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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.641 OF 2024
WITH
INTERIM APPLICATION NO. 5239 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.641 OF 2024**

Sahebrao Pandurang Barve ... Applicant

V/s.

The State of Maharashtra ... Respondent

Ms. Surekha Das, for the applicant.

Ms. Shilpa Gajare, APP for respondent – State.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 7, 2025

PRONOUNCED ON : OCTOBER 9, 2025

JUDGMENT:-

1. The applicant has assailed the judgment and order passed by the learned Additional Sessions Judge, Vasai, below Exhibit 8 in Special Case No. SPL ACB No. 2 of 2017, whereby the applicant's application under Section 227 of the Code of Criminal Procedure, 1973, seeking discharge from the offence punishable under Section 7 of the Prevention of Corruption Act, 1988, came to be rejected. The challenge is principally founded on the ground that the sanction for prosecution, as required under Section 19 of the said Act, has been accorded by an authority subordinate to the Appointing Authority, and therefore, is not in accordance with law.

2. The prosecution case, in brief, is that an offence came to be registered at Virar Police Station on 14 April 2016 vide FIR No. 08 of 2016 at the instance of Mr. Ashok Manohar Salve, Police Inspector, Anti-Corruption Bureau, Palghar, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988.
3. The complainant, Mr. Keluskar, had purchased a room bearing address A/20, Third Floor, Trilok Asmita Society, Mayekar Wadi, Virat Nagar, Virar (West) in the year 2008. He sold the said room in the year 2010. Subsequently, the original owner, Mrs. Rajni Vattal Pawar, lodged a complaint in person and through her advocate against the complainant alleging that the sale was effected by use of forged documents. The said complaint came to be filed before Virar Police Station.
4. It is alleged that during the pendency of the said complaint, the accused demanded a bribe of Rs. 2,00,000 for settling the matter, which was later reduced to Rs. 1,00,000. The accused allegedly insisted upon payment of Rs. 50,000 immediately. Accordingly, a trap was organized on 10 March 2016 by the Anti-Corruption Bureau. However, the trap did not succeed as the accused did not accept the bribe amount. Thereafter, a complaint was lodged on 17 April 2016 by Mr. Ashok Salve, Police Inspector, Anti-Corruption Bureau, Palghar, leading to registration of the present offence.
5. The learned Advocate appearing for the applicant submitted that the competent authority empowered to remove or dismiss the

applicant from service is the Director General of Police, Maharashtra State. Therefore, the sanction for prosecution under Section 19 of the Prevention of Corruption Act ought to have been accorded by the Director General of Police. In the present case, however, the sanction has been accorded by the Special Inspector General of Police, who is subordinate to the Director General of Police. It is thus contended that the sanction is invalid, defective, and void being contrary to Article 311(1) of the Constitution of India.

6. She submitted that the Director General of Police is the head of the Department and is assisted by the Additional Director General, Special Inspector General, and Deputy Inspector General. The reliance placed by the learned Trial Court upon the Government Resolution dated 12 February 2013, empowering the Special Inspector General to accord sanction for prosecution, is erroneous. It is argued that the said Resolution is inconsistent with Article 309 of the Constitution of India since the subject matter is already governed by the provisions of Section 25(2)(b) of the Maharashtra Police (Amendment) Act, 2015, and Rule 5 of the Bombay Police (Punishment and Appeals) Rules, 1956, read with Schedule I, which do not authorize the Special Inspector General to remove a Police Sub-Inspector or Assistant Police Inspector.

7. Reliance was placed upon the following decisions:

(i) *Nanjappa v. State of Karnataka, Criminal Appeal No. 1867 of 2012*;

(ii) *Krishna Kumar v. Divisional Assistant Electrical Engineer, Central Railway, (1979) 4 SCC 289*;

(iii) *Vaky Dasu Rathod v. State of Maharashtra, Criminal Application No. 1439 of 2018*;

(iv) *Sudhir s/o Narayanrao Girde v. State of Maharashtra, Criminal Revision Application No. 98 of 2024 (Bombay High Court, Nagpur Bench)*.

8. On the strength of the above submissions, the learned Advocate contended that the sanction being invalid in law, the applicant is entitled to be discharged from the case.

9. Per contra, the learned Additional Public Prosecutor placed reliance upon the Government Resolution dated 12 February 2013 issued by the State of Maharashtra in exercise of powers under Article 162 of the Constitution of India, duly authenticated by the Governor of Maharashtra under Article 166 of the Constitution, to contend that for the purpose of granting sanction under the provisions of the Prevention of Corruption Act, the competent authority in respect of the post of Assistant Police Inspector is the Special Inspector General of Police or an officer of higher rank.

