



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 568 OF 2002

The State Of Maharashtra
through Dy. S.P., Anti Corruption
Bureau, Jalgaon.

....Appellant

Versus

Vithal Sajan Ahire
Age: 45 years, Occu.: Service in
MSEB, r/o. Erandol, Dist.Jalgaon.

.....Respondent
(Ori. Accused)

.....
APP for Appellant : Mr.S.M.Ganachari
Advocate for Respondent : Mr. V.B.Patil
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19 JANUARY, 2024

PRONOUNCED ON : 31 JANUARY, 2024

JUDGMENT :-

1. This is an appeal on behalf of the State as it is aggrieved by the judgment and order passed by the Special Judge and Additional Sessions Judge, Jalgaon dated 02-07-2002 in Special Case No.9 of 1997, which was tried for commission of offence under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (for short “the PC Act”).

2. Learned APP for Appellant State would submit that accused

was working as Assistant Lineman in Maharashtra State Electricity Board (MSEB). Complainant is an agriculturist. Accused had demanded bribe under the garb of private fees to reconnect disconnected electricity connection. Therefore, complainant has approached Anti Corruption Bureau (ACB). Thereafter, trap was laid.

Demand was made and the learned trial Court has answered this point in affirmative. Even acceptance is held by the learned trial Judge to be proved and the said point is answered in affirmative. However, according to him, for only want of sanction, learned trial Court has acquitted accused. He submitted that grant of sanction was only upon due satisfaction. Sanctioning authority himself has stepped in the witness box, but the learned trial Court hold that there was no authority with sanctioning authority to grant sanction. Infact, there is documentary evidence regarding delegation to grant sanction, but the same has not been considered by the learned trial Judge and therefore, for all above reasons, he prays to allow the appeal.

3. In answer to above, learned Counsel for the respondent would submit that case was not proved beyond reasonable doubt. That for establishing the charge, apart from proving demand and acceptance, it is incumbent upon the prosecution to also prove that sanction to

prosecute was in accordance with law. He pointed out that sanctioning authority was holding additional charge and not full-fledge charge to accord sanction. Learned Counsel would submit that in the present matter, Deputy Executive Engineer was holding charge of Executive Engineer and he exercised powers, which are bestowed on superior authority i.e. Executive Engineer. Therefore, there is defect in the prosecution and hence, learned trial Court has rightly acquitted the appellant. According to him, there is no merit in the case and so he prays not to disturb findings of the learned trial Court.

4. In the instant appeal, there is challenge to the impugned judgment passed by the learned Special Judge and Additional Sessions Judge acquitting accused from charges under Sections 7, 13(1)(d) r/w 13(2) of the the PC Act.

On going through the impugned judgment, as pointed out by the learned APP, it is emerging that learned trial Judge has answered point nos.1 and 2 in affirmative thereby holding that respondent herein, who was Assistant Lineman, had demanded illegal gratification of Rs.100/- which was other than legal remuneration and he has accepted the said amount. However, after noting above two points in affirmative, learned trial Court acquitted accused by

answering point no.3 in negative i.e. prosecution failing to establish that there was valid sanction for prosecuting appellant accused. Precisely said acquittal is now assailed by instant appeal. Though there is no serious contest about findings to point nos.1 and 2, as this Court is testing the impugned judgment by invoking Section 374 of the Cr.P.C., it is expected of this Court to even deal with the above said points to ascertain whether the conclusion reached at is correct or not.

5. The sum and substance of evidence of **PW1** Dattatraya Sidappa Hatki, sanctioning authority, which is at exh.8, is that he seems to be Deputy Executive Engineer and according to him, he was holding additional charge of the post of the Executive Engineer and was thus appointing and removing authority of class-IV servants. According to him, accused, who is their employee, had demanded bribe and accepted the same and was caught by the Anti Corruption Bureau (ACB) and that he has gone through the papers submitted by the ACB and he has accorded sanction vide exh.9.

