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

CRIMINAL APPEAL NO.714 OF 2004

Avadhnarayan s/o Jokuram Dubey,
aged about 71 years, occupation : nil,
r/o Daloli, Kamptee, Nagpur. ….. Appellant.

:: V E R S U S ::

State of Maharashtra,
through the Inspector of
Anti Corruption Bureau, Nagpur. ….. Respondent.

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Shri A.K.Bhangde, Counsel for the Appellant.
Shri A.M.Kadukar, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 21/06/2023
PRONOUNCED ON : 31/07/2023

JUDGMENT

1. The present appeal is against judgment and order of conviction and sentence dated 23.9.2004 passed by learned Special Judge under the Prevention of Corruption Act, 1988 (hereinafter is referred as “the said Act”.) in Special Case No.13/1990 whereby learned Special Judge convicted the appellant for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the said Act.

Under Section 7 of the said Act, he was sentenced to suffer simple imprisonment for one year and to pay fine Rs.500/-, in default, to suffer simple imprisonment for two months.

Under Section 13(1)(d) and 13(2) of the said Act, he was sentenced to suffer simple imprisonment for two years and to pay fine Rs.1000/-, in default, to suffer simple imprisonment for three months.

Learned Special Judge directed that all the sentences shall run concurrently.

2. Brief facts of the prosecution case are as under:

The appellant at the material time was serving as Tax Collector in the Municipal Council at Kamptee. Complainant Madankumar Sinha was residing in the house at Futana Oli, Kamptee and the house was standing in the name of his wife. He was paying house tax Rs.390/- to the Nagar Parishad at Kamptee. The complainant has rented one room of his house for Rs.100/- per month. As per allegations, in the month of August 1989, he visited the house of the complainant and sought an information relating to tax and Tax Declaration Form. After 2-3 days, the appellant had approached to the complainant at his house and told him that as tenant is paying Rs.400 per month, he has to pay tax of Rs.1200/- per month for the period of four years. The complainant was not ready for the same. The appellant told the complainant that tax can be reduced if he pays him Rs.2000/-. The complainant was not ready to pay the same amount also. The complainant agreed to pay Rs.800 on the condition that the tax be charged on old rates. On 15.9.1989, there was again demand to the complainant by the appellant. As the complainant was not willing to pay the bribe amount, he approached to the Office of the Anti Corruption Bureau (the bureau) and lodged a report.

3. After receipt of the report, officers of the bureau called two panchas. In presence of the panchas, the informant has narrated the incident which was verified by the panchas. The demonstration of phenolphthalein powder and ultra violet lamp was shown to the complainant and

panchas and amount Rs.800/- (eight notes of Rs.100/-) was obtained from the complainant. Accordingly, pre-trap panchanama was drawn by applying the solution on the said currency. After the pre-trap panchanama, the complainant and pancha No.1 visited the house of the appellant. Initially, the appellant was not there. At about 8:00 pm, again they both visited the house of the appellant. The appellant has demanded the amount and the complainant has handed over the tainted amount to the appellant and gave a signal to the raiding party members. The appellant was caught red handed and arrested.

4. During course of investigation, sanction to prosecute the appellant, in view of Section 19 of the said Act, was obtained from appropriate authority and on completion of investigation, chargesheet was filed against the appellant.

5. During trial, the prosecution has examined in all five witnesses viz. Ramkrishna Bhikaji Gulmate (PW1) vide Exhibit-33, who acted as a pancha on pre-trap and post-trap

panchanamas; Mobin Raheman Mohd.Siddiqui (PW2) vide Exhibit-44, Superintendent at Municipal Council, Kamptee; Abdul Hafiz Fate Mohammad (PW3) vide Exhibit-47, Head Clerk in the Municipal Council to prove the sanction; Madneshkumar Sinha (PW4) vide Exhibit Exhibit-51, and Mohd.Shabbir Sk.Ismail Rizvi (PW5) vide Exhibit-54, the Investigating Officer. The prosecution also placed reliance on various documents during trial.

6. After considering the evidence adduced during the trial, learned Special Judge held the appellant guilty and convicted and sentenced him as the aforesaid.

