

(2015) 04 BOM CK 0317

In the Bombay High Court

Case No : Criminal Application No. 617 of 2015

State of Maharashtra

APPELLANT

Vs

Madhavrao Jalbaji Karnale

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Prevention of Corruption Act, 1988 — Section 13 (1)(d), 13 (2), 19, 7

Citation : (2015) 04 BOM CK 0317

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : S.D. Kaldate, APP, for the Appellant; N.S. Ghanekar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sadhana S. Jadhav, J—Heard. Rule. Rule made returnable forthwith and heard with the consent of parties.

2. The State being aggrieved by the order dated 27.08.2014, passed by the Special Judge (PC Act), Aurangabad, below Exh. 63 in Special Case No. 37 of 2009, has filed present application. The respondent herein is being tried as an accused in Special Case No. 37 of 2009 for offences punishable under sections 7, 13 (1)(d) read with 13 (2) of the Prevention of Corruption Act, 1988. The substantive evidence of the sanctioning authority had commenced in the year 2010. The recording of substantive evidence was concluded on 21.10.2010. The sanctioning authority i.e. P.W. 1-Mr. Shriprakash Waghmare had deposed before the Court that at the time of raid, the accused was working as an Assistant Sub-Inspector. After being satisfied that prima facie case was made out, P.W. 1 had accorded sanction, which is at Exh. 11. It was elicited in the cross-examination that Aurangabad city comes under Commissionerate since 1991. The witness had denied the suggestion that it is only the Commissioner of Police, who is empowered to accord sanction against an A.S.I. The Special Court had recorded

substantive evidence of P.I. Yogesh Gawade in July, 2014. The Special Court had recorded substantive evidence of Mr. Ramnath Deorao Chopde, Dy. S.P., Anti-corruption Bureau on 11.08.2014.

3. In the meantime, the Special Court had acquitted one P.S.I. Vedusing Gulabsing Solunke on the ground that the sanction accorded to prosecute him was not valid sanction. The said judgment was delivered on 03.12.2012. In that case, the Court had observed that the sanction was not a valid sanction and had sent copy of the judgment to the Director General of Police, Maharashtra State, Mumbai. The prosecution had realized that the Director General of Police would be an appropriate authority to accord sanction to prosecute the accused in Special Case No. 37 of 2009.

4. The prosecution had filed an application below Exh. 63. It was contended in the said application that the case is posted for evidence. However, it is a matter of record that on 11.08.2014, the recording of evidence had been completed. It is contended in the said application that at the time of raiding, the accused was P.S.I. and the competent authority to appoint and remove a person on the post of P.S.I. was Director General of Police, Maharashtra State, Mumbai, and therefore, the sanction of competent authority was essential. In order to enable the prosecution to send the case papers for want of sanction by the competent authority, the prosecution had solicited stay to the proceedings till the prosecution obtains sanction from the competent authority. Learned Special Judge has rightly rejected the application. Learned Special Judge had observed that the accused is facing trial since last five years and it is also observed that the prosecution had examined P.W. 1 in the year 2010 and at that stage itself the prosecution was fully aware that the sanction accorded to prosecute the accused is an invalid sanction. However, it appears that only because the accused in Special Case No. 6 of 2010 was acquitted in the judgment and order dated 03.12.2012, the prosecution had taken steps to obtain a fresh sanction, which would not be a valid sanction in the eyes of law. The sanction to prosecute a public servant cannot be treated as an idle formality. There is no question of reviewing sanction once accorded. Sending a matter for obtaining sanction to competent authority after recording of substantive evidence in a trial would amount to abuse of process of law. There is no question of subsequent authority according sanction as the trial had already proceeded and the prosecution had opened defence.

5. In the case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, AIR 1997 SC 3400 : (1997) CriLJ 4059 : (1997) 3 Crimes 301 : (1997) 7 JT 695 : (1997) 5 SCALE 667 : (1997) 7 SCC 622 : (1997) SCC(L&S) 1784 : (1997) 3 SCR 705 Supp : (1997) AIRSCW 3478 : (1997) 8 Supreme 178 , the Hon'ble Apex Court has reiterated that grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the

innocent but not a shield for the guilty.

6. In the present case only after realizing that one of the accused in another case had been acquitted on account of invalid sanction, the prosecution has moved the present application. In-fact, section 19 of the Prevention of Corruption Act, contemplates that no Court shall take cognizance of an offence against a public servant without a valid sanction. The power of sanction cannot be reviewed. In the present case by obtaining sanction from the competent authority would take back the case to square one i.e. at the stage of taking cognizance. Hence, it would be unfair to permit the prosecution to seek stay of the proceedings only for obtaining a valid sanction from the competent authority, that too after conclusion of recording of substantive evidence.

The Hon"ble Apex in the case cited supra had also considered the issue of remitting the matter back to the authority. However, had observed that it would not be fair, just to direct that the proceedings may again be initiated from the stage of sanction so as to expose the appellant to another innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution which, as a part of right to life, philosophizes early and of criminal proceedings through a speedy trial.

7. In view of this, the order passed by learned Special Judge, Aurangabad, being a justifiable order and which is passed in accordance with law, does not warrant any interference. Hence, the application challenging the said order being sans merit, stands rejected. Learned Special Judge shall proceed with the proceedings in the present case in accordance with law, within one week from the date of receipt of this order.

8. The Criminal Application stands dismissed. Rule discharged.