



Judgment

439 wp283.23

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

CRIMINAL WRIT PETITION NO.283 OF 2023

State of Maharashtra,
through Anti Corruption Bureau,
Deputy Superintendent of Police,
Buldana, district Buldana. **Petitioner.**

:: VERSUS ::

Sanjay s/o Mahadeo Ingle,
age about 40 years, occupation service,
r/o Palshi (Kd.), post Palshi (Bk.),
tahsil Khamgaon, tahsil and district
Buldana. **Respondent.**

**Shri M.J.Khan, Additional Public Prosecutor for the
Petitioner/State.**

Shri K.P.Sadavarte, Counsel for the Respondent.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 09/07/2025

PRONOUNCED ON : 25/07/2025

JUDGMENT

1. Heard learned Additional Public Prosecutor Shri
M.J.Khan for the petitioner/State and learned counsel Shri

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K.P.Sadavarte for the respondent. **Rule.** Heard finally by consent.

2. By this petition, the petitioner/State has challenged order dated 29.12.2022 passed by learned Additional Sessions Judge-1, Khamgaon in Special ACB Case No.14/2015 whereby the respondent/accused is discharged.

3. Brief facts necessary for disposal of the writ petition are as under:

The respondent was appointed as “Talathi” on 9.7.2015 and posted at Khamgaon, district Buldhana. The father of the complainant had purchased a piece of agricultural land at Khamgaon and met the respondent/accused to carry out mutation entry on the basis of sale deed. It is alleged that the respondent/accused demanded amount Rs.2000/- for

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taking such mutation entry. As the complainant was not desiring to pay the bribe, he approached the office of the Anti Corruption Bureau at Buldana (the bureau) and lodged a complaint. On following procedure, a raid was conducted and the respondent/accused was caught while accepting bribe amount Rs.2000/-. On completion of investigation, after obtaining a sanction, chargesheet was filed in the special court. The prosecution has examined 4 witnesses including the Sanctioning Authority. On the basis of admission given by PW4 Sanctioning Authority, the respondent/accused has applied for discharge on account of invalid sanction on the ground that the sanction to prosecute was accorded by the Sub Divisional Officer who was neither appointing nor removing authority for the respondent/accused. The respondent/accused was appointed on the post of “Talathi” by the order of the Collector whilst the Sub

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Divisional Officer has merely given a posting and, therefore, the sanction accorded by the Sub Divisional Officer is invalid. Learned Judge below has considered the submissions, however declined to entertain the application on the ground raised therein by stating that the charge was already framed long back. The point of validity of sanction was not raised at earlier point of time and rejected the discharge application.

4. The respondent/accused challenged the order by filing Criminal Writ Petition No.530/2022 which was decided on 11.11.2022. The question raised in the said writ petition was as to maintainability of discharge application at the midst of the trial. The writ petition came to be allowed with direction that the Special Court shall decide the application Exh.56 afresh in the light of above observation on the point of validity of sanction.

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The Special Court considered the discharge application and discharged the respondent/accused by passing order dated 29.12.2022 and hence this writ petition.

5. Learned Additional Public Prosecutor for the State submitted that after framing of charge, the application for discharge itself is not maintainable.

The Trial Court wrongly relied upon the decision of the Hon'ble Apex Court in the case of **Nanjappa vs. State of Karnataka, reported in 2015 ALL MR (Cri) 3318 (SC)** misinterpreting the same.

Once the charge is framed, only option available with the Trial Court is either to convict or acquit the accused.

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It is further submitted that the question of validity of sanction requires to be decided at the time of trial. It is not a case that there was no sanction at all.

The Hon'ble Apex Court in the case of **Ratilal Bhanji Mithani vs. State of Maharashtra and ors, reported in (1979)2 SCC 179** observed that once charge is framed, the Magistrate has no power under the CrPC to discharge and, therefor, he can either convict or acquit the accused.

He, therefore, submitted that the order passed by learned Judge below deserves to be quashed and set aside.

