

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

CRIMINAL WRIT PETITION NO. 530/2022

Sanjay s/o Mahadeo Ingle,
 Age about 39 years, Occ-Service,
 R/o. Palshi (Kd), Post Palshi (Bk.),
 Tah. Khamgaon, Tah. & Dist. Buldana.

... **PETITIONER**

VERSUS

State of Maharashtra
 through Anti Corruption Bureau,
 Khamgaon, Dist. Buldana.

... **RESPONDENT**

Mr. K.P. Sadavarte, Advocate for petitioner.
 Mr. S.M. Ukey, APP for respondent/State.

<u>CORAM</u>	: <u>VINAY JOSHI, J.</u>
<u>RESERVING THE JUDGMENT ON</u>	: <u>19/09/2022</u>
<u>PRONOUNCING THE JUDGMENT ON</u>	: <u>11/11/2022.</u>

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of both the parties.

3. The petitioner raises a challenge to the order dated 30.06.2022, by which the Special Court has rejected application Exh. 56 claiming discharge. The petitioner (accused/Talathi) was facing the prosecution for the offence punishable under Sections 7, 13(1)(d), 13(2) of the Prevention of Corruption Act ('PC Act'). The petitioner has applied for discharge on account of invalid sanction to prosecute in terms of Section 19 of the PC Act, however the Trial Court has declined to discharge the petitioner. Hence, this petition.

4. The facts in brief are that the petitioner was appointed as a Talathi and posted in Khamgaon, District Buldana. The complainant's father had purchased a piece of agricultural land in Khamgaon, Dist. Buldana. On 09.07.2015, the complainant met to the petitioner seeking to carry mutation entry on the basis of sale-deed. The petitioner has raised illegal demand of Rs. 2,000/- for taking mutation entry. The complainant was reluctant to pay the bribe and therefore, he has approached to the office of Anti Corruption Bureau. The complaint was recorded. Necessary procedure was followed and raid was conducted, on which the petitioner was caught by the Police while accepting bribe amount of Rs. 2,000/-. The investigation was completed. The necessary sanction for prosecution was obtained which was followed by filing of charge-sheet in the Special Court.

5. The prosecution has examined in all four witnesses including the Sanctioning Authority. On the basis of admission given by PW-4 Sanctioning Authority, the petitioner has applied to the Special Court for discharge on account of invalid sanction. It is contended that the sanction to prosecute was accorded by the Sub Divisional Officer ('SDO') who was neither appointing nor removing authority for the petitioner. It is contended that the petitioner was appointed on the post of Talathi by the order of Collector whilst SDO has merely given a posting to the petitioner, therefore the Collector is the competent authority for according sanction, however the SDO has granted sanction which is invalid. The learned Trial Court has considered the submissions, however declined to entertain the application on the ground raised therein by stating that charge was already framed long back. The point of validity of sanction was not raised at earlier point of time. Therefore, the question of sanction can be decided at the time of conclusion of trial and accordingly rejected discharge application.

6. The learned counsel appearing for the petitioner would submit that the petitioner was appointed as Talahti by the Collector whilst the sanction was accorded by the SDO who was neither appointing or removing authority and thus, the sanction to prosecute is not in tune of Section 19(1)(c) of the PC Act. *Per contra*, the learned

APP has supported the impugned order as well as placed reliance on the Government Resolution dated 30.05.1984 to contend that the SDO is competent authority to accord sanction. Moreover, the learned APP would submit that since charge has already been framed, now at belated stage, the applicant cannot claim for discharge. In support of said contention, the learned APP relied on the decision of the Supreme Court in case of *Ratilal Bhanji Mithani Vs. State of Maharashtra and others, (1979) 2 SCC 179*. On facts, he relied on the decision of this Court in case of *Vikas s/o. Baburao Marathe Vs. The State of Maharashtra, 2015 ALL MR (Cri) 2988* to contend that the sanction is valid.