7. I have heard learned counsel Shri A.K.Bhangde for the appellant and learned Additional Public Prosecutor Shri A.M.Kadukar for the State. I have been taken through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeal.

8. Learned counsel for the appellant submitted that the judgment and order of conviction impugned is not in accordance with law. The prosecution failed to prove the

valid sanction and also failed to prove the demand and acceptance of bribe. He submitted that as a matter of fact, even the sanction to prosecute the appellant as contemplated under Section 19 of the said Act, was bad in law and, therefore, the conviction of the appellant stood vitiated on that ground itself.

9. *Per contra*, learned Additional Public Prosecutor for the State submitted that the findings recorded and the sentences imposed upon the appellant by learned Special Judge are proper and legal. The prosecution had succeeded in establishing its case against the appellant. The sanction order is also legal and no interference is called for in the judgment and order impugned in the appeal.

10. Since question of validity of the sanction has been raised as a primary point, it is necessary to discuss an aspect of the sanction. The sanction order was challenged on the ground that the officer, who accorded the sanction, is not examined. Moreover, there was no application of mind while awarding the sanction.

11. On the point of valid sanction, learned counsel for the appellant placed reliance on the following decisions:

Mohd.Iqbal Ahmed vs. State of Uttar Pradesh[1].

Shivchalappa Gurumorti Appa Loni vs. State of Maharashtra[2].

Mansukhlal Vithaldas Chauhan vs. State of Gujarat[3].

State of Karnataka vs. Ameerjan[4].

C.M.Girish Babu vs. CBI Cochi, High of Kerala[5].

12. In order to prove the sanction order, the prosecution has examined Head Clerk of the Municipal Council PW3 Abdul Hafiz Fate Mohammad. As per his evidence, one Mr.AGB Khan was Chief Officer of the Municipal Council, Kamptee from 20.3.1990 to 23.10.1991. As per his evidence, he was working with the said Chief Officer. Said Chief Officer Shri Khan died on 1.1.1992. Resolution was passed by the Standing Committee of the Municipal Council at Kamptee. The copy of the said

1 AIR 1979 SC 677.
2 1993 Mh.L.J. 573.
3 (1997)7 SCC 622
4 (2007)11 SCC 273
5 (2009)3 SCC 779

resolution is at Exhibit-48. The sanction order is marked at Exhibit-49. The sanction order was signed by the said Chief Officer and he identified his signature. During his cross examination, he admitted that Exhibit-48 does not bear endorsement about meeting clerk handed over the letters to him and the said Exhibit does not bear office seal. He further admitted that the original resolution was signed by the President. He further admitted that Exhibit-50 does not bear the office seal of the chief officer. Exhibit-50 is the signature of sanctioning authority Shri Khan on the forwarding letter.

13. Learned counsel for the appellant submitted that the sanction is not mere formality. It is observed by the Honourable Apex Court in the case of **Mohd.Iqbal Ahmed vs. State of Uttar Pradesh** cited *surpa* it is incumbent on the prosecution to prove that a valid sanction had been granted by the sanctioning authority after it was satisfied that a case had been made out constituting the offence. The grant of sanction is not an idle formality but a solemn and sacrosanct act which affords protection to government

servanats against frivolous prosecutions and must therefore be strictly complied with. It is further held that what the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact which may come into existence after the resolution granting sanction has been passed, is wholly irrelevant.

He further submitted that the same view is taken by this court in the case of **Shivchalappa Gurumorti Appa Loni vs. State of Maharashtra** wherein it is held that grant of sanction is not an idle formality.

In the case of **Mansukhlal Vithaldas Chauhan vs. State of Gujarat** cited *supra,* the Honourable Apex Court held that validity of sanction would, therefore, depend upon material placed before sanctioning authority and fact that all relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant facts before the Court to show that all relevant facts were considered by the sanctioning authority.

He submitted that perusal of the order of sanction Exhibit-49 shows that the said is based on the draft sanction order. The same nowhere reflects application of mind which is required.

