

MHJN010027892014



ORDER BELOW EXH.39 IN SPECIAL CASE (PCA) NO.22 OF
2014

[State Vs. Mukhtyarsingh and others.]

1. This is an application for discharge under section 227 of the Code of Criminal Procedure filed by accused no.1 on the ground that no sanction has been obtained as per the statutory mandate contained in Section 19 of the Prevention of Corruption Act and under Section 197 of the Code of Criminal Procedure.
2. Perused application and say filed by the prosecution.
3. Heard, Adv.Shri.H.D.Zol, the learned Advocate for the applicant-accused and learned APP Shri.B.K.Khandekar for the State.
4. A First Information Report was registered on 26/08/2010 at the police station Partur under sections 120-B, 177, 218, 420, 465, 467, 468, 471 of the Indian Penal Code and under sections 13(1)(c) r.w. 13(2) of the Prevention of Corruption Act against the applicant-accused and the co-accused. The sum and substance of the First Information Report is that the accused alongwith deceased accused,

being public servants, in furtherance of their common intention dishonestly and fraudulently sanctioned the claims under the 'Rashtriya Kutumb Artha Sahaya Yojana', by fabricating documents, creating false records and misappropriated or otherwise the government money and thereby cheated the Government.

5. A detailed investigation followed and on complaint a chargesheet was filed before this Court for the offences as mentioned in the First Information Report. My learned predecessor was pleased to frame the charge on 18/09/2019 against the accused persons. Since then the prosecution has examined only one witness.

6. It is contended by the applicant-accused that the offence has taken place in the year 2010. The applicant-accused has retired in the year 2010. The charge-sheet is filed in the year 2014. No sanction is obtained for his prosecution under the Prevention of Corruption Act or under the Code of Criminal Procedure, perhaps because he had retired. It is argued that his prosecution is not permissible without prior sanction. He should therefore be discharged. The learned Advocate in support of his arguments relies upon the decisions in Sajay s/o. Laxman Kholapurkar Vs. State of Maharashtra 2017(2) Mh.L.J (Criminal) 493, Nanjappa Vs. State of Karnataka 2015(3) B

Cr. C 573 (SC), V. Suryanarayana Vs. The State, Rep. By the Inspector of Police, CBI, ACB, Hyderabad 2015(SUPPL) Criminal Court Cases 526 (A.P), State of Karnataka Vs Dr. V. Chandrashekhar AIR Online 2022 Kar 78:: 2022(2) AKR 1, State Vs Ravinder Singh 1995 Cri.L.J. 3428.

7. The learned APP on the other hand submits that the incident is of the year 2010 and the chargesheet is filed in the year 2014. Accused has retired in the year 2010 and as he had retired prior to filing of the charge-sheet the sanction was not required. In support of his submissions, the learned APP has relied upon the decision in State of Kerala Vs. M.M. Manikantan Nair, 2001 AIR (SC) 2145, Roop Kishore Dargar Vs. State and Anr. Criminal Writ Petition No. 31/2004.

8. Based on the foregoing the following points arise for my determination. My findings thereon for the reasons to follow are as under.

POINTS

FINDINGS

- | | | |
|---|--|---------------------|
| 1 | Whether applicant-accused no.1 is .. In the affirmative. entitled to be discharged of the offence punishable under sections 120-B, 177, 420, 465, 467, 468, 471, 409 of the Indian Penal Code, 1860 and u/s. 13(1) (c), r.w. 13(2) of the Prevention of Corruption Act ? | In the affirmative. |
|---|--|---------------------|

2 What order ?

.. As per final order.

REASONS

9. As already stated above the applicant-accused along with other accused is charged of having committed the offences punishable under sections 120-B, 177, 420, 465, 467, 468, 471, 409 of the Indian Penal Code and section 13(1)(c) read with 13(2) of the Prevention of Corruption Act, 1988. The question which arises in this application is whether the sanction under section 19 of the Prevention of Corruption Act and section 197 of the Code of Criminal Procedure was necessary, before prosecuting the accused for the said offences.

