



Judgment

357 revn98.24

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

CRIMINAL REVISION APPLICATION NO.98 OF 2024

Sudhir s/o Narayanrao Girde,
aged about 62 years, occupation: retired,
r/o ward No.3, Bhagatsingh Chowk,
taluka Nagbhid, district Chandrapur. **Applicant.**

:: VERSUS ::

State of Maharashtra,
through Police Station Officer,
Police Station Nagbhid,
taluka and district Chandrapur. **Non-applicant.**

Shri A.A.Naik, Senior Counsel assisted by Shri A.D.Hazare,
Counsel for the Applicant.
Shri V.A.Thakare, Additional Public Prosecutor for the Non-
applicant State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 27/01/2025

PRONOUNCED ON : 13/02/2025

JUDGMENT

1. By preferring this revision, the applicant has
challenged the order dated 26.10.2023 passed below
Exh.35 by learned Additional Sessions Judge, Chandrapur

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in Special (ACB) Case No.4/2016 for discharge under Section 239 of the Code of Criminal Procedure.

2. The applicant is an employee of a private school who was appointed as Assistant Teacher in “Sant Vidyalaya, Mindala, taluka Nagbhid, district Chandrapur.” The said school is run by “Mahatma Jyotiba Fule Magasvargiya Mandal, Mindala”. On attaining the age of superannuation, he retired as Assistant Teacher on 30.9.2019. On 3.11.2014, Dipak Natthuji Ambade, who claims to have worked as Lecturer at “Sant Hardas Junior Arts College, Mindala, approached the office of the Anti Corruption Bureau (the bureau) at Chandrapur alleging that co-accused Ashok Narayan Khandale, through the applicant, informed him that the informant has to pay Rs.3,50,000/- for regularizing his services from non-grant to grant-in-aid basis. As he was not willing to pay the amount, he approached the office of the bureau and

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lodged a complaint. On 3.11.2014, trap was arranged. The verification of the demand was done in presence of the panchas. On 3.11.2014, co-accused Ashok Narayan Khandale was caught accepting the gratification amount. The applicant was arraigned as an accused on an allegation that he abetted commission of such crime. Accordingly, he along with the co-accused was chargesheeted for the offences punishable under Sections 7, 12, 13(1)(d), 13(2), and 9 of the Prevention of Corruption Act, 1988 (the P.C.Act).

3. The applicant has filed an application vide Exh.35 for discharge under Section 239 of the Code. Initially, the applicant has filed an application which came to be rejected. Against the said order, revision bearing Criminal Revision Application No.87/2021 was filed, but the same was withdrawn with liberty to raise a ground of absence of sanction. The application was filed on the ground that

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no sanction was obtained prior to prosecuting the applicant. The cognizance is taken by the Special Court, in absence of sanction, which is not permissible. It is further contended that officer of the bureau issued communication in the name of the Director of Education, Secondary and Higher Secondary, dated 4.2.2016 for obtaining the sanction. The Education Officer accorded the sanction though he is not the competent authority. The court cannot take cognizance against the accused on invalid sanction.

4. Learned Senior Counsel Shri A.A.Naik for the applicant, submitted that in view of the provisions of Section 4 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (the MEPS Act) and the Rules framed thereunder of the year 1981, the applicant being the employee of private school, the Management which runs the school would be

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authority competent to remove him from the office within the meaning of clause (c) of sub-section (1) of Section 19 of the P.C.Act. Pursuant to such provision, the officer of the bureau has to obtain the sanction from the Management. The officers of the bureau approached the Education Officer and the Education Officer accorded the sanction though he was not competent authority. In fact, only the Management is competent to remove the applicant from the employment under the provisions of Section 4 of the MEPS Act. The Government could not have power to accord the sanction and, therefore, the Director of Education is not the competent authority. No sanction was obtained from the competent authority before launching the prosecution against the applicant. He submitted that Section 2(12) of the MEPS Act defines the Management. As there is no valid sanction, the prosecution against the applicant in absence of the valid

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sanction vitiates the entire proceeding. Therefore, the applicant is to be discharged from the charges.