6. *Per contra*, learned counsel for the respondent/accused submitted that as per the scope provided under Section 19 of the Prevention of Corruption Act, 1988 (the PC Act), no Court shall take

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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 and valid sanction. He submitted that, in the present case, there was no valid sanction as the appointing authority was the Collector and sanction was granted by the Sub Divisional Officer. He placed reliance on the decision of the Hon'ble Apex Court in the case of **Nanjappa vs. State of Karnataka** *supra* wherein in paragraph Nos.13 to 16 it has been observed that as under:

“13. What is important is that, not only was the grant of a valid sanction held to be essential for taking cognizance by the Court, but the question about the validity of any such order, according to this Court, could be raised at the stage of final arguments after the trial or even at the appellate stage. This Court observed:

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“Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefore or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage.

But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be

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taken for the first time before an appellate court.”

14. In *B.Saha and ors vs. M.S.Kochar* (1979) 4 SCC 177, this Court was dealing with the need for a sanction under Section 197 of the Cr.P.C. and the stage at which the question regarding its validity could be raised. This Court held that the question of validity of an order of sanction under Section 197 Cr.P.C. could be raised and considered at any stage of proceedings. Reference may also be made to the decision of this Court in *K. Kalimuthu vs. State by DSP* (2005) 4 SCC 512 where Pasayat, J., speaking for the Court, held that the question touching the need for a valid sanction under Section 197 of the Cr.P.C. need not be raised as soon as the complaint is lodged but can be agitated at any stage of the proceedings. The following observation in this connection is apposite:

“The question relating to the need of sanction under Section 197 of the Code is

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not necessarily be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned the effect of Section 19, dealing with question of prejudice has also to be noted.”

15. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to 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

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much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

16. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to Section 19, which starts with a non-obstante clause. Also relevant to the same aspect would be Section 465 of the Cr.P.C. which we have extracted earlier. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning

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prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to Section 4, “error includes competence of the authority to grant sanction”. The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate

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or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section(3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1). Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional Court shall, while examining

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whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-Section 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any

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such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision.”

He further submitted that the prosecution is under Special Act viz. the P.C.Act. Section 19 of the PC Act puts a specific embargo on the Court to take cognizance in absence of valid sanction.

He submitted that in view of the decision in the case of **Nanjappa** *supra*, absence of sanction vitiates the trial, meaning thereby it goes to the root of the case. It conveys that the competency of the sanctioning authority can be tested at any stage of the proceeding. In view of

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the special requirement of mandate of law, learned Judge below has rightly discharged the respondent/accused and, therefore, the writ petition being devoid of merits is liable to be dismissed.

7. On hearing both the sides and perusing the entire record, it reveals that issue revolves around is, absence of sanction and validity of sanction. The respondent/accused is discharged by learned Judge below as there was on valid sanction.

8. Before referring to the law on the point, it is necessary to refer Section 19 of the PC Act, which runs 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] [Substituted 'sections 7, 10, 11, 13 and 15' by Act No. 16 of 2018, dated 26.7.2018.] alleged to have been committed by

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a public servant, except with the previous sanction,

(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] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] 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

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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 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

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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, prescribe 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

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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

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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

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specified person or any requirement of a similar nature.”

9. Section 19(1) of the PC Act states that 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.

10. In view of clause (a) of Section 19(1) of the PC Act, 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 the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government.

Clause (b) of the said Section, deals with a person employed or as the case may be, was at the time of commission of the alleged offence employed in

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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.

Whereas, clause (c) of the said Section deals with if a person, of the authority competent to remove him from his office.

11. A plain reading of Section 19(1) leaves no manner of doubt that the same is couched in mandatory terms and forbids courts from taking cognizance of any offence punishable under Sections 7, 10, 11, 13, and 15 against public servants except with the previous sanction of the competent authority enumerated in clauses (a), (b) and (c) to sub-section (1) of Section 19. The provision contained in sub-section (1) would operate in absolute terms but for the presence of sub-section (3) to Section 19 to which we shall presently turn. But before we do so, we

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wish to emphasise that the language employed in sub-section (1) of Section 19 admits of no equivocation and operates as a complete and absolute bar to any court taking cognizance of any offence punishable under Sections 7, 10, 11, 13, and 15 of the Act against a public servant except with the previous sanction of the competent authority.

