

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.498 OF 2015

The State of Maharashtra
(At the instance of Senior Inspector of
Police Sewree Police Station
vide their C.R.No.94 of 2013

...Applicant
(Orig. Complainant)

Versus

Rahul Gajanan Jadhav
Age 34 years, Assistant Engineer, B.M.C.
R/a. A-103, Sowmya Apts., C.S. Road,
Anand Nagar, Dahisar (East),
Mumbai 400 068

...Respondent
(Orig. Accused No.3)

Mr. H.J. Dedhia:	APP for Applicant – State.
Mr. Sudeep Pasbola, Ayush Pasbola, Sankalp Vichare i/b. Rahul Arote:	Advocate for Respondent.

CORAM : S. M. MODAK, J.
DATE : 25th APRIL 2024

ORAL JUDGMENT:-

1. I have already heard learned Advocate Shri Sudeep Pasbola assisted by Mr. Ayush Pasbola and learned APP.

2. The Respondent was working as Assistant Engineer, Maintenance, 'E' Ward from 1st July 2005. On 25th October 2012, he is transferred as Assistant Engineer, B.M.C. (Market Department). He was discharged by the Court of Additional Sessions Judge as per order dated 23rd December 2014 for the offences punishable under Section 304, 336, 337, 338, 268, 114, 201, 109 r/w 34 of the Indian Penal Code (page 67). He was Accused No.3. He along with the other Municipal employees were charge-sheeted for dereliction of duty in taking proper maintenance of the building known as "Babu Genu Municipal Market" situated at Mazgaon.

3. The building collapsed on 27th September 2013. Total 61 occupants of the said building died and there are several injured as many as 31. The reason for collapse of building was unauthorized constructions carried out by the occupant - Ashok Kumar Mehta making structural changes. Initially, Dr. Prithviraj Chavan who was Deputy Superintendent of Zone-I filed FIR against said Ashokkumar Mehta and others with Shivdi Police Station. During the investigation, it was disclosed that the present Applicant has also failed to perform his duties.

4. The prosecution contention before the trial Court was there were number of official correspondence by the authorities of the Corporation about necessity of carrying out repairs. Even the higher officials have taken note of all these complaints and even the consultant by name Pentacle Consultants (I) Pvt. Ltd. was appointed. Even he gave report about extensive repairs being carried out. It was on 5th November 2012. However, even though the concerned officers have tried to complete the procedure, prior to execution of work the building collapsed.

5. The Court of Additional Sessions Judge discharged the present Respondent predominantly for the reason material collected against the Applicant is not sufficient for establishing *prima facie* case against him. The Sessions Court considered the nature of his duties and liabilities, considering his transfer 10 months earlier to collapse of the building. The Sessions Court has discussed all these materials and gave reasoning why charge cannot be framed against him.

6. The legality of the said order is challenged by way of this Revision. It is also true that the issue of sanction was also raised before the Sessions Court. It is reflected in paragraph 32 of the impugned

judgment. The prosecution contended that the sanction can be obtained lateron also during the pendency of the proceeding. That is why, the issue of sanction was not dealt with by the trial Court.

7. When this revision was pending, Police officers were pursuing with the Municipal Corporation for according the sanction. However, the Municipal Commissioner finally refused the sanction as per letter dated 15th March 2021. The relevant correspondence were shown to me by learned APP and learned Advocate Shri Pasbola. There is no dispute that the Respondent is a Municipal employee. **The correspondence which was brought to my notice is as follows:-**

- (i) Letter dated 25th August 2014 by the Municipal Commissioner - Sitaram Kunte addressed to the Commissioner of Police, opining that provisions of Section 304(I) of IPC cannot be attracted for the reason that Municipal Officers have not committed any heinous offence of culpable homicide not amounting to murder.
- (ii) Assistant Commissioner of Police, Vadala Division, Mumbai again wrote to Municipal Commissioner on 5th February 2015 reiterating the request for sanction. He has requested the Municipal Commissioner not to

decide the issue whether the provisions of Section 304 can be invoked or not and he has requested the Municipal Commissioner to leave it to the Court.

(iii) There is letter dated 6th November 2015 addressed by the Additional Municipal Commissioner to the Principal Secretary, Home Department requesting him to reconsider the issue of applicability of Section 304 r/w 34 of IPC. Even the Corporation has obtained the opinion of Senior Advocate Shri Anil Sakhare on 25th January 2021 opining that reconsideration of decision refusing sanction is not warranted.

