IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Revision Application No. 53 Of 2008

Shamkant s/o Dattatraya Thombre ...Applicant

Versus

State of Maharashtra And Another ...Respondents

APPEARANCES :

Senior Advocate for Applicant : Mr. Rajendra Deshmukh a/w Mr. Hashmi Ubaid and Mrs. Shital i/by Mr. R.G. Dodiya

Addl.PP for Respondent/State : Mr. A. S. Shinde

CORAM : MEHROZ K. PATHAN, J.

Date On Which The Arguments Were Heard : 3rd FEBRUARY 2026

Date On Which The Judgment Is Pronounced : 17th FEBRUARY 2026

J U D G M E N T :

1. The present Revision Application is filed by the Applicant seeking quashing and setting aside of the order dated 08.02.2008 passed by the learned Special Judge and Additional Sessions Judge, Jalna, below Exhibit-134 in Special (SPA) No.2/2005, whereby the Applicant's request for quashing of the prosecution and for discharge was rejected.

2. This Court vide its order dated 17.06.2008 admitted

the Revision and stayed the proceedings before the trial Court insofar as the Applicant is concerned. The present Revision Application is taken up for final hearing by consent of the parties.

3. The Applicant was arrayed as an accused in Crime No.141/2000 registered with Kadim Jalna Police Station for alleged irregularity and misappropriation committed by him while performing duties in the capacity of the Chief Executive Officer, Zilla Parishad, Jalna during the period of 08.08.1997 to 13.10.1998 on the complaint of the Executive Engineer of the Rural Water Supply Department, Zilla Parishad, Jalna for the offences punishable under Sections 120(B), 408, 409, 119, 465, 109 of the Indian Penal Code and under Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The Applicant got retired on superannuation from the Government service on 30.04.2003. The prosecution has completed the investigation in the aforesaid crime and has filed a charge-sheet before the learned Special Judge, Jalna in respect of the said crime on 18.01.2005. The prosecution submitted a note along with the charge-sheet that the sanction is being sought for prosecution of the Applicant accused along with the other co-accused from the competent authority and necessary correspondence in that regard is being made and after receipt of the sanction, the same would be produced before the Court and hence the trial shall not proceed.

5. The Applicant therefore filed an application on 27.07.2007 before the learned Trial Court at Jalna on the ground

that, although the charge-sheet had been filed on 18.01.2005, sanction had not yet been accorded by the competent authority. The Applicant accordingly prayed for quashing of the prosecution alleged against him for want of mandatory sanction. The learned Trial Court called upon the prosecution to file its say. The prosecution accordingly filed its say and prayed for rejection of the application. The Deputy Superintendent of Police, CID, Jalna, submitted a letter before the trial Court conveying that the sanction against the Applicant had been rejected by the Government vide order dated 07.12.2007. The Applicant thereafter filed one more written submission, Exhibit-202, on 15.01.2008, praying for quashment of the prosecution against him on the ground of refusal of sanction by the Government. However, the learned Trial Court, vide the impugned order dated 08.02.2008, was pleased to reject the application for quashment of the prosecution and for discharge of the Applicant.

. Being aggrieved by the order dated 08.02.2008 thereby rejecting the application for discharge and quashment of the prosecution and against the Applicant, the Applicant has filed the present Revision.

6. The learned Senior Counsel Mr. Deshmukh for the Applicant submits that the Applicant was exonerated in the departmental inquiry conducted by the Government for very same charges vide communication issued by the Government dated 17.05.2003. It is further submitted by the learned Senior Counsel that as the Government itself has refused the sanction by order dated 07.12.2007 to prosecute the present Applicant, the prosecution of the Applicant in the aforesaid crime ought to have

been quashed. The learned Senior Counsel further submits that the learned trial Court has wrongly relied upon by the judgment in **V.S. Goraya Vs. U.T. of Chandigarh reported in (2007) 6 SCC 397**, as the facts of the said case is different from the present case. The facts in the case of V.S. Goraya (supra) show that the public servant was dismissed from service at the time of filing of the charge-sheet and taking of the cognizance by the trial Court, whereas in the present case the Applicant stood retired on 30.04.2003 when the charge-sheet came to be filed on 18.01.2007. Thus the learned trial Court has wrongly applied the law in the case of V.S. Goraya (supra) to reject the application filed by the Applicant for discharge.