Thus, Section 19(1) of the PC Act deals with what would be the consequences if there was no sanction.

12. In the present case, there is no dispute that the Authority to grant sanction was the Collector. However, the sanction was granted by the Sub Divisional Officer. The validity of a sanction order should be tested on the touchstone of the prejudice to the accused which is essentially a question of fact and, therefore, should be left to be determined in the course of the trial and not in the

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exercise of jurisdiction under Section 239 of the CrPC and that is also after framing of charge. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Sections 325 and 360 of the CrPC. In a warrant case instituted otherwise than on a police report, 'discharge' or 'acquittal' of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of 'discharge' and 'acquittal' are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. General rule is that there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and the Magistrate considers for reasons to be

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recorded, in the light of the evidence, that no case has been made out. Sub-section (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal.

13. From the Scheme of the provisions noticed above, it is clear that in a warrant case instituted otherwise on a police report, 'discharge' or 'acquittal of accused are distinct concepts applicable to different stages of the proceedings in the Court. The legal effect and incidents of 'discharge' and 'acquittal' are also different. An order of discharge in a warrant case instituted on complaint can be made only after the process has been issued and before the charge is framed.

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14. Section 239 of the CrPC states about accused shall be discharged. As per the said Section, if, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Whereas, Section 240(1) of the CrPC states that when charge should be framed. As per this Section, if, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is

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competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

Section 240(2) states that the charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

15. Thus, Section 240 of the CrPC provides that if an accused person refuses to plead, doesn't plead, or claims to be tried, the court is required to ask them at the next hearing whether they wish to cross-examine any prosecution witnesses whose evidence has been if he does so wish, the witnesses shall be re-called for cross examination and, thereafter, the accused shall be called upon to produce his defence.

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16. Section 232 of the Code states that if after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal. Whereas, Section 235 of the Code states that after hearing arguments and points of law (if any), the Judge shall give a judgment in the case. If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law.

17. Thus, from the Scheme of the said provisions, it is clear that in a warrant case instituted otherwise on a police report, 'discharge' or 'acquittal of accused are distinct. An order of discharge in a

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warrant case instituted on complaint can be made only after the process has been issued and before the charge is framed. There cannot be order of discharge after framing of the charge. Once a charge is framed, the Magistrate has no power under Section 227 or 239 any other provision of the Code to cancel the charge, and reverse the proceedings and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. The Magistrate is required to proceed with the trial in the manner provided in CrPC.

18. In paragraph No.13 in the case of **Nanjappa** *supra*, it is observed “what is important is that, not only was the grant of a valid sanction held to be essential for taking cognizance by the Court, but the question about the validity of any such order, according to this Court,

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could be raised at the stage of final arguments after the trial or even at the appellate stage and observed that, “ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefore or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage.

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But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court.”

The Hon’ble Apex Court further observed that the legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of sanction can be raised at any stage of proceeding.

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19. At this stage, two aspects required to be taken into consideration, are sub-section (3) of Section 19 starts with non obstante clause. In view of sub-section (3) of Section 19, any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to Section 4, “error includes competence of the authority to grant sanction”.

20. A careful reading of sub-section (4) of Section 19 shows that the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage.

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21. A conjoint reading of sub-section 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge.

