



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

...

CRIMINAL REVISION APPLICATION NO.163/2023

State of Maharashtra

..Applicant

versus

Maroti Dnyandeo Jagtap

..Respondent

.....
Ms.M.H.Deshmukh, APP for the applicant-State

Mr.Adil J. Mirza, Advocate for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 11th September, 2023.

PC:

Heard.

2. The prosecution has challenged the order dated 4th November, 2019 passed below Exh.12 by the learned Special Judge, Achalpur in ACB Case No. 8/2014.

3. The non-applicant/original accused no.2 had filed an application under section 227 of the Code of Criminal Procedure, 1973 (in short, 'the Code') seeking discharge for want of sanction by the competent authority. The Special Judge, by relying upon the judgment in the case of Sharad Waman Buchake vs. State of Maharashtra, reported in 1993 Mah.LJ 284, has held that despite the accused having been charged u/s 12 of the Prevention of Corruption Act, 1988 (in short, 'the PC Act'), the offence u/s 12 will have to be read with the offence u/s 7 or 11 of the PC Act and, thus, will require sanction to prosecute the accused.

4. The learned APP has invited my attention to the judgment of the Hon'ble Supreme Court, in the case of State: Through CBI vs. Parmeshwaran Subramani and another, reported in (2009) Vol.9 SCC

729. The challenge before the Supreme Court was identical. The High Court had discharged the accused for want of sanction. The High Court in the said order has also relied upon the judgment, in the case of Sharad Buchake vs. State of Maharashtra, reported in 1993 Mah.LJ 284. The Supreme Court while setting aside the order has held in para nos. 15 to 18 and 26, as under :

“15. The Courts below relying upon the decision in Sharad Waman Buchake (supra) were of the view that Section 12 cannot be treated as being wholly distinct or independent from Section 7 or Section 11 because it speaks of abetment of those offences punishable under Section 7 or Section 11 as the case may be. The view taken by the High Court was that though an accused can be charged independently under section 12, the existence of an offence under Section 12 is dependent upon Section 7 or Section 11. Therefore, so long as a sanction is required for punishment of the principal offence under Section 7 or Section 11 of the Act, sanction would equally be necessary in regard to punishment for abetment of those offences.

16. In our considered opinion, the interpretation sought to be placed by the High Court on Section 19 of the Act is wholly erroneous. The court at that stage cannot go into the question whether there was any abetment of any offence punishable under Section 7 or Section 11.

17. Section 12 of the Act, in clear and categorical terms, speaks that whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term as provided thereunder. It is thus clear that abetment of any offence punishable under Section 7 or Section 11 is itself a distinct offence. The offence punishable under Section 7 or Section 11 whether actually committed by a public servant is of no consequence. It is precisely for the said reason Section 19 of the Act specifically omits Section 12 from its purview. The Courts by process of interpretation cannot read Section 12 into

Section 19 as it may amount to rewriting the very Section 19 itself.

18. It is well settled law that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise if undertaken by the Courts may amount to amending or altering the statutory provisions.

26. The legislature consciously in its wisdom omitted the offence of abetment of any offence punishable under Section 7 or Section 11 of the Act thereby making its intention clear that no previous sanction as such would be required in cases of the offence punishable under Section 12 of the Act. The High Court read something into Section 19 on its own thereby including Section 12 also in its ambit, which in our opinion is impermissible.”

Thus, the Supreme Court has in unequivocal terms held that offence u/s 12 of the PC Act is an independent offence and, therefore, sanction is not required as it is not contemplated u/s 19 of the PC Act.

5. The learned counsel for the non-applicant submits that he does not dispute the proposition of law. However, he submits that he had filed an application u/s 227 of the Code seeking discharge not only on the ground of absence of sanction but also on the ground that there is absolutely no evidence against him. The learned Special Judge has allowed the application only on the count of absence of sanction and has not dealt with the other ground raised by the non-applicant. He submits that since the order was in his favour, he has not challenged the same. Accordingly, he seeks liberty to re-agitate the issue before the Special Judge as regards absence of evidence against the non-applicant.

6. In my view, liberty is not required. If the law permits the non-applicant to raise the ground in the peculiar facts and circumstances of the case, he is entitled to ventilate his grievance but not otherwise. With this observation, the following order is passed:

ORDER

- (i) The Revision Application is allowed.
- (ii) The order dated 4.11.2019 (below Exh.12) in ACB Case No. 08/2014 (*State vs. Krushna and another*) passed by the learned Special Judge, Achalpur is hereby quashed and set aside.
- iii) Copy of this order be served upon the concerned Special Judge.

[ANIL L. PANSARE, J.]

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