



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

CRIMINAL WRIT PETITION NO. 370 OF 2024

Avin S/o Rambhau Dolkar,
Aged 41 years, Occ. Legal Practitioner,
R/o Shobha Bankar, Pathanpura Ward, Dist.
Chandrapur-442402

...Petitioner

// VERSUS //

1. State of Maharashtra,
through the Secretary, Revenue and Forest
Department, Madam Cama Road, Hutatma
Rajguru Chowk, Mumbai-400 032
2. The Deputy Secretary, State of Maharashtra,
Revenue and Forest Department, Madam
Cama Road, Hutatma Rajguru Chowk,
Mumbai-400 032
3. Director General of Anti Corruption Bureau,
Mumbai, Maharashtra, 6th Floor, Sir
Pochkhanwala Road, Worli Police Camp,
Worli, Mumbai-400 030
4. Police Inspector, Anti Corruption Bureau,
Chandrapur, Behind Hutatma Smark, Civil
Line, Chandrapur-442401
5. Police Inspector, Anti Corruption Bureau,
Nagpur New Administrative Building No.1,
2nd Floor, Civil Line, Nagpur-44001
6. Police Inspector, Anti Corruption Bureau,
Wardha PJR5+X35, Wardha, Maharashtra,
442001, MIDC
7. Shri Sameer S/o Premvir Mane, Age-43 years,
Occ. Service, R/o Tehsil Karyalaya, Ajara,
Taluka-Ajara, District Kolhapur

... Respondents

Shri H.V.Thakur, Advocate for the petitioner.

Shri M.K.Pathan, APP for the respondent/State.

Shri R.R.Vyas, Advocate for the respondent no.7.

**CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.**

Reserved on : 28th June, 2024.

Pronounced on : 10th July, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Heard Shri H.V.Thakur, Advocate for the petitioner, Shri M.K.Pathan, APP for the respondents/State and Shri R.R.Vyas, Advocate for the respondent no.7. **Rule.** Rule made returnable forthwith.

2. The present petition has been filed by the original complainant to challenge the order passed by the respondent no.2 Deputy Secretary, State of Maharashtra, Revenue and Forest Department Mantralaya, Mumbai dated 21st July, 2023 thereby refusing to grant sanction for prosecuting the respondent no.7 under Section 19 of the Prevention of Corruption Act, 1988 (hereinafter referred as 'PC Act, 1988'). Alternatively, prayer is also made to direct the respondent no.2 to pass the afresh decision after considering the entire case record on the communication dated 1st November, 2014 given by the respondent no.3 Director General of Anti Corruption Bureau, Mumbai seeking grant of sanction to prosecute the respondent no.7 under Section 19 of Prevention of Corruption Act for the offence punishable under Sections 7, 13(1)(d), 13(2) of PC Act, 1988.

3. Before we proceed, a fact is required to be brought on record that earlier also by communication dated 4th December, 2014, the respondent no.2 had refused to grant sanction and therefore the present petitioner had approached this court by filing Criminal Writ Petition No. 941 of 2019. This Court had allowed the petition. The impugned order of acceptance of closure report dated 29th March, 2019 passed by the learned Special Judge under Prevention of Corruption Act / Additional Sessions Judge, Chandrapur as well as relevant communication by which sanction was refused by the respondent no.2 was quashed and set aside. On 13th March, 2023, this Court had then directed the respondent no.4 to reforward the papers with additional material to the sanctioning authority, who in turn was directed to take appropriate decision as per the provisions of law. Thereupon, the Director of Anti Corruption Bureau, Mumbai by letter dated 27th April, 2023 forwarded the material afresh to the respondent no.2 in view of the order passed by this Court. However, by impugned order dated 21st July, 2023 once again the sanction, which was sought under Section 19 of the PC Act, 1988 was refused. Hence, this petition.

4. Learned advocate for the petitioner after giving the background has submitted that when the earlier order of refusal to grant sanction was set aside, then it was incumbent upon the respondent no.2 to consider the entire material afresh. The impugned order dated 21st July, 2023 rather discloses that the respondent no.2 relied upon his earlier order and observed that the additional material is only the spectrography report. Infact the transcript of the conversation was already on record.

Considering that the transcription also, the concerned authority had come to the conclusion that the papers are not sufficient to grant sanction to prosecute the respondent no.7. Infact respondent no.2 had not considered the observations of this Court. Further when we consider the earlier order of rejection dated 4th December, 2015 which can be seen that the said authority, sat on the file as an appellate authority and then came to the conclusion that no work was pending before the respondent no.7 for which he could have demanded an illegal gratification. By no stretch of imagination it can be said that while passing the earlier order dated 4th December, 2015, the concerned authority had considered the conversation which was then recorded and the transcript of the same was produced of which now the spectrographic report is positive. When the impugned order is without the application of mind, it deserves to be set aside and the matter deserves to be remanded with the specific directions.

