



Judgment

apl1209.25

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION APL NO.1209/2025

Devendra Supda Umbarkar,
aged about 44 years, occupation: service,
Executive Engineer, Maharashtra
State Electricity Distribution
Company, Thane, Mumbai,
at present r/o 2601, Vasudha-B,
Dosti Vihar, Vartak Nagar, Thane,
(West) - 400 606. **Applicant.**

:: V E R S U S ::

1. State of Maharashtra,
through Anti Corruption Bureau,
Akola, taluka and district Akola.
Through Police Station, Khadan,
Akola, taluka and district Akola.

2. Vikrant Ganeshrao Waghmare,
aged about 48 years,
occupation Deshmukh Peth, near Dr.Babasaheb
Utangale School, Akola,
taluka and district Akola. **Non-applicants.**

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Shri S.V.Sirpurkar, Counsel for the Applicant.
Shri A.M.Joshi, APP for the NA No.1/State.
Shri Vinay Sharma, Counsel for NA No.2

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CORAM : URMILA JOSHI-PHALKE, J.

RESERVED ON : 10/02/2026

PRONOUNCED ON : 20/02/2026

JUDGMENT

1. Heard learned counsel appearing for respective parties.

Admit. Heard finally by consent.

2. By this application, the applicant is seeking quashing of FIR in connection with Crime No.435/2017 registered for offences under Section 7(d) and 15 of the Prevention of Corruption Act, 1988 (the PC.Act) and the consequent proceeding arising out of the same bearing chargesheet No.389/2025.

3. The crime is registered on the basis of a report lodged by non-applicant No.2 (the complainant) on allegation that a Tender Public Notice was published for Murtizapur Sub-Division for the purpose of Domestic Meters and for Replacement of Meters in Murtizapur Sub-Division on contract basis from the Maharashtra State Electricity Distribution Company, Akola. The complainant applied for getting the contract on contract basis as he is running a

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business as Proprietor of “Bhakti Electricals, VHB Colony, Akola”. OnLine Application form has been submitted for getting the work by quoting the lowest rate and, therefore, the Work Order was issued to him for Domestic Single Phase Meters Replacement by the order of the Executive Engineer, Rural Division, Akola on 27.6.2017. The Work Order of Rs.5.00 lacs was given in the name of the firm of the complainant. It is alleged that as per the order received by the complainant, he met the Deputy Executive Engineer, Sub-Division, Murtizapur on various occasions. He was replied by the said Deputy Engineer that meters are not available with him and, therefore, the complainant met the applicant who at the relevant time was working as the Executive Engineer (Rural). The applicant told the complainant that he has not completed the work of Balshi Takli on which the complainant replied that he completed the work, but bills have not been released. At the relevant time, the applicant demanded amount Rs.1.00 lac of his previous work of Balshi Takli i.e.

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10% amount of the Work Order of Murtizapur, Sub-Division issued to the complainant against contract amount of Rs.5.00 lacs i.e. amount Rs.60,000/- was demanded. It was alleged that the applicant told the complainant that unless the amount is paid, he will not issue further Work Order.

On the basis of the said report, the police have registered the crime against the applicant.

4. The allegation of demand has been verified by drawing verification panchanama. The conversation between the complainant and the applicant was recorded. Thereafter, a trap was laid. The conversation on the day of the trap was also recorded in the voice recorder. On the day of the trap, the applicant was not present in the office and, therefore, the trap was not successful. The trap was failed subsequently also. Thus, after completion of the investigation, chargesheet was submitted against the applicant.