7. The learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Labh Singh reported in (2014) 16 SCC 807**, particularly paragraph no. 10, wherein the Hon'ble Supreme Court has held that the High Court was absolutely right in setting aside the order of the Special Judge as the Court could not have taken the cognizance, insofar as the offences punishable under the Penal Code are concerned, as the protection under Section 197 of the Code of Criminal Procedure is available to the public servant concerned even after retirement.

8. The learned Senior Counsel further relied upon the judgment of the Bombay High Court at its Nagpur Bench in the case of **Prakash s/o Shivram Natkar Vs. State of Maharashtra and Anr.** in Criminal Revision Application No.61/2022 dated 17.03.2025, wherein this Court has held that the ground raised by

the Applicant, insofar as the sanction is concerned, is a valid ground, as the object behind requiring sanction is to ensure that a public servant does not suffer harassment on false allegations. The mandate of Section 19(1) of the Prevention of Corruption Act is clear and unambiguous, that the Court shall not take cognizance without sanction by the competent authority.

9. The learned Senior Counsel further submits that the Applicant was 65 years old when the Revision was filed and is presently 83 years of age, and therefore relies upon the judgment in **Nanjappa v. State of Karnataka**, Criminal Appeal No.1867 of 2012, delivered by the Hon'ble Supreme Court to submit that the Applicant shall not be made to face trial at this age.

10. The learned Senior Counsel relied upon the judgment in **State of Punjab v. Partap Singh Verka**, Criminal Appeal No.1943 of 2024 (arising out of SLP (Crl.) No.6006 of 2019), delivered by the Hon'ble Supreme Court, to submit that even while considering an application under Section 319 of the Code of Criminal Procedure for addition of an accused, the Court cannot proceed further without first satisfying the requirements of Section 19 of the Prevention of Corruption Act.

11. Thus the learned Senior Counsel submits that taking into consideration the aforesaid pronouncements of law by the Hon'ble Supreme Court and the High Court, the impugned order dated 08.02.2008 is bad in law and is thus liable to be quashed and set aside. It is further submitted that the sanction to prosecute the Applicant was refused by the competent authority and as such in

the absence of any sanction to prosecute the Applicant, the cognizance of the charge-sheet could not have been taken by the learned Special Court.

. The learned Senior Counsel further submits that the definition of the public servant does not exclude a retired public servant from the purview of section 19 of the Prevention of the Corruption Act and as such even though the Applicant stood retired at the time of filing of the charge-sheet, the sanction to prosecute the Application was must and in the absence of the same the prosecution of the Applicant could not be sustained. He therefore prays for quashing and setting the aside the impugned order dated 08.02.2008.

12. As against this, the learned APP submits that the impugned order is just and proper and is passed on the correct appreciation of the law and has been pronounced by the Hon'ble Supreme Court in the various judgments. It is almost now a settled law that the sanction to prosecute the public servant for the offences under the Prevention and Corruption Act is not required if the public servant had already retired on the date of cognizance by the Court. He relies upon the judgment of the Hon'ble Supreme Court in the case of **S.A. Venkataramani Vs. State reported in AIR 1958 SC 107**, wherein a three-Judge Bench of the Hon'ble Supreme Court held in no uncertain terms that when the Court is asked to take cognizance, not only must the offence have been committed by a public servant, but the person accused must still be a public servant removable from his office by a competent authority.

13. The learned APP further relied upon the judgment in **Parkash Singh Badal and Another Vs. State of Punjab and Others reported in (2007) 1 SCC 1**, wherein the Hon'ble Supreme Court was pleased to hold that the question relating to the need of sanction under Section 197 of the Code is not necessarily to 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.

