

(2010) 12 BOM CK 0025

In the Bombay High Court

Case No : Criminal Appeal No. 1 of 2001

Maruti Subrao Shinde

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Constitution of India, 1950 — Article 311

Prevention of Corruption Act, 1988 — Section 13, 7

Revenue and Forest Department Recruitment Rules, 1984 — Rule 2A

Citation : (2010) 12 BOM CK 0025

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : B.R. Patil, instructed by Manoj Kadam, for the Appellant; M.R. Tidake, APP, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—Heard the learned Counsel appearing on behalf of the Appellant and the learned APP for the State.

2. The Appellant has filed this appeal, being aggrieved by the judgment and order passed by the Special Judge, Gadhinglaj in Special Case No. 3 of 1999. By the said judgment and order dated 21.12.2000, the Special Judge was pleased to convict the Appellant for the offence punishable u/s 7 of the Prevention of Corruption Act, and was sentenced him to suffer R.I. for five years and to pay fine of Rs. 5,000/-, in default, to suffer further S.I. for three months. He was also convicted for the offence punishable u/s 13(2) of the Prevention of Corruption Act, 1988 and was sentenced to suffer R.I. for six years and to pay fine of Rs. 10,000/-, in default, to suffer S.I. for six months.

3. The prosecution case in brief is that the accused was working as a Talathi. It is alleged that he received Rs. 100 as bribe from the Complainant while he was handing over a copy of the 7-12 extract and in return for handing over the copy of the said 7-12 extract, he received Rs. 100/-as bribe and he was caught red-

handed. FIR was lodged at the Police Station, Gadhinglaj. The Appellant-Accused was arrested. A proposal for sanction to prosecute the accused was submitted to the Sub-Divisional Officer (SDO) who was pleased to grant sanction and, thereafter, charge sheet was filed against the Appellant. Charge was framed against him. The accused pleaded not guilty and claimed to be tried. Prosecution examined six witnesses. The Trial Court on the basis of the evidence convicted the accused.

4. Shri B.R. Patil, the learned Counsel appearing on behalf of the Appellant submitted that the entire trial was vitiated since sanction to prosecute was not granted by the competent authority. He submitted that the Appellant was appointed by the Assistant Collector. However, sanction to prosecute was granted by the Sub-Divisional Officer, who was sub-ordinate to the Assistant Collector and, therefore, by virtue of the provisions of Article 311 of the Constitution of India, the sanction to prosecute was invalid. In support of the said submission, he relied on two judgments of this Court; (1) in the case of Bhaurao Marotrao Manekar v. State of Maharashtra 1980 Mh.L.J. 445; and (2) the judgment of the another Single Judge of this Court in the case of Sakharam Trymbak Patil v. State of Maharashtra 1993 Mh.L.J. 276.

5. On the other hand, the learned APP for the State submitted that the salary of the SDO and the Assistant Collector was the same and, therefore, the SDO was competent to accord the sanction.

6. In my view, there is much substance in the submissions made by the learned Counsel for the Appellant. In the present case, admitted position is that the Appellant was appointed by the Assistant Collector and that the sanction to prosecute was granted by the Sub-Divisional Officer. In this connection, it is also admitted that that the power to grant sanction to prosecute has to be exercised by the person who is not sub-ordinate to the appointing authority. In this context, it could be relevant to know the Article 311(1) which reads as under:

"311(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

The safeguard which is provided to the public servant under Article 311 being a constitutional right. Violation of the said constitutional right would vitiate the proceedings and the entire trial which is conducted by the prosecution on the basis of an invalid sanction will have to be set aside. The PW-3 in his evidence has clearly stated that he was working as a Sub-Divisional Officer at Gadhinglaj and he had granted sanction to prosecute the Appellant. He has also stated that on 29th March, 1972, the Assistant Collector, Gadhinglaj Division appointed the Appellant as Talathi. According to him, the Sub-Divisional Officer is empowered to appoint the Talathi and, therefore, he is also empowered to remove him. He has produced the circular which is at Exhibit -25 dated 13th March, 1994 in

which it is mentioned that a Talathi can be appointed by the Sub-Divisional Officer. He has also invited my attention to Exhibit -26 wherein the rules viz. The Talathi under the Revenue and Forest Department (Recruitment Rules), 1984. He submitted that in these rules, Rule 2A defined the Appointing Authority as Sub-Divisional Officer or the Assistant Collector of the respective Revenue Sub-Division. In the cross examination, this witness has admitted that he was selected through Maharashtra Public Service Commission and he was working as Deputy Collector and that he would have been appointed as a Assistant Collector on promotion after about 8 to 10 years. He also admitted that the cadre of the Deputy Collector and the Assistant Collector was different and separate seniority lists were maintained for them. In the present case, since the Assistant Collector was the appointing authority, the Sub-Divisional Officer could not have granted sanction to prosecute the accused. The Trial Court, in my view, clearly erred in holding that since the pay scale of the Assistant Collector and the SDO is same, their posts are equivalent. It is a well settled position in law that equivalence of pay scale cannot be treated as a criteria for determining the equivalence of posts and rank. In the present case since the Appellant was appointed by the Assistant Collector, the order to grant sanction could not have been granted by the person who is sub-ordinate to the post of Assistant Collector since the post of SDO is sub-ordinate to that of Assistant Collector. Therefore, sanction to prosecution was invalid.

7. In two judgments, the Learned Single Judges of this Court have held that in cases where the Collector appoints the Talathi, the sanction given by the SDO to prosecute is not valid. This Court in the case of Bhaurao Marotrao Manekar (supra) has clearly held that a Sub-Divisional Officer cannot grant sanction to prosecute in cases where appointment is made by the Assistant Collector. Similar view has been taken by another Single Judge of this Court in the case of Sakharam Trymbak Patil (supra), the ratio of the judgments clearly apply to the set of facts of the present case.

8. Under these circumstances, therefore, the sanction to prosecution was invalid on the ground that the Sub-Divisional Officer was not competent to accord the sanction. The trial, therefore, which was held on the basis of the said invalid sanction was vitiated and the conviction and sentence, therefore, awarded by the Special Court will have to be quashed and set aside.

9. The appeal, therefore, is allowed. The conviction and sentence imposed on the Appellant-accused are set aside and the accused is ordered to be set at liberty. His bail bond shall stand cancelled and fine if paid be refunded. Appeal is, accordingly, allowed and disposed of.