



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 CRIMINAL APPLICATION NO.2299 OF 2020

Dadasaheb Sukhdeo Aandhale,
Age 34 yrs., Occ. Service,
R/o Ganesh Nagar, Beed,
Tq. & Dist. Beed.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Anti Corruption Office, Beed,
Tq. & Dist. Beed.
- 2 Kailas Narayanrao Dhole,
Age 40 yrs., Occ. Agri.,
R/o Ganesh Nagar, Georai,
Tq. Georai, Dist. Beed.

... Respondents

...

Mr. R.G. Hange, Advocate for applicant

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. Y.K. Bobade, Advocate for respondent No.2

...

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

DATE : 27th NOVEMBER, 2024

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

1 Present application has been filed initially for quashing First Information Report vide Crime No.266/2020 dated 09.06.2020 registered with Police Station, Georai, Tq. Georai, Dist. Beed and by way of amendment for quashing the proceedings in Special Case (ACB) No.215/2023 pending before learned Special Judge/District Judge-6, Beed, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as "P.C. Act").

2 Heard learned Advocate Mr. R.G. Hange for applicant, learned APP Mr. G.A. Kulkarni for respondent No.1 and learned Advocate Mr. Y.K. Bobade for respondent No.2.

3 Learned Advocate for the applicant has mainly contended that the applicant is challenging the proceedings mainly on legal point. Present applicant was serving as Talathi of village Georai around 09.06.2020. It is alleged that the applicant had demanded amount for 7/12 extract and 8-A extract. After the investigation was over, Investigating Officer had sent the application for permission to prosecute the applicant, that is, under Section 19 of the P.C. Act. By communication dated 30.09.2021 Sub Divisional

Officer, Beed had rejected the permission by giving elaborate reasons. It appears that thereafter also the communication was continued by the Anti Corruption Department. By letter dated 08.09.2022 the Investigating Officer had asked the Sub Divisional Officer, as to whether he had taken permission from Law and Judiciary Department before rejecting the permission and if it has not been taken, then it should be so referred. The said communication has been replied by the Sub Divisional Officer, Beed on 21.10.2022, wherein it is stated that by giving a detailed reasons the permission has been rejected. It was then told that it is not mentioned in the Government Resolution dated 12.02.2013 that any such permission from Law and Judiciary Department is necessary. Thereafter, it appears that once again a communication was made to the Sub Divisional Officer, Beed for according permission/sanction. Again by communication dated 27.09.2023 the Sub Divisional Officer, Beed had confirmed the decision earlier taken of not to grant permission to prosecute the applicant and the same reasons were adopted. It appears that thereafter also the communication continued and thereafter the Forensic Science Laboratory report regarding the voice samples those were sent was received stating that the voice in the recorded conversation on the day of incident and the sample that was later on taken matches. Thereafter, once again the matter was sent to Sub Divisional Officer, Beed seeking permission to prosecute the applicant. However, this time by communication dated

06.11.2023 the Sub Divisional Officer, Beed had stated that in view of the Government Resolution No.Talathi-2023/pr.kra.8/E-10 dated 18.09.2023 the competent authority, to accord permission/sanction or to refuse it, has been given to Collector and, therefore, the Investigating Officer should make correspondence to Collector, Beed. Thereafter, the communication has been made to the Collector and by order dated 07.12.2023 the permission has been granted by Collector, Beed to prosecute the applicant. This action of granting permission amounts to review of the order passed by the predecessor, which is not permissible, as there is no review power with the sanctioning authority to review its own decision, when once refused.

4 The learned Advocate for the applicant has further submitted that even if we consider the impugned conversation, then it can be seen that the applicant had refused to accept the amount. Rather he has stated that the amount is not required to be given. Prosecution has invoked only Section 7 of the P.C. Act, that is, in respect of alleged demand. If we consider the said conversation, there was no categorical statement asking for the bribe. Therefore, on the merits also there was no evidence against the applicant; yet, the Investigating Officer by hurriedly getting the permission reviewed has filed the charge sheet. It would be, therefore, unjust to ask the applicant to face the trial.

