

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

CRIMINAL REVISION APPLICATION NO. 40/2021

Deepak Dattatraya Khaniwale...Versus... State of Maharashtra and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. P.R.Agrawal, Advocate for applicant
Mr. S.M.Ghodeswar, APP for Respondent Nos. 1 to 3

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/01/2022

Heard Mr. Agrawal, learned counsel for the
applicants and learned APP for respondents/State.

The application lays a challenge to the order dated 15.2.2021 passed by the learned Special Court, whereby the application for discharge of the applicant has been rejected. By the application at Exh.6, the applicant sought his discharge on the ground that sanction against the co-accused who was his senior viz. Shri Anil Kinge was refused by the Sanctioning Authority by an order dated 2.6.2017, in spite of which charge-sheet was filed against the said Shri Kinge as well as the applicant. On an application being filed by the said Shri Kinge for his discharge, the same came to be allowed by the learned Special Court by the order dated 18.8.2018.

In so far as the applicant is concerned, relying upon the G.R. dated 3.4.2000, which in clause 4(d) mandates that the authority to sanction, in case of officers

of different ranks from the same department is concerned, it would be the higher authority, which in this case was the Director General (ACB), as the said Shri Kinge was a Police Inspector in the Crime Branch, and the applicant was his writer. In the instant case since there is no dispute that G.R. dated 3.4.2000 applies, in view of the mandate of clause 4(d) even for the applicant prima facie it would have been the same authority which considered the proposal for sanction of the said Shri Kinge viz. Director General (ACB), who would have been the competent authority and not the Commissioner of Police, who is claimed to have granted sanction for the prosecution of the applicant on 15.1.2018. Consideration or non-consideration of Clause 4(d) of the G.R. dated 3.4.2000 while granting the sanction, would certainly be said to be a ground affecting the legality and validity of sanction, which could always be questioned by the applicant in the application for discharge filed by the applicant before the learned Special Court. In the instant matter, the impugned order though in para 7 notes the G.R. dated 3.4.2000, however, the issue of validity of the sanction based upon the requirements and parameters of the G.R. dated 3.4.2000 has not been adverted to at all, which is apparent from the bare perusal of the impugned order. In **Nanjappa vrs State of Karnataka 2015 (14) SCC 186**, the importance of a sanction under Section 19 of the Prevention of Corruption Act has been reiterated in the following words:

“15. 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”.

This being the position and the absence of any consideration of the plea regarding invalidity of the sanction based upon G.R. dated 3.4.2000 in the impugned order, leaves me no option than to quash the impugned order dated 15.2.2021, which is accordingly done. The matter is remanded back to the learned Special Court to consider the application afresh in the light of G.R. dated 3.4.2000. The application is accordingly allowed in above terms.

JUDGE

rvjalit