22. In appeals or revisions, rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1).

23. In the present case, learned Special Judge has discharged the accused after recording the evidence of the

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Sanctioning Authority on the basis of observation of the Hon'ble Apex Court in the case of **Nanjappa** *supra* . It is necessary to consider that under what circumstances the Hon'ble Apex Court has held that "ought to have discharged the accused rather than acquitting him" and, therefore, the observations of the Hon'ble Apex Court require to be considered, as under:

"7. In Baij Nath Tripathi vs. The State of Bhopal and Anr. (AIR 1957 SC 494), a Constitution Bench of this of Court was dealing with the case of a sub-inspector of police from the then State of Bhopal, who was prosecuted by the Special Judge, Bhopal and convicted of offences punishable under Section 161 of the IPC and Section 5 of the Prevention of Corruption Act, 1947. He was sentenced by the Trial Court to undergo nine months' rigorous imprisonment on each count. In an appeal before the Judicial Commissioner against the said conviction and sentence, it was held that since no

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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 charge-sheet had been submitted against the appellant. The accused was then tried for a second time before another Special Judge to which prosecution, the accused took exception on the ground that a second trial was impermissible having regard to the provisions of Article 20(2) of the Constitution of India and Section 403 of the Code of Criminal Procedure. A similar contention was raised by Sudhakar Dube, another Sub-Inspector of Police who was similarly tried and prosecuted but the Special Judge finding the sanction order to be incompetent had quashed the proceedings. Dube was also thereupon sought to be tried for the second time which second trial was assailed by him in writ petition before this Court. The short question that fell for consideration in the above backdrop, was whether the petitioners had

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been prosecuted and punished within the meaning of Article 20 of the Constitution of India or tried by a Court of competent jurisdiction within the meaning of Section 403(1) of the Code of Criminal Procedure. It was urged on behalf of the respondent, that in case the previous trial was null and void and non-est, a second trial was legally permissible. That contention found favour with the Court. Relying upon **Yusofalli Mulla vs. The King AIR 1949 PC 264**, **Basdeo Agarwalla vs. King Emperor AIR 1945 FC 16** and **Budha Mal vs. State of Delhi, Criminal Appeal No.17 of 1952**, it was held that the accused had neither been tried by a Court of competent jurisdiction nor was there any accusation or conviction in force within the meaning of Section 403 of Cr.P.C. to stand as a bar against their prosecution for the same offences. The following passage from the decision succinctly sums up the legal foundation for accepting the contention urged on behalf of the State of Bhopal:

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“If no Court can take cognizance of the offences in question without a legal sanction, it is obvious that no Court can be said to be a Court of competent jurisdiction to try those offences and that any trial in the absence of such sanction must be null and void, and the sections of the Code on which learned counsel for the petitioners relied have really no bearing on the matter. Section 530 of the Code is really against the contention of learned counsel, for it states, inter alia, that if any Magistrate not being empowered by law to try an offender, tries him, then the proceedings shall be void. Section 529(e) is merely an exception in the matter of taking cognizance of an offence under s. 190, sub-s. (1), cls. (a) and (b); it has no bearing in a case where sanction is necessary and no sanction in accordance with law has been obtained.”

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In paragraph No.8 it is observed that in **Yusofalli Mulla's case** (supra), the Privy Council was examining whether failure to obtain sanction affected the competence of the Court to try the accused. The contention urged was that there was a distinction between a valid institution of a prosecution on the one hand and the competence of the Court to hear and determine the prosecution, on the other. Rejecting the contention that any such distinction existed, this Court observed:

“The next contention was that the failure to obtain a sanction at the most prevented the valid institution of a prosecution, but did not affect the competency of the Court to hear and determine a prosecution which in fact was brought before it. This suggested distinction between the validity of the prosecution and the competence of the Court

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was pressed strenuously by Mr. Page, but seems to rest on no foundation. A Court cannot be competent to hear and determine a prosecution the institution of which is prohibited by law and Section 14 prohibits the institution of a prosecution in the absence of a proper sanction. The learned Magistrate was no doubt competent to decide whether he had jurisdiction to entertain the prosecution and for that purpose to determine whether a valid sanction had been given, but as soon as he decided that no valid sanction had been given the Court became incompetent to proceed with the matter. Their Lordships agree with the view expressed by the Federal Court in Agarwalla's case A.I.R. (32) 1945 F.C. 16 that a prosecution launched without a valid sanction is a nullity.”

