CNR No. MHND010029032018

ORDER BELOW EXH.09
State Vs. Sunil

This application is filed by the applicant/accused No.1 Sunil Nagesh Khamitkar under section 227 of Cr.P.C. for discharging him from the charges under section 7, 12, 13(1)(D) r/w. 13(2) of the Prevention of Corruption Act, 1988.

2. **In brief, contents of the application are as under-**

Complainant Datta Vithalrao Jadhav lodged complaint against the accused persons alleging that, he got married with a girl belongs to Nav Boudh Caste, so he applied to District Social Welfare Officer, Zilha Parishad Nanded for receiving financial aid from the Government. The complainant alleged that, for forwarding his file for sanction, Amol Madhavrao Srimanwar, Inspector of Social Welfare Office, Zilha Parishad, Nanded had demanded Rs.6000/- for himself and Rs.15,000/- for District Social Welfare Officer, Sunil Khamitkar. The complainant was not willing to give bribe amount to them, hence he lodged complaint in the office of ACB, Nanded.

3. According to applicant/accused No.1 Sunil Khamitkar, the ACB office arrange verification trap to verify demand of bribe and on demand of accused No.1 arranged trap on 09/03/2017 and caught hold accused No.2 Amol while receiving bribe amount from the complainant. Thereafter, complaint filed by P.I. of ACB Nanded against accused Amol

and present applicant/ accused No.1 in the police station Vazirabad, Nanded u/s. 7, 12, 13(1)(D) r/w. 13(2) of the Prevention of Corruption Act,1988.

4. It is contention of applicant/accused No.1 that, police arrested and inquired with accused No.2 about the bribe. At the time of inquiry with applicant/accused No.1, he stated that he does not know about the proposal of the complainant and he never demanded any amount. There is no credible evidence against the applicant/accused No.1. The sanctioning authority denied to issue sanction to initiate prosecution against applicant/accused No.1 and said order is not challenged. It is contended, as per provision of section 19 of the Prevention of Corruption Act, no Court shall take cognizance of offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with previous sanction from competent authority.

5. It is contended, a perusal of FIR and investigation papers shows that, there is no evidence of involvement of present applicant/accused No.1 in the case and no offence is made out against him. Hence, this application.

6. The prosecution has filed say below Exh.15 and denied contents in the application. It is contended, sanctioning authority passed detail order, therefore contention in respect of filing report under section 169 of Cr.P.C. is false and not according to the law. It is contended, Dy. Secretary has found prima-facie evidence against both accused persons but by order

dated 1 August, 2018 given sanction to file prosecution against accused Amol Srimanwar. The opinion of Dy. Secretary Law/ Law Officer was against the accused persons and there is prima-faice evidence against the accused persons. Hence, present application be rejected.

7. I have heard both sides at great length. Learned advocate Shri. A.V. Patil for the applicant/accused No.1 has submitted, there is no direct demand from accused No.1 and accused No.1 is falsely involved in the crime. Sanctioning authority applied his mind and came to right conclusion. The sanctioning authority denied to accord sanction for prosecution against present applicant/accused No.1. The mandatory provision of section 19 of Prevention of Corruption Act,1988 is not complied, hence accused be discharged from the offences charged against him.

8. On the other side, learned DGP Shri. Deshmukh has submitted, accused No.2 demanded amount for himself and for accused No.1. ACB Officer prepared bribe demand verification panchnama in presence of panchas. After getting evidence against accused persons a proposal sent for getting sanction order. In order to save accused, concerned authority intentionally denied to give sanction against applicant/accused No.1. The prosecution has placed reliance on the following judgments :

1] ***State of Bihar and another Vs. Rajmangal Ram, Cri. Appeal No.708/of 2014 (arising out of Special Leave Petition***

(CRL). No. 8013 of 2012 wherein the Hon'ble Apex Court has held

> *"while considering validity of grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the Parent Department, this Court held that in view of section 19(3) of the P.C. Act, interdicting a Criminal Proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the Court can also reach the conclusion that failure of Justice had been occasion by any such error, omission or irregularity in the sanction".*

2] ***R. Venkatakrushnan Vs. Central Bureau of Investigation, Cri. Appeal No.76/2004, decided on 07 August, 2009*** wherein the Apex Court has held that,

> *"the accused has been challenged competence of the sanctioning authority to issue sanction orders against them. As per the section 19(3) of the P.C. Act, a finding or a sentence shall not be reversed by a Court of Appeal on the ground of any error, omission or irregularity in the sanctioning order unless a failure of justice has been occasion thereby".*

9. I have gone through the record. It appears from the complaint that on Datta Jadhav lodged complaint to ACB office wherein it is mentioned that Srimanwar, Inspector of Social Welfare Office met him. When the complainant inquired with him about his proposal at that time, he told he will find out the way. Thereafter, in the Month of February, 2017 the complainant again met to Srimanwar in his office, at that time he told he will inform after consulting with Khamitkar Saheb, Social Welfare Officer. The complainant alleged that on 03/03/2017, Srimanwar, Inspector Social Welfare Office, demanded bribe of Rs.6,000/- for himself and Rs.15,000/- for Khamitkar Saheb. The complainant has not alleged that, Khamitkar has demanded amount to him.

