

Archana Sahebrao Dhok Vs State Of Maharashtra Thr. The P.S.O. Police Station Bhandara And Another

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Dec. 22, 2018

Acts Referred: Prevention of Corruption Act, 1988 " Section 7, 11, 13, 15, 19

Hon'ble Judges: M. G. Giratkar, J

Bench: Single Bench

Advocate: K. B. Zinzarde, H. R. Dhumale, R. S. Parsodkar, V. K. Paliwal

Final Decision: Dismissed

Judgement

1. Rule.

2. Criminal Revision Application No. 27/2018 is filed by the complainant Archana Dhok and Criminal Revision Application No. 52/2018 is filed by the

State of Maharashtra against the order passed by Special Judge, Bhandara in Special Criminal Case No. 7/2015 dated 4/12/2017 by which accused

is discharged.

3. Heard learned counsel Shri K. B. Zinzarde for the applicant in Criminal Revision Application No. 27/2018, Shri H. R. Dhumale, learned Additional

Public Prosecutor for the State, learned counsel Shri R. S. Parsadkar with Shri Paliwal for respondent Ku. Kunda Motiramji Bodalkar @ Kunda Arjun

Godbole.

4. Complainant Archana Dhok has lodged the complaint in the office of Anti Corruption Bureau, Bhandara. As per her complaint, she was working as

Head Mistress of the school at Sant Shivram Maharaj Junior High School, Bhandara. Accused Kunda Motiramji Bodalkar was appointed as Head

Mistress in the year 2004. Her appointment was challenged up to the Supreme Court and again, she got charge of the said post in the month of May,

2010. The Education Officer gave direction to Head Mistress Bodalkar to stop payment of salary of Archana Dhok. Her salary was not drawn from

June, 2010 to January, 2011. Therefore, complaint was made to the Education Officer, Bhandara. Accused Kunda Bodalkar demanded bribe amount

of Rs. 2700/-. Complainant Archana Dhok paid bribe of Rs. 600/-, to her. On 27/4/2011, amount of Rs. 400/-, was paid to the accused. On 9/5/2011, amount of Rs. 400/-, was

5th, 2011, accused demanded remaining amount of Rs. 1700/-. Complainant Archana Dhok approached to Anti Corruption Bureau Office, Bhandara.

As per the procedure, pre-trap panchanama etc. were prepared. Thereafter trap was arranged. On 9th, 2011 at about 11.00 a.m., accused Kunda

accepted bribe of Rs. 1700/-. Thereafter post trap panchanama etc. was prepared. Crime was registered against accused Kunda Bodalkar.

Investigating authority/Anti Corruption Bureau applied for grant of sanction on 7th, 2014. President of Swami Vivekanand Shikshan Sanstha,

Bhandara granted sanction on 23rd, 2015.

5. Application, Exhibit 6 was filed by accused Kunda Bodalkar before the Special Judge, Bhandara contending that President of the society is not

authorized to grant sanction. As per the bye-laws of the society, Secretary of the society is authorized to grant sanction to prosecute the employee.

6. Learned Special Judge, after hearing the prosecution and defence, passed order below Exhibit 6 holding that sanction granted by President Shri

Madhukar Ambhorkar is not a valid sanction and, therefore, applicant is discharged. Hence, the complainant and also State, both filed present revision

applications.

7. Shri Zinzarde, learned counsel for the applicant has submitted that trial Court cannot allow the accused to produce any document. The trial Court

has to see materials on record and frame the charge. Learned counsel has submitted that President Shri Madhukar Ambhorkar is authorized by the

Members of the Society by resolution dated 21st, 2015 to see the charge of Secretary. Therefore, it is a valid sanction granted by Secretary. In

support of his submission, he has pointed decisions of Hon'ble Apex Court in the case of State by Police Inspector Vs. T. Venkatesh Murthy reported

in 2004 CJ (SC) 1210 and State of Orissa Vs. Debendra Nath Padhi reported in 2004 CJ (SC) 1285.

8. Shri Dhumale, learned Additional Public Prosecutor has supported the contentions of learned counsel Shri Zinzarde and submitted that opportunity

needs to be given to the prosecution to prove the allegations/charge. There is a dispute between two groups of management. Whether it is a valid

sanction or not is to be decided after recording evidence.

9. Shri Parsodkar and Shri Paliwal, learned counsel for respondent Kunda Bodalkar has submitted that Court cannot take cognizance of the offence

without valid sanction as per Section 19 of Prevention of Corruption Act. Learned counsel has submitted that President Shri Ambhorkar was not

authorized to issue sanction and, therefore, both the revisions are liable to be dismissed.

