

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 181 OF 2021

Osmankhan Ahmedkhan Golandaj ...Petitioner

Versus

1. The State of Maharashtra

2. Mohammed Juber Pashamiya Momin ...Respondents

Mr. V. D. Gunale, Advocate for the Petitioner.

Mr. S. W. Munde, Advocate for Respondent No. 1.

Mr. I. D. Maniyar, Advocate for Respondent Nos. 2.

CORAM : R.M. JOSHI, J.

RESERVED ON : SEPTEMBER 04, 2023
PRONOUNCED ON : SEPTEMBER 08, 2023

ORDER

1. This Petition is filed under Article 226 and 227 of the Constitution of India taking exception to the order dated 08.10.2020 passed below Exh. 14 in Special Case (ACB) No. 6/2015 rejecting application for discharge and directing competent authority to examine proposal of the investigating officer for according the sanction for prosecution against this accused.

2. Petitioner is the Secretary of Hajrat Miya Shah Khadri Urdi Primary and Secondary School, Wadawana

(Bk.) (for short "**said School**"). It is alleged by the complainant that the Petitioner and one headmaster of the said School demanded a sum of Rs. 1 lacs for his appointment. As he was never intended to give money, he approached ACB Office, Nanded with complaint dated 08.01.2015. According to the complainant, the demand of bribe was verified and trap was laid. It was found that the Petitioner had agreed to accept Rs. 80,000/- towards final settlement for issuance of appointment order. After completion of formalities, complainant went to accused. It is his case that Petitioner and headmaster accepted the bribe money. On completion of investigation, charge-sheet is filed and the matter is registered as Special Case (ACB) No. 06/2015.

3. Petitioner filed application below Exh. 14 for seeking discharge. The said application was rejected by order dated 02.05.2017. Against the said rejection of discharge, Petitioner filed Criminal Writ Petition No. 1072/2017 wherein the said order came to be set aside and matter was remanded back for trial Court for fresh consideration of the application. Learned Trial Court thereafter passed impugned order rejecting the

application for discharge and directed competent authority to examine proposal of the investigating officer for according the sanction for prosecution against this accused.

4. Learned Counsel for the Petitioner submits that the Petitioner is not a public servant within the meaning of section 2(C) of Prevention of Corruption Act, 1988 (for short '**the Act**'). Without prejudice to the said submission, it is contended that the Petitioner being Secretary of the said School, has not been appointed by the President and hence, President is not competent accord sanction for his prosecution. It is submitted that no proceeding can lie against the Petitioner without valid sanction and hence, application Exh. 14 ought to have been allowed. To support his submissions, he placed reliance on the judgment in case of N. K. Ganguly Vs. CBI, New Delhi, MANU/SC/1326/2015.

5. Learned APP and Counsel for Complainant opposed the said contention by submitting that the education institution wherein the Petitioner is appointed as Secretary, which is fully Government aided

and hence, being office bearer of the said institute, Petitioner is a public servant. As far as sanction and its validity is concerned, it is submitted that in view of Section 19(3) of the Act, unless it is shown that failure of justice is caused, the order passed by the Special Court cannot be interfered with. To support his submissions, he placed reliance on the judgment of Apex Court in case of Asian Resurfacing of Road Agency Pvt. Ltd and Anr Vs. Central Bureau of Investigation, 2018 SCeJ 688.

6. For the purpose of deciding application for discharge on merits, the Court is required to see as to whether *prima facie* contention of the complainant in the complaint and material on record is sufficient to frame charge against accused. There cannot be any dispute that the complaint, verification panchnama as well as trap panchnama more than sufficiently indicates enough evidence in order to frame charge against Petitioner. Thus, on merits, there is no substance in the contention of the Petitioner that this is not the case of framing of the charge.

7. As far as the issue of valid sanction, as raised by the Petitioner, is concerned, it would be pertinent to take note of definition of public servant under the Act. Section 2(c)(xii) of the Act defines public servant, which reads thus:

*(c) "public servant" means,—
(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.*

The aforesaid definition clearly shows that any person who is an office-bearer or an employee of an educational institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority is said to be public servant. *Prima facie* perusal of the record indicates that the Petitioner is Secretary of said School, which is undisputedly a Government aided educational institute. Thus, there is no doubt that the Petitioner is a public servant.

8. Section 19 of the Act provides that previous sanction is necessary for prosecution of a public servant. Relevant provision applicable to present case says that no Court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have committed by a public servant except previous sanction from the authority competent to remove him from his office. Petitioner herein has challenged the authority of President of the institution to accord sanction of his prosecution. In this Petition, direction issued by the trial Court to the competent authority to examine the proposal of the investigating officer for according sanction of prosecution against the Petitioner is taken exception.

9. The question before this Court as to whether such direction can be issued and whether it has caused failure of justice. The Hon'ble Apex Court in case of State of Karnataka, Lokayukta Police Vs. S. Subbegowda, 2023 SCC OnLine SC 911, while dealing with Section 19(3) of the Act in paragraph 12 of the judgment has referred observations in case of Nanjappa v. State of Karnataka, which reads thus:

"22. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act 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 the 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.

23. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of subsection (3) to Section 19, which starts with a non obstante clause. Also relevant to the same aspect would be Section 465 CrPC which we have extracted earlier.

23.1. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an

accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of Explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny.

23.2. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure or justice has occurred by such invalidity. What is noteworthy is that sub-section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

It is thus clear from the said judgment that

unless failure of justice is shown it is not open for causing any interference into the order passed by the Special Court by invoking Section 19(3) of the Act.

10. In the same judgment, in paragraph 22 the legal position regarding the sanction has been enunciated to say that "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 the 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". It is thus clear from these observations that merely for want of valid sanction the prosecution against the accused cannot come to an end. It is always open to maintain a prosecution after obtaining valid sanction. In such position of law, if it is found by the trial Court to call upon competent authority to examine the proposal of the investigating officer for according sanction of the prosecution

against the Petitioner, then no fault can be found with such order. Pertinently, Petitioner has failed to show any failure of justice being caused by passing of impugned order.

11. Hence, order impugned cannot be interfered with in view of provisions of Section 19(3)(a) of the Act. Resultantly, Petition stands dismissed.

(R.M. JOSHI, J.)

Malani