

ORDER BELOW APPLICATION EXH. 17
IN STC No. 166/2019
State Vs. Dhirendrasingh Bilwal
(Passed on this the 12th Day of August, 2022)

01] The accused No. 1 has filed present application for discharge under Section 227 of Cr. P.C. As per contents of application and oral argument it is the case of accused No. 1 that the accused No. 1 alleged to have committed an offence punishable under Sections 7 and 15 of Prevention of Corruption Act, 1988. The sanction order given in respect of accused No. 1 is null and void. The accused No. 1 was working as Assistant Police Inspector. Director General of Police (D.G.P.) Mumbai is the sanctioning authority for the post of Assistant Police Inspector. However, sanction given by Special Inspector General of Police Amaravati, range Amaravati.

02] The Special Inspector General of Police Amaravati, range Amaravati is sub-ordinate to the post of Director General of Police Mumbai. The Post of Director General of Police is highest post in the police department.

03] The DYSP Anti Corruption Bureau Buldhana has issued letter dated 17.03.2017 to Superintendent of Police Buldhana for making enquiry and collecting information in respect of service record of accused No. 1. The Superintendent of Police Buldhana has submitted written information vide letter dated 09.05.2017.

04] On page No. 229 Question No. 5 of the charge-sheet it has been specifically mentioned that -

“आरोपी लोकसेवक सपोनी धिरेंद्रसिंग गोविंदसिंग बिलवाल यांच्या विरुद्ध दिनांक १६.०३.२०१७ रोजी गुन्हा दाखल झालेला आहे त्यावेळी ते धारण करित असलेले सहाय्यक पोलीस निरीक्षक या पदावर कामावर घेण्याचे व त्या पदावरून / कामावरून काढून टाकण्याचे अधिकार असलेले सक्षम अधिकारी यांचे पदनाम, सदर सक्षम अधिकारी यांना कोणत्या शासन निर्णय अथवा परिपत्रकानुसार प्रस्तुत अधिकार प्रदान करण्यात आले आहे. आरोपी लोकसेवक यांना सपोनी पदावर पदोन्नती देण्याचे अधिकारी मा. पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांना असून पदोन्नती देण्याचे अधिकार त्यांना असल्याने शासकीय सेवेतून काढून टाकण्याचे अधिकार देखील त्यांनाच आहे.

05] Page No. 774, 775, 776 and 777 specifically and clearly shows that, the sanction is given by (C. H. Wakade) SPL. INSPECTOR GENERAL OF POLICE, AMRAVATI RANGE AMRAVATI. So it is crystal clear that, the sanction order given in respect of Accused No. 1 is totally bad in law and null and void, which, makes the whole prosecution case void-ab-initio.

06] As the sanction order is itself defective given by person who has no right and authority to give sanction makes the whole prosecution case void-ab-initio and no purpose will be served by proceeding against Accused No. 1 by conducting the trial. Proceeding against Accused No. 1 will amount to abuse of process of law. Hence, no purpose will be served by proceeding against the accused No. 1 for want of proper sanction.

07] Hence, it is crystal clear that on the day of trap accused No. 1 was working as Assistant Police Inspector, the power to grant sanction to the post of Assistant Police Inspector is vested in the hands of Director General of Police, Mumbai. As there is wrong and improper sanction against accused No. 1 proceeding against the accused No. 1 will be abuse of process of law. Hence, the accused No. 1 pray to discharge him from the charges leveled against him.

08] During the course of oral argument, the learned Advocate for accused No. 1 relied upon following case law-

1] Balu Dasu Rathod Vs. State of Maharashtra & Others, in Criminal Application No. 1439 of 2018, decided on 4th September, 2019 -

Wherein the Hon'ble Bombay High Court held that therefore, it is crystal clear that unless there is previous sanction by the *Competent authority, the Special/Trial Court cannot take cognizance of the offence. In the present case sanction is accorded by the Additional Commissioner of Police, Thane who is neither appointing authority nor he can remove the present applicant from the government service. As already observed, appointing authority of the applicant is Director General of Police, Maharashtra State and the sanction is given by the Additional Commissioner of Police, Thane. Therefore, keeping in view the exposition of law by the Supreme Court in the aforesaid two authoritative pronouncements in the case of Nanjappa Vs. State of Karnataka [2015 ALL MR (Cri) 3318 (S.C.)] and State of Karnatak through CBI Vs. C. Nagrajaswamy (Supra), an inevitable. conclusion is that the cognizance taken by the learned Sessions Court, Thane for the aforesaid offences against the applicant, cannot legally sustain and therefore, the cognizance taken by the said Court will have to be treated without previous sanction of the competent authority. The sanction given by the Additional Commissioner of Police, Thane cannot be treated as valid sanction as contemplated under Section 19 of the said Act.*

2] Shridhar Mahadeo Dhamorikar Vs. State of Maharashtra & Others, in Criminal Appeal No. 208 of 1967, decided on 20.09.1968 -

Wherein it was held by the Hon'ble Bombay High Court, Bench at Nagpur that in the case of a civil servant who has been appointed by a particular authority the delegation of power to a subordinate authority to dismiss or to remove that person is not permissible as it takes away the protection of Article 311 of the Constitution. Although normally where a subordinate authority is empowered to appoint a civil servant, an authority higher in rank to that subordinate authority does not make an order of appointment, yet if such an order is in fact made, then in that case the power to order dismissal or removal cannot be exercised by an authority lower in rank than the appointing authority.