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5. Learned counsel for the applicant submitted that in view of Section 19 of the P.C.Act, unless and until there is a valid sanction, the court cannot take cognizance against accused. He submitted that initially the office of the Anti Corruption Bureau at Nagpur applied for sanction, but the same was rejected. The Sanctioning Authority refused the sanction to prosecute the applicant. Thereafter, again, the investigating agency applied for sanction and without considering, whether there is any new material available or not to accord the sanction, the Sanctioning Authority has awarded the sanction which is against the settled law by the Hon'ble Apex Court. He submitted that, undisputedly, the sanction for prosecution of accused on earlier occasion was rejected by the competent authority. The sanction accorded subsequently is not valid and legal. He submitted that it is not the case of the prosecution that after rejection of the sanction, any new material was placed before the competent authority with proposal for sanction. He further submitted

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that in the background of rejection of the sanction earlier, granting sanction on the same material is not legal and proper and the subsequent sanction nowhere reflects as to why the earlier order was reviewed by the Sanctioning Authority.

6. In support of his contentions, learned counsel for the applicant has placed reliance on following decisions:

(1) State of Punjab and anr vs. Mohammed Iqbal Bhatti, reported in (2009)17 SCC 92;

(3) Himachal Pradesh vs. Nishant Sareen reported in (2010) 14 SCC 527, and

(3) Criminal Application APL NO.309/2020 (Kamlakar s/o Sharad Visale vs. State of Mah., thr.Anti Corruption Bureau, Akola and anr) decided by this court on 26.7.2023.

7. *Per contra*, learned APP for the State strongly opposed the said contentions and submitted that the investigating agency has applied for sanction as the Sanctioning Authority

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has not considered material properly and wrongly rejected the sanction. He submitted that issue, whether there is valid sanction or not, is to be considered at the time of trial. At this stage, the sanction is before the court and, therefore, the court has rightly taken cognizance. In view of that, the application deserves to be rejected.

It is further submitted that the crime committed by the accused is serious one. The verification panchanama shows the conversation between the applicant and the complainant wherein it is clearly revealed that the applicant has demanded the amount which is gratification amount.

8. Having heard both sides and perusing the entire investigation papers, it is undisputed that previously sanction to prosecute the accused by order dated 14.2.2019 was refused by the competent authority. Subsequent sanction was granted on 16.9.2025. The order of sanction in question is dated 16.9.2025. It is undisputed that by this order, the

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earlier order of refusing the sanction came to be reviewed. It is nowhere case of the prosecution that after refusal of the sanction, new material was collected and submitted to the competent authority seeking review of the earlier order refusing the sanction. On the contrary, it is the case of the prosecution that on the basis of the very same material, the sanction was sought from the competent authority and it was accorded on 16.9.2025. It is undisputed that in earlier sanction dated 15.2.2019, the Sanctioning Authority has considered the entire investigation papers, verification panchanama, and conversation and observed that the conversation is in respect of 10% Security Deposit and not the gratification amount and refused to accord the sanction.

9. Now, question is, whether review of the sanction, in the facts and circumstances, was in accordance with the law.

10. It is necessary to consider the settled legal position from two decisions relied upon by learned counsel for the applicant.

11. The identical issue fell for consideration of the Hon'ble Supreme Court in the case of **State of Punjab and another vs. Mohammed Iqbal Bhatti**, *supra*. In the case before the Hon'ble Supreme Court, the sanction was refused by order dated 15.12.2003. The matter was again placed before the competent authority for sanction and sanction was granted on 14.09.2004 for prosecution of the accused. The legality of the said order was challenged before High Court of Punjab and Harayana. The High Court allowed the challenge and held that the state has no power to review the order of sanction. This order was challenged before the Hon'ble Apex Court. The Hon'ble Supreme Court maintained the order of Punjab and Haryana High Court. The observations from paragraph Nos.6, 7 and 9, 20, and 21 are relevant for the purpose of this case and the same are extracted below:-

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“6. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the authority concerned is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts.

7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidence must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the

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investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidence may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. (See *Mansukhlal Vithaldas Chauhan v. State of Gujrat*) [(1997) 7 SCC 622]. The authority concerned cannot also pass an order of sanction subject to rectification of a higher authority.