5. In support of his contentions, learned Senior Counsel for the applicant placed reliance on following decisions:

1. Madhuri Bharat Upadhey vs. State of Maharashtra, reported in 2024 SCC OnLine Bom 266;

2. Anant Shesharao vs. State of Maharashtra, reported in 2019 SCC OnLine Bom 1829;

3. Pranita Prakashrao Katewale vs. State of Maharashtra, reported in 2019 SCC OnLine Bom 1221;

4. Sagar Ramchandra Vatkari vs. State of Maharashtra, reported in 2021(2) ABR (cri) 513;

5. Nanjappa vs. State of Karnataka, reported in (2015)14 SCC 186;

6. Prakash Singh Badal and anr vs. State of Punjab and ors, reported in (2007)1 SCC 1, and

**7. Criminal Writ Petition No.630/2013
(Sau.Jyoti Ramesh Upase vs. State of
Maharashtra) decided by the Division Bench
of this Court on 21.10.2013.**

6. *Per contra*, learned Additional Public Prosecutor Shri V.A.Thakare for the State submitted that the applicant is prosecuted on an allegation of abetment. The issue of validity of sanction can be raised during the trial and not at this stage. The issue regarding the sanction can be raised at the time of final arguments. At this stage, the applicant is not entitled to raise an issue of sanction. The applicant is charged for the offence that he abetted the co-accused. In view of sub-section (3) of Section 19 of the P.C.Act, the issue as to the sanction cannot be raised merely because there is an error or 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. He submitted that in the

present case, no prejudice is caused to the applicant and, therefore, the Special Court has rightly rejected the application.

7. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

1. State of Karnataka Lok Ayikta Police vs. Subbegowda, reported in AIR 2023 SC 3770;

2. Criminal Appeal NO.4964/2024 (Central Bureau of Investigation vs. Jagat Ram) decided on 3.1.2024;

3. Special Leave Petition (Cri.) NO.2029/2018 (K.Ravi vs. State of Tamil Nadu and anr) decided on 29.8.2024;

4. State of Telangana vs. Managipet @ Mangipet Sarveshwar Reddy, reported in (2019)19 SCC 469;

5. Special Leave Petition (Cri.) No.7976/2023 (Bhisham Lal Verma vs. State of Uttar Pradesh and anr) decided on 30.10.2023;

6. SLP (Cri.) No.9114/2019 (State of Punjab vs. Hari Kesh) decided on 7.1.2015, and

7. Petition for Special Leave to Appeal (Criminal) No.12289/2023 (Nara Chandrababu Naidu vs. The State of Andhra Pradesh and anr) decided on 16.1.2024.

8. There is no dispute about the fact that the applicant is employee of the private school governed by the MEPS Act. By virtue of provision under Section 4(6) of the MEPS Act, no employee of a private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank by the Management, except in accordance with the provisions of this Act and the Rules made in that behalf.

9. Thus, it is the management which alone is competent to suspend or dismiss or remove employees from the employment.

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10. By virtue of Section 4A of the MEPS Act, it is only when the Inquiry Committee enquiring into the misconduct or misbehaviour of an employee unreasonably exonerates him that it empowers the Director of Education to direct the Management to impose penalty upon such an employee. It further empowers the Director of Education to hold an inquiry if in spite of his instructions the management fails to initiate the action.

11. By virtue of Section 4(6) of MEPS Act, it is only the Management which has powers to remove its employees. The powers conferred upon the Director of Education are only contingent. Therefore, it cannot be said that the Director of Education has any powers to remove an employee under Section 4(1) of the MEPS Act who is serving in private school.

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12. In the light of the above legal position, by virtue of Section 19 of the P.C.Act, it would be the Management of a private school which alone would be competent to accord sanction and nobody else that is not even the Director of Education can exercise that power.

