

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

CRIMINAL APPLICATION NO.732 OF 2022

Applicant : **Mr. Umakant s/o Somla Rathod,**
Age 41 Years, Occupation : Service,
R/o Quarter No.94/5/59, Police Line Takli,
Nagpur.

– **Versus** –

Non-Applicants : 1) **State of Maharashtra,**
Through its Police Station Officer,
Police Station Sitabuldi, District Nagpur.

2) **Anti Corruption Bureau,**
Through its Police Inspector,
Having its Office at Civil Lines,
Nagpur.

Mr. R.R. Vyas, Advocate for the Applicant.
Mrs. M.H. Deshmukh, Advocate for the Non-Applicants.

CORAM : **VINAY JOSHI, J.**
DATE : **26th JULY, 2022.**

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of the parties, the matter is heard finally.

02] The applicant has been arrayed as an accused in Crime No.6826/16, dated 19/11/2016 for the offence punishable under Sections 7, 12, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (hereinafter

referred to as 'Act' for short), for which final report has been filed (Special Case No.30/2017). The applicant has applied for discharge *inter alia* contending that the sanction for prosecution in terms of Section 19 of the Act is defective. The learned Special Judge has rejected for discharge and, therefore, applicant is before this Court.

03] Briefly stated, one Deepak Bhujade had lodged report bearing Crime No.269/2016 for the offence punishable under Section 379 of the Indian Penal Code alleging that one Sunil Bhaisare has committed theft of Rs.5,00,000/-. The applicant being a Police Officer, the said crime was entrusted with him for investigation. It is alleged by Sunil Bhaisare that the applicant had approached to him and raised monetary demand of Rs.15,00,000/- for settling the criminal case. Therefore, he had approached to the Office of Anti Corruption Bureau and lodged the report against the applicant. After obtaining prior sanction, charge-sheet has been filed.

04] It is primly argued that the learned trial Court has totally ignored the provisions of Section 19 of the Act. The sanction to prosecute was not accorded by the competent authority, who is competent to appoint and remove the applicant. It is submitted that sanction, dated 29/07/2017 in terms of Section 19(1)(c) was accorded by the Additional Commissioner of Police, Nagpur, who is an Officer to the rank of a Deputy Inspector General of

Police. It is submitted that the Deputy Inspector General of Police is an authority subordinate in rank to the Director General of Police, who is an appointing and removing authority for the applicant, a Police Sub-Inspector. It is in these circumstances, the sanction is defective and, therefore, discharge is claimed.

05] The State has opposed the application by supporting the impugned order as well as relying on the Government Resolution dated 12/02/2013 authorizing Deputy General of Police to accord sanction.

06] It is not in dispute that the applicant was appointed as Police Sub-Inspector. The applicant's appointment letter dated 20/08/2015 has been placed on record, in which the applicant stands at Sr. 335. Inasmuch as, it is also not in dispute that the sanction has been accorded by the Additional Commissioner of Police, Nagpur. The applicant's learned Counsel would submit that this Court has an occasion to deal with the similar issue in the case of Balu Dasu Rathod vs. State of Maharashtra, through the Director General of Police and others – 2019 SCC Online Bom 1809, wherein exactly the same issues was considered by this Court and held that the sanction is defective. Perusal of the said decision indicates that in said case also, the prosecution was against the Police Sub-Inspector for which sanction was accorded by the Additional Commissioner of Police, Thane. In that context, it

has been observed that the appointing and removing authority for the Police Sub-Inspector is the Director General of Police and thus sanction vitiates. The learned A.P.P. conceded the position that the said order has not been challenged by the State in appeal. Incidentally, it is brought to the notice that the petitioner of said case viz. Balu Rathod was also appointed by the same appointment order like the petitioner, who stands at Sr. No.284 in the same appointment order.

07] In the above case, this Court has also considered the Government Resolution, dated 12/02/2013 and held that it is not applicable. Thus, the issue involved is squarely covered by the said decision of this Court. Moreover, another decision of this Court in the case of State of Maharashtra, Through A.C.B., B.M.U. vs. Ajay Ratansingh Parmar – 2022 SCC Online Bom 531 has been cited, wherein under similar circumstances, this Court has held that for the post of Assistant Police Inspector, the Director General of Police is the appointing and removing authority and the sanction accorded by the Police Commissioner is defective. Therefore, the issue involved is no more *res integra* and thus sanction being defective the impugned order is not sustainable in the eyes of law and liable to be quashed.

08] The learned Counsel appearing for applicant also canvassed that the prosecution itself was totally false and planted one. The complainant of the

case was habitual offender, who has tried to entangle the applicant in order to escape from the criminal case. In this regard, the applicant attracted my attention towards two statements from the charge-sheet, which are of Milind Totre, Deputy Superintendent of Anti Corruption Bureau (Page No.400) and one Falgun Ghodmare, Police Inspector attached to Anti Corruption Bureau (Page No.401) to contend that there has been attempt on behalf of the complainant to give bribe, which has been already exposed. Be that as it may, on the sole ground of defective sanction, the impugned order would not survive.

9] In that view of the matter, the impugned order dated 07/10/2021 passed in Special ACB Case No.30/2017 is hereby quashed and set aside. The applicant stands discharged. The non-applicants/State is at liberty to apply for fresh sanction and file supplementary charge-sheet, if warrants so. In that case, the competent sanctioning authority shall apply its mind and pass appropriate orders in accordance with law.

10] The application stands disposed of. Rule is made absolute in the above terms.

(VINAY JOSHI, J.)

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