6. **PW2** Arun Bandu Patil is the complainant and an agriculturist, whose electricity connection was disconnected on account of default and therefore, he came in contact of accused Lineman for

reconnection of the electricity connection. His evidence is at exh.10 wherein he deposed that he was ready to pay the arrears to reconnect the disconnected connection, but according to him, accused persons namely Vithal Ahire and Yuvraj Patil put up a demand of Rs.100/- as private fees to do the needful and therefore, he lodged complaint in ACB and on its directions, trap was laid and thereafter, accused was apprehended while accepting tainted currency notes. He has narrated the entire episode of trap till apprehension of accused and lodgement of complaint.

7. **PW3** Ramchandra Manik Nile, who has acted as shadow pancha, has also deposed about being called and apprised about demand made by accused and in his presence, complaint being lodged by PW2 Arun in the office of ACB. He deposed that currency notes, which were tainted and were supposed to be handed over to the accused on demand, were handed over to accused. He stated about pre-trap panchanama being drawn and thereafter they proceeding towards the field whereas ACB staff waiting in lane to nab the accused. Even he deposed that accused approached complainant and questioned whether he has brought the amount and on answer in affirmative, complainant took out the amount from his pocket and accused accepted the same and kept in his left side pocket

and after signal, ACB Officers apprehended accused and on being subjected to ultraviolet rays, the currency note, which was tainted was found in possession of accused and therefore, post-trap panchanama vide exh.23 was drawn.

8. **PW4** Kalidas Shankarrao Suryawasnshi is the Investigating Officer, who deposed about complainant approaching him, lodging complaint, shadow pancha being called, trap being laid, accused being apprehended and on investigation accused being chargesheeted.

9. On going through the evidence of PW2 Arun, complainant and PW3 Ramchandra, shadow pancha, more particularly, the cross-examination faced by them, it is evident that their evidence as regards demand, acceptance, apprehension has remained unshaken. Both the witnesses have stood their ground inspite of being subjected to extensive cross. Nothing adverse has been brought against them as regards to their testimonies are concerned, which would favour defence and render prosecution evidence doubtful. Consequently, on careful scanning and re-appreciation of evidence, this Court is of the firm opinion that it is established that complainant was an agriculturist and his electricity connection was disconnected on

account of arrears and when he approached respondent accused, who was Assistant Lineman, for reconnection, Rs.100/- were demanded by way of of private fees. Such demand was reported to ACB by PW2 Arun by lodging complaint and resulting in ACB trap. PW3 Ramchandra was used as a pancha. On relevant day, it is demonstrated that complainant carried tainted currency, which was to be paid on demand and accused respondent demanded the money, which was illegal gratification and it was on such demand paid by complainant and accused was thereafter apprehended. The above discussed evidence clearly shows that prosecution has proved demand as well as acceptance.

10. Now, crucial question which arises for consideration in appeal is whether sanction to prosecute the respondent accorded by PW1 Hatki is valid and meets legal requirements so as to hold sanction of prosecution to be perfect and valid. The bone of contention is the validity of sanction and is contested by laying stress here in the appeal. Learned trial Court has acquitted accused holding that sanction was not valid and hence, appeal by State. Therefore, evidence of PW1 Hatki is required to be minutely and scrupulously examined.

11. **PW1** Dattatraya Sidappa Hatki deposed that in 1997 he was working as Deputy Executive Engineer at Dhara in MSEB and he was holding additional charge of the post of Executive Engineer, MSEB. He claimed to be appointing as well as removing authority and further claimed that ACB submitted papers for sanction to prosecute appellant, who was Assistant Lineman in the department. According to him, he accorded sanction after going through the papers and on getting convinced that there was a case to grant sanction for prosecuting him.

Learned Advocate for respondent advanced argument that very cross-examination of this witness has rendered his testimony doubtful as regards to his competence to grant sanction. Resultantly, the answers given by this witness while under cross-examination are required to be dealt with. Admissions and answers, which are emanating from his testimony are as under:

“He admitted that person holding substantive charge is infact Executive Engineer and such authority is competent to appoint and remove the employee of the post of Assistant Lineman and is thereby competent to accord sanction. He admits that at the time of incident, he was holding additional charge and it was not substantive posting, but he was working

as Deputy Executive Engineer. He further admitted that particulars of documents are not referred by him in his sanction order. He admitted that there is prescribed proforma for sanction order. He admitted that he gave dictation on the line of prescribed proforma and further candidly admitted that he had not discussed with the Officers of ACB. He further candidly answered that he has accorded sanction for attempt only. He admitted that there are interpolations and additions in the sanction order, which are not indulged by him. He admitted regarding being unaware of the provisions of Section 7 and 13 of the PC Act as well as unaware of Section 19 of the PC Act.

