Judgment

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION NO.61 OF 2022

Prakash s/o Shivram Natkar,
aged about 51 years, occupation : service,
r/o plot No.47, Mahavir Nagar,
Part-II, Darwha Road, Yavatmal,
taluka and district Yavatmal. ..... **Applicant.**

:: **VERSUS** ::

1. State of Maharashtra, through
Police Station Officer, Police Station
Wadgaon Road, Yavatmal,
taluka and district Yavatmal.

2. Anti Corruption Bureau,
Yavatmal. ..... **Non-applicants**.

Shri P.R.Agrawal, Counsel for the Applicant.
Mrs.Ritu Sharma, Additional Public Prosecutor for the Non-applicants/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 24/02/2025
PRONOUNCED ON : 17/03/2025

JUDGMENT

1. Heard learned counsel Shri P.R.Agrawal for the applicant and learned Additional Public Prosecutor Mrs.Ritu Sharma for the non-applicants/State.

2. The present revision is filed by the applicant in connection with Crime No.3302/2015 registered with the non-applicant police station under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 against rejection of discharge application vide Exh.18 dated 31.1.2022.

3. Brief facts necessary for disposal of the revision are as follows:

The applicant is accused No.1 in Special (ACB) Case No.9/2017 instituted on the basis of FIR lodged by one Satish Moreshwar Deshmukh with the non-applicant/police station alleging that accused No.2 Mohsin Khan Anwar Ali Khan who was working as Cashier at Block Development Office, Panchayat Samiti, Yavatmal allegedly demanded Rs.4000/- for disbursing of Rs.27,990/- towards the bill raised by one Sachin

Bhagat for the work of data entry undertaken by Sachin Bhagat on behalf of himself and on behalf of the present accused who was discharging his duties as Assistant Block Development Officer, Panchayat Samiti, Yavatmal at the relevant time. It is further alleged that after receiving the complainant, officials of the Anti Corruption Bureau (the bureau) conducted a trap in which co-accused Mohsin Khan was caught red handed by accepting Rs.2000/- from original complainant Sachin Bhagat. After the raid, the applicant as well as the co-accused were arrested and released on bail. During investigation, the Investigating Officer approached the appointing authority of the present applicant namely Government of Maharashtra, Gram Vikas and Water Conservation Department, Mumbai for obtaining sanction. However, the Deputy Secretary of the said Department of the Government of Maharashtra communicated with the Investigating Officer that perusal of the investigation papers show that no *prima facie* case is made out against the applicant and denied to accord the sanction. Though the Investigating Officer again requested to revise the earlier decision of non-grant of the sanction, the Government again communicated and denied the sanction. After completion of the investigation, the chargesheet is submitted against the applicant.

4. As the cognizance was taken, in absence of the sanction, it is not permissible by law. The applicant approached the court by filing an application for discharge and the same was rejected.

Hence, this revision.

5. Learned counsel for the applicant submitted that the application for discharge was filed on two grounds;

(1) in absence of the sanction, in view of Section 19(1) of the Prevention of Corruption Act, the court cannot take cognizance. In absence of the sanction, the entire trial vitiates; and (2) the applicant is already exonerated from the departmental enquiry. He submitted that the entire investigation papers nowhere show that it was the applicant who has demanded the amount and accepted the same through the co-accused. Even, recital of the FIR nowhere discloses that it was the present applicant who has demanded the gratification amount. After the investigation, the Investigating Officer approached the Government of Maharashtra, Gram Vikas and Water Conservation Department, Mumbai for obtaining the sanction. The said sanction was refused. Again, the Investigating Officer approached the concerned department for obtaining the sanction. But, the earlier decision was not revised. Thus, the prosecution has

filed the chargesheet against the present applicant and cognizance was taken in absence of the sanction.