5. Learned advocate for the petitioner relies on A.Sreenivasa Reddy Vs. Rakesh Sharma and another; (2023)8 SCC 711 wherein it has been held that sanction contemplated under Section 197 of the Code of Criminal Procedure (hereinafter referred as 'CrPC') concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" whereas, the offences contemplated in the PC Act, 1988 are those which cannot be treated as acts either directly or even purportedly done in discharge of his official duties. Further, because Section 197 of the CrPC and Section 19 of the PC Act, 1988 operate in conceptually different fields, in cases covered under the Act, in respect of public servants the

sanction is of automatic nature and thus factual aspects are of little or no consequence. It has been further held that there can be no thumb rule that in a prosecution before the court of Special Judge, the previous sanction under Section 19 of the PC Act, 1988 would invariably be the only prerequisite. If the offences on the charge of which the public servant is expected to be put on trial, include the offences other than those punishable under the PC Act, 1988 that is to say under the general law (i.e. IPC), the court is bound to examine, at the time of cognizance and also, if necessary, at subsequent stages (as the case progresses) as to whether there is a necessity of sanction under Section 197 of the CrPC.

6. Per contra, learned APP has given only factual situation that earlier also the concerned department had forwarded the entire material for getting sanction under Section 19 of the PC Act. However, at that time, the spectrographic report was not forwarded as it was received thereafter. After the sanction was refused vide order dated 4th September, 2015, the present petitioner approached this Court and aforesaid order was passed. In compliance with the said order the entire material was resent including the additionally collected material for sanction under Section 19 of the PC Act. However, that has been refused on the ground that earlier also the documents including the transcription of the conversation was considered and the spectrographic report is not going to make out any difference.

7. Learned advocate for the respondent no.7 resubmits the above said facts as given by learned APP and submits that only

spectrographic report cannot give any additional evidence. He relies on the decision in Sitaram S/o Namdeo Bhore Vs. State of Maharashtra and another in Criminal Writ Petition No. 206 of 2021 decided on 10th July, 2023. Therein reliance was placed on State of Himachal Pradesh Vs. Nishant Sareen; [2010] 14 SCC 527, where it was observed thus:

“12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.”

8. It was then held by this Court that in view of *State of Himachal Pradesh Vs. Nishant Sareen* (supra), the only exercise which remains to be seen is whether the reviewing authority has considered fresh/additional material or on the same material reviewed the order. Only the spectrographic report cannot be considered for reviewing its own order.

9. He further submits that there was no fresh material collected by the Investigating Officer subsequent to the earlier order of rejection and therefore the impugned order has been correctly passed.

10. We have already taken note of the history of the litigation. Only to recapitulate the same we may say that after collecting the material in investigation including the transcript panchanamas, the respondent no.2 (in the earlier petition respondent no.4) refused to accord the sanction under Section 19 of the PC Act, 1988 by order dated 4th December, 2014. Now, the reliance has been placed on the decision in the earlier writ petition filed by the present petitioner which came to be decided on 13th March, 2023. It is specifically stated that order of refusal, to sanction was given on 4th December, 2015. The spectrographic report was received on 4th February, 2016 giving a positive report and it was specifically stated that “in response, the respondent no.2 has communicated to the respondent no.4 that as per the circular, if there is new material, afresh proposal can be sent for sanction. However, the respondent no.4 has misinterpreted the letter communicated to the respondent no.7 that the sanction has been once refused cannot be

granted”. Taking into consideration the fact that new material has been given, that order dated 4th December, 2015 was set aside and the concerned authority was directed to reconsider the decision after reforwarding all the papers to the respondent no.4. Neither the petitioner nor the learned APP is pointing out that except the spectrographic report whether there was any other material which was forwarded for consideration to respondent no.2 for granting the sanction. If only the spectrographic report was forwarded in response to the earlier order passed by this Court and at the time of old proposal, the panchanama bearing the conversation was submitted, then we will have to presume that it was considered by the concerned authority while rejecting the proposal by order dated 4th December, 2015. In view of the *State of Himachal Pradesh Vs. Nishant Sareen* (supra), only fresh material collected by the Investigating Officer subsequent to the earlier order would have been considered for review. The spectrographic report only confirms as to whether the voice into CDs match with each other or not. The two CDs which were sent, one was containing the conversation allegedly recorded at the time of trap and another was the verification conversation which was taken to verify as to whether the first CD had the voice of the complainant and the accused i.e. respondent no.7. The conversation was already on record when the entire record was earlier sent. We agree to the view taken by this Court in *Sitaram S/o Namdeo bhore Vs. State of Maharashtra and another* (supra). The impugned communication dated 21st July, 2023 also takes note of the same that there is no change in the conversation or evidence in respect of the same

and therefore only the spectrographic report cannot be considered as an additional evidence to review the earlier order in view of State of *Himachal Pradesh Vs. Nishant Sareen* (supra).

11. No case is made out for exercising constitutional powers of this Court under Article 226 of the Constitution of India to interfere with the order dated 21st July, 2023 or for grant of alternative prayer for direction to pass a fresh decision. Accordingly, the writ petition stands dismissed.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]