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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.39 OF 2006**

State of Maharashtra ... Appellant
Vs.
Sanjay Nathuram Disale ... Respondent

Mr. Y. Y. Dabke APP for the Appellant-State.
Ms. Arpana Bhosale for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 7TH JANUARY 2023

PC:-

1. The only point in this Appeal is whether the findings given by the trial Court regarding defect in sanction granted under section 19 of the Prevention of Corruption Act is proper or not. This issue has arisen in Appeal preferred by the State against the judgment dated 3rd August 2005, delivered by the Special Judge, Raigad, Alibag in Special Case No.7 of 2003.

2. The present Respondent is acquitted for the offences punishable under sections 7, 11, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988.

3. In fact, the sanction is granted for the offence under sections 7, and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act. It is surprising that learned Special Judge while framing charges

under those sections have also framed a charge for the offence under section 11 of the Prevention of Corruption Act.

4. I have heard learned APP Shri Dabke for the Appellant and learned Advocate Ms. Arpana Bhosale for the Respondent-accused. So far as demand and acceptance is concerned, there is finding given by learned Special Judge in favour of the prosecution. They are proved, whereas there is finding against prosecution that sanction is valid and trial Court held that it has caused prejudice to the accused. In view of that scope of the Appeal is restricted to correctness of those findings.

5. The relevant findings on the point of validity of sanction finds place at paras 31 to 35. While treating the sanction as invalid, the learned Special Judge considered the following circumstances :

- (i) The answer given by the sanctioning authority PW 4 Pra;vin Dharade that *“If Hirve would not have been entitled to get Rs.4000/- from Panchayat Samiti then he would not have accorded sanction to prosecute the accused”*.
- (ii) The Investigating Officer Deputy Superintendent of Police Bhosale has purposely did not sent muster roll at Exhibit-55 to the sanctioning authority. If any material collected during investigation was not placed before the sanctioning authority, then sanctioning authority was unable to apply its mind.
- (iii) The sanction order cannot be simply said to be with technical defects but it can be said that sanction order is absolutely invalid.
- (iv) The sanction order is invalid, trial has been vitiated and same causes prejudice to the accused.

6. Learned APP has taken me through evidence of relevant witnesses. They are as follows :

- (a) PW 2 Shama Hirave – complainant.
- (b) PW 3 Suresh Patil - Gram Sevak.
- (c) PW 4 P Pravin Darade, Chief Officer, Zilla Parishad – sanctioning authority
- (d) PW 5 - Arun Bhosale, Deputy SP., Investigating Officer.

7. I will refer to them only for deciding limited controversy. The factual background is that there was shortage of water during summer in the villages falling within limits of Phanasgaon, Gram Panchayat Bhalgaon. PW 3 Suresh Patil was working as Gram Sevak for Bhalgaon Gram Panchayat.

8. The Gram Panchayat has received a letter from Panchayat Samiti for supply of water by bullock cart for the year 2002. The complainant - Shama Hirave was allotted the contract to supply water by bullock cart. He agreed to receive at the rate of Rs.140/- per day. He supplied water from 15th May 2002 to 31st May 2002 and from 1st June 2002 to 15th June 2002. Gram Sevak prepared the bill and sent it to Panchayat Samiti.

9. There is direction of maintaining muster so as to record the entry of supplying water by bullock cart. It is to be signed by villagers and Sarpanch. The complainant has also supplied water. The bill reached to the office of Panchayat Samiti and the accused was

working as tracer in that office and he demanded the amount of Rs.2,000/- for clearing bill. The complainant was not agreeable to that and hence he lodged the complaint with the office of Anti Corruption Bureau on 21st December 2002. The raid was conducted and the accused was trapped while receiving the amount of Rs.2,000/- from the complainant. The demand and acceptance was proved as concluded by the trial Court.

10. Coming to the cross examination of the complainant, Gram Sevak PW 3 – Suresh Patil and sanctioning authority PW 4 – Pravin Darade, the defence brought on record various facts throwing light about procedure to be followed like maintaining muster and submitting bill to Panchayat Samiti. The defence of the accused was that in fact the complainant is not entitled to get amount of Rs.4,000/- from Panchayat Samiti.

11. I have perused their cross examination. It has come on record that the documents sent to office of Panchayat Samiti were defective. That is to say on the muster at Exhibit-25, signature of Sarpanch and villagers were not there. That's why accused has pleaded that he was not bound to pay that amount to the complainant. Even sanctioning authority has answered that as the amount was not due to the complainant, he would not have granted sanction to prosecute the accused. Even he has admitted that the muster which is foundation of claim of Rs.4,000/- was not placed before him. This was also admitted by the Investigating Officer.

12. It is important to note that PW 5 - Arun Bhosale is the

Investigating Officer right from the stage of lodging complaint till the trap whereas PW 6 - PI Prakash Bagve is the Investigating Officer, who has obtained sanction and filed charge-sheet. Considering the finding about invalidity of sanction, it is important to note that through his evidence the forwarding letter written to sanctioning authority was not brought on record, and on the above background, the trial Court held that the sanction is defective. It is for the reason that the sanctioning authority could not get an opportunity to go through the muster. Ultimately, sanctioning authority after perusing papers has to decide whether there is fit case for granting sanction.

13. As per section 7 accepting illegal gratifications other than legal remuneration as motive or reward or forbearing to do any official act is an offence.

14. Learned APP invited my attention to the provisions of section 19(3) and (4) of the Prevention of Corruption Act. As per unamended provisions of section 19(3) the finding, order or sentence can be set aside or altered if the case is made out. It can be set aside on the following grounds :

- (a) If there is any error;
- (b) If there is omission; or
- (c) If there is irregularity in the sanction.

15. It is not sufficient. It can be accepted only when it has occasioned "failure of justice". The explanation says that error includes competency to grant sanction. If there is no failure of justice there cannot be alteration or reversion. Section 19(4) lays down one

of the ground on which it can be said that there is failure of justice. If objection to this lacunas is taken at earlier stage of proceedings, it is one of the factor.

16. In this case, no sentence is awarded but there is finding that the sanction is defective, whether such finding can be challenged by the prosecution. If there could have been conviction and finding that the sanction is valid, the Respondent-accused could have challenged that conviction and he could have taken the ground that sanction is defective. However, this is not case before us. It is the prosecution who has obtained sanction and they have tendered in evidence. It is their own document. So if there is defect or error or omission in the sanction, they cannot challenge it subsequently. Hence, I am not inclined to accept the contention of learned APP. I confirm the findings given by the trial Court on the point of invalidity of sanction so it cannot be reversed. The Appeal is dismissed as without merit.

(S. M. MODAK, J.)