

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1207 OF 2012

The State of Maharashtra
(Through Anti Corruption Bureau,
Thane)

...Appellant

vs.

Laxman Bhikaji Kavarakhe
Age 54 years, Market Inspector,
A.P.M.C. Turbhe, Navi Mumbai.

...Respondent

Mr. N. B. Patil - APP for the Appellant/State
Mr. Kuldeep U. Nikam a/w Mr. Prasad Avhad - Advocate for the
Respondent

CORAM : S. M. MODAK, J.

DATE : 18th JANUARY, 2023

JUDGMENT :-

1. This is an appeal filed by the State against the judgment of acquittal delivered by the learned Special Judge (Anti Corruption), Thane in connection with the Special Case No. 12 of 2004.

2. The Respondent-accused was working as Marketing Inspector in Agricultural Produce Market Committee, Navi Mumbai. He was prosecuted for demanding and accepting illegal gratification

for the offence punishable under Section 7 and Section 13(2) read with 13 (1)(d) of the Prevention of Corruption Act. He demanded Rs. 5,000/- and accepted Rs. 1,000/- from the Complainant-Shankar Vitthal Patel – P.W. No. 2.

3. Complainant-Shankar Patel hold license for running business issued by the A.P.M.C.. He used to run the fruit business on wholesale basis from the open shed in the APMC Market. If on a given day, the fruit stock is not disposed of, the traders used to keep it in the cold storage for which the permission of the Marketing Inspector is required. The incident has taken place out of the demand made by the Respondent-accused from the Complainant for paying him illegal gratification for grant permission to store the fruits. Initially, he allowed the Complainant to store the fruits. Subsequently, when similar request was made at that time the Respondent granted him permission and the Respondent allowed him to pay Rs. 1000 per week.

4. The Complainant was not satisfied and hence he approached Anti Corruption Bureau Thane on 30/09/2003. Accordingly, trap was laid and the Respondent was caught red handed on 30/09/2003 while accepting the illegal gratification of

Rs. 1,000/-. Therefore, an offence came to be registered against him and after obtaining sanction, charge-sheet was filed.

5. During the trial the prosecution in all examined five witnesses. Whereas the Respondent also examined two defence witnesses. They are Deputy Secretaries of APMC Vashi and Mumbai. The trial Court has accepted the prosecution case of demand and acceptance. Whereas when the question of sanction has arisen, it has held that sanction was not proper and ultimately the Respondent was acquitted.

6. Considering this narrow scope of the appeal, I have requested to the learned Advocate Shri Kuldeep Nikam to assist the Court as amicus curiae as there was no one is present on behalf of the Respondent. He readily agreed. Accordingly, I have heard learned APP and learned Advocate Shri Kuldeep Nikam.

Validity of sanction

7. The only issue arisen in this appeal as to whether the trial Court judge is right in holding that sanction is defective. My attention is invited to the evidence of sanctioning authority and the documents produced by him. The P.W. No. 1- Yashwant Dadaji Khavale. He was working as Secretary A.P.M.C., Navi Mumbai.

During his evidence he produced the sanction at Exh. 21, dated 07/07/2004. He also referred to the decision of the Sub Committee dated 01/06/2004. The prosecution was permitted to file the original of the said decision on the next date. After producing the original, it was marked as Exh. 22.

Findings

8. The trial Court has considered the provisions of the Maharashtra Agriculture Produce Marketing (Development and Regulation) Act and Rules and held that the sanction is defective as sanction is required from the Marketing Committee. Though there is a resolution at Exh. 22 but it was not on the Marketing Committee. That is why it is not accepted by the trial Court. At the same time, the Secretary was held incompetent to grant sanction and hence it was not accepted.

Submission

9. According to the learned APP, in the resolution at Exh. 22, the members of the Sub Committee has noted down the various events including the proposal submitted to the Director of Marketing as the suspension is for more than one month. It also refers to arrest of the Respondent and his detention in the Police custody. Finally, the

Sub Committee accepted request of the Anti Corruption Bureau to grant sanction. Whereas the Secretary in the documents titled as Sanction dated 07/07/2004 has also reiterated all the events and more specifically he has recorded about satisfaction to grant sanction.

10. According to the learned Advocate Shri Kuldeep Nikam, the Sub Committee is not empowered to grant sanctions as contemplated under Rule 103 of the Maharashtra Agriculture Produce Marketing (Development and Regulation) Rules and resolution of the sub committee cannot be said to be a sanction. It nowhere reflects the grounds for arriving a satisfaction to grant sanction. According to him, the Secretary has mentioned about arriving at his satisfaction, for which he was not competent to record.

11. P.W. No. 1, the Member Secretary was thoroughly cross-examined and he admits that for prosecution, the approval of the Marketing Committee is required. Exh. No. 22 is decision of the Sub Committee. He also admits that removal can be there as per Rule 103 of the APMC Rules. He also admits that as per Rule 103 resolution has to be passed by 2/3rd majority. He also admits that in

the sanction order granted by him, there is no reference that he has granted it in exercise of delegated powers by the Marketing Committee.

12. I have perused Rule No. 103 of the Maharashtra Agriculture Produce Marketing (Development and Regulation) Rules. It lays down the procedure prior to dismissal and removal of any person in the service of the Marketing Committee. It contemplates conducting an inquiry and after the inquiry, passing a resolution by 2/3rd majority of the members of the Marketing Committee. Section 29 of the APMC Act lays down powers and duties of the Marketing Committee. Whereas Section 30 of the Maharashtra Agriculture Produce Marketing (Development and Regulation) Act deals with appointment of the Sub Committee by Marketing Committee by delegation of powers. Whereas Rule 106 of the Maharashtra Agriculture Produce Marketing (Development and Regulation) Rules lays down the power and functions of Secretary. He is Chief Executive Officer and he has to implement the resolution of the Marketing Committee.

13. After going through above provisions, it cannot be said that finding of the trial Court are erroneous. The resolution is passed

by the Sub Committee and there is nothing on record to show that the Sub Committee was delegated the power by the Marketing Committee.

14. Furthermore even if we consider it as sanction for the sake of arguments as canvassed by the learned APP, it cannot be said that the members of the Sub Committee have applied their mind prior to granting sanction. It no where reflects what are the materials considered and on what basis they have arrived at satisfaction. The sanction order issued by the Member Secretary cannot be considered as sanction in law for the simple reason that he is not competent to grant sanction. At the most he can communicate about granting of sanction.

15. As contemplated under Section 19 (c) of the Prevention of Corruption Act, sanction has to be of the authority competent to remove the delinquent from his office. Here the Secretary cannot do it but it is Marketing Committee can do it.

16. For the above reasons, I am not inclined to accept the contention raised by the learned APP. The finding are not erroneous. There is no reason to interfere in those findings. All other points are not argued as scope of the appeal is limited to the findings on the

point of sanction. Hence appeal is dismissed.

17. Office to pay fees to the learned Advocate Shri Kuldeep Nikam for the service he has rendered.

[S. M. MODAK, J.]