24. In paragraph No.9, it is observed that the Federal Court had in **Basdeo Agarwalla's** case (supra), summed up

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the legal position regarding the effect of absence of a sanction in the following words:

“In our view the absence of sanction prior to the institution of the prosecution cannot be regarded as a mere technical defect. The clause in question was obviously enacted for the purpose of protecting the citizen, and in order to give the Provincial Government in every case a proper opportunity of considering whether a prosecution should in the circumstances of each particular case be instituted at all. Such a clause, even when it may appear that a technical offence has been committed, enables the Provincial Government, if in a particular case it so thinks fit, to forbid any prosecution. The sanction is not intended to be and should not be an automatic formality and should not so be regarded either by police or officials. There may well be technical offences committed against the provisions of such an Order as that

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in question, in which the Provincial Government might have excellent reason for considering a prosecution undesirable or inexpedient. But this decision must be made before a prosecution is started. A sanction after a prosecution has been started is a very different thing. The fact that a citizen is brought into Court and charged with an offence may very seriously affect his reputation and a subsequent refusal of sanction to a prosecution cannot possibly undo the harm which may have been done by the initiation of the first stages of a prosecution. Moreover in our judgment the official by whom or on whose advice a sanction is given or refused may well take a different view if he considers the matter prior to any step being taken to that which he may take if he is asked to sanction a prosecution which has in fact already been started.”

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In paragraph No.10 what is observed is, “so also the decision of this Court in **Budha Mal vs. State of Delhi [Criminal Appeal No.17 of 1952 disposed of on 3/10/1952]**, the Hon’ble Apex Court had clearly ruled that absence of a valid sanction affected the competence of the Court to try and punish the accused and observed that

“We are satisfied that the learned Sessions Judge was right in the view he took. Section 403 CrPC applies to cases where the acquittal order has been made by a court of competent jurisdiction but it does not bar a retrial of the accused in cases where such an order has been made by a court which had no jurisdiction to take cognizance of the case. It is quite apparent on this record that in the absence of a valid sanction the trial of the appellant in the first instance was by a Magistrate who had no jurisdiction to try him.”

In paragraph No.11 the Hon’ble Apex Court observed that, “the above line of reasoning was followed

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by this Court in **State of Goa vs. Babu Thomas, (2005) 8 SCC 130**, where this Court while dealing with a case under Section 19 of the Prevention of Corruption Act, 1988 held that absence of a valid sanction under Section 19(1) went to the very root of the prosecution case having regard to the fact that the said provision prohibits any Court from taking cognizance of any offence punishable under Sections 7,10,13, and 15 against the public servant, except with the previous sanction granted by the competent authority in terms of clauses (a), (b) and (c) to Section 19(1). This Court was in that case dealing with a sanction order issued by an authority who was not competent to do so as is also the position in the case at hand. The second sanction order issued for prosecution of the accused in that case was also held to be incompetent apart from the fact that the same purported to be retrospective in its operation. This Court noted that

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on 29th March, 1995 when cognizance was taken by the Special Judge, there was no order sanctioning prosecution with the result that the Court was incompetent to take cognizance and that the error was so fundamental that it invalidated the proceedings conducted by the Court. The Court accordingly upheld the order passed by the High Court but reserved liberty to the competent authority to issue fresh orders having regard to the serious allegation made against the accused.”

25. The legal position was reiterated by the Hon’ble Apex Court in the case of **State of Karnataka vs. C.Nagarajaswamy, reported in (2005) 8 SCC 370**, wherein the Hon’ble Apex Court summed up the law in the following words:

“In view of the aforementioned authoritative pronouncements, it is not possible to agree with

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the decision of the High Court that the trial court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that [pic]even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Code as, even then, it would be held to have been rendered illegally and without jurisdiction.”

26. Thus, what is settled by various pronouncements is that not only grant of valid sanction is essential for taking cognizance by the court but also the question about validity of any such order could be raised at the stage of final arguments after the trial or even at the appellate stage. The legal position clarifying the importance of sanction under Section 19 of the PC Act is clear. Thus, statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an

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authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1).

