
(2020) 02 BOM CK 0084
In the Bombay High Court
Case No : Criminal Appeal No. 213 Of 2004

State Of Maharashtra

APPELLANT

Vs

Ratan Tulshiram Londhe

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 11, 13, 13(2), 13(1)(d), 15, 19
Code Of Criminal Procedure, 1973 — Section 378, 386

Citation : (2020) 02 BOM CK 0084

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Advocate : Anamika Malhotra, Anuj Desai

Final Decision : Dismissed

Judgement

1. This is an appeal impugning an order and judgment dated 24-11-2003, passed by the Court of Special Judge, Pune, acquitting respondent (accused)

of the offence punishable under Sections 7 and 13 (2) read with Section 13(1)(d) of Prevention of Corruption Act 1988 (P.C. Act 1988).

2. As none appeared for respondent, this court appointed Mr. Anuj Desai as Amicus Curiae. Before I proceed with the case, I must express my

appreciation for the assistance rendered and endeavour put forth by Mr. Desai, learned Amicus Curiae, for it has been of immense value in rendering

the judgment.

3. Accused is alleged to have taken illegal gratification of Rs.1300/- on 21-1-1995. I do not wish to go into other details because one of the grounds

apart from the merits, which the Trial Court considered while acquitting accused, was the issue of sanction. The Trial Court concluded that the

sanction order Exhibit 24 was not legal and valid. If that was the conclusion

arrived at, the court need not have gone into the merits of the case.

4. Learned APP Ms Malhotra submitted relying upon the judgment of the Apex Court in CBI Vs. Ashok Kumar Aggarwal 2014 CRI L.J. 930 that

when an error or omission or irregularity in sanction is not fatal, the court should ignore such error or omission or irregularity. Ms Malhotra submitted

that unless the court comes to a conclusion that the defect or irregularity has caused failure of justice, the court need not interfere.

5. The sanctity of sanction has been considered and laid down by the Apex court in Balbhadra Parashar vs. State of Madhya Pradesh AIR 2016 SC

1554. The Apex court held that grant of sanction is not empty formality and order of consent should not be construed in a pedantic manner and the

purpose for which order of sanction is required to be passed should always be borne in mind, and there has to be application of mind in support of the

sanction. Paras-5 & 6 read as under :-

5. It is contended that the grant of sanction is not an empty formality and there has to be application of mind in support of the said sanction. We

have been commended to Mansukhlal Vithaldas Chauhan v. State of Gujarat, 1997(4) R.C.R.(Criminal) 236 : (1997) 7 SCC 62 wherein a two-Judge

Bench while dealing with grant of sanction has observed:-

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant

facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must

ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by

extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also

Jaswant Singh v. State of Punjab, AIR 1958 SC 124, and State of Bihar v. P.P. Sharma, 1991(2) S.C.T. 397 : 1992 Supp. (1) SCC 222.)

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and

evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of

genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any

quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction

vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown

that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or

constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was

compelled to act mechanically to sanction the prosecution.

6. In *State of Karnataka v. Ameerjan*, 2007(4) R.C.R.(Criminal) 375 : 2007(5) Recent Apex Judgments (R.A.J.) 202 : (2007) 11 SCC 27, 3while

dealing with the grant of sanction, it has been held thus:-

9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of

sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the

public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction

must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed

hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General

of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or

by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the

matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not

evident. Ordinarily, before passing an order of sanction, the entire 82 (2007) 11 SCC 273 records containing the materials collected against the

accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the

materials placed before the said authority before the order of sanction was

passed, the same may be produced before the court to show that such materials had in fact been produced.

6. The Apex court in *State of Maharashtra Vs. Mahesh Jain* (2013) 8 SCC 119 has held that grant of sanction is a sacrosanct act and is intended to provide safeguard to a public servant against frivolous and vexatious litigation. Grant of sanction is an administrative function and the sanctioning authority is required to prima facie, reach the satisfaction that relevant facts would constitute the offence. Satisfaction of the sanctioning authority is essential to validate an order granting sanction.

7. The Apex court in *Mahesh Jain* (supra) has referred to *Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh* (1979) 4 SCC 17 2 where the Apex court held â??it is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void, ab initio.

8. Mr. Desai, Learned Amicus, relying upon the judgment of the Apex Court in *Nanjappa Vs. State of Karnataka* (2015) 14 Supreme Court Cases

186 submitted that Section 19 of P. C. Act which provides that no court shall take cognizance of an offence punishable under Sections 7, 11, 13 and

15, alleged to have been committed by a public servant, without the sanction was couched in mandatory terms and acts as complete bar to prosecution

without previous sanction. Mr. Desai submitted that in the absence of valid sanction the court is not competent to take the cognizance of the case and

the trial itself will be void-ab-initio. Therefore, the trial based on invalid sanction is null and void and there is no bar on prosecution after obtaining fresh

sanction, can pray for re-trial. Mr. Desai also submitted that if the sanction itself is invalid, the Trial Court cannot come to the conclusion of acquitting

or convicting accused, as it was not competent to take cognizance of the alleged offence. With an invalid sanction, the trial itself will be nonest in the

eyes of law. Mr. Desai submitted that in that case the Trial Court must discharge accused and parties may be relegated to a position where

prosecution can be initiated after obtaining sanction afresh from the competent authority.

9. Mr. Desai, Learned Amicus, relying upon the judgment of the Apex Court in *Dinesh Kumar Vs. Airport Authority of India* (2012) 1 SCC 532

submitted that validity of sanction depends on materials placed before the

sanctioning authority and consideration thereof implies application of mind by the sanctioning authority. As there is a distinction between absence of sanction and invalidity of sanction, the challenge to sanction as regards invalidity due to non application of mind, has to be raised during the trial. Mr. Desai submitted that considering the evidence of the sanctioning authority Mr. Ravindra Surve (PW-3), the sanction accorded itself is invalid.

