

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLN. FOR LEAVE TO APPEAL BY STATE NO.120 OF 2019

THE STATE OF MAHARASHTRA
VERSUS
NAMDEV KARBHARI SURYAWANSHI AND ANR

...
APP for Appellant : Mr. S. P. Sonpawale
Advocate for Respondents : Mr. C. P. Sengaonkar & Mr.
R.N. Chavan
...

CORAM : R.M. JOSHI, J

DATE : AUGUST 17, 2023

PER COURT :

1. Heard learned Counsels for the parties.
2. Respondent is charged for offences punishable under Sections 7, 12 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act'). After charge was framed against him vide Exh. 5, prosecution examined 4 witnesses to bring home his guilt. The said trial culminated into acquittal of Respondent by impugned judgment and order dated 20.02.2019 passed in Special Case No. 5/2013.
3. Learned APP submits that trial Court has committed error in holding that sanction accorded by the witness no.3 Rajgopal, Principal Secretary,

Protocol is not valid. It is his submission that in view of the mandatory provision of Section 19 of the Prevention of Corruption Act the authority competent to remove an employee from his office is competent to accord sanction for the prosecution. The said submission is opposed by the Counsel for the Respondent by stating that admittedly the accused was Gazetted Officer and he could not have been removed from his office except with the sanction of State Government. He also drew attention of the Court to the findings recorded by the trial Court on this issue wherein after considering the evidence of the sanctioning authority it is observed that the said witness had no authority to sanction prosecution of the accused who is Gazetted Officer.

4. Perusal of the testimony of this witness clearly indicates that the accused who is Gazetted Officer could not have been removed from his office save or by with sanction of the State Government. He further states that as per Government Resolution dated 03.04.2002 Gazetted Officer of salary less than Rs. 10,650/- authority for granting sanction to prosecution

would be Deputy Chief Minister or Cabinet Minister. There is no dispute about the fact that the Respondent herein is the Gazetted Officer and that no sanction has been obtained for his prosecution in terms of above Government Resolution. In view of Section 19(1)(b) of the Act, where a public servant is not removable from service without sanction of State Government, Government Resolution above would have application. This Court, therefore, finds no infirmity in findings recorded by the learned trial Court with regard to lack of authority of the witness to accord valid sanction for the prosecution of the Respondent.

5. Learned Counsel for the Respondent by relying upon the judgment of the Hon'ble Apex Court in case of P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Another, (2015) 10 SCC 152, submitted that before conviction of the accused prosecution is required to prove the demand of illegal gratification and only thereafter the other aspects as to the receipt of the tainted money etc, became relevant. By drawing attention of the Court to the cross-examination of the complainant it is pointed

out that the Respondent has lodged criminal case against complainant herein and that there was reason for the complainant to make false complaint against Respondent.

6. It is settled law that the complainant in case of the offering of bribe to a public servant is treated as accomplice. More particularly when there is admission on the part of the complainant that a criminal case has been initiated against him at the instance of Respondent, this Court finds it necessary that his testimony gets corroborating from independent evidence. In this regard, evidence of panch witness indicates that at the time of alleged receipt of the tainted money the panch witness was not present in the cabin of the Respondent. Further it is clearly admitted by him that tainted money was kept on the table of the co-accused and it was recovered from that place itself. Having regard to these facts, there is substance in the contention of learned Counsel for the Respondent that the prosecution has failed to prove the demand made by the Respondent of illegal gratification and acceptance thereof beyond reasonable doubt.

7. Having regard to these facts, it is not a fit case wherein leave can be granted to the prosecution to file appeal against acquittal. Hence, application stands dismissed.

(R.M. JOSHI, J.)

Malani