13. Here, in the present case, the applicant serving as Assistant Teacher is prosecuted on an allegation that he abetted the other co-accused to accept the bribe amount. The co-accused was found accepting the bribe amount. After initial investigation, on 4.2.2016 the Investigating Officer issued communication to the Director of Education requesting for sanction against the applicant as well as the other co-accused. By communication dated 4.4.2016, the Director of Education has accorded the sanction. The Director of Education, in view of Section 4(6) of MEPS Act, is not the authority who can remove the applicant from the employment. The office of the bureau has

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obtained such sanction under Section 19 of the P.C.Act from the Director of Education who is not the competent authority. The provisions of Section 19 of the P.C.Act requires sanction to be accorded by an authority competent to remove the employee from his office and in view of the above discussion, it has been found that it is the Management of such a private school which alone has power to remove such an employee by virtue of sub-section (6) of Section 4 of the of MEPS Act irrespective of the Government Resolution dated 5.11.2015, the Director of Education would not be competent to accord the sanction under Section 19 of the P.C.Act. Therefore, without going into the intricate question as to whether the State Government could by an executive order superseded the provisions of Section 19 of the P.C.Act and without examining its virus, it can be safely concluded on a conjoint reading of Section 19(1)(c) of the P.C.Act and

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sub-section (6) of Section 4 of the MEPS Act, that it is only the Management of a private school which would be competent authority to remove an employee of the school being run by it and the Director of Education will not have any such power. Consequently, the sanction to prosecute the applicant accorded by the Director of Education stating to have derived the power under the Government Resolution dated 05.11.2015 is indeed an illegal which goes to the root of the matter and the very prosecution of the applicant.

14. Though learned Additional Public Prosecutor for the State placed reliance on the decision in the case of **State of Karnataka Lok Ayikta Police vs. Subbegowda** *supra*, the facts of the case show though the issue of validity of sanction was raised at the earlier point of time. The same was not pressed by the accused and by observing the said fact, the Hon'ble Apex Court held that

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the only stage open to the accused in that situation was to raise the said issue at the final arguments in the trial in accordance with law.

15. In **Central Bureau of Investigation vs. Jagat Ram** *supra*, the Hon'ble Apex Court dealt with sub-section 3(a) of Section 19 of the P.C.Act which states that 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.

16. In the case of **State of Telangana vs. Managipet @ Mangipet Sarveshwar Reddy** *supra*, the Hon'ble Apex Court considered that if an investigation was not conducted by a police officer of the requisite rank and status required under Section 17 of the Act, such lapse would be an irregularity, however unless such irregularity

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results in causing prejudice, conviction will not be vitiated or be bad in law.

17. The aspect of sanction is considered by the Hon'ble Apex Court in the case of **Nanjappa vs. State of Karnataka** *supra* wherein it is held that 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. 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

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Sections 7, 10, 11, 13, and 15 of the Act against a public servant except with the previous sanction of the competent authority. A similar bar to taking of cognizance was contained in Section 6 of the P.C.Act.

In the said judgment, the decision of Federal Court in **Basdeo Agarwalla vs. King Emperor AIR 1945 FC 16** was referred wherein it is held that, “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

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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 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

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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.”

The Hon’ble Apex Court further observed that, “the legal position regarding the importance of sanction under Section 19 of the P.C.Act 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 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

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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”.

18. As far as the issue involved in the case in hand is concerned, the Director of Education is incompetent person to accord the sanction and this aspect is dealt with by the Division Bench of this Court in case of **Sau.Jyoti Ramesh Upase vs. State of Maharashtra** *supra* wherein it is observed that, “the service conditions of the petitioner are governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 hereinafter referred to as Act of 1977. The petitioner has been working as the Head Mistress of the school and as per the provisions of Act of

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1977 and the Rules framed thereunder, the appointment of the petitioner has to be by the "Management" as defined under Section 2(12)(c) of the Act of 1977. Consequently, the Authority Competent to remove the petitioner from the service is the Management of the school. The Investigating Officer had sought the sanction of the Management by the communication dated 22.10.2008 but the Management had refused to grant sanction for the prosecution of the petitioner by the resolution dated 3.1.2009. In our view the prosecution of the petitioner is illegal and cannot be continued as it is without there being proper sanction as required by the provisions of Section 19(1)(c) of the Act of 1977”.