I have considered the evidence of PW-3 with the assistance of Mr Desai. I agree that the sanction accorded is invalid for two reasons: (a) PW-3 has sought legal advice of the legal adviser of PCMC and on going through the papers and report of the legal adviser, has accorded the sanction, (b) PW-3 has received the draft sanction order from ACB Pune along with the report and PW-3 says "I approved the draft and accorded the sanction". In view of admission by PW-3 that he has granted the sanction in consultation with the legal adviser, also shows non application of mind as held in *Mansukhlal Vs. State of Gujarat* 1997 (7) SCC 622. Mr. Desai submitted relying upon the judgment of the Apex Court in *State of Maharashtra through Deputy Superintendent of Police ACB Nagpur Vs. Devidas s/o Narayanrao Bobde* 2014 SCC Online Bom.10 4t5hat signing on draft sanction order submitted by ACB, would indicate non application of mind.

10. Mr. Desai submitted, since the incident happened on 21-1-1995 and 25 years have passed since then, no purpose would be served by resuming the proceedings over and again. Mr. Desai submitted that even considering the evidence, which was recorded by the court, there appears to be no merit because the demand and acceptance have not been proved.

Hence the matter be given a quietus.

11. On the issue of sanction as submitted by Mr. Desai, I am in agreement with him. This is because the validity of sanction depends on the application of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation. It necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction, where prosecution has to be sanctioned or not. The sanctioning authority, since has a discretion to grant or not to grant the sanction, cannot rely on advice from anybody else because, as held in *Mansukhlal (supra)*, its discretion should be shown to have not been affected by any extraneous consideration, nor should the

sanctioning authority be under pressure from any quarter, nor should any external affairs be acting upon it to take the decision one way or the other. If any one seeks legal adviser's advise and he advises that sanction ought to be given, the sanctioning authority will be under pressure to grant the sanction. The sanctioning authority will find it absolutely difficult to go against legal advise and refuse the sanction. It is, therefore, necessary that the discretion to grant or not to grant the sanction, should be vested purely and absolutely in the sanctioning authority. The sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction where prosecution has to be sanctioned or not.

12. In the circumstances, the sanction accorded based on legal advise or even if, considering the legal adviser's report, will have to be invalid. It would not assist the sanctioning authority to say that even he has applied his mind independently.

13. As regards signing on the draft sanction order, as held by the Learned Single Judge of this Court in *Devidas s/o Narayanrao Bobde (supra)*, signing on draft sanction order would indicate non application of mind.

14. Therefore, there is no valid previous sanction. The Learned Single Judge of this Court in *Laxman through the legal heirs and another vs. State of Maharashtra 2019 SCC Online Bom 1020* relying upon *Nanjappa (Supra)* observed in that case time of 20 years had lapsed as the incident happened in March 1999 and concluded that no purpose could be achieved by directing a fresh trial.

15. In the case at hand, the incident happened on 21-1-1995. The case was received by the Sessions Court on 18-12-1995 and was registered on the same day. It was decided on 24-11-2003, duration being 7 years, 11 months and 6 days. The appeal has been lodged in this court on or about 17-2-2004 and was admitted on 16-1-2006. Accused was 24 years of age, when the complaint was filed and would be now approximately 59 years of age and probably would have even retired.

Should I set aside the order and permit the launch of fresh prosecution against accused at this distinct point of time, is what we have to consider next.

In my view, putting the clock back at the stage when the prosecution witnesses themselves may not be available, would serve no purpose. That apart, the Trial Court had, even upon appreciation of the evidence, although it was not

required to do so, had held that the prosecution has failed and acquitted accused.

16. The Apex Court in Ghurey Lal Vs. State of U.P. (2008) 10 SCC 450 has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its

power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion

with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is

not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial

court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is

going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has ""very substantial and compelling reasons"" for doing so.

A number of instances arise in which the appellate court would have ""very substantial and compelling reasons"" to discard the trial court's decision.

Very substantial and compelling reasons"" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in ""grave miscarriage of justice"";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

- v) The trial court's judgment was manifestly unjust and unreasonable;
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.
- vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

The Apex Court in many other judgments including *Murlidhar & Ors. Vs. State of Karnataka* (2014) 5 SCC 730 has held that unless, the conclusions

reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are

likely to result in grave injustice. Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely

because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of

acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of

acquittal passed in his favour by the Trial Court.

The Apex Court in *Ramesh Babulal Doshi Vs. State of Gujarat* 1996 SCC (cri) 972 has held that if the Appellate Court holds, for reasons to be

recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or

demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that

there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and

arrive at its own conclusions.

17. In so far as the offence under Section 7 of PC Act is concerned, it is settled position in law that demand of illegal gratification is sine qua non to

constitute the said offence and mere recovery of currency notes cannot

constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. This position has been well laid down in several judgments of the Apex Court and all other High Courts including Bombay High Court (B. Jayaraj V/s. State of Andhra Pradesh (2014) 13 SCC 55).

18. I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP and Mr. Desai. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment in its consideration on the merits of the case. The views expressed by the Trial Court that prosecution has failed to prove beyond reasonable doubt, cannot be faulted and it is settled law that if one of the two views are possible, the appellate court should not interfere. In the circumstances, I feel no purpose will be served to resume the proceedings over and again. Accused and his family would have already suffered ignominy of allegations and trial. They need not go through that again.

19. In the circumstances, appeal is dismissed.

20. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from today, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against accused and will factor in all promotions and increments that accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this judgment.

Certified copy expedited.