3] Sakharam Tryambak Patil Vs. State of Maharashtra, reported in [1993 Mh. L.J. Page 276]

Wherein the Hon'ble Bombay High Court bench at Nagpur held that the requirement of section 6(1)(c) of the Prevention of Corruption Act, 1947 is that sanction prosecute a public servant should be accorded by an authority who is competent to remove from office the public servant concerned. The accused Patwari was appointed by the Collector while sanction was accorded by the Sub-Divisional Officer, an officer subordinate to the Collector. The Sub-Divisional Officer being subordinate to the Collector could not remove from service an officer appointed by the Collector without doing violence to Article 311 (1) of the Constitution of India. The sanction to prosecute was invalid on the ground that the Sub-Divisional Officer was not competent to accord the sanction. Trial held to be vitiated and conviction and sentence set aside.

4] Satish Mehra Vs. Delhi Administratio and Another, in Criminal Appeal No. 1385 of 1995, decided on 31 July, 1996 reported in Supreme Court cases (Cri.) 1104 -

Wherein the Hon'ble Apex Court held that the object of providing such an opportunity as is envisaged in Section 227 of the

Code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, the Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. Most of the Sessions Courts in India are under heavy pressure of workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself.

09] The Investigation Officer and learned APP have filed their say at Exh. 17 and 21 and opposed the application. As per say and oral argument it is the case of the prosecution that as per the Government G. R. No. अभियो-१३१२/ प्र.क्र.३०/पुर्नबांधित-१/११-अ दिनांक १२ फेब्रुवारी २०१३ powers of Sanction order under Section 19 of the Prevention of Corruption Act, 1988, to file case against Assistant Police Inspector and Police sub-inspector, is given to Special Inspector General of Police. Therefore, the Special Inspector General of Police has given sanction order under Section 19 to lodge case against the accused No. 1 which is valid and legal. The matter is fixed for evidence and charge is already framed against the accused. Therefore, the application is not tenable and the same may be rejected.

10] Heard both sides, perused application, say thereon, charge-sheet and documents placed on record. The accused No. 1 alleged to have committed an offences punishable under Section 7, 12 and 15 of the Prevention of Corruption Act. On 04.03.2021 charge against the accused No. 1 has been framed and matter is fixed for evidence of the prosecution.

11] On perusal of G.R. dated 12.02.2013 the Special Inspector General of Police is empowered to grant sanction to file case against the accused No. 1. Accordingly, the Special Inspector General of Police has granted sanction to file case against the accused No. 1.

12] On perusal of charge-sheet, sanction order, aforesaid G.R. and documents placed on record, it appears that there is prima-facie strong evidence against the accused No. 1. At the time of deciding discharge application the jurisdiction of the Court is very limited. Marshaling and appreciation of evidence is not in the domain of the Court as held in **Palwinder Singh Vs. Balwinder Sing & Ors, reported in 2009 (3) SCC 850.**

13] It is necessary to point out that at the time of deciding the discharge application under Section 227 of Cr. P.C., the Court has to proceed with an assumption that the material brought on record against the accused is true and to evaluate the said materials and documents with a view to find out whether the facts emerging there from taken at their face value discloses the existence of all

ingredients constituting the offence as held in State of Tamilnadu represented by Inspector of Police Vigilance and Anti Corruption Vs. N. Suresh Rajan (In ACB Case), reported in 2014 (11) SCC 709.

14] As discussed above after perusing the charge-sheet and all documents placed on record it is prima-facie clear that there is strong case against the accused No. 1 and other accused and therefore, on 04.03.2021 this Court has framed charge against the accused No. 1 and matter is fixed for evidence.

15] It is necessary to point out that after framing of charge the question of discharge does not arise. Once charge is framed, the accused is put to trial and thereafter, either accused acquitted or convicted, but he can not be discharged. Once charge is framed, there is no back gear for discharging the accused under Section 227 of Cr. P.C. Discharge post framing of charge is not viewed in Cr. P.C., as held by the Hon'ble Apex Court in 1] Ratilal Bhanaji Mithani Vs. State of Maharashtra & Ors., reported in AIR 1979 SC 94, in 2] Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia & Anr, reported in 1989 SCC (1) 715, as held by the Hon'ble Bombay High Court in 3] Leela Narvekar Vs. Keshav Narvekar and others, reported in 2017 DGLS (Bom.) 1362 : 2018 Criminal Law Journal 1107 : 2018 All M.R. (Cri) 804 and as held by the Hon'ble Calcutta High Court in 4] Tapati Bag Vs. Patitpaban Ghosh And Ors. reported in 1993 Criminal Law Journal in 3932.

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16] Therefore, with due respect the case laws relied upon by the accused No. 1 are not helpful to him. Hence, the present application deserves rejection and resultantly following order is passed.

-O R D E R-

Application Exh. 17 of accused No. 1 under
Section 227 of Cr. P.C. is rejected.

Place: Mehkar
Date: 12.08.2022

(Suraj V. Kendre)
Additional Sessions Judge
Mehkar, Dist. Buldana

CERTIFICATE

I affirm that, the contents of this PDF File are same words to words, as per the original Judgment/Order.

Name of Stenographer : Shaikh Imran Abdul Rauf
Court : Additional Sessions Judge Mehkar
Order date : 12.08.2022
Order Signed by the Presiding
Officer on : 12.08.2022