

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1) No(s).2306/2007

(From the final impugned judgement and order dated 15/05/2006 in SBCRL No. 150/2001 of The HIGH COURT OF RAJASTHAN AT JAINPUR BENCH, JAIPUR )

STATE OF RAJASTHAN

Petitioner(s)

VERSUS

GOVIND NARAIN

Respondent(s)

(With appln(s) for c/delay in filing SLP,exemption from filing O.T. and office report ))

Date: 14/11/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr. Milind Kumar, Adv.  
Mr. Aruneshwar Gupta,Adv.

For Respondent(s)

Mr. Sanjay Parikh, Adv.  
Ms. Anitha Shenoy,Adv.  
Mr. A.N. Singh, Adv.  
Mr. Jitin Sahni, Adv.

UPON hearing counsel the Court made the following  
ORDER

Delay condoned.  
Leave granted.  
The appeal is allowed in terms of the signed order.

(Sukhbir Paul Kaur)  
Court Master

(Vijay Dhawan)  
Court Master

(Signed Order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1565 OF 2007  
(Arising out of SLP(Cr1.)No.2306 of 2007)

STATE OF RAJASTHAN

APPELLANT(S)

Versus

GOVIND NARAIN

RESPONDENT(S)

ORDER

We have heard counsel for the parties.

Delay condoned.

Leave granted.

This appeal by special leave is directed against the impugned judgment and order dated 15th May, 2006 passed by the High Court of Rajasthan at Jaipur Bench, Jaipur in S.B. Criminal Leave to Appeal No.150 of 2001 whereby the High Court has affirmed the acquittal of the accused-respondent on account of lack of proper sanction. We need not go into the detailed facts. Suffice it to say that the accused was allegedly trapped accepting bribe for which the prosecution was held against the accused

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under the Prevention of Corruption Act, 1988. The Trial Court after recording evidence of the prosecution and hearing both the sides acquitted the accused respondent of the charges framed against him on the ground that the prosecution had not been able to prove that sanction under Section 19 for prosecution was accorded by the competent authority. The Trial Court also held that the prosecution had not been able to prove its case beyond reasonable doubt. Aggrieved by this order the State Government filed an application praying for leave to appeal before the High Court. The High Court did not examine the matter in detail with regard to the acquittal of the accused on the merit but confined itself on the question whether the view taken by the Trial Court that there was no proper sanction was correct. The High Court upheld the decision of the Trial Court and rejected the application for leave to appeal filed by the State.

Aggrieved against the order dated 15th May, 2006 passed by the learned Single Judge of the High Court the present Special Leave Petition was filed before this Court by the State of Rajasthan.

We have heard learned counsel for the parties and perused

the record.

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We make it very clear at the outset that we are not making any observation on the merits of the case which was argued before the learned Single Judge of the High Court. We confine ourselves to the question of grant of sanction.

In the present case the sanction was accorded by the Director of the Local Self Government Department who was also the ex-officio Deputy Secretary to the Government. The Trial Court examined CW-1 Sri Parmesh Chandra who was the concerned Secretary of the Local Self Government Department. The Trial Court has recorded that no papers or originals were looked into which were placed before it when the sanction was accorded by the competent authority i.e. the Minister of the Local Government.

Learned Counsel appearing on behalf of the respondent has produced before us the delegation of power of granting sanction and it has been shown at Column No.25 of the office memorandum dated 14.2.1994. It says that the power of sanction to prosecute officers of Rajasthan Municipalities (except the powers delegated to the Head of Departments) have been given to the Minister only. Court witness No.1 Parmesh Chandra has stated that the minister had given him oral sanction to deal with cases pertaining to prosecution sanction but no minutes

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of the meeting were produced before the Court. In the present case the sanction was issued under the signature of Director of Local Body Department, Rajasthan, Jaipur who is also the ex-officio Deputy Secretary which is evident from the statement of Mr. Parmesh Chandra. It was the Secretary concerned who had come in the witness box and deposed that the sanction was issued by him after the oral approval from the minister concerned. All this evidence was before the learned Trial Court but we fail to appreciate how the Trial Court, keeping in view the evidence, has

held that proper sanction was not granted. It could have been possible for the State to produce the note sheet and the recorded approval by the Secretary on the oral direction of the Minister. However, the Secretary himself has come in the witness box and made a statement on oath that oral sanction was granted by the Minister. This in our opinion is sufficient to show that there was proper grant of sanction. The Court has to take a practical view of the matter understanding the manner in which the Government functions, and it should not be over-technical.

As regards the argument of learned counsel for respondent that there was no application of mind before grant of sanction, in our opinion in a trap case where

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the accused has been caught red handed, the question of non-application of mind before granting sanction hardly arises. We are not satisfied that the view taken by the learned Single Judge of the High Court as well as by the Trial Court that there was no proper sanction, particularly since the Secretary concerned has come in the witness box and deposed before the Court. That should be a sufficient compliance of Section 19 of the Prevention of Corruption Act. This Court time and again has laid down that in cases of sanction evidence can be led to prove that the sanction has been granted by the competent authority with due application of mind. Therefore, we are satisfied that the sanction in the present case was properly accorded and the finding recorded by the Trial Court and the High Court was not correct.

Learned counsel appearing on behalf of the respondent invited our attention to the decision of this Court in the case of State of Goa versus Babu Thomas reported in 2005 (8) SCC 130. In this case the Court on the factual evidence found that the sanction was granted by a non competent authority and therefore, the Court set aside the prosecution. Similarly, in the case of Mansukhlal Vithaldas Chauhan versus State of Gujarat

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reported in 1997 (7) SCC 622 (at 631 para 15)), this Court held that there was no proper application of mind on the facts and material evidence collected to grant sanction. However, in the present case when the Secretary to the Government himself came in the witness box and deposed that the matter was examined by the Deputy Secretary and the Secretary himself obtained oral sanction from the minister concerned that in our opinion, is sufficient compliance of Section 19 of the Act.

In the facts and circumstances of the case. we are of the view that the view taken by the Trial Court and confirmed by the High Court cannot be sustained.

The observation made by the High Court that the prosecution has not been able to prove guilt against the accused by producing cogent and reliable evidence, cannot be sustained. No evidence was discussed by the High Court nor reasons given for rejecting the prosecution evidence before reaching to this finding. Hence it cannot be sustained. The matter will have to be examined after considering the evidence. However, we clarify that any observation made in this order will not prejudice the case of the appellant before the High

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Court. The High Court is free to decide the case on merits after proper appreciation of evidence and due application of mind.

Consequently, we set aside the order of the learned Single Judge of the High Court dated 15th May, 2006 and remit this case back to the High Court to decide the question on merits after proper appreciation of evidence and due application of mind.

The appeal is accordingly, allowed.

.....J.  
(A.K.MATHUR)

.....J.  
(MARKANDEY KATJU)

New Delhi,  
November 14, 2007