14. Undisputedly, the decision in the case of **Mansukhlal Vithaldas Chauhan vs. State of Gujarat** cited *supra,* does state that the proceeding would be rendered *void ab initio* 'for want of proper sanction'. The said Act also contains a provision making previous sanction necessary for the prosecution. However, terms of the said Sections were not identical or similar to that of Section 19 of the previous Act of 1947 of the said Act. Section 19 of the said Act reads as under:

“**19**. Amendment of Act 15 of 2003.- In the Prevention of Money Laundering Act, 2002, in Part A of the Schedule, for paragraph 8, the following Paragraph shall be substituted, namely:-

“PARAGRAPH 8
OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988 (49OF 1988)

Section Description of offence.

7. Offence relating to public servant being bribed.

7-A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.

8. Offence relating to bribing a public servant.

9. Offence relating to bribing a public servant by a commercial organization.

10. Person in charge of commercial organization to be guilty of offence.

11. Public Servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant.

12. Punishment for abetment of offence.

13. Criminal misconduct by a public servant.

14. Punishment for habitual offender.”

15. Thus, the sanctioning authority has to apply its own independent mind for generation of its satisfaction for sanction. The mind of the sanctioning authority should not be under pressure and the said authority has to apply his independent mind. On the basis of the evidence, which came before it, an order of sanction should not be construed in a pedantic manner. However, purpose for which an order of sanction is required is to be borne in mind. In fact, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the said Act by refusing to accord sanction for his prosecution or not.

16. Thus, the application of mind on the part of sanctioning authority is imperative. The order granting sanction must demonstrate that he or she should have applied their mind while according the sanction.

17. After going through the evidence of Head Clerk of the Municipal Council PW3 Abdul Hafiz Fate Mohammad, admittedly, he is not the person who has accorded the

sanction. The person who accorded the sanction is not alive and PW3 has no personal knowledge as to whether the Chief Officer has applied his mind while according the sanction.

18. Perusal of the sanction order shows that he has not disclosed on what basis he came to the conclusion that sanction has to be accorded. The sanction order only shows that upon reading the papers of investigation, he formed his opinion and accorded the sanction. The sanction order further discloses that the investigation papers were placed before the Standing Committee of the Municipal Council and the said Standing Committee by its Resolution dated 29.6.1990 recorded and conveyed its approval to launch the prosecution. It is apparent that the sanctioning authority has accorded the sanction only on the basis of the resolution passed by the Standing Committee. The grant of sanction is a serious exercise of power by the competent authority. It has to be apprised of all the relevant materials and on such materials the authority has to take a conscious decision as to whether the facts would reveal the commission of the offence under the relevant provisions. No doubt, an

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elaborate discussion is not required. However, decision making on relevant materials should be reflected in the order.

19. After going through the evidence of PW3 Abdul Hafiz Fate Mohammad, admittedly, the sanction order nowhere reflects that which document is considered by the sanctioning authority and on what basis the sanctioning authority came to the conclusion that the sanction is to be accorded to launch prosecution against the appellant.

20. There is no finding by learned Special Judge as to the validity of the sanction.

21. Besides the sanction, the prosecution relied upon the evidence of PW4 Madneshkumar Lalaprasad Sinha, who is the complainant and PW1 Ramkrishna Bhikaji Gulmate, who acted as a pancha on pre-trap as well as the post trap panchanama.

The evidence of PW4 complainant Madneshkumar Sinha shows that the demand was made to reduce the tax when the appellant had been to his house. Initially, the

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appellant has demanded amount of Rs.2000/- and, thereafter, the appellant agreed to accept Rs.800/-. As per his evidence, he was not ready to pay the said amount and, therefore, he approached to the office of the bureau and lodged the report. The officer of the bureau called two panchas and he narrated the incident to the said panchas and, thereafter, officer of the bureau obtained Rs.800/- from him. He handed over the currency of Rs.100/- eight in numbers. The officers of the bureau have shown them demonstration by applying the solution and its effect and, thereafter, the said solution was applied on the notes and the amount was kept in his shirt pocket. The necessary instructions were given to him as well as panchas. Thereafter, he along with pancha No.1 proceeded towards the house of the appellant. There was communication between him and the appellant. The appellant demanded the amount and he handed over the same to the appellant and, thereafter, he along with the appellant came downstairs and the officers of the bureau caught the appellant and the amount was recovered from the bag of the appellant.