10. In Sanjay s/o. Laxman Kholapurkar (cited supra) applicant who was Superintendent Engineer was arrayed as accused no.4 in the chargesheet. He had applied for quashing of criminal proceedings in Special Case No 23/2016 arising out of Crime No 3176/2016 registered with Sadar Police Station Nagpur for the offences punishable under section 13(1)(c), 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 and sections 420, 120-B, 109, 465, 467, 468 and 471 of the Indian Penal Code. Accused had obtained voluntary retirement from the Government service in the year 2013. Material on record showed that the alleged offensive act and conduct alleged against applicant-accused was reasonably

connected with the performance of his official duty. It was observed in para 14 as under :

“14....The true test as to whether the applicant/accused No.4, a public servant, was acting or purporting to act in the discharge of his official duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it. Taking the allegations as they are on their face value, we are of the considered view that the alleged offensive acts and conduct alleged against the applicant is reasonably connected with the performance of his official duties. Therefore the learned Special Judge could not have taken cognizance of the case without previous sanction of the concerned Government.”

11. It was further observed in para 15 as under.

“15. In the above premise, we find substance in the contention of applicant that prior sanction under section 197 of the Code of Criminal Procedure is a sine qua non and in the absence of sanction taking of cognizance by the Special Court would not sustain in the eyes of law. On this ground alone, application deserves to be allowed”.

12. The application was allowed and the charge-sheet in Special Case No.23/2016 was quashed qua accused. It was however, clarified that in the event the investigating agency applies and the competent authority grants sanction, the order passed by the Court would not come in the way of investigating agency in filing a fresh charge-sheet.

13. In Nanjappa Vs. State of Karnataka, 2015(3) B Cr C 573 (SC) (supra) the appellant was a bill collector in the Grampanchayat. It was the prosecution case that the bribe amount was demanded by accused and paid to him by the complainant and he was caught red hand by the trap team. On completion of investigation, the chargesheet was filed against him. The trial Court had acquitted him on the ground that the prosecution had failed to prove that the accused had any role in the offence. It also held that the sanction of the prosecution had not been granted by the Competent Authority and was therefore not in accordance with section 19 of the Prevention of Corruption Act. It had acquitted the accused. It was observed in para 4 as under;

“4. We have heard learned counsel for the parties at considerable length. This appeal must, in our opinion, succeed on the short ground that in the absence of a valid previous sanction required under Section 19 of the Prevention of Corruption Act, the trial Court was not

competent to take cognizance of the offence alleged against the appellant. Section 19 of the Prevention of Corruption Act reads as under:

“19. Previous sanction necessary for prosecution (1) No court shall take cognizance of an offence punishable under section 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,- (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.”

14. It further observed in para 12,13,14 as under;

“12. The legal position was reiterated once more by this Court in State of Karnataka vs. C. Nagarajaswamy (2005) 8 SCC 370, where this Court summed up the law in the following words:

“In view of the aforementioned authoritative pronouncements, it is not possible to agree with the decision of the High Court that the trial court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Code as, even then, it would be held to have been rendered illegally and without jurisdiction.

13. What is important is that, not only was the grant of a valid sanction held to be essential for taking cognizance by the Court, but the question about the validity of any such order, according to this

Court, could be raised at the stage of final arguments after the trial or even at the appellate stage. This Court observed:

“Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefore or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage. But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court.