. The learned APP further relies upon the observations of the Hon'ble Supreme Court that the offence of cheating under Section 420, or for that matter the other offences relatable to Sections 467, 468, 471, and 120B, can by no stretch of imagination, by their very nature, be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. He therefore submits that sanction under Section 197 Cr.P.C. is not necessary even in respect of offences under the IPC.

14. I have gone through the order dated 08.02.2008 passed by the learned Additional Sessions Judge, Jalna, rejecting the application filed by the Applicant for quashing of the prosecution and for discharge from the offences under the Prevention of Corruption Act, filed under Sections 13(2) and 13(1)(d) of the said Act, along with Sections 120B, 408, 409, 112, 465, and 109 of the Indian Penal Code, against the Applicant and other co-accused. A perusal of the charge-sheet shows that there are serious allegations of criminal breach of trust by a public servant, coupled with conspiracy and forgery with an intention to

cheat, against the present Applicant and other accused persons. The Applicant was working as Chief Executive Officer of the Zilla Parishad, Jalna, at the relevant time between 08.08.1997 and 13.10.1998.

15. The perusal of the order dated 08.02.2008 shows that the learned trial Court considered the fact that the Applicant had retired on 30.04.2003, whereas the charge-sheet came to be filed on 18.01.2005. The learned trial Court relied upon the judgment in V.S. Goraya (cited supra) and held that the facts of the said authority were identical to the facts of the present case, wherein the Applicant is charged with offences punishable under Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act and held that since the petitioner was retired before filing of charge-sheet, sanction under Section 19 was not necessary. The very judgment relied upon by the learned Senior Counsel Mr. Deshmukh in the case of State of Punjab Vs. Labh Singh (supra) would itself show that the public servants in question had retired on 13.12.1999 and 30.04.2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13.09.2000 and later on 24.09.2003. The Hon'ble Supreme Court in the case of Labh Singh (supra) was pleased to hold as under :

> "The public servants having retired from service there was no occasion to consider grant of sanction under section 19 of the PC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the PC Act is not required if the public servant had already retired on the date of cognizance by the Court."

. In S.A. Venkataramani (supra) while construing Section 6(1) of the Prevention of Corruption Act, 1947 which provision is

in pari materia with section 19(1) of the PC Act 1947, this Court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the Court was asked to take cognizance. In a comparatively recent judgment of the Hon'ble Supreme Court, in the case of **Station House Officer, CBI/ACB/Bangalore v. B.A. Srinivasan and Another, reported in 2019 SCC 1324**, the three-Judge Bench was pleased to hold as under:

> "The protection available to a public servant while in service is not available after his retirement."

16. The Hon'ble Supreme Court in State of Punjab v. Lab Singh (supra) relied upon the judgments in C.R. Bansi v. State of Maharashtra, Kalicharan Mahapatra v. State of Orissa, and the Constitution Bench decision in K. Veeraswamy v. Union of India, had came to the conclusion that sanction to prosecute a public servant for offences under the Prevention of Corruption Act is not required if the public servant has already retired on the date when cognizance is taken by the Court. Thus, the law on the aforesaid point stands settled and made applicable by various pronouncements of the Hon'ble Supreme Court. In the present case as the Applicant had retired from service on 30.04.2003 and the charge-sheet was filed thereafter in 2005, it cannot be said that the Applicant was a public servant on the date of filing of the charge-sheet in Court, and as such, the sanction contemplated under Section 19 of the Prevention of Corruption Act was not necessary. The contention of the present Applicant is therefore misconceived and liable to be rejected.