10. Section 19 provides specifically that no Court shall take cognizance of offences punishable under Sections 7, 11, 13 and 15 alleged to have been

committed by a public servant except with the previous sanction.....

There is dispute between two groups in the management. The appointment of accused Kunda Bodalkar as Head Mistress was disputed by opposite

group and, therefore, accused Kunda Bodalkar was to approach up to the Supreme Court. As per the directions of the Supreme Court, her posting as

Head Mistress was approved. Prior to accused Kunda Bodalkar, complainant Archana Dhok was the Head Mistress. Therefore, there is no dispute

that complainant and accused are not in good terms. Without going into the merits, it appears that complainant Archana lodged the complaint in the

office of Anti Corruption Bureau. As per the case of Anti Corruption Bureau, accused was trapped while accepting amount.

11. After complete investigation, Investigating Officer applied for grant of sanction. President of the Society Shri Ambhorkar granted sanction to

prosecute accused Kunda Bodalkar.

12. There is no dispute that there is two groups in the management of the society. Secretary of the society died and his post is not filled. As per the

resolution dated 21st, 1st, 2015, Secretary was shown absent. It is pertinent to note that there is a dispute going on between two groups before the

Charity Commissioner and the appellate Courts. Learned counsel Shri Zinzarde for the applicant pointed out resolution dated 21st, 1st, 2015 and

submitted that President is authorized to accord sanction. It is pertinent to note that this resolution nowhere state about grant of sanction to prosecute

the accused.

13. As per the bye-laws of the society, President is not authorized to issue sanction. The Secretary of the institution is authorized to grant sanction.

Learned counsel Shri Zinzarde pointed out decision in the case of State of Orissa Vs. Debendra Nath Padhi (supra). Hon'ble Apex Court has

observed that accused has no right to produce any document or material to prove his innocence at the time of framing of charge. It is pertinent to note

that as per Section 19 of Prevention of Corruption Act, the Court shall not take cognizance without valid sanction to prosecute the employee/accused.

There is an objection about the sanction and it is rightly decided by the Sessions Court. In the case of State by Police Inspector Vs. T. Venkatesh

Murthy (supra), it was observed that sanction for prosecution of a public servant cannot be a ground. Merely because there is omission, error or

irregularity in according sanction, that does not affect validity of proceedings unless Court record satisfaction that such an error or omission resulted in

failure of justice. This decision is not applicable in view of recent decision of Hon'ble Apex Court in the case of Nanjappa Vs. State of Karnataka

reported in AIR 2015 SC 3060. Hon'ble Apex Court has observed as under :

A reading of subĀ,s. (3) to S. 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special

Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding,

sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or

irregularity. SubĀ,section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional

proceedings on the grounds that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has

occurred by such invalidity. What is noteworthy is that subĀ,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 S. 19(1). SubĀ,section (3), 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. The language employed in subĀ,section (3) is, clear and

unambiguous. This is, sufficiently evident even from the language employed in subĀ,section (4) according to which the appellate or the revisional Court

shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact

whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of subĀ, sections (3) and (4) leaves

no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including

finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused.

In the instant case, the trial Court held that the authority who had issued the sanction was not competent to do so, a fact which has not been disputed

before the High Court or Supreme Court. The only error which the trial Court, 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. The High Court has not, correctly appreciated the

legal position regarding the need for sanction or the effect of its invalidity. It has simply glossed over the subject, by holding that the question should

have been raised at an earlier stage. The High Court did not, realise that the issue was not being raised before it for the first time but had been

successfully urged before the trial Court. Thus the order of the High Court convicting the accused was liable to be set aside. However the Supreme

Court in fact and circumstances found no compelling reason for directing a fresh trial at this distant point of time in a case of this nature involving a

bribe of Rs. 500/- for which the accused has already suffered the ignominy of a trial, conviction and a jail term no matter for a short while.

14. The Division Bench of this Court in Criminal Writ Petition No. 630/2013 on 21.10.2013 has held that without sanction of management of the

school, the teacher cannot be prosecuted.

15. In the present case, there is no dispute that President was/is not authorized to grant sanction to prosecute Teacher/Head Mistress "A" accused.

Secretary is authorized to issue sanction. After the death of Secretary Shri Babanrao Jawade, no other person is acting as a Secretary because of the

dispute between the management. There is no resolution of the management/society authorizing president Shri Madhukar Ambhorkar to issue sanction

to prosecute the accused. Hence, in view of the judgment of the Apex Court in the case of Nanjappa Vs. State of Karnataka (supra), order passed by

Special Judge discharging accused Kunda Bodalkar is perfectly legal and correct. I do not find any merit in both the revisions. Accordingly, both

revisions are dismissed with no order as to costs.