14. In B. Saha and ors. Vs. M.S.Kochar, this Court was dealing with the need for a sanction under Section 197 of the Code of Criminal

Procedure and the stage at which the question regarding its validity could be raised. This Court held that the question of validity of an order of sanction under Section 197 Code of Criminal Procedure could be raised and considered at any stage of proceedings. Reference may also be made to the decision of this Court in K. Kalimuthu vs. State by DSP where Pasayat, J., speaking for the Court, held that the question touching the need for a valid sanction under Section 197 of the Code of Criminal Procedure need not be raised as soon as the complaint is lodged but can be agitated at any stage of the proceedings. The following observation in this connection is apposite: “The question relating to the need of sanction under Section 197 of the Code is not necessarily be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned the effect of Section 19, dealing with question of prejudice has also to be noted.”

15. It further observed in para 16 as under:

“16.....What is noteworthy is that Sub-section (3) has no

application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1). Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.....”

16. It further observed in para 17 as under.

“17... The only error which the trial Court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case.”

17. In *V. Suryanarayana Vs. The State*, Rep. By the Inspector of Police, CBI, ACB, Hyderabad 2015(SUPPL) Criminal Court Cases 526 (A.P) the Hon’ble Court has referred to the decision in *G.Sagar Suri V. State of U.P.*, 2000(1) SCR 417 and *Prakash Singh Badal V. State of Punjab* wherein the Hon’ble Supreme Court observed that

“whether a public servant retired from service or is in service, to prosecute such a public servant under the provisions of the P.C. Act, there shall be sanction under Section 19 of the P.C. Act if the alleged offence was committed by an employee during the course of his employment.”

18. It also relied upon the decision in State through CBI V. Raj Kumar Jain 1998(2) Apex Court Journal 323 (S.C.) : AIR 1998 SC 2985 and observed in para 24 as under;

“24 Further in view of the latter review of the Supreme Court in Raj Kumar Jain (supra), I agree with the contention of the learned Senior Counsel for the petitioner that the sanction under Section 19 of the P.C. Act is necessary before the petitioner is prosecuted.”

19. It concluded in para 27 as under:

“27.Thus, although the petitioner failed in establishing that the Investigating Officer had no power to investigate the case under Section 17 of the P.C. Act, although the petitioner failed to show that the offences under Section 409 of IPC and under Sections 13(2) read with Section 13(1)(d) of the P.C. Act are not applicable to the case of the petitioner and although the petitioner failed to show that the Investigating Officer was the complainant himself, the petitioner

succeeded in showing that the prosecution failed to obtain approval and permission from the concerned Government to prosecute him. Consequently, the case against the petitioner is not maintainable and is accordingly quashed.”

20. In State of Karnataka Vs Dr. V. Chandrashekhara AIR Online 2022 Kar 78:: 2022(2) AKR 1 it was held that “the public servant cannot be prosecuted without sanction and his retirement from service does not make any difference in matter of obtaining sanction.”

21. The Hon’ble High Court referred to section 19(1) of the Prevention of Corruption Act 1988 as it stood before the amendment and also after the amendment and observed in para 14 and 15 as under.

“14. Therefore it is clear that the amended Section makes it very clear that sanction is necessary not only for subjecting a public servant while in service (or who is in service) but also a public servant who has retired from service (who was in service). This amendment is by way of substitution, and it takes effect from the inception in the sense it must be understood as if the substituted provisions is there from the day when the law was enacted. This position is made clear by the Division Bench of this Court in the case of PUSHPALATHA N.V. v.

V. PADMA AND OTHERS (ILR 2010 Kar 1484) : (AIR 2010 Kar 124) Though this decision was rendered in an appeal arising from a suit, for the purpose of understanding the effect of amendment by substituting a provision of law, it can be referred to here. What is held is as below.

“52. This declaration and conferment of right in coparcenary property, a salient and distinguishing feature of a coparcenary property in Mitkshara, is the right by birth in the coparcenary property. When the amending Act came into force in 2005, naturally the question and a doubt would arise, as to when the daughter would get that right. The Parliament realised this problem and did not want to leave any one in doubt about its intention. It is expressly stated in the section itself that this “right is by birth”, leaving no scope for interpretation. This amendment is introduced by way of substitution. The result is, this amended provision is there in the statute on the day it came into force i.e. 17-06-1956. From that day till the amendment Act came into force on 9-9-2005, the daughter of the coparcener was not a coparcener and she became a coparcener only from 9-9-2005. Though her status was so declared on 9-9-2025, she has been given right in the coparcenary property from the date of her birth. It would result in absurdity.