7. In response, the learned counsel for the petitioner would submit that invalid sanction renders the trial *non est* in the eyes of law and therefore, the point of sanction can be questioned at any stage of the proceedings. To support said contention, he relied on the decision of the Supreme Court in case of *Nanjappa Vs. State of Karnataka, 2015 ALL MR (Cri) 3318 (S.C.)*. Moreover, he has relied on the decision of this Court in case of *Balu Dasu Rathod Vs. The State of Maharashtra & ors., 2019 ALL MR (Cri) 4480* to contend that even after recording of evidence of witnesses, the aspect of validity of sanction can be gone into and in proper case can be discharged on account of invalid

sanction.

8. The first point falls for consideration is about the maintainability of discharge application at the midst of the trial. In case of Ratilal Bhanji Mithani (*supra*), it is observed by the Supreme Court that once a charge is framed in a warrant case, the Magistrate has no power under the Code of Criminal Procedure ('Code') to discharge accused and therefore, he can either acquit or convict the accused. The said decision relates to a prosecution under the provisions of Customs Act and the Imports and Exports Act. A private complaint was filed alleging the offence under the aforesaid Act and in that context, it has been held that once charge is framed in a warrant case, there is no power under the Code to discharge the accused.

9. I have carefully examined the decision of the Supreme Court in case of Nanjapp (*supra*). In the said case, the Supreme Court has occasion to consider the importance of valid sanction in terms of Section 19 of the PC Act. The Supreme Court took a resume of earlier decisions in the field and ultimately held that if the Court proceed despite invalidity attached to the sanction order, the same shall be deemed to be *non est* in the eyes of law. It is observed in para 15 of the decision that the question regarding validity of sanction can be raised at any stage of the proceedings. Likewise, it is observed in para 16

that that it does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of valid order sanctioning the same. A careful reading of said decision conveys that the statute precludes from taking cognizance by the Court against the public servant except with the previous sanction of an authority competent to grant such sanction in terms of Section 19(1)(a)(b)(c) of the PC Act. Obvious, the competence of the Court trying the accused depends upon the existence of a valid sanction and the question of validity of sanction can be raised at any stage of the proceedings.

10. In another decision of the Supreme Court in case of *State of Karnataka through CBI Vs. C. Nagarajaswamy with another connected matter, (2005) 8 SCC 370*, it has been observed in para 13 to 16 as below:-

“13. The Appellant was proceeded against the Respondents under the Act. Section 5 of the Act provides for the procedure and powers of the Special Judge. Section 19 of the Act 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.

14. 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 in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the

accused for the purpose of determination as to who could remove him from service.

15. Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regards sanction may be determined at an early stage.

16. 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. The prosecution is under a special Act namely PC Act. Section 19 of the PC Act puts a specific embargo on the Court to take cognizance in absence of valid sanction. In view of decision of the Supreme Court in case of Nanjapp (*supra*), absence of sanction vitiates the trial, meaning thereby it goes to the root of the case. It conveys that the competency of the Sanctioning Authority can be tested at any stage of the proceedings. In view of the special requirement of the mandate of law, the general proposition that after framing of charge, there could be no claim of discharge would not apply, especially in view of the ratio laid down by the Supreme Court in case of Nanjapp (*supra*).

12. In short, there is no embargo on the Trial Court to consider the challenge about validity of sanction after recording of evidence in view of peculiar fact of this case. The Trial Court has not dealt

the challenge about validity of sanction on its merits, but declined to entertain application only because charge was framed long back and now evidence has commenced.

13. In the light of above discussion, the Special Court is required to decide the challenge on its own merits despite stage of trial. In view of that, petition is allowed. Impugned order dated 30.06.2022 passed below Exh. 56 in Special A.C.B. Case No. 14/2015 is hereby quashed and set aside. The Special Court shall decide application Exh. 56 afresh in the light of above observation on the point of validity of sanction.

14. Petition stands disposed of in above terms.

(VINAY JOSHI, J.)

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