

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION [APL] NO.186 OF 2022

Applicant : **Prakash s/o Ambadas Tike,**
(Orig. Accused-1) Aged about 54 years,
Occu : Service, Assistant Account Officer,
At Zilla Parishad, Washim,
R/o Washim, Tq. & Distt. Washim.

– Versus –

Non-Applicants : 1) **Bhimrao s/o Prabhusingh Rathod,**
(Orig. Complainant) Aged about 53 years, Occu : President of
Paramhans Bhagwant Mauli Mandal Society,
Affiliated Mukbadhir Niwasi Vidyalaya Va Apang
Niwas Vidlyaya, Tuljapur, Warud Road,
Mangrulpir,
R/o HUDCO Colony, Mangrulpir, Distt. Washim.

2) **Sunil s/o Naresh Khamitkar,**
Aged about 54 years, Occu : Service,
District Social Welfare Officer,
Zilla Parishad, Washim,
R/o Washim, Tq. & Distt. Washim.

AND

CRIMINAL APPLICATION [APL] NO.253 OF 2022

Applicant : **Sunil Naresh Khamitkar,**
Aged about 42 years, Occu : Service,
R/o Zilla Parishad, Latur.

– Versus –

Non-Applicant : **Bhimrao Prabhusingh Rathod,**
Aged 53 years,
R/o Hudko Colony, Mangrulpir,
Tah. Mangrulpir, Dist. Washim.

Mr. T.S. Deshpande, Advocate for the Applicant in APL No.186/22.

Mr. Manish Shukla, Advocate for Non-Applicant No.1 in APL No.186/22 and

for Non-Applicant in APL No.253/22.

*Mr. M.N. Ali, Advocate for the Applicant in APL No.253/22 and
for Non-Applicant No.2 in APL No.186/22.*

CORAM : **VINAY JOSHI, J.**
DATE : **21st JULY, 2022.**

ORAL JUDGMENT :-

Heard finally by consent of the learned Counsel appearing for the respective parties.

02] **Admit.**

03] Both applications are arising out of an order dated 04/12/2021 passed by the Special Court constituted under Section 3 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'Act' for short). The challenge is common, hence, both the applications are taken together for disposal.

04] Briefly stated, the non-applicant Bhimrao Prabhusingh Rathod has filed a private complaint in the Special Court alleging that both applicants, namely, Prakash Ambadas Tike and Sunil Naresh Khamitkar, who are the public servants, have committed an offence punishable under Sections 7, 13(1) read with 13(2) of the Act. The learned Special Judge by taking cognizance recorded verification statement of the complainant and issued process which is impugned herein.

05] The challenge to the impugned order is raised *inter alia* non-obtaining prior sanction for prosecution in terms of Section 19 of the Act. It is submitted that the special statute has led a specific requirement of prior sanction, in absence the Court is precluded from taking cognizance thereof. Since the original complainant has not obtained prior sanction, the impugned order is said to be unsustainable in the eyes of law.

06] The learned Counsel appearing for the original complainant submitted that the word 'shall' mentioned under Section 19 of the Act has to be read as a 'may' and thus prior sanction is not mandatory. The word 'may' and 'shall' are not synonyms but may be used interchangeably, if the context requires such interpretation. It will always depend upon the facts of a given case and particularly the purpose sought to be achieved and object behind implementation of such a provision. The very purport of Section 19 of the Act is to provide a protection to the honest public servant from untenable prosecution. The legislative intent is laud and clear that the public servants shall not be hauled in any un-meritorious criminal prosecution. Having regard to the legislative intent, the word 'shall' cannot be read as a 'may' to make an entire Section 19 of the Act otiose. It is also argued that in view of proviso to Section 19(1) of the Act, the word 'shall' is not mandatory. However, I do not find any substance in said contention because the proviso

only spells out the procedure for obtaining sanction in the cases of private complaint. Therefore, there is no substance in the said contention.

07] The law is fairly well settled in several decisions that prior sanction for prosecution as contemplated under Section 19 of the Act is of mandatory nature. The act of the Special Judge of issuance of process itself demonstrates that the Court has taken cognizance admittedly without prior sanction. The proviso to Section 19(1) primly specifies as to who has to apply for sanction to the appropriate authority. As per the proviso, generally the Investigating Officer or the Police Officer has to apply. However, there is a rider that if a private complaint is filed and the Court without dismissing the same has directed to the complainant to obtain sanction, then he could apply. However, the said proviso does not exclude the basic requirement of prior sanction, but provides the mechanism of obtaining sanction in case of private complaint.

08] Admittedly, both the applicants are public servants and prior sanction has not been obtained. The Special Judge has committed serious error in taking cognizance without considering the mandatory aspect of sanction. Therefore, the impugned order would not sustain in the eyes of law. However, the complaint cannot be dismissed at the threshold since it is open for the Special Court to take further steps, if desires so in the matter.

09] In view of that, both the applications are allowed. The impugned order dated 04/12/2021 is hereby quashed and set aside. The Special Court shall consider the provisions of Section 19 of the Act and pass appropriate orders in accordance with law.

(VINAY JOSHI, J.)

**sandesh*