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As far as the evidence of PW1 pancha Ramkrishna Gulmate is concerned, he testified that after visiting the house of the appellant, the complainant enquired about his work and the appellant asked about the amount. The complainant has handed over the said amount and, thereafter, gave signal to the other raiding party members. The appellant was caught in his house and the amount was seized from his bag. The complainant is also cross examined. His cross examination shows that he is not aware who was tax collector of his locality and where he was residing. He was acquainted with the appellant prior to the incident. He does not remember whether the appellant was present in his house when he visited the house.

Thus, the entire cross examination of PW4 complainant Madneshkumar Sinha shows that initially the appellant was not present in the house and when they visited after some time, the appellant has demanded the amount and accepted the same.

22. As far as the evidence of PW4 complainant Madneshkumar Sinha is concerned, the appellant was caught when they came downstairs along with the appellant. Whereas, as per the evidence of PW1 pancha Ramkrishna Gulmate, the appellant was caught in his house when the complainant has given a signal to the other raiding party members. The cross examination of PW1 shows that he has not personally communicated with the complainant in the office of the bureau. He also admitted that the complainant has not submitted his complaint in his presence.

There is a material variance as far as the incident of giving signal to the raiding party members and the place where the appellant was caught.

As per the evidence of the complainant, the appellant was caught outside the house when they came downstairs along with the accused. Whereas, as per PW1, the appellant was caught in the house itself.

23. Now, it has to be seen whether there is any material to show that the appellant was entrusted with the

work of tax recovery of the area where PW4 complainant Madneshkumar Sinha was residing. The evidence of PW2 Mobid Rehman shows that the appellant was working as Tax Collector. The duties of the tax collectors were maintained in the demand register in the year 1989. The appellant was entrusted with the tax recovery of ward nos.7, 8, 9, and 10. His evidence further shows that the tax assessment depends on the rental valuation if the premises is given on rent. His evidence further discloses that the officers of the bureau collected relevant documents from his office on the next date. The cross examination of this witness is on the point that one Gulabrao Madavi, the employee of the Municipal Council, was the tax collector in ward Nos.7 to 11 and there were several complaints against him and on his say the appellant was implicated. This witness has admitted that the tax is assessed by the valuation officer and the tax collector has no authority to determine the tax of any house.

Thus, it reveals from the cross examination that the appellant was not authority either to assess or reduce the tax. The allegations against the appellant are that for reducing the tax, he has demanded the amount. In fact the evidence of PW2 shows that the appellant was not authority having power either to assess or reduce the tax.

24. It is submitted by learned counsel for the appellant that as the appellant was not authority either to assess or reduce the tax, he has no reason to demand the amount. The evidence of the investigating officer is regarding the entire process carried out by him. The testimony of PW1 pancha Ramkrishna Gulmate and PW4 complainant Madneshkumar Sinha did not agree with each other in regard to the details regarding happenings, more particularly about the place where the appellant was caught. As far as the demand is concerned, there is no evidence as to the previous demand. Obviously, version of such demand is based only on the evidence of PW4 without any corroboration and, therefore, his evidence needs to be judged carefully in the light of other evidence on record. Insofar the subsequent demand is concerned, the same is corroborated by the evidence of PW1. However, there is

variation in the evidence PW1 and PW4. The sequence narrated by PW4 shows that the appellant was residing in the house in the campus of temple in daloli locality. He along with the pancha went at the house of the appellant. There was discussion and the appellant asked him whether he had brought the amount. He informed the appellant that he had come with the amount and, thereafter, he told the appellant that the old tax office house should be maintained. The declaration given by the tenant be returned to him and the appellant told that the declaration will be destroyed by him. The appellant was also given him assurance that the tax of his house will be destroyed by him and it would be less than earlier. Thereafter, he handed over the amount to the appellant and the appellant counted it and kept it one bag and, thereafter, they came downstairs and he gave a signal to the raiding party members. The said members came and caught hands of the appellant. Whereas, the sequence narrated by PW1 shows that he and the complainant went to the house of the appellant. The wife of the appellant was sitting on stair case. She told that the appellant is not at home and thay shall come after an hour. Thereafter, they again went. At that time, the appellant was present in the house. He was introduced as neighbour of the complainant. Thereafter, the complainant has asked about the declaration form and the appellant asked him to believe and the declaration form was secured with him. Thereafter, the appellant shown one requisition form which was bearing the signature of the tenant of complainant. The form was then kept in a bag and then the appellant asked the complainant to pay the amount and the complainant has taken the amount and handed over it to the appellant. The appellant has kept the said amount in a bag. Thereafter, he and the complainant came out of the house and the complainant gave signal to the other raiding party members.