6. In view of Section 19 of the Prevention of Corruption Act, there is a complete bar on the power of the court to take cognizance of offences punishable under Sections 7, 10, 11, 13, and 15 alleged to have been committed by the public servant except with the previous sanction of the competent authority. Clauses (a) to (c) of Section 19, clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant. He submitted that likewise, in view of the decision of the Hon'ble Apex Court, if an accused is completely exonerated on merit in a departmental

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enquiry, a separate criminal prosecution on the same set of facts is generally not allowed to continue. For all above these reasons, learned Judge below ought to have allowed the application for discharge, but learned Judge below rejected the application erroneously.

7. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. State of Himachal Pradesh vs. Nishant Saree, reported in 2011 AIR (SC) 404;

2. Nanjappa vs. State of Karnataka, reported in 2015 ALL MR (Cri) 3318;

3. State of Punjab vs. Partap Singh Verka, reported in AIR 2024 SC 3299;

4. Ashoo Surendranath Tewari vs. The Deputy Superintendent of Police, EOW, CBI and anr, reported in 2020(9) SCC 636;

5. Criminal Application (APL) No.734/2020 (Keshav vs. The State of Maharashtra and ors) decided by this court on 20.6.2022;

6. Sanjay s/o Laxman Kholapurkar vs. State of Maharashtra, through Superintend of Police, Anti Corruption Bureau, Nagpur (Criminal Revision Application No.141/2019) decided by this court on 16.9.2021;

7. Siddappa Kashiraya Savli vs. State of Maharashtra, reported in 2024 ALL MR (Cri) 4165, and

8. Dr.Gurfan Beig vs. CBI, ACB Pune and anr, reported in 2024 ALL MR (cri 3427.

8. *Per contra,* learned Additional Public Prosecutor for the State supported the order impugned in the revision and submitted that criminal and disciplinary proceedings based on the same charge exoneration and disciplinary proceeding held by itself not a ground for quashing criminal proceeding. The criminal case is to be decided on the basis of evidence adduced therein and cannot be rejected on the basis of the evidence in departmental proceedings. She further submitted that whether there was sanction or not or whether there was

valid sanction or not is a matter of evidence. At this stage, even, strong suspicion is sufficient to frame the charge against the accused.

9. After hearing both the sides and perusing of the investigation papers, it reveals that application for discharge was filed mainly on two grounds that cognizance is taken in absence of the sanction and the applicant is exonerated from the department enquiry. As far as factual aspects are concerned, it is undisputed that the applicant was serving as the Block Development Officer and the co-accused was working as Cashier with him. The FIR was lodged on the basis of complaint by one Satish Deshmukh alleging that the co-accused has demanded the bribe amount for disbursing the payment of Rs.27,990/- for himself and the applicant. Accordingly, raid was conducted and the co-accused was found accepting the bribe amount. During the

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investigation pre-trap and post-trap panchanamas were drawn. The genuineness of the demand is also verified. Before completion of the investigation, the communication was made to the Government of Maharashtra, Gram Vikas and Water Conservation Department, Mumbai on 16.12.2016 for according the sanction to launch prosecution against the applicant. The Deputy Secretary of the said Department by communication dated 19.5.2017 refused to accord the sanction. Subsequent to that communication, again, a request was made by letter dated 14.8.2017 to revise the decision and to accord the sanction. The said request was also rejected and the sanction was not granted. Thus, admittedly, without sanction, the chargesheet was filed against the applicant. It is also a matter of record that for the alleged misconduct, departmental enquiry was conducted against the applicant in which he was exonerated. Thereafter, the application was filed for discharge which was rejected. Subsequent to that, the applicant filed Criminal Revision Application No.129/2019 which was decided on 17.12.2021 granting liberty to the applicant to file another application raising the ground of sanction and, therefore, the applicant filed a fresh application vide Exh.18 the same was rejected on 31.1.2022 and the said order is under challenge.

10. Before entering into the merits of the case, it is necessary to see the considerations for considering the application for discharge.

11. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and

evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

12. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU/SC/1113 2023**, adverting to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors, reported in (2014) 11 SCC 709** and **The State of Maharashtra vs. Som Nath Thapa, reported in (1996) 4 SCC 659** and **The State of MP Vs. Mohan Lal Soni, reported in (2000) 6 SCC 338,** has held as under:

> "10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the

prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of **Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709** adverting to the earlier propositions of law laid down on this subject has held:

> "29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the

prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

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13. Thus, at the stage of considering the application for discharge, the defence of the accused is not to be looked into. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court

cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

14. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting to the various decisions, the Hon'ble Apex Court has enumerated the following principles:

> "(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under

the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

15. Now, the question whether the court can take cognizance in absence of the sanction.

16. Section 19 of the Prevention of Corruption Act, 1988 reads as follows:

"**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) 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] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(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;

(c) in the case of any other person, of the authority competent to remove him from his office.

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless-

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, presecribe such guidelines as it considers necessary.

Explanation. - For the purposes of sub-section (1), the expression "public servant" includes such person-

(a)who has ceased to hold the office during which the offence is alleged to have been committed; or

(b)who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. For the purposes of this section,

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

17. The object underlying Section 19 is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations. The exercise of power under Section 19 is not an empty

formality since the Government or for that matter the sanctioning authority is supposed to apply its mind to the entire material and evidence placed before it and on examination thereof reach conclusion fairly, objectively and consistent with public interest as to whether or not in the facts and circumstances sanction be accorded to prosecute the public servant.

18. A plain reading of Section 19(1) of the Prevention of Corruption Act leaves no manner of doubt which mandates that for taking cognizance of offences punishable Sections 7, 10, 11, 13, and 15 against public servant and previous sanction of the competent authority is required. The court cannot take cognizance in absence of the sanction. Sub section (1) of Section 19 in absolute terms states that the sanction is the pre-condition to take cognizance.

19. Thus, legal position is clear that the statute forbids taking of cognizance by the court against public servant except with the previous sanction of an authority competent to grant such sanction in terms of Clauses (a), (b) and (c) of Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case, the sanction is found to be invalid, the authority or the State is at liberty to approach to the concerned authority to obtain a valid sanction, but the Section creates a complete bar on the power of the court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this sub-section. If

the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15.

20. The Hon'ble Apex Court in the case of **State of Himachal Pradesh vs. Nishant Saree** *supra* relied upon by learned counsel for the applicant explained the object of Section 19 of the Prevention of Corruption Act and observed by referring its earlier decisions that object underlying Section 19 is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations.

21. In **Nanjappa vs. State of Karnataka** *supra,* the Hon'ble Apex Court held that the prosecution of public

servant in corruption case without valid sanction, the court would discharge the accused and not acquit the accused on merits. By referring Section 19 of the Prevention of Corruption Act, the Hon'ble Apex Court by referring the judgment of the Division Bench in the case of **Baij Nath Tripathi vs. The State of Bhopal and anr, reported in AIR 1957 SC 494** held since no sanction according to law had been given for the prosecution of the accused, the Special Judge had no jurisdiction to take cognizance of the case and that the trial was invalid and void *ab initio*, hence quashed relegating the parties to the position as if no legal chargesheet had been submitted against the appellant.

22. The Hon'ble Apex Court in the case of **State of Punjab vs. Partap Singh Verka** *supra* also by the referring the earlier decisions held that the law declared by this Court emerging from the judgments referred to

hereinabove, leaves no room for any doubt that under Section 197 of the Code and/or sanction mandated under a special statute (as postulated under Section 19 of the Prevention of Corruption Act) would be a necessary prerequisite before a court of competent jurisdiction takes cognizance of an offence (whether under the Penal Code, or under the special statutory enactment concerned). The procedure for obtaining sanction would be governed by the provisions of the Code and/or as mandated under the special enactment. The words engaged in Section 197 of the Code are, "… no court shall take cognizance of such offence except with previous sanction…" Likewise, Sub section (1) of Section 19 of the Prevention of Corruption Act provides no court shall take cognizance except with the previous sanction. Thus, the Hon'ble Apex Court held the mandate is clear and unambiguous that a court "shall not" take cognizance without sanction. The same needs no further elaboration. Therefore, a court just cannot take cognizance without sanction by the appropriate authority.

