

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

CRIMINAL APPLICATION (APPA) NO. 1109/2022 IN
CRIMINAL APPEAL NO. _____/2022

(Central Bureau of Investigation, Anti Corruption Branch, Nagpur Vs. Shri Jagdish Baghwandas
Thakkar & anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. M. Chandurkar, Advocate for applicant.
Mr. H. S. Chauhan, Advocate for respondent No.1.
Mr. D. K. Hazare, Advocate for non-applicant No.2.

CORAM: VINAY JOSHI AND
VALMIKI SA MENEZES JJ.

DATED : 18/01/2023.

Heard.

2. This is an application seeking leave to challenge the order of acquittal in Special Case No. 22/2002 passed by the learned Additional Sessions Judge vide its order dated 30.09.2019. On the basis of source information, the Superintendent of Police, CBI has registered an offence against accused for the offence punishable under Sections 120-B, 409, 420, 468, 471, 477-A of the Indian Penal Code and under Section 13(1)(d), 13(d) of the Prevention of Corruption Act, 1988. The accused No. 1 is public servant in the capacity of Manager of Insurance Company as well as accused No. 2, is an Agent working in said Insurance Company.

Primly, it has been argued that though cover notes have been issued to several customers, however it was not followed by issuance of policy, meaning thereby

allegations are about issuing false cover notes, misappropriation, mis-utilization of public fund etc. The prosecution has led evidence of in all 18 witnesses to establish the guilt of accused and banks upon several documents which are mostly receipts, vouchers, cover notes, specimen documents etc. The learned Trial Judge held that the sanction to prosecute is invalid as well as on facts expressed that the evidence is not sufficient to establish the offence with requisite standard of proof and as such, both respondents have been acquitted.

3. We have heard both sides and gone through the evidence of all witnesses coupled with the documents. So far as the grant of statutory sanction is concerned, prosecution has examined PW-1 sanctioning authority who was the then working as General Manager of the Insurance Company and accorded sanction which is at Exh. 36. There are two aspects in challenge of sanction i.e. non-application of mind and incompetency to accord the sanction. The challenge is basically on the ground that there is total non-application of mind. In this regard, parties have made submissions to support their respective stand. The learned counsel appearing for the accused took us through the sanction order and part of evidence of the sanctioning authority. Much trace is given on the point that it does not beare date on sanctioned order as well as other side resisted submission by stating that it bears a seal having specific date. The learned counsel appearing for accused has relied on the decision of the Supreme Court in case of *Central Bureau of Investigation Vs. Ashok Kumar*

Aggarwal with another connected matter, (2014) 14 SCC 295 to contend that in above parameters, sanction order does not withstand. There is no dispute that sanction is prerequisite to prosecute the public servant and it is not an idal formality. It is matter of fact that to decide on emerging evidence whether the sanction is valid. The authority has perused the entire material and after due deliberation has accorded sanction. There is no dispute that PW-1 was the competent person to accord the sanction and now factual aspect about non-application of mind is for adjudication. Prima facie, it cannot be held that sanction is invalid.

4. On the remaining grounds, the prosecution has examined near about 9 to 10 witnesses who are customers of the Company. It is their evidence that they have taken insurance through the accused No. 2, Agent, by paying the amount. They are in receipt of cover notes signed by the accused No. 1. However, they did not get the policy. Our attention has also been invited to the evidence of some other who stated that belatedly the amount has been deposited. We have gone through the reasons accorded by the Trial Court in support of the acquittal. The prosecution has also tendered various documents which requires scrutiny. Having regard to the nature of material, we are of the view that matter requires a re-look.

5. In view of above, application stand allowed and disposed of. Leave to appeal is granted.

6. Appeal be registered and numbered accordingly.

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1. Heard.
2. **Admit.**
3. The learned counsel appearing for respondent
Nos. 1 and 2 waive service of notice.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane

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