Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4721 OF 2026

Punaji Sakharam Kavate .. Petitioner

Versus

State of Maharashtra .. Respondent

.....

- Mr. Rohan Nahar a/w Mr. Anurag R. Mishra & Ms. Gayatri Potawade, Advocates for Petitioner
- Mr. Amit A. Palkar, APP for State

.....

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 16, 2026

P. C.:

1. Heard Mr. Nahar, learned Advocate for Petitioner and Mr. Palkar, learned APP for State.

2. Case of the Petitioner is in a very narrow compass. Initial recommendation for issuance of sanction was made initially on 28.02.2019 by the Competent Authority. After due consideration, the Competent Authority rejected grant of sanction on 14.09.2020. It is seen that a fresh review was made on 24.11.2021 for issuance of fresh sanction. This fresh recommendation was reconsidered and by order dated 05.03.2024, sanction was given for prosecution of the Petitioner .

3. The moot question argued before the Court is that when the Review Application was made on 24.11.2021, it was not based on any

fresh material whatsoever. As also, the impugned sanction order dated 05.03.2024 does not consider any fresh material whatsoever *qua* the Petitioner before the Court for grant of sanction. In that view of the matter, the case of the Petitioner is clearly covered by the decision of the Supreme Court in the case of ***State of Rajasthan v. Dev Kant Meena***[1]. Once it is clear that the fresh sanction has been issued on the same set of facts and circumstances with regard to which there was an earlier rejection, the subsequent order issued on the same facts is *prima facie* not sustainable in law unless and until there is a fresh set of circumstances and material enabling the Competent Authority to consider the same for recommending the fresh sanction. The same Competent Authority cannot take a contradictory view on the basis of the same material which is *prima facie* seen in the present case when the orders dated 14.09.2020 and 05.03.2024 are passed by the Court. I have perused both the orders. Paragraph Nos. 7 and 10 of the above decision clearly covers such a situation. Said paragraph Nos. 7 and 10 read thus:-

> *"7. It is trite that, when there are two views possible, especially in proceeding with a criminal prosecution against a public servant, the view exonerating the officer should be taken, especially since the criminal prosecution can lead to a finding of guilt only if it is proved beyond any reasonable doubt. If the administrative authority itself expresses a doubt and suspicion regarding the demand of bribe, the trap laid and the recovery of the money there is no question of a sanction being granted, since it is a very reasonable and valid doubt. In the present case even on preponderance of possibilities, there arise a case of victimization; which we notice only to emphasize that, in considering a sanction for prosecution the standard*

1 2026 SCC OnLine SC 1401

should be of a possibility of bringing home the guilt of the delinquent, beyond reasonable doubt, a tad higher than mere preponderance of probabilities but surely not to the extent of finding concrete proof beyond reasonable doubt, which is the function of the jurisdictional Court.

8. .....

9. .....

10. State of Punjab v. Mohd. Iqbal Bhatti4 held that though the State, in the matter of grant or refusal of sanction exercises a statutory authority, it cannot be said that there is no power to review once the power is exercised, since there is no such express statutory power conferred. An express power of review may not be necessary when the power is administrative in character and the paramount consideration in a judicial review is the application of mind to the materials coming forth in the case and not necessarily with respect the decision as such. It was held that when a decision is taken to decline sanction by the appropriate authority, reviewing such order on the very same material would not be appropriate or permissible (para 9). A mere change of opinion per se on the same materials cannot be a ground for review or reconsideration of an earlier order, refusing to grant sanction. A caveat was also made that, on the basis of fresh materials collected by the investigating agency, there could be a review of refusal to sanction, when there is a proper application of mind on the fresh materials which were not available at the earlier instance."

4. The fact is that while considering sanction for prosecution, the standard should be of a possibility of bringing home the guilt of the delinquent beyond reasonable doubt and it needs to be higher than the preponderance of probability. It is seen that once the Administrative Authority has arrived at a conclusion on the basis of the material before it that the sanction is not required to be given and prosecution is not required to be done, the same Competent Authority cannot review its own decision on the basis of the same material as it would then result in victimization of the delinquent person.

5. In view of the above observations and findings, I am inclined to allow the present Petition. Hence, Petition is allowed in terms of prayer clauses (a) and (b) which reads thus:-

"a) This Hon'ble Court may kindly be pleased to allow the present Criminal Writ Petition;

b) This Hon'ble Court may kindly be pleased to quash and set aside the impugned order dated 14.08.2026 passed by Hon'ble Sessions Judge, Pune below Exhibit 3 in Special Case No. 543 of 2024."

6. Writ Petition is allowed and disposed.

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[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR

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Date: 2026.10.16 19:40:28 +0530