23. Though learned Additional Public Prosecutor for the State placed reliance on the decision in the case of **L.Narayana Swamy vs. State of Karnataka and ors, reported in (2016)9 SCC 598,** considering facts and circumstances in the cited decision and facts of the present case are not identical and, therefore, the said decision is not helpful to the state.

24. The other ground raised by the applicant is that, he is exonerated from the departmental enquiry.

25. Admittedly, the applicant is exonerated from the departmental enquiry. Whether that would be sufficient ground to discharge the accused, learned counsel for the

applicant placed reliance on the decision in the case of **Ashoo Surendranath Tewari vs. The Deputy Superintendent of Police** *supra* wherein the Hon'ble Apex Court held that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The Hon'ble Apex Court, by referring the various judgments, culled out the ratio of the said decision and concluded that the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.

26. The said aspect is also dealt with by this court in the case of **Keshav vs. The State of Maharashtra and ors** *supra* and **Sanjay s/o Laxman Kholapurkar vs. State of Maharashtra** *supra.*

27. The Hon'ble Apex Court in the case of **Ashoo Surendranath Tewari** *supra* observed that if the material on record is scrutinized on the anvil of settled position of law, the irresistible conclusion is that the material is insufficient to the commission of offence under the Act.

28. As far as the decision relied upon by learned Additional Public Prosecutor for the State in the case of **State of (NCT of Delhi) vs. Ajay Kumar Tyagi, reported in (2012)9 SCC 685** is concerned, the Hon'ble Apex Court considered the various decisions and held that

criminal proceedings and disciplinary proceedings based on same charge, exoneration in disciplinary proceedings held by itself not a ground for quashing criminal proceedings. The criminal case is decided on the basis of evidence adduced therein and cannot be rejected on the basis of evidence in departmental proceeding or report of enquiry officer. However, if prosecution is solely based on a finding in a disciplinary proceeding and same is set aside by superior authority, as the very foundation goes, prosecution may be quashed. It is further held that disciplinary authority is entitled to take different view.

29. The ground raised by the applicant, as far as sanction is concerned, is valid ground as the object behind the sanction is to ensure that a public servant does not suffer harassment on false, frivolous, concocted or unsubstantiated allegations.

30. As observed earlier, the mandate of Section 19(1) of the Prevention of Corruption Act is clear and unambiguous that a court "shall not" take cognizance without sanction. The same needs no further elaboration. Therefore, a court just cannot take cognizance without sanction by the appropriate authority.

31. As far as the second contention is concerned, as to exoneration in disciplinary proceedings, the cannot be considered at this stage in view of the decision in the case of **State of (NCT of Delhi) vs. Ajay Kumar Tyagi** *supra* which is the decision by three Judge bench and the same was not referred in **Ashoo Surendranath Tewari** *supra.*

32. After having sifting and weighing the evidence on record, it is clear that the cognizance was taken by

learned Judge below in absence of the sanction. It is well settled position of law that the courts cannot take cognizance against any pub servant for offences punishable Sections 7, 10, 11, 13, and 15 of the Act and only after obtaining the sanction, the cognizance can be taken. In absence of the sanction, the entire procedure remains flawed. Learned Judge below ought to have appreciated the said legal position while deciding the application for discharge.

33. In this view of the matter, this Court passes following order:

ORDER

(1) The Criminal Revision Application is **allowed**.

(2) The order dated 31.1.2022 passed below Exh.18 by learned Assistant Sessions Judge, Yavatmal in Special

Case ACB No.9/2017 rejecting the discharge application is quashed and set aside.

(3) The applicant is discharged of offences in connection with Crime No.3302/2015 registered with the non-applicant police station under Sections 7 and 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

Revision stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

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