Therefore, what the Parliament did was to use the phrase, “on and from the commencement of the Hindu Succession (Amendment) Act, 2005”, as the opening words of the Section, thus removing the absurdity. (emphasis supplied)

15. Thus seen, it may be stated that the amendment brought to Section 19 of the Prevention of Corruption Act by Act No.16 of 2018 is to be understood as if it came into effect from the date the Prevention of Corruption Act was first given into effect i.e., from 09.09.1988. This being the change in law, definitely the respondent can contend that he cannot be prosecuted without sanction and his retirement from service does not make any difference in the matter of obtaining sanction. Therefore the argument of Sri.B.S.Prasad cannot be accepted, I do not find any infirmity in the ultimate conclusion taken in the impugned order to discharge the respondent. The revision petition fails and it is dismissed.”

22. In State Vs Ravinder Singh, 1995 Cri.L.J. 3428 the main thrust of the arguments on behalf of the petitioner was that after Magistrate has recorded the evidence, the Special Judge ought to have furnished the whole evidence of the State and could not have discharged the accused. The Special Judge has no power to discharge the accused

after charge has been framed by the Court. It was argued on behalf of the Respondent that in view of Section 19 of the Prevention of Corruption Act, the cognizance cannot be taken by any Court in the absence of any sanction. The sanction has to be valid, legal and should not suffer from any infirmities such as non-application of mind or the same should not be other wise bad in law. If there is no valid sanction or the court during the course of hearing comes to the conclusion that the sanction is vitiated. Then the court has not other alternative but to discharge or acquit the accused because the very foundation on which the prosecution has been launched cognizance has been taken, will no be is existence.

23. It was observed in para 8 as under:

“8. It would be seen that sanction as mentioned in Section 19 of the Act is a pre-requisite for taking cognizance of an offence and prosecution for that offence by a Special Judge under the Said Act and if at any stage on the basis of material before the Special Judge or it is otherwise brought to the notice of the Special Judge that the basis of cognizance i.e., the sanction suffers from any vice, infirmity or illegality to argue that the Special Judge has to still proceed with the remaining evidence will be an exercise in futility and not only an exercise in futility but will be a great burden on public exchequer and time which is in paucity of the Courts concerned. To test further contention of the learned counsel for the State that evidence ought to have been recorded by the Special Judge, what would be the net result, even if I assume that the evidence could have been recorded, the ultimate finding again would be to acquit the accused, because the basis foundation on which the Court has taken cognizance suffered from illegality. The Special Judge, after coming to a finding on the

basis of evidence, which was led before him, applied his judicial mind and on the basis of all the evidence and material held that there was no legal sanction. Having come to the conclusion that the sanction was not legal, it was incumbent on the Special Judge to discharge the accused. The authorities cited by the learned counsel for the petitioner is of no help to the case of the petitioner. In the absence of proper, legal and valid sanction, the Special Judge will not have the jurisdiction to take cognizance of the offence thereby implying that if the Special Judge after coming to a conclusion that there was no legal sanction, still chooses to proceed in the matter, then the proceedings will be without jurisdiction and illegal.”

24. As far the decisions relied upon by the learned APP in State of Kerala Vs. M.M. Manikantan Nair 2001 GoJuris (Supreme Court) 712 the respondent no.1 was booked for trial along with another accused for the offences punishable under section 120-B, 409, 468, 471 and 477 of the Indian Penal Code and section 13(1)(c) read with section 13(2) of the Prevention of Corruption Act. The allegation against respondent no.1 was that while he was working as the Secretary of Melukavu Gram Panchayat along with another accused, who was the Head Clerk of the Panchayat, committed criminal conspiracy to misappropriate the funds of the Panchayat which was earmarked for construction of waiting sheds. Tribal training centres etc. and misappropriated large amount by creating bogus receipts and bills and thereby committed the above offences. Initially the respondent was placed under suspension and subsequently was allowed to retire from service on attaining superannuation.

25. The respondent had filed Revision Petition u/s. 482 of the Criminal Procedure Code before the High Court of Kerala for quashing the said criminal proceeding on the ground that there was no sanction to prosecute him as required under section 122 of the Kerala Panchayat Act. That petition viz. CrI.M.C.No.1137 of 2000 was dismissed by the learned single Judge of the High Court by judgment dated 31st May, 2000 on the grounds that there was proper sanction to prosecute the respondent and a prima facie case was made out against him. Subsequently, a miscellaneous petition was filed in the above criminal case by the respondent for clarification of the above order. This petition was finally allowed by the impugned order dated 13-7-2000 by the same learned Judge holding that there was no proper sanction from the competent authority and, therefore, no cognizance could have been taken against him. Being aggrieved, the State had approached the Hon'ble Apex Court.

26. Two questions were framed and the second question was whether sanction to prosecute under sub-section 1 of section 122 of the Kerala Panchayat Act is necessary in the present case? It was observed in para no.9 as under;

“9. The language of Section 122 is clear and unambiguous. Sanction

to prosecute the President, Executive Authority or Members of a Panchayat is necessary for prosecution of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. If a person ceases to hold the above office on retirement or otherwise no sanction for prosecution is necessary. The petitioner who retired from the service could not claim protection under this section as he ceased to hold the post under the Panchayat.”

27. It was observed in para no.12 as under.

“12. We are, therefore, of the opinion that in view of clear language of sub-section (1) of Section 122 of the Kerala Panchayat Act, sanction is required under the said sub-section only if a person holds the office of President, Executive Authority or any member and not otherwise. As the respondent retired from service no previous sanction for prosecution under this section is required.”

28. In *Roop Kishore Dargar Vs. State and Anr.* 2005 GoJuris (BOM) 795. Petitioner was working as a Chief Marketing Manager. He was charged for having extended credit facility to private party in spite of clear instructions to ensure that outstanding amounts are required adjusted from the parties before it delivering any more

supply to such party. The petitioner had filed application before Special Judge for discharge on the count that Court cannot take cognizance against him for want of sanction much less valid sanction. It was stated that chargesheet was filed against him on 30th September 1988 on which date he continued to be in the employment of R.C.F. for which reason the sanction to prosecute him was prerequisite to take cognizance of alleged offence against him. The Special Judge has negated contention by observing that the date on which chargesheet came to be filed i.e. 30th September 1988, the petitioner had already retired from service much before that date on 31st July, 1998. In that view of the matter sanction was not necessary. The respondents on the other hand placed reliance on letter issued by company dated 19th August 1998 to the Investigating Agency C.B.I. informing that the petitioner retired on 31st July, 1998. In addition reliance was also placed on the letter issued by the company addressed to the Investigating Agency C.B.I. dated 3rd March, 1999 which reiterated the position that petitioner was not reemployed by the company on attaining the age of superannuation. It was observed in para no. 6 as under.

“6. There is substance in the argument canvassed on behalf of the

prosecution. The document which is part of the charge-sheet, does support the stand of the prosecution, as can be seen that the petitioner retired from service on 31st July, 1998. Insofar as the letter relied upon by the petitioner is concerned, that is a matter, which will have to be decided at the trial. In other words, in my opinion, the question of sanction in the fact situation of the present case is a mixed question of fact and law, which can be resolved only after evidence is laid by the parties on that issue. Viewed in this perspective, the petitioner cannot succeed on the argument that it was not open to the trial Court to take cognizance of the alleged offence as against the petitioner, for want of sanction. To that extent, the view of the lower Court will have to be upheld, making it clear that the issue will have to be considered threadbare, after considering the evidence led by the respective parties in support of their claim at the trial.”

29. Keeping in mind the observations in the above decisions I may now proceed to discuss the present application before me. In the facts of the present case before us admittedly applicant-accused retired on 30/06/2010. The offence is registered against him on 26/08/2010. The chargesheet is filed in the year 2014. Admittedly, no sanction to prosecute him is obtained, on the ground that it is not required as he

has retired. The charge is framed against the applicant-accused on 18/09/2019 of the offences punishable under sections 13(1)(c) r.w. 13(2) of Prevention of Corruption Act, 1988, u/s.120-B, 177, 420, 465, 467, 471, 409 r.w. 34 of the Indian Penal Code,1860. The matter has been proceeded with and the prosecution has examined one witness on 21/09/2021. As already stated above the allegations against the applicant-accused and deceased accused is that they being public servants, in furtherance of their common intention dishonestly and fraudulently sanctioned the claims under the 'Rashtriya Kutumb Artha Sahaya Yojana', by fabricating documents, creating false records and misappropriated or otherwise the government money and thereby cheated the Government.

30. I have gone through the First Information Report and what can be said is that taking the allegations as they are it can be said that the alleged offences have taken place while the applicant-accused was performing his official duties. In view of the observations in the decisions referred above it follows that the prior sanction u/s. 197 of Criminal Procedure Code and section 19 of the Prevention of Corruption Act is a *sine-quo-non* and in absence thereof the cognizance taken by this Court would not sustain in the eyes of law

irrespective of the fact that accused had retired prior to filing of the chargesheet. Under section 197 of the Code of Criminal Procedure public servant is entitled to prosecution not only in regard to an offence alleged to have been committed by him while acting as a public servant but also in respect of the offences alleged to have been committed by him while purporting to act in discharge of his official duties. Similarly under section 19 of the Prevention of Corruption Act he cannot be prosecuted without sanction and his retirement from service does not make any difference in the matter of obtaining sanction. As far as the decisions relied upon by the Ld APP Shri Khandekar are concerned they cannot be applied to the facts of the present case before us, as they differ in facts. In State of Kerala vs M.M.Maniknatan Nair (supra) it was a case to which Section 122 of the Kerala Panchayat Act was applicable. It provided that sanction was required only for person who held the office of President, Executive Authority or any member and not otherwise and the accused therein was a Secretary. It was therefore held that sanction was not required. In Roop Kishore Dargar vs State and Anr (supra) the question whether the sanction was required or not was in the facts of the case a mixed question of facts and law and therefore it was held

that it can be resolved only after the evidence is laid by the parties on that issue. That is not the case in the present case before us.

31. Though in the present case the charge is already framed and the matter has been proceeded with the accused deserves to be discharged in view of the observations in Nanjappa Vs. State of Karnataka (supra). I am therefore of the opinion that in the present case the application deserves to be allowed and accused deserves to be discharged. Hence, the order.

ORDER

- 1) Application Exh.39 is allowed.
- 2) Applicant-accused no.1 Mukhtyarsingh Ramrao Theng, is discharged from the offence registered at C.R. No. 105/2010 of the offences punishable under sections 120-B, 177, 420, 465, 467, 468, 471, 409 of the Indian Penal Code, 1860 and u/s. 13(1)(c), r.w. 13(2) of the Prevention of Corruption Act. However, Investigating Agency may file fresh chargesheet after obtaining sanction.

Date : 05.11.2025

(V.M. Mohite)
Special Judge,
Jalna.

CERTIFICATE

I affirm that the contents of the P.D.F. file is word to word as per the original order.

Name of Stenographer : A.P.Deshmukh

Name of the Court : Principal District and Sessions Judge, Jalna.

Date : 05.11.2025

Sd/-
Stenographer Grade-1