



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 381 OF 2018
WITH
CRIMINAL APPLICATION NO. 4440 OF 2024
IN APEAL/381/2018

Tarachand s/o Dharmu Rathod,
Age: 49 years, Occu.: Government
Service as Police Head Constable
(Bakkal No.898) at Police Head
Quarter, C.P. Office, Aurangabad,
R/o: Plot No.27/B, Komal Nagar,
Padegaon, Aurangabad, Taluka
and District: Aurangabad.

... APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra,
through the Deputy Superintendent
of Police, Anti Corruption Bureau,
Aurangabad.

... RESPONDENT
(Original Complainant)

...
Mr. Rajendra S. Deshmukh, Senior Counsel, a/w Ms. Rakshanda
Jaiswal, i/b Mr. Devang Deshmukh & Mr. Vishal A. Chavan, Advocate for
Appellant / Applicant.

Mr. D. J. Patil, APP for Respondent / State.

...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 20th November, 2025.

J U D G M E N T:

1 This appeal is preferred by the convicted accused against the judgment dated 23rd April, 2018 delivered by the learned Special Judge (P.C. Act), Aurangabad in Special Case (ACB) No.39 of 2015, by which the appellant was convicted under Section 235(2) of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short, "the PC Act") and sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/-. In default, to suffer further simple imprisonment for 6 months. The appellant was further convicted for the offence punishable under Section 13(1)(d) read with Section 13(2) of the PC Act and sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- and in default, to suffer further simple imprisonment for 6 months. Both the sentences were directed to be run concurrently.

2 The learned Senior Counsel for the appellant pointed out the report lodged by the complainant Mrs. Urmila Bokan against the appellant, stating that the appellant was found accepting the bribe amount. It is alleged that the appellant had demanded Rs.10,000/- from the complainant as bribe for not initiating chapter case against

her and her family members. The trap was arranged and the appellant was arrested while accepting a bribe of Rs.5,000/-. Therefore, the report was lodged and the appellant was prosecuted. After recording the evidence, the learned Special Judge (P.C. Act), Aurangabad, held the appellant liable.

3 During the arguments, the learned Senior Counsel for the appellant submitted that apart from the merits of the case, the appellant has challenged the impugned judgment on the ground that there is no valid sanction to prosecute the appellant. He contended that the sanction to prosecute the appellant is not legal and correct and it was not granted by the competent authority, who is the appointing and removing authority of the appellant. He pointed out the sanction order, appointment order and the information received from the police department under the Right to Information Act, 2005, as well as the order of termination of the appellant under Rule 13(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and Rule 3(3) of the Police Punishment and Appeal Rules, 1956. He submitted that the circular, which is pointed out and relied upon by the respondent / State dated 12th February, 2013, authorizing above the rank of police officers to grant sanction as competent authority, who are superior officers to the District Superintendent of Police, Deputy

Police Commissioner, is against the provisions of law and therefore, the sanction granted to prosecute the appellant is not sustainable. He further submitted that the evidence of sanctioning authority (PW-1) is shaken in the cross-examination. PW-1 Amitesh Kumar s/o Jugalkishor Prasad has admitted in his cross-examination that the Commissioner of Police, Aurangabad is inferior to Additional Director General of Police of Maharashtra. The sanction granted by PW-1 Amitesh Kumar, who was then Police Commissioner of Aurangabad, was inferior to the Additional Director General of Police of Maharashtra, who appointed the appellant.

4 The learned Senior Counsel for the appellant relied upon the following authorities:-

- a) ***Balu Dasu Rathod Vs. State of Maharashtra, through the Director General of Police and others, 2019 SCC OnLine Bom 1809***, in which the learned Single Judge of this Court in paragraph No.11 held as under:-

“11. That it has been also provided in the Schedule that a punishment of dismissal, compulsory retirement or removal from service cannot be inflicted upon the applicant by any authority lower in rank than that by which the applicant was appointed. That it is an undisputed

position that the Additional Commissioner of Police, Thane, is not competent to remove the applicant from service and it is in these circumstances that a sanction accorded by the said Additional Commissioner of Police is null and void ab initio and, in these circumstances, the applicant states that the order of issuance of process may be quashed and set aside.”

- b) ***Mr. Umakant s/o Somla Rathod Vs. The State of Maharashtra and another***, (Criminal Application No.732 of 2022) decided by the learned Single Judge of this Court at Nagpur Bench on 26th July, 2022, in which in paragraph No.7 it is held as under:-

“07] In the above case, this Court has also considered the Government Resolution, dated 12/02/2013 and held that it is not applicable. Thus, the issue involved is squarely covered by the said decision of this Court. Moreover, another decision of this Court in the case of State of Maharashtra, Through A.C.B., B.M.U. vs. Ajay Ratansingh Parmar – 2022 SCC Online Bom 531 has been cited, wherein under similar circumstances, this Court has held that for the post of Assistant Police Inspector, the Director General of Police is the appointing and removing authority and the sanction accorded by the Police Commissioner is defective. Therefore, the issue involved is no more *res integra* and thus

sanction being defective the impugned order is not sustainable in the eyes of law and liable to be quashed.”