On re-examination by learned APP, he answered that he had granted sanction under the powers delegated in the capacity of Executive Engineer by virtue of Resolution dated 30-07-1986.

Again on cross-examination by accused, he answered that in absence of Executive Engineer, the matter is referred to the Superintendent Engineer for granting sanction to prosecute employee.”

12. Thus, taking into account above discussed substantive evidence

of PW1 Hatki, it is clearly emerging that firstly he was Deputy Executive Engineer, whereas an authority to grant sanction as well as remove employee of cadre of accused was Executive Engineer. Therefore, on the date of sanction, PW1 Hatki was not Executive Engineer. Moreover, he admitted that he was holding additional charge. It is common knowledge that additional charge is meant only for preventing hurdles in routine administrative work. While passing orders or granting sanction to prosecute, only Executive Engineer is held competent. Resultantly, it is doubtful whether PW1 Hatki was competent at all to accord sanction on that date. Moreover, considering the answers and admissions given in cross-examination that he has not discussed the nature and particulars of documents, which are forwarded by ACB, it is doubtful whether there is proper application of mind, which is expected from sanctioning authority. Once it is shown that there is no proper application of mind by sanctioning authority, it is fairly settled that the sanction cannot be sustained or held to be valid in the eyes of law. Law to this extent has been discussed in the ruling of ***State of Maharashtra Through C.B.I. v. Mahesh G. Jain***, 2014 ALL SCR 177, wherein the Hon'ble Apex Court has laid down principles as regards to grant of sanction and the same are reproduced as under:

- “(a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
- (b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and after consideration of the circumstances, has granted sanction for prosecution.
- (c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.
- (d) Grant of sanction is only on administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.
- (e) The adequacy of material placed before the sanctioning authority cannot be gone into by the Court as it does not sit in appeal over the sanction order.
- (f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

(g) The order of sanction is pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be hyper technical approach to test its validity.”

Similar legal position is reiterated in the case of ***State of Karnataka v. Ameerjan*** (2007) 11 SCC 273 and ***CBI v. Ashok Kumar Aggarwal*** (2014) 14 SCC 295.

13. Likewise, the Hon’ble Apex Court in the case of ***Mansukhlal Vithaldas Chauhan v. State of Gujarat***, (1997) 7 SCC 622 had lucidly and succinctly dealt with the issue of validity of sanction and observation of the Hon’ble Apex Court in paragraph no.19, which are relevant, are reproduced hereunder for ready reference.

“19. Since the validity of “sanction” depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or

the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority “not to sanction” was taken away and it was compelled to act mechanically to sanction the prosecution.”

CONCLUSION

14. Keeping above legal requirements in mind and on visiting evidence of PW1 Hatki, more particularly, cross-examination, it is emerging that he has not dealt with all the documents placed before him and has moreover, adopted proforma, which was supplied to him. Such answers clearly show that there is no proper appreciation of required material before according sanction. As discussed above, it is also doubtful that by virtue of holding subordinate post of Executive Engineer and further holding some additional charge, PW1 Hatki was at all competent or authorized to grant sanction. Section 19 of the PC Act clearly comes into play. Its requirements not being met, even this Court is of the firm opinion that prosecution, for want of valid sanction, has no validity in the eyes of law.

15. Therefore, in the considered opinion of this Court, learned trial Court has committed no error whatsoever in acquitting accused.

16. Learned APP has sought reliance on following citations :

(I) Decision of this Court dated 08-02-2007 in case of ***Ramchhabil Jagaru Kushwah v. State of Maharashtra.***

(ii) Decision of Hon'ble Apex Court dated 31-03-2014 in case of ***State of Bihar & Ors. v. Rajmangal Ram.***

In above relied cases, facts are distinct than the facts of case in hand and therefore, it is not open for prosecution to take recourse to the same or to further rely on it. Consequently, there being no merits in the appeal, it deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.568 of 2002 stands dismissed

(ABHAY S. WAGHWASE)
JUDGE