10. The learned APP further relied upon the judgment of the Hon'ble Supreme Court in State represented by the *Deputy Superintendent of Police, Vigilance and Anti-Corruption, Chennai City-I Department v. G. Easwaran, Criminal Appeal No. 1405 of 2019*, wherein it has been held that the issue of invalidity of sanction, where a sanction order exists, is a matter to be examined during the course of trial. The Supreme Court has observed that the validity or otherwise of the sanction must be considered at the stage of trial and not at the threshold. On this premise, it was

contended that the question of validity of sanction may be adjudicated by the learned Trial Court at the appropriate stage. Accordingly, the learned APP prayed for dismissal of the revision application.

11. The revision challenges the order below Exhibit 8 in Special Case No. SPL ACB No. 2 of 2017. The trial court refused the applicant's discharge under Section 227 Cr.P.C. The single prominent ground in this revision is that the sanction for prosecution is invalid because it was accorded by Special Inspector General of Police and not by the Director General of Police. I have heard counsel. I have read the record. I give reasons for rejecting the revision.

12. The Prevention of Corruption Act requires previous sanction before a court takes cognizance of offences under Sections 7, 11, 13 and 15. The statute lays down who must grant the sanction. The statute also directs that questions of error, omission or irregularity in sanction ordinarily do not justify staying proceedings unless such defect results in a failure of justice.

13. The scope of judicial scrutiny at the stage of Section 227 is narrow. The court asks whether a prima facie case exists on the material placed by the prosecution. The court must not embark upon a mini trial. It must not weigh evidence or test probabilities. The court should not shut down prosecution by resolving disputed questions of fact at the threshold.

14. The recent decision of the Supreme Court in *G. Easwaran(Supra)* reinforces this rule. The Court held that alleged

defects in sanction ordinarily require trial scrutiny; they do not, as a rule, warrant quashing of proceedings at the pre-trial stage. The Court warned against premature factual appraisal and reiterated that validity of sanction is usually for trial.

15. On the record before the trial court a sanction order exists. The applicant has not shown a manifest or patent illegality in that order. The applicant has not shown forgery, non-existence, or a fact so plain that no trial could cure it. In those circumstances the trial court acted within its duty in refusing discharge. The issue of sanction needs to be examined in evidence during trial.

16. The applicant has placed strong reliance on the decision of the Supreme Court in *Nanjappa(Supra)* and other similar judgments. In those cases, the Supreme Court held that a valid sanction is a condition precedent for taking cognizance of an offence under the Prevention of Corruption Act. The Court further observed that if the sanction is patently invalid or granted by an authority having no power at all, the court can examine such issue even at the preliminary stage.

17. However, the legal position that has now emerged through subsequent judgments, particularly in *G. Easwaran(Supra)* , makes the position clearer. The Supreme Court has explained that the question of validity or propriety of sanction is often a mixed question of law and fact. Such questions require examination of records, rules of service, and administrative instructions. Therefore, they are best considered at the time of trial when both sides can lead evidence. The Court has cautioned that at the stage

of discharge, the court should not act as if it were conducting a full-fledged trial.

18. In the present case, there is no material to show that the sanction order suffers from any patent illegality on its face. The order of sanction exists, it is issued in writing, and it bears the seal of authority. The applicant only raises an interpretative issue about whether the Special Inspector General was the competent authority under the service rules.

19. Such a dispute cannot be conclusively decided at the discharge stage. It requires evidence regarding the chain of command, delegation of powers, and the extent of authority conferred by the Government Resolution dated 12 February 2013. These are matters which need detailed examination of the relevant administrative records. The trial court, therefore, acted rightly in not accepting the argument that the sanction was invalid at the threshold.

20. The trial court was correct in its view that once a sanction exists and appears regular on its face, it should be presumed to be valid unless proved otherwise in trial. The applicant will have an opportunity to challenge its validity during trial, by cross-examining the sanctioning authority and producing necessary documents. Hence, at this stage, there is no ground to discharge the applicant solely on the plea of invalid sanction.

21. The argument founded on Article 311(1) of the Constitution is misplaced at this stage. The statutory scheme contemplates that questions of competence and regularity can be tested in

appropriate proceedings and in trial when evidence can be produced and evaluated.

22. I have considered the submission that the Government Resolution dated 12 February 2013 is in conflict with service rules or Part IX provisions. The submission raises a mixed question of law and fact about executive competence and delegated power. The record before the trial court and before this Court on revision does not permit a conclusive adjudication of those mixed issues. Those matters need to be examined during trial when the State can produce the administrative file and the applicant can cross examine.

23. The matter involves disputed facts which the trial court must determine in the course of trial. Interference in revision would amount to a premature appellate reappraisal of facts and evidence. The authorities relied upon by the applicant do not compel a different course on the present record.

24. For these reasons I find no merit in the revision. The order below Exhibit 8 stands confirmed. The revision is dismissed. The trial court shall proceed with the trial and decide the validity of the sanction and all other issues on evidence. No order as to costs.

25. In view of disposal of revision application, pending interim application also stands disposed of.

(AMIT BORKAR, J.)