27. In the case of **Mohammad Safi vs. The State of West Bengal, reported in AIR 1966 SC 69** the Hon'ble Apex Court observed that, "as regards the second contention of Mr. Mukherjee it is necessary to point out that a criminal court is precluded from determining the case before it in which a charge has been framed otherwise than by making an order of acquittal or conviction only where the charge was framed by a court competent to frame it and by a court competent to try the case and make a valid order of acquittal or conviction. No doubt, here the charge was framed by Mr. Ganguly but on his own view he was not competent to take cognizance of the offence and, therefore, incompetent to frame a

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charge. For this reason the mere fact that a charge had been framed in this case does not help the appellant”.

28. In addition to the competency of the court, Section 403 of the Code speaks of there having been a trial and the trial having ended in an acquittal. From what we have said above, it will be clear that the fact that all the witnesses for the prosecution as well as for the defence had been examined before Mr. Ganguly and the further fact that the appellant was also examined under s. 342 cannot in law be deemed to be a trial at all. It would be only repetition to say that for proceedings to amount to a trial they must be held before a court which is in fact competent to hold them and which is not of opinion that it has no jurisdiction to hold them. A fortiori it would also follow that the ultimate order made by it by whatever name it is characterized cannot in law operate as an

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acquittal. In the Privy Council case it was interpreted by Sir John Beaumont who delivered the opinion of the Board to be an order of discharge. It is unnecessary for us to say whether such an order amounts to an order of discharge in the absence of any express provision governing the matter in the Code or it does not amount to an order of discharge. It is sufficient to say that it does not amount to an order of acquittal as contemplated by s. 403(1) and since the proceedings before the Special Judge ended with that order it would be enough to look upon it merely as an order putting a stop to the proceedings. For these reasons we hold that the trial and eventual conviction of the appellant by Mr. Bhattacharjee were valid in law and dismiss the appeal.

29. In **Babu Thomas** supra also this Court after holding the order of sanction to be invalid, relegated the parties to

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a position, where the competent authority could issue a proper order sanctioning prosecution, having regard to the nature of the allegations made against accused in that case.

30. In the light of the above, it is clear that validity of sanction at any stage renders the trial non-est in the eyes of law. It is also settled that second trial is not forbidden upon obtaining a valid sanction.

31. Here, in the present case, the respondent/accused is facing corruption charges. Admittedly, charges of corruption is serious in nature and when it is alleged against a public servant who agrees to accept amount while performing his/her public duty. The discharge of the accused on these grounds would give wrong signal to the society. Therefore, as observed by the Hon'ble Apex

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Court in the case of **Nanjappa** *supra*, second trial is not forbidden upon obtaining a valid sanction.

32. In the present case, the respondent/accused is discharged in view of the decision of the Hon'ble Apex Court in the case **Nanjappa** *supra*. At the same time, considering the observations of the Hon'ble Apex Court in the case of **Nanjappa**, the issue is also settled by the Hon'ble Apex Court in the case of **Baij Nath Tripathi** *supra* wherein it is stated that second trial is not forbidden upon obtaining a valid sanction.

33. As observed earlier, cognizance is taken without a valid sanction though offences under Section 7 and 13(1) of the P.C.Act reveal that the whole trial is *null and void*.

34. In this view of the matter, while maintaining the order of discharge passed by learned Special Judge, the liberty is to be granted to the prosecution to obtain the

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sanction from the competent authority and on obtaining the sanction, in accordance with law, as the second trial is not forbidden, the accused can be prosecuted.

35. In this view of the matter, I proceed to pass following order:

ORDER

(1) The Criminal Writ Petition is **partly allowed**.

(2) The order dated 29.12.2022 passed by learned Additional Sessions Judge-1, Khamgaon in Special ACB Case No.14/2015 discharging the respondent/accused is hereby maintained.

(3) The State is at liberty to approach a competent authority seeking valid sanction by following due process of law.

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(4) The parties are relegated to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law.

Rule is made absolute in the above terms. Petition stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!