19. Thus, even if the competence of the Government Resolution dated 5.11.2015 is considered. In view of the decision in the case of **The Rajasthan State Industrial Development and Investment Corporation vs. Subhash**

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Sindhi Cooperative Housing Society, Jaipur and ors, reported in (2013)5 SCC 427, in paragraph No.19, it is held that, “executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines etc. which run contrary to statutory laws cannot be enforced”.

As such, for this reason also, the sanction accorded by the Director of Education based on such Government Resolution cannot be said to be a valid sanction under Section 19 of the PC.Act.

20. A Coordinate Bench of this Court in cases of **Madhuri Bharat Upadhey vs. State of Maharashtra** *supra* and **Anant Shesharao vs. State of Maharashtra** *supra* and **Pranita Prakashrao Katewale vs. State of Maharashtra** *supra* held that the Director of Education has no power to accord the sanction. In paragraph Nos.15 and 16, in

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Pranita Prakashrao Katewale *supra* this court held as under:

“15. In the backdrop of said position of law clarified by the aforesaid Judgments of this Court, it cannot be said that sanction granted in the present case for prosecution against the applicant by the Director of Education was sustainable because it was in terms of Government Resolution dated 05/11/2015. The said Government Resolution is nothing but an executive instruction issued by the State and such executive instructions can certainly not prevail over statutory provisions of the MEPS Act and Rules and the aforesaid Judgment of this Court, wherein it has been categorically laid down that only the management of the school has the power and authority to grant sanction for prosecution of a teacher or Headmistress for offences under the provisions of the Prevention of Corruption Act, 1988. The said conclusion has been given in

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the aforesaid Judgment upon analysis of the provisions of the MEPS Act and Rules and such position of law cannot be circumvented by issuing executive instructions in the form of aforesaid Government Resolution dated 05/11/2015.

16. Thus, the contention raised on behalf of non-applicant State that the Director of Education was competent to grant sanction for prosecution against the applicant in the present case is wholly unsustainable and it is a fallacious argument raised on behalf of the non-applicant State that as long as the Government Resolution dated 05/11/2018 exists and it is not set aside, the Director of Education is entitled to grant sanction. This is because in no case can an executive instruction like the Government Resolution dated 05/11/2015, prevail over the statutory provisions of the MEPS Act and Rules and the Judgments rendered by this Court. Therefore, it is found that the Court below committed a

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grave error in rejecting the contention raised on behalf of the applicant regarding defective sanction as ground for discharge.”

21. The present case is not a case where the question of invalidity of sanction is raised, but it is a clear case where the Director of Education has absolutely no power or authority to grant such sanction. Due regard to the mandate of Section 19(1)(c) of the P.C.Act will have to be kept in mind inasmuch as the Special Court cannot take cognizance of the offence for want of sanction by the competent authority. This is not case of defective sanction and, therefore, the contention of learned Additional Public Prosecutor for the State that the question cannot be decided at the threshold and should be raised during the trial cannot be accepted. The Director of Education is not empowered to grant the sanction for prosecution so far as the applicant is concerned.

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22. Thus, in view of the consistent view taken by this court in various decisions that the Director of Education has no power to grant sanction, the sanction accorded is not by the competent authority within the meaning of Section 19(1)(c) of the PC.Act and, therefore, the order impugned in the present revision rejecting the discharge application suffers from illegality and the same is liable to be quashed.

23. In view of such state of affairs, the order dated 26.10.2023 passed below Exh.35 by learned Additional Sessions Judge, Chandrapur in Special (ACB) Case No.4/2016 for discharge under Section 239 of the Code of Criminal Procedure is quashed and set aside.

Revision is **allowed** in the aforesaid terms and **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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