- c) ***State of Maharashtra Through A.C.B. B.M.U. Vs. Ajay Ratansingh Parmar, 2022 SCC OnLine Bom 531***, in which the learned Single Judge of this Court in paragraph No.9 held as under:-

“9. Thus, it is evident that the Police Commissioner, who is below the rank of Director General of Police not being appointing authority is not competent to accord the sanction. The trial Court has elaborately dealt the said issue. In view of the above discussion, sanction to the prosecution which is pre-requisite under Section 19(1)(c) of P.C. Act is invalid.”

- d) ***C.B.I. Vs. Ashok Kumar Aggarwal, 2014 CRI. L. J. 930***, in which the Honourable Supreme Court in paragraph No.9 held as under:-

“9. In view of the above, we do not find force in the submissions advanced by Shri Vishwanathan, learned ASG that the competent authority can delegate its power to some other officer or authority, or the Hon’ble Minister could grant sanction even on the basis of the report of the SP. The ratio of the judgment relied upon for this purpose, in A. Sanjeevi Naidu etc. v. State of

Madras & Anr., AIR 1970 SC 1102, is not applicable as in the case of grant of sanction, the statutory authority has to apply its mind and take a decision whether to grant sanction or not.”

- e) ***Uttam s/o. Ganpat Ajgekar Vs. The State of Maharashtra, 2021 ALL MR (Cri) 4145***, in which the learned Single Judge of this Court in paragraph No.23 held as under:-

“**23.** Thus, taking into consideration principles laid down in the aforesaid judgments, it is to be held that since grant of sanction removes protective umbrella, which shields public servant from the prosecution, the authority, who has to take a decision whether to grant or not to grant sanction for prosecution is required to be free from possibility of bias against the public servant. (“**Dhirendra Kishan v. Bharat Heavy Electricals Ltd. and others 1999 Criminal Law Journal 3405.**.)”

- f) ***Sudarshan Vs. The State of Maharashtra, MANU/MH/1684/2018***, in which the learned Single Judge of this Court in paragraph No.32 held as under:-

“**32.** It has to be stated that the Government Resolution dated 12th February, 2013 placed on record by the learned APP may not be of any help for the prosecution since the sanction in the

instant matter was admittedly accorded by PW 1-Bhagwantrao More prior to that. In view of the discussion made herein above, unhesitatingly, it can be said that PW 1 - Bhagwantrao More was not competent authority to grant sanction to prosecute the appellant-accused for the offences punishable under the PC Act.”

5 The learned APP for the respondent / State pointed out Article 311 of the Constitution of India as well as Section 19 of the PC Act. Section 19(1)(b) of the PC Act is relevant, which reads as under:-

“19.Previous sanction necessary for prosecution. - (1)
No Court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]-

(a) ...

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

6 The learned APP for the respondent / State further submitted that the words *“not removable from his office”* intended

with the public servant, who can be removed from his services by the officer, that officer can give sanction to prosecute him. The Commissioner of Police, Aurangabad, is the competent authority to remove the appellant from service and therefore, it is not necessary that the sanction shall be granted by the appointing authority only, but the sanction by the removing authority is legal sanction. He submitted that the circular of the Government dated 12th February, 2013, clarifying that the sanctioning authority shall not be Superintendent of Police of the District or Deputy Commissioner of Police or superior officer to them. The Commissioner of Police, Aurangabad, is superior officer to the Superintendent of Police or Deputy Commissioner. Therefore, the sanction granted to prosecute the appellant is valid. He pointed out that in the said circular, it is held that the circular is applicable to the persons to whom the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 are not applicable, but the rules of the Maharashtra Police Act are applicable for appeal and punishment. He lastly submitted to dismiss the appeal.

7 The learned APP relied upon the judgment of the Honourable Supreme Court in the case of ***Parkash Singh Badal and another Vs. State of Punjab and others, (2007) 1 Supreme Court Cases 1***, in which the Honourable Supreme Court held that

sanctioning authority is not required to separately specify each of the offence against the accused public servant. This is required to be done at the stage of framing of charge.

8 Perused the record and proceedings, particularly, the disputed circular and the relevant documents on record.

9 Perused the case law relied upon by both the sides. Nobody will dispute the ratio laid down in the above authorities. However, facts of the case are decisive.