17. Insofar as the other ground raised by the learned Senior Counsel for the Applicant, pertaining to paragraph no.10 of the judgment of the Hon'ble Supreme Court in State of Punjab v. Lab Singh (supra) is concerned, the Hon'ble Supreme Court in Parkash Singh Badal and Another v. State of Punjab and Others (supra) has clearly held that the offence of cheating under Section 420, or for that matter offences relatable to Sections 467, 468, 471, and 120B, can by no stretch of imagination, by their very nature, be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence. Thus, it is clear that the offences alleged to have been committed by the Applicant under the Indian Penal Code cannot be regarded as acts done or purported to be done in furtherance of his official duties. The question relating to the need of sanction under Section 197 of the Code is not necessarily to 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. Hence, the second submission made by the Applicant with regard to paragraph no.10 of the judgment in State of Punjab v. Labh Singh (supra) is therefore liable to be rejected.

18. Insofar as the judgment relied upon by the learned Senior Counsel in Prakash s/o Shivram Natkar (supra), it is clear from the facts of that case that it was not a case of a retired public servant and the necessity under Section 19 of the Prevention of Corruption Act for sanction to prosecute a retired public servant.

The observations and findings of the said judgment therefore cannot be read as dealing with the case of a retired public servant. Thus, reliance on the aforesaid case, which does not consider the situation of a retired public servant, would be of no assistance to the Applicant, as the Applicant is a retired public servant.

19. The submission of the Applicant with regard to exoneration in the departmental inquiry is already settled by the judgments of the Hon'ble Supreme Court in **State Of N.C.T.Of Delhi vs Ajay Kumar Tyagi, reported in (2012) 9 SCC 658**, wherein the Hon'ble Apex Court considered various decisions and held that criminal proceedings and disciplinary proceedings based on the same charge, and the fact that the accused was exonerated in disciplinary proceedings, by itself cannot be a ground for quashing the criminal proceedings. A criminal case is decided on the basis of the evidence produced by the prosecution and cannot be rejected on the basis of evidence in departmental proceedings or the report of an inquiry officer. It is only in cases where the prosecution is based solely on a finding in a disciplinary proceeding, and the same is set aside by the superior authority, that the prosecution may be quashed, as the very foundation itself ceases to exist. In the present case, the prosecution of the Applicant is not based upon charges proved against him in any inquiry report. The FIR filed against the Applicant and other accused persons is an independent initiation of criminal proceedings, which include allegations of criminal conspiracy, criminal misappropriation, and criminal breach of trust against the Applicant and other co-accused persons. It cannot be said to be based upon the findings of

the inquiry report, and as such, the same cannot form the basis for quashing the proceedings on the ground of exoneration of the Applicant in the disciplinary inquiry.

20. The submission made by the learned Senior Counsel for the Applicant regarding the age of the Applicant, who is now 83 years old, and the judgment relied upon pertaining to consideration of the age of a senior citizen, is misconceived. In the present case, the Applicant himself obtained a stay of the trial against him by filing the present Revision Application, and this Court, vide order dated 17.06.2008, stayed the trial as against the Applicant. Thus, the Applicant cannot take undue advantage of his own acts. Moreover, the judgment in Nanjappa v. State of Karnataka (supra), which considered the age of the accused, pertains to a different set of facts wherein the accused had already been convicted by the High Court by reversing the order of acquittal passed by the Trial Court on a technical ground of sanction. In the facts in the case of Nanjappa v. State of Karnataka (supra), is distinguishable and the same cannot be applied to the facts of the present case.

21. Thus, taking into consideration the clear pronouncement of law on the aforesaid points raised by the Applicant, I do not find any error committed by the learned Trial Court in rejecting the application for discharge and quashing of the prosecution filed by the Applicant. The Revision Application is therefore devoid of substance on merits and is hereby rejected.

22. Needless to mention, the interim relief of stay granted to the trial as against the Applicant stands vacated.

23. Since the trial has remain stayed for 18 years by the interim order dated 17.06.2008, and also taking into consideration the age of the Applicant, it would be necessary in the interest of justice to direct the trial Court to decide the trial expeditiously. The trial Court is therefore requested to make an endeavour to complete the trial expeditiously and in any case not beyond one year.

[MEHROZ K. PATHAN]
JUDGE

Najeeb.