Thus, the sequence narrated by the complainant and PW1 is at variance. The evidence of PW1 further shows that the amount was recovered from the bag of the appellant.

25. Thus, after appreciating the evidence adduced by the prosecution, the evidence of PW4 complainant Madneshkumar Sinha appears to be silent as to on what date the appellant is alleged to have demanded bribe. His report dated 25.9.1989 Exhibit-52 does not show that when the alleged demand was made first time and no evidence is brought on record as to how many days after the alleged demand report Exhibit-52 came to be lodged by the complainant with the office of the bureau. In this context, if report Exhibit-52 is perused, it reveals that prior to the alleged demand, the date of first demand is not deposed by the complainant. As far as the second demand is concerned, it is corroborated by the pancha. The report Exhibit-52 further reveals that the appellant has informed the complainant that the tax amount would be reduced and he will destroy the declaration given by the tenant. The said declaration is not placed on record nor the tenant is examined. As observed earlier, there is a variance as regards the place where the appellant was caught red handed. As per the complainant, he was caught when they

came downstairs. Whereas, as per the evidence of PW1 pancha Ramkrishna Gulmate, the appellant was caught inside the house. Admittedly, the amount was not seized from the person of the appellant, but it was seized from the bag of the appellant. The evidence of PW3 Abdul Hafiz Fate Mohammad shows that the appellant was only the Tax Collector and was not having any authority either to reduce or increase the tax amount. The demand by the accused assuring the complainant that he will reduce the tax amount appears to be doubtful as the appellant was not concerned about the same. Admittedly, the appellant had no role to play as far as reducing the amount of tax is concerned.

26. The Honourable Apex Court in the case of **State of Punjab vs. Sohan Singh** held that learned Special Judge failed to consider categorical statement of PW9 evidencing that respondent had no role to play in grant of electric connection out of turn since connection can be granted by electricity board in order of seniority maintained by it. The Honourable Apex Court held that in the matter of grant of electric metal connection, respondent had no role to play.

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27. Here, in the present case also, the appellant is a tax collector. PW2 Mobid Rehman has specifically stated that the appellant is not authority to increase or reduce the tax amount. He specifically stated during his cross examination that the tax collector has no authority to determine the tax of any house.

28. Considering the fact that PW4 complainant Madneshkumar Sinha has not stated regarding the date when the first demand was made, there is no evidence that after the first demand, when he has filed the complaint. Moreover, there is a variance as regards catching of the appellant after the incident. The evidence of PW1 pancha Ramkrishna Gulmate and the complainant is contradictory as to the events happened during the post-trap panchanama. Similarly, there is no convincing evidence even on the aspect of proposed signal which was directed by the bureau to be given by the complainant on the appellant accepting the amount. Even, otherwise, the case of the prosecution fails. Considering the evidence of PW3 Abdul Hafiz Fate Mohammad, who narrated about the sanction, it

reveals from the sanction order that the sanctioning authority has not applied its mind while according the sanction. As the person, who accorded the sanction, is not alive. PW3 is not aware regarding the criterion applied by the sanctioning authority while according the sanction. The sanction order is silent regarding the application of mind of the sanctioning authority is concerned.

29. Thus, the entire evidence of the prosecution does not establish the guilt of the appellant for the offence for which he was charged. In fact, as there was no valid sanction, the prosecution is vitiated for want of sanction and as such the criminal appeal succeeds. In the result, I pass following order:

ORDER

(1) The criminal appeal is **allowed**.

(2) The judgment and order of conviction and sentence dated 23.9.2004 passed by learned Special Judge in Special Case No.13/1990 convicting and sentencing the appellant is hereby quashed and set aside.

(3) The appellant is acquitted of offences for which he was charged.

Appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

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