10 Following point emerges for consideration:-

Sr.No.	Point	Finding
1	Was the learned Special Judge illegal and incorrect in holding that the sanction granted to prosecute the appellant was valid ?	Affirmative

11 Apart from the factual merits and demerits of the case, this Court re-appreciated the evidence of PW-1 Amitesh Kumar, the then Police Commissioner of Aurangabad, who deposed that he had granted sanction to prosecute the appellant, however, in his cross-examination, he admitted that the post of Commissioner of Police,

Aurangabad, is inferior to that of the Additional Director General of Police, Maharashtra. This admission of PW-1 Amitesh Kumar shows that Additional Director General of Police of Maharashtra is superior officer to him, who admittedly appointed the appellant when he entered into service. In the appointment order of the appellant dated 1st December, 1991, it is specifically stated that the Police Commissioner, Brihanmumbai, has appointed the appellant. Admittedly, thereafter, on his request, the appellant was posted at Aurangabad. PW-1 Amitesh Kumar, who accorded sanction to prosecute the appellant, was not holding post equivalent to the Commissioner of Police, Brihanmumbai. Therefore, the sanction to prosecute the appellant accorded by him is not legal sanction.

12 Further the argument of the learned APP is that the rules of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, are not applicable to the appellant. In the letter dated 29th March, 2019, in which also the reference of these two Rules i.e. Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and the Police Punishment and Appeal Rules, 1956, are applied and quoted in the said order by which the appellant is departmentally held liable and punished. Therefore, in the circular of the State Government dated 12th February, 2013, though it is stated that the rules of the

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 are not applicable, is not sustainable. If all these aspects are considered together along with the ratio laid down in the authorities (cited supra) by the learned Senior Counsel for the appellant, the sanction accorded by PW-1 Amitesh Kumar to prosecute the appellant is illegal and not sustainable, as it is against the provision of law, which goes to the root of the matter and therefore, apart from the merits of the case, the appeal deserves to be allowed, as the sanction granted to prosecute the appellant, is illegal and not sustainable. Hence, point No.1 is answered in the affirmative.

13 The learned APP for the respondent / State further argued that fresh sanction from the competent authority can be obtained and the appellant can be prosecuted afresh. In this regard, the learned Senior Counsel for the appellant pointed out paragraph No.16 of the judgment delivered by this Court at Principal Seat in the case of ***(Dilip Mahadeo Mandhare Vs. The State of Maharashtra)*** dated 25th August, 2021 in Criminal Appeal No.610 of 2012, which reads as under:-

“16. The question then which arise for consideration is whether the said objection, of the sanction being not valid, was taken at what point of time, since in the wake of Section 19(4) of PC Act, which stipulate that while considering the

issue of proper sanction is accorded or not, such question be considered having regard to the fact whether the objection could have been raised at any earlier stage in the proceedings. As far as the present case is concerned, the Appellant will not suffer from the said handicap, since he had challenged the validity of the sanction order during trial and even in the statement recorded under Section 313 of Cr.P.C., he has raised a cloud over the sanction order.

Further, since the Appellant demonstrate that there is a gross failure of justice, which has occasioned on account of the defective sanction and considering the proposition of law as set out by the Hon'ble Apex Court in the case of ***Nanjappa Vs. State of Karnataka***, 2015 ALL MR (Crime) 3318 (SC), it is not feasible to remand the matter back for obtaining the valid sanction, since the conviction of the Appellant is of the year 2012 and the case of the prosecution is of the year 2007. No fruitful purpose would be served by remanding the case back for according sanction by the competent authority on account of the huge time lapse."

14 Considering the law laid down in the above authority and facts of the case in hand, when the appellant is prosecuted in the year 2015, no fruitful purpose would be served by remanding the case back for according legal sanction through the competent authority as there is huge lapse of time as held by the Honourable Supreme Court in the case of ***Nanjappa Vs. State of Karnataka***, 2015 ALL MR (Crime) 3318 (SC).

15 For the aforesaid reasons, the appeal deserves to be allowed and the impugned judgment and order deserves to be set aside. Hence, the following order:

ORDER

- I. The Criminal Appeal is allowed.
- II. The judgment and order of conviction and sentence, dated 23rd April, 2018, passed by the learned Special Judge (P.C. Act), Aurangabad in Special Case (ACB) No.39 of 2015, is hereby set aside. The appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.
- III. Bail bonds of the appellant are cancelled.
- IV. Fine amount, if paid, be refunded to the appellant.
- V. Criminal Application No.4440 of 2024 filed for suspension of substantive sentence/stay, stands disposed of.
- VI. Concerned to act upon an authenticated copy of this judgment.

[SANJAY A. DESHMUKH, J.]