10. Section 19 of the Prevention of Corruption Act, 1988 contemplates previous sanction necessary for prosecution - no court shall take cognizance of an offence punishable under Section 7, 11, 13 and 15 alleged to have been committed by a public servant (save as otherwise provided in the Lokpal and Lok Ayukt Act 2013).

11. I have gone to the sanction order wherein it is mentioned

> "सामान्य प्रशासन विभागाच्या क्र.अभियोग-१३१२/प्र.क्र.३०/पुर्नबाधित-१/११-अ दिनांक १२/०२/२०१३ च्या शासननिर्णयातील परिच्छेद ४ अन्वये लोकसेवक श्री सुनिल नागेश खमितकर, जिल्हा

समाज कल्याण अधिकारी (गट-अ) जिल्हा परिषद, नांदेड यांच्याविरुध्द अभियोग दाखल करण्यास मंजूरी नाकारण्याचा शासनाने निर्णय घेतला आहे."

12. It seems the sanctioning authority accorded sanction to prosecute against Amol Srimanwar but refused to accord sanction to prosecute against Sunil Khamitkar. The applicant/accused no.1 has not contended that, there is omission, error or irregularity found in the order of the sanctioning authority. Perusal of letter of Deputy Secretary (Law) Law and Judiciary Department states that, the sanctioning authority is not required/ expected to go through each and every details of the investigation papers placed before it for according sanction to prosecute the concerned public servant but it has to see and satisfy itself, while taking a decision on the point of according sanction for prosecution.

13. It also transpires from the contents of the charge-sheet, that the sanctioning authority refused to accord sanction against applicant/accused No.1. The contents of the charge-sheet are as under

" मा. सह सचिव, महाराष्ट्र शासन सामाजिक न्याय व विशेष सहाय्य विभाग, मंत्रालय मुंबई यांनी अभिप्राय सादर केल्यावरही सक्षम अधिकारी मा. सह सचिव, महाराष्ट्र शासन सामाजिक न्याय व विशेष सहाय्य विभाग, मंत्रालय, मुंबई यांनी लोकसेवक श्री. सुनिल नागेश खमितकर, जिल्हा समाज कल्याण अधिकारी

यांच्याविरुध्द न्यायालयात खटला दाखल करणेसाठी अभियोगपूर्व मंजुरी नाकारली आहे".

14. It appears from record, after getting complaint the investigating officer initiated trap proceeding and recorded conversation between the complainant and accused Srimanwar and the complainant and applicant/accused no.1. A perusal of script of said conversation, it seems accused Sunil Khamitkar has not demanded gratification.

15. I have gone through the cited judgments filed by the prosecution. The fact in the cited judgments that there was an objection in respect of defect or omission or error in the order granting sanction to prosecute but in the present case in hand no such objection raised by the defense. On the contrary, the sanctioning authority straight way refused to accord sanction to prosecute against applicant/accused No.1 Khamitkar. Hence, with due respect, I state the cited judgments are not helpful to the prosecution.

16. At the stage of section 227 of the Code of Criminal Procedure, the judge has merely to see the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. At the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. It is only

for the purpose of deciding prima-facia whether the court should proceed with the trial or not.

17. In view of above discussion, it is clear that sanctioning authority has not accorded sanction to prosecute against the present applicant/accused No.1. As per Section 19 of the Prevention of Corruption Act, 1988, it is mandatory to accord sanction of the Sanctioning Authority and then only the Court can take cognizance. Admittedly, in this matter Sanctioning Authority refused to accord sanction against the applicant/ accused no.1, therefore in absence of the sanction order against accused no.1 this Court can not take cognizance of offence punishable under Section 7, 10, 11, 13 and 15 of the Prevention of Corruption Act, 1988. There is substance in the submission of Ld. advocate for the applicant/accused No.1, hence I accepted submission of Learned Advocate for the applicant/accused No.1 and pass following Order:-

ORDER

1. Application is allowed.

2. The applicant/accused No.1 Sunil Nagesh Khamitkar is hereby discharged from the Charges levelled under section 7, 12, 13(1)(D) r/w.13(2) of the Prevention of Corruption Act, 1988.

3. His bail bond and surety bond stand cancelled.

4. The prosecution is directed to proceed with the matter against accused Amol Madhav Srimanwar.

Sd/-
(U.V. Indapure)
Addl. Sessions Judge,
Nanded.

Date : 20/12/2023.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same word to word, as per the original order.

1.	Name of the Stenographer	:- Vijay Dandare Steno Grade-III
2.	Court Name	:- Court of Addl. Sessions Judge, Nanded.
3.	Date of Order signed by the Presiding Officer on	:- 20/12/2023 :- 20/12/2023
4.	Order uploaded on	:- 22/12/2023