5 Per contra, the learned APP as well as learned Advocate for respondent No.2 have objected the application and submitted that now the conversation between the applicant and respondent No.2 has been recorded and the FSL report says that the voice is that of the applicant and respondent No.2. There was a clear demand from the applicant for the amount which he was not entitled to. There was no financial transaction between the applicant and respondent No.2 and, therefore, the said amount was nothing but the bribe. Though the permission was refused twice earlier; yet, in view of additional evidence in the form of report of the FSL the competent authority has accorded sanction. It has been accorded by Collector, Beed and whether it is after the subjective satisfaction would be considered at the time of trial. Therefore, case is not made out to exercise the powers under Section 482 of the Code of Criminal Procedure.

6 At the outset, we would like to consider the point of sanction first. All the details are already narrated. On two occasions i.e. on 30.09.2021 and on 27.09.2023 Sub Divisional Officer and Sub Divisional Magistrate, Beed had refused to accord sanction to prosecute the applicant, who was serving as Talathi. Now, the prosecution and the authority at Beed are taking help of Government Resolution dated 18.09.2023. By the said Government Resolution it appears that the Government had taken a decision

that for giving sanction for prosecuting a Talathi (clause 'C'), Collector would be the appointing authority. Certainly this Government Resolution would come into play prospectively and cannot act retrospectively. Taking into consideration the position that prior to 18.09.2023 the powers were stated to be with Sub Divisional Officer, the rejection of the sanction at two earlier occasions will have to be considered as by the competent authority and then merely because by Government Resolution the powers are given to some other authority. The said authority cannot decide the point, whether to accord sanction or not afresh. Further, even as per the prosecution case, as the additional evidence in the form of FSL report was received, the fresh attempt has been made to get the sanction. On this point we 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.”

The said decision in **Nishant Sareen** (supra) was relied by this Court in **Chandan Tulsiram Jibhakate vs. The State of Maharashtra and others** [2021 ALL MR (Cri.) 1089]. We would also like to rely on the decision in

Dhanraj Atmaram Nandagawli vs. The State of Maharashtra and others in Writ Petition No.806 of 2023 decided on 04.07.2024, to which one of us was party [SMT. JUSTICE VIBHA KANKANWADI, J.], wherein similar view was taken.

7 Here, it is to be noted that the said conversation was already before the sanctioning authority, which was in the form of panchnama and also some part in the statement. What has been got through FSL report was the confirmation about the voice and not the contents. Therefore, when the contents were already there, which were considered by the sanctioning authority as undisputed fact, in other words, the said conversation was considered by the sanctioning authority as that of between the applicant and respondent No.2 itself, still by giving a reasoned order the permission was refused. Then in that case the FSL report has not made any difference, it cannot be considered as an additional evidence. Nothing has been done by the Investigating Officer after the sanction was refused second time. The said sample of the voice and the recording was already sent for analysis, when application was made for according sanction to the competent authority. Therefore, the sanction now accorded by Collector, Beed on 07.12.2023 amounts to review of the order, when the said authority was not empowered to. When the sanction itself is defective for illegal, then it would be unjust to

ask the applicant to face the trial.

8 When the charge sheet is produced, we have gone through the same including the transcript of the conversation. By no stretch of imagination it shows that there was a clear demand of amount. Therefore, on the merits also it would be unjust to ask the applicant to face the trial. Case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) First Information Report vide Crime No.266/2020 dated 09.06.2020 registered with Police Station, Georai, Tq. Georai, Dist. Beed and the proceedings in Special Case (ACB) No.215/2023 pending before learned Special Judge/District Judge-6, Beed, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 stand quashed and set aside as against applicant viz. Dadasaheb Sukhdeo Aandhale.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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