

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

CRIMINAL WRIT PETITION NO. 206 OF 2021.

Sitaram s/o Namdeo Bhole,
Aged 56 years, Occupation -
Service as Executive Engineer,
resident of Amrut Ganga, O-1, Wing,
Flat No.202, Sinhagad Road,
Khau Galli, Pune.

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PETITIONER.

VERSUS

1.The State of Maharashtra,
through the Secretary,
Water Resources Department,
Madam Cama Road, Hutatma
Rajguru Chowk, Mantralaya,
Mumbai – 32.

2.The Deputy Superintendent of
Police, Anti Corruption Bureau,
Bhandara, District Bhandara.

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RESPONDENTS.

Mr. R.N. Ghuge, Advocate for the Petitioner.
Mr. S.S. Doifode, Addl.P.P. for Respondents.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATE : JULY 10, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Rule. Rule is made returnable forthwith and matter is heard finally by consent of the learned Counsel for the parties.

2. The petitioner has called in question the order passed by respondent no.1 State Government, Water Resources Department, Mumbai dated 24.12.2020, granting sanction to prosecute him in terms of Section 19 of the Prevention of Corruption Act [P.C. Act] for the offence punishable under Sections 7, 13[1][d] and 13[2] of the P.C. Act. Consequential relief of quashing of charge sheet No.6/2021 is also prayed for.

3. The principal challenge in this petition is as regards the extent of powers vested in the government in reviewing its order

granting or refusing sanction to prosecute a public servant in terms of Section 19 of the P.C. Act. It is the case of the petitioner that the authority has no power to review its decision, sans fresh material.

4. The original complainant Raju Bhoyar, a contractor has lodged a complaint with the anti corruption bureau against the petitioner, who was working as an Executive Engineer, Hydro Electric and Lift Irrigation Department, Bhandara. It is alleged that in order to clear complainant's pending bills for the work done by him, the petitioner had demanded an amount of Rs.2 lakhs. It was followed by verification and laying down a trap. After completing the required formalities of investigation, papers were forwarded for according sanction to the competent Authority in terms of Section 19 of the P.C. Act. The Authority has applied its mind and refused to grant sanction vide its order dated 07.01.2017. Refusal order pinpoints 8 reasons for refusing the sanction. The said order was intimated to the anti corruption department by the Chief Secretary vide communication dated 06.05.2017.

5. The petitioner was arrested on 19.07.2014, and was remanded to police custody for two days. After refusal of sanction, the petitioner was reinstated in service on 17.07.2017. In the background, on 25.01.2019, the anti corruption department has sought review of the order of refusal of sanction by stating various reasons. Examination of said letter indicates that after refusal of sanction, the department has received spectrographic report dated 18.01.2016, stating that the voice of petitioner matches. On the said particular ground sanction was accorded vide impugned order dated 24.12.2020, which is the subject matter of challenge in this petition.

6. It is to be remembered that the object underlying Section 19 of the P.C. Act is to ensure that a public servant does not suffer harassment on false, frivolous, unsustainable allegations. The exercise of powers under Section 19, is not an empty formality, since the government or sanctioning authority is supposed to apply its mind to the entire material and evidence placed before it. We have examined the refusal order dated 07.01.2017, which bears several

reasons which weighed the authority for refusal of sanction.

7. The learned Counsel for the petitioner would submit that it is not permissible for the sanctioning authority to review or reconsider the matter on same material. In this regard, reliance is placed on the decision of Supreme Court in case of **State of Himachal Pradesh .vrs. Nishant Sareen – [2010] 14 SCC 527**, particularly our attention has been drawn to paragraph nos. 12 and 13 of the said decision, which reads as under :

“12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same

materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. *In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.”*

8. In the light of above settled position, the only exercise

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which remains to see is whether the reviewing authority has considered fresh/additional material or on the same material reviewed the order. In that regard, the learned Counsel for the petitioner would submit that already while refusing sanction, the authority has considered the conversation took place at the time of occurrence. Particularly our attention has been invited to paragraph nos. 6 and 7 of the sanction refusal order dated 07.01.2017. It indicates that the verification panchnama bears the transcript of conversation but, it does not discloses about the monetary demand. Vis-a-vis we have gone through the review proposal dated 25.01.2019, which barely refers the spectrographic report as an additional material. We have also gone through the pre-trap panchnama which bears the transcript of the conversation. Apparently, the same was considered by the authority while refusing sanction. Having regard to the conversation and other material, the authority thought that this is not a fit case to grant sanction, which resulted into refusal. The impugned order though do not bears any reason, however, the review proposal dated 25.01.2019, bears a reference of spectrographic report as an additional material. As a

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matter of fact, while refusing sanction no suspicion was raised about the digital voice recording and transcript of conversation. The order of refusal was based on the assumption that petitioners' voice was there in the conversation. In such a situation, subsequent receipt of the spectrographic test report, showing voice identification cannot be considered as a fresh material for reconsideration. It appears that the competent Authority was changed on which different opinion has been formed, which cannot be a reason to review its own order. Moreover it is unacceptable that for release of bill amount of Rs.75,000/- the petitioner has demanded bribe of Rs. 2 lakhs.

9. The spectrographic report is shown as a ground to justify the review, which is wholly untenable. Apparently, there was no fresh material on the basis of which earlier order of rejection of sanction can be reviewed. In view of the law laid down by the Supreme Court in above referred case of State of Himachal Pradesh .vrs. Nishant Sareen, the said course is totally impermissible, therefore, the impugned sanction order which is passed in the

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fashion of passing fresh order without referring to the earlier order is liable to be quashed and set aside. In the result, Criminal Writ Petition is allowed.

10. The impugned order of sanction to prosecute, passed by respondent no.1 State Government, Water Resources Department, Mumbai dated 24.12.2020 along with the related charge sheet, is hereby quashed and set aside. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE