IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. APPEAL NO.1107 OF 2004

Shri Anand Murlidhar Salvi
Age: 48 years, Occ: Service,
Residing at : Om Apartment,
Flat No,8., Dapodi, Pune
District: Pune ... Appellant
(Org. Accd.)

Vs

The State of Maharashtra ... Respondent
(Org. Complainant)

...

Mr. Ashok B. Tajane for the Appellant.

Mr. Yogesh Dabke, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 29th JANUARY, 2021.
PRONOUNCED ON: 23rd FEBRUARY, 2021

JUDGMENT:

The Court of Special Judge (Under the Prevention of Corruption Act), Pune by the judgment and order dated 25th August, 2004 passed in Special Case No.25 of 2001,

convicted the appellant for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ('**PC Act**' for short) and sentenced to suffer rigorous imprisonment for two years and fine of Rs.5,000/- in default to suffer rigorous imprisonment for five months separately for both the offences. It is against the conviction and sentence, this appeal is preferred.

2 Heard Mr. Tajane, learned counsel for the appellant and Mr. Dabke, learned Additional Public Prosecutor for the State.

3 This is a trap case, in which the appellant was alleged to have accepted the amount of Rs.1,500/-, a illegal gratification while working as 'Senior Clerk' in the office of the Executive Engineer, Implementation Wing, Town Planning, Yerwada, Pune for drawing and lodging bills in treasury relating to arrears of pay due to complainant.

4 Briefly stated, prosecution case is that, Mrs. Smita Suresh Paranjape (P.W.1), public servant, working in the same office, i.e. Executive Engineer, Town Planning was entitled to arrears of pay for the period from 1st January, 1986 to 31st December, 1993. Pay fixation order was passed on 29th December, 2000. Whereafter she enquired with accused about the, bills. Following that accused told her, unless, Rs.1,500/- were paid, he would not submit bills to Treasury. Thereafter on 17th January, 2001, Complainant approached the Anti Corruption Bureau. Upon completing required formalities, Complainant was accompanied by the witness, Sangita Maruti Sarde (P.W.2). Initially, the Complainant and the witness had been in his office where the complainant enquired about her bills. Accused told that he had done calculations required for drawing a bill and also asked whether she had brought the money. Whereafter the accused, Complainant and the witness went to a tea-stall, where again Complainant enquired about the bills and

thereafter accused demanded bribe. Soon after he received the bribe, the raiding party apprehended the accused and the tainted money quoted with the Anthracine powder was recovered.

5 Prosecution in support of the charge examined four witnesses. The learned Judge upon appreciating the evidence, convicted the appellant as stated above and hence, this Appeal.

6 Mr. Tajane, learned counsel for the appellant contended that sanction dated 30th May, 2001 granted under Section 19 of the PC Act was invalid and was not only relatable to irregularity and errors crept in while granting, but it resulted in failure of justice. Mr. Tajane would, therefore, submit that the learned Trial Court did not appreciate the evidence of the sanctioning authority and erroneously held, sanction was valid. He would submit that evidence of the sanctioning authority on the face of it

renders the sanction invalid and on this ground alone, the Trial Court ought to have absolved the appellant of all the charges. In support of this contention, Mr. Tajane has taken me through the testimony of the Director of Town Planning, Maharashtra State, a sanctioning authority.

7 On the other hand, Mr. Dabke, the learned Additional Public Prosecutor for the State, contended that Section 19(3) of the Act is complete embargo on the Court to reverse or alter findings, sentence or order passed by the Special Judge in appeal on the ground of error, omission or irregularity in the sanction unless in the opinion of the Court that such an error, omission or irregularity caused failure of justice. Mr. Dabke, would, therefore, argue that alleged lapses and omissions on the part of Sanctioning Authority while granting the sanction itself would not be fatal to the prosecution when the material furnishes proof of illegal demand of gratification and its acceptance by the appellant-accused. In support of his contention, Mr. Dabke

would rely on the provisions of Section 19(3)(4) of the PC Act and testimony of complainant (P.W.1) and witness (P.W.2), who accompanied the complainant at the office of the accused.

8 I have carefully considered submissions and have perused the testimony of Sanctioning Authority minutely and also perused Exhibits 50 (Draft Sanction Order) and 47 (Sanction Order). It reveals that on 9th May, 2001, Superintendent of Police, Anti Corruption Bureau, Pune sent the sanction proposal along with the investigation papers to him for according sanction to prosecute the appellant. This proposal was received by the office of the Sanctioning Authority on 11th May, 2001. On 14th May, 2001 till 24th May, 2001, Sanctioning Authority proceeded on the earned leave. It is interesting to note that Sanctioning Authority would admit that the draft sanction order at Exhibit 50 was prepared/drafted by the Administrative Officer, Mr. Buwa

and office superintendent Mr. Joshi. He would further admit that Mr. Buwa and Mr. Joshi prepared the draft sanction order independently and he did not instruct them to prepare it. Authority would further testify that when he resumed the office after 25th May, 2001, a draft order was placed before him on 30th May, 2001 but could not say or remember whether it was along with the investigation papers or not. He further testified, when the draft order was put up before him, he read it carefully and made few corrections in the red ink. It is again interesting to note that witness deposed, that he signed draft sanction order, as a mark of its approval, however, he did not put a date on it. His evidence further shows that final approval was prepared by incorporating corrections made by him in the draft order. I have perused the draft sanction order. It shows, Sanctioning Authority had carried out five or six “grammatical corrections”, and nothing more. To verify whether the Sanctioning Authority has applied his mind while issuing final sanction order Exhibit 47, I have verified

it with the draft order Exhibit 50. It could be seen, that, the final sanction order is nothing more than copy of the draft order without any addition or subtraction to its substance. Thus, upon reading the testimony of the Sanctioning Authority along with the draft Sanction and Final Sanction Order, I hold, the Sanctioning Authority did not independently apply its mind while according the sanction. Thus, prosecution has not established that, Sanctioning Authority itself did conscious scrutiny of the whole record and independently applied its mind to all relevant facts/material before granting the sanction. Nevertheless, sanction order on the face of it indicate that record of the investigation was placed before the authority but testimony of Sanctioning Authority is as vague as possible, who admits he simply counter signed draft sanction, which prosecution has translated into sanction at Exhibit 47.

9 Object of provisions for sanction is that the authority giving the sanction should be able to consider for itself, the evidence before it comes, to conclusion that prosecution in the circumstances be sanctioned or forbidden. Herein prosecution evidence on sanction reveals, sanction was granted mechanically and without application of mind. Ordinarily, the Sanctioning Authority is the best person to judge, as to whether public servant concerned should receive protection under the Act, by refusing to accord the sanction for his prosecution or not. Indisputably, application of mind on the part of Sanctioning Authority is imperative and therefore, order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of Sanctioning Authority.

10 Though I have held that previous sanction was invalid, the question is whether irregularity, errors and omissions crept in or relatable sanction order has resulted in a failure of justice. Before answering this question, let me

reproduce Section 19 of the PC Act, which reads as under:

> *"19. Previous sanction necessary for prosecution.—*
>
> *(1) No court shall 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,—*
> *(a) in the case of a person who is 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;*
> *(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the 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.*
> *(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."*

It may be stated that the order of sanction is pre-requisite as it is intended to provide a safe-guard to a public servant against frivolous and vexatious litigants. However, order of sanction should not be construed in pedantic manner and there should not hyper-technical approach to test its validity.

. The Apex Court in the case of **Ashok Tshering Bhutia v. State of Sikkim** [1] has observed that a defect or irregularity in the investigation however serious, would

1 (2011) 4 SCC 402

have no direct bearing on the competence or the procedure relating to cognizance of the case as already been taken and the case has proceeded to termination, invalidity of the precedent investigation does not vitiate the result unless miscarriage of the justice has been caused thereby. Similar is the position with regard to validity of the sanction. Mere error, omission or irregularity in the sanction is not considered to be fatal unless it has resulted into failure of justice or has been occasioned thereby.

11 Section 19(1) of the PC Act is a matter of procedure and does not go to the root of the jurisdiction and once, the cognizance has been taken by the Court under the Code, it cannot be said that mere irregularity or omission or irregularity in the sanction is fatal unless it resulted in the failure of justice. Keeping in mind, the provisions of Section 19(3)(4) of the PC Act and the law laid down by the Hon'ble Apex Court, let me ascertain whether invalid sanction has resulted in failure of justice. In this

case, on reading the testimony of the Sanctioning Authority and upon verifying the Draft Sanction Order with sanction, it can be said with certainty that the Sanctioning Authority in fact, has not exercised the jurisdiction under Section 19(1) of the PC Act. In other words, authority plainly and simply put its signature on the Draft Sanction Order by bringing out clerical mistakes in name and a few words and nothing more. Moreover, in cross-examination, authority would admit that he did not remember or re-collect whether he had perused investigation. It appears and in this fact situation and in consideration of the evidence, I do not hesitate to hold and conclude that the irregularity attached to the Sanction Order was not ‘mere’ (*emphasis supplied)* irregularity but ‘gross’ in nature and failure of justice has been occasioned thereby.

12 In the result, prosecution fails.

13 That for the reasons stated above, appeal is

allowed and the impugned conviction and sentence is quashed and set aside. Bail bonds stand cancelled. Sureties are discharged.

14 Appeal is, accordingly, disposed off.

(SANDEEP K. SHINDE, J.)