



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 CRIMINAL APPLICATION NO.2043 OF 2020

Ganesh Bhausahab Agale,
Age 33 yrs., Occ. Talathi,
Village Jeur Baijabai,
Tq. & Dist. Ahmednagar,
At present r/o Shirasgaon,
Tq. Newasa, Dist. Ahmednagar.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
MIDC Police Station,
Ahmednagar.
- 2 Sandip Nivrutti Magar,
Age 41 yrs., Occ. Agri.,
R/o Jeur Baijabai,
Tq. & Dist. Ahmednagar.

... Respondents

...

Mr. S.S. Jadhav, Advocate for applicant

Mrs. R.P. Gour, APP for respondent No.1

Respondent No.2 - Served

...

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 06th DECEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashing the First Information Report vide Crime No.899/2020 registered with MIDC Police Station, Ahmednagar on 16.10.2020, for the offence punishable under Sections 5, 7(A) of the Prevention of Corruption Act, 1988.

2 Heard learned Advocate Mr. S.S. Jadhav for applicant and learned APP Mrs. R.P. Gour for respondent No.1.

3 The learned Advocate for applicant has submitted that though First Information Report has been lodged long back, the charge sheet is not yet filed. Though the applicant cannot get the information as to whether the sanction has been given or not; yet, when the matter was on board on 02.03.2022 statement was made on behalf of applicant that the appointing authority has not given sanction to prosecute the applicant. Thereafter, again on 21.02.2024 the said aspect was taken note of, at that time, learned Advocate for applicant as well as learned APP were unanimous in saying that sanction has been refused. But on 06.03.2024 statement was made that though sanctioning authority has refused to accord sanction for prosecuting applicant, who is Talathi, an appeal has been preferred before the learned Collector and then the matter was adjourned. The matter could not have

been so lingered and once the sanctioning authority has come to the conclusion that the material which was placed before him is not sufficient to according sanction, there is no point in asking the applicant to face the trial.

4 The learned APP has produced a photo copy of communication dated 09.10.2024 by Resident Deputy Collector, Ahmednagar stating that the review application for reviewing the order of rejecting the application for sanction to prosecute is rejected. However, Superintendent of Police, Anti Corruption Bureau, Nashik Division, Nashik by letter dated 03.12.2024 has asked for the opinion of the Law Officer. She had noted some defects and directions are given that by removing those defects the proposal be forwarded again. Therefore, the final decision is yet to come in respect of sanction.

5 At the outset, it is to be noted that the First Information Report appears to have been filed by one Sandip Nivrutti Magar contending that the present applicant had demanded bribe. Accordingly, amount of Rs.190/- was given that is Rs.100/- out of that was towards the bribe amount. When that amount has been accepted, his First Information Report has been registered. The other formalities and the procedure appears to have been completed. Copy of the panchnama, which was given to the accused – applicant, has

been produced, which describes the conversation. It says that the informant loudly said amount of Rs.190/- and then the applicant asked him to give that amount to the employee/the person named Rasal, to whom he is addressing as 'Major'. But then the informant asks the applicant as to what purpose he has taken that amount. Then, the applicant says that it is in respect of fees towards 7/12 extract. Except this conversation there appears to be no other conversation at the relevant time. Therefore, taking into consideration this aspect the competent authority by order dated 26.11.2021 had rejected the sanction stating that the said amount is towards the fees that is Education Cess, arrears, mutation, 7/12 extract and certified copy. It was then specifically stated in the said refusal order that the amount does not appear to be towards the bribe. It also appears that though the sanction was refused on 26.11.2021, the said refusal was not challenged by Anti Corruption Bureau before any competent Forum. But then the application appears to have been filed before the Collector for review. The Resident Deputy Collector in his communication dated 09.10.2024 has stated that as per the Government Resolution dated 12.02.2013 and 31.01.2015 it is not necessary to take the opinion of the Law and Judiciary Department when a competent authority has refused to accord sanction in Anti Corruption matters. There is no new evidence produced before the authority before whom review application has filed and, therefore, the said competent authority has refused

to review the order. In fact, on this point we would like to say that when a competent authority refuses to accord sanction to prosecute, then it has no power to review his own order. In rarest of the rare cases when new evidence is produced, there is no question of reviewing the order passed by the same authority. We would like to rely on the decision in **State of Himachal Pradesh vs. Nishant Sareen** [(2010) 14 SCC 527], wherein it has been held that -

“In this case, the Supreme Court has held that whenever there is a refusal to grant sanction, it would not be open to the competent authority to review such an order on same materials because power of review conferred upon the authority is not unbridled and unrestricted and putting of some fetters on its power of review is essential to accord finality to such an exercise.”

6 Therefore, it would be now unjust to ask the applicant to face the trial. Certainly case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure in view of the guidelines in **State of Haryana and others vs. Ch. Bhajan Lal and others** [AIR 1992 SC 604]. Hence, following order.

ORDER

- i) Criminal Application stands allowed.

ii) First Information Report vide Crime No.899/2020 registered with MIDC Police Station, Ahmednagar on 16.10.2020, for the offence punishable under Sections 5, 7(A) of the Prevention of Corruption Act, 1988 stands quashed and set aside as against applicant viz. Ganesh Bhausaheb Agale.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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