(iv) Refusal of sanction is reiterated again on 15th March 2021 by the then Municipal Commissioner.

8. So the position existing today is that the Municipal Commissioner has refused sanction to prosecute the Municipal Officers. **Mr. Pasbola also relied upon the following orders passed in respect of this offence only. They are as follows:-**

(a) The Court of Additional Sessions Judge has discharged co-accused Mahendrakumar Patel on 4th July 2022. The Court has taken note of the refusal of the sanction by the Competent Authority.

- (b) Co-accused Dr. Prithviraj Chavan has filed Writ Petition No.2072 of 2023 wherein the Division Bench as per order dated 17th July 2023 was pleased to quash the prosecution for the reason that the sanction was refused.

9. Learned APP Shri Dedhia made the following submissions:-

- (i) He relied upon the Maharashtra amendment carried out in Section 156 of the Code of Criminal Code, 1973. It deals with the requirement of the sanction when the private complaint is filed. If such private person applies for sanction then the decision has to be taken within 90 days and if it is not taken it is presumed that sanction is granted.
- (ii) Though the prosecution has made an attempt to challenge the order discharging Mahendra Patel, the Joint Secretary to Law and Justice Department vide decision dated 21st September 2022 has refused permission to file Writ Petition.

10. In the above set of facts, there are two decisions by the concerned Courts thereby taking a note of refusal of sanction and as permission to file Writ Petition is refused from the side of the prosecution the issue is

rested.

11. Mr. Pasbola has also relied upon following judgments :-

- (i) *In the case of A. Srinivasulu VS. The State Rep. by the Inspector of Police*¹.

Those accused were officers of BHEL (Bharat Heavy Electricals Ltd.). They along with private persons were prosecuted for certain offence under the IPC and under the provisions of Prevention of Corruption Act. Trial was conducted. Few of the accused were convicted and the Appeals were dismissed by the Court. There was an issue whether the officers of BHEL falls within the purview of the Public Servant. They were held to be public servant and as such sanction under Section 197 of Cr.P.C. and under Section 19 of the Prevention of Corruption Act was held necessary (para 29).

- (ii) *In Indra Devi vs. State of Rajasthan*²

There is also necessity of sanction under Section 197 for prosecuting public servant was reiterated. That was the prosecution for offence under IPC and under SC/ST Act sanction for prosecution was not taken.

1. (2023) Live Law (SC) 485
2. (2021) 8 SCC 768

Accordingly, the proceeding was quashed against them.

12. It is true that as per the provisions of Section 197 of the Code, sanction is required for prosecuting the public servant. If we read the provisions we may find that sanction is required only for prosecution of those public servants for whose removal sanction by the Government is required. In other words, if sanction is not required for their removal, sanction under Section 197 of the Code will not be required. This issue can be dealt with in some other matter. However, learned Advocate Shri Pasbola invited my attention to the provisions of Section 86A of the Mumbai Municipal Corporation Act, 1888. It reads thus :--

“86A.Sanction for prosecution of officers and servants of Corporation.

Notwithstanding anything contained in this Act, the Commissioner shall be competent to sanction prosecution of any officer or servant of the Corporation which has been sought by the Police or any other Government agency. The Commissioner shall inform about grant of any such sanction to the Municipal Corporation in be next ensuing meeting of the Corporation.”

13. As per the said provision Commissioner Competent Authority for grant of sanction is saddled with the responsibility to place that

sanction before the Municipal Corporation in the ensuing meeting of the Corporation.

14. If we compare provisions of Section 197 of the Code and Section 86A of the said Act, we may find that the sanction is required under both the provisions. Only difference is the sanction under Section 197 is not required of public servants when they can be removed without sanction. It is required only when they are to be removed with the sanction of the Government. This requirement does not find place in Section 86A of the said Act. In other words, sanction under Section 86A will be required for every officers and servants of the Corporation.

15. The Court is required to take note of this development about refusal of the sanction. In fact, when the trial Court has discharged this Respondent on 23rd December 2014 earlier on 20th August 2014 only sanction was refused. For some reason or other it was not pointed out. Be that as it may, this Court is required to take cognizance of this fact. In view of that, challenged to the said order on behalf of the State no more survivies. For this reason, the Court is not going into the merits of the matter, that is to say, whether the findings recorded by the trial Court discharging the Respondent are perverse or not.

16. In view of that, Revision Application is dismissed.

[S. M. MODAK, J.]