appeal is dismissed.

(S. M. MODAK, J.)