9. In the aforementioned situation, the High Court, opined:

"Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the official concerned, reviewing such an order on the basis of the same

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material, which already stood considered, would not be appropriate or permissible. The Government is expected to act consciously and cautiously while taking such serious decisions. The perusal of the record shows that pointed queries had been raised to be answered by the Vigilance Bureau but no answer was forthcoming nor any had been submitted subsequently which culminated into passing of the later order dated September 30, 2004. We refrain ourselves from mentioning the queries which had been raised but it would suffice to say that the queries were never answered at the relevant time when the order dated December 15, 2003 had been passed nor was the same ever commented upon as no answers were placed before the competent authority for passing the impugned order dated September 30, 2004.

20. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into

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consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to.

21. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise.”

12. The Hon'ble Apex Court in the case of State of Himachal Pradesh vs. Nishant Sareen reported in (2010) 14 SCC 527 has considered the identical issue. In this case, the

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Hon'ble Apex Court has considered the decision in the case of **State of Punjab and another vs. Mohammad Iqbal Bhatti**, supra. The Hon'ble Apex Court approved the view taken in Bhatti's case. The observations from paragraph Nos.12, 13 and 14 are relevant for the purpose of this case where the legal position is enunciated. These paragraphs are extracted below.

“**12.** It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials

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again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorized to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such a course.

14. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated 15.03.2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.”

13. Learned APP for the State vehemently submitted on the basis of the judgment in **Criminal Appeal No.1405/2019 (State Rep.By the Deputy Superintendent of Police, Vigilance and Anti Corruption Chennai City-I Department vs. G.Easwaran)** decided on 26.3.2025 wherein the Hon’ble Apex Court by referring its earlier decision in the case of **Director, Central Bureau of Investigation v. Ashok Kumar Aswal**,

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reported in (2015) 16 SCC 163 observed that, “all the above apart, time and again, this Court has laid down that the validity of a sanction order, if one exists, has to be tested on the touchstone of the prejudice to the accused which is essentially a question of fact and, therefore, should be left to be determined in the course of the trial and not in the exercise of jurisdiction either under Section 482 of the Code of Criminal Procedure, 1973 or in a proceeding under Articles 226/227 of the Constitution.”

It is further held that, “there is no doubt that the High Court committed an error in quashing the prosecution on the ground that the sanction to prosecute is illegal and invalid. In conclusion, we find that the objections raised in the revision petition against the Special Court’s order dismissing the discharge application were identical to the grounds raised in the petition under Section 482 Cr.P.C., from which the present appeal arises.”

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It is further held that, “the validity of the sanction can always be examined during the course of the trial and the problems due to the typographical error as alleged by the State could have been explained by producing the file at the time of trial.”

14. Thus, in the judgment, on which the learned APP for the State has placed reliance on, issue of validity sanction was raised.

Whereas, the issue involved before this court is, whether the Sanctioning Authority can review its earlier order of refusing the sanction without having any new material.

15. The issue involved before this court if appreciated in the light of the law laid down in the above said two decisions, it leaves no manner of doubt that on fact as well as in the law the order passed by the Sanctioning Authority cannot be sustained. The legal position culled out from the above decisions is that the order of refusal of sanction cannot be

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reviewed unless and until the fresh material has been collected and submitted to the competent authority with a request to review the earlier sanction order and grant the sanction. A change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. The order refusing a sanction can be reviewed on the basis of fresh material collected by the Investigating Agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in the light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted.

16. In the backdrop of the above, facts of the case in hand need consideration. Undisputedly, the proposal for review of sanction was submitted on the basis of the same material which was submitted on the earlier three occasions. The earlier sanction order dated 14.2.2019 shows that the Sanctioning Authority has considered documents i.e. service

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documents of the applicant, the Work Order issued to the complainant, and the conversation recorded between the complainant and the applicant. It was observed that from the conversation that the amount demanded appears to be of Security Deposit which is required to be deposited by the complainant against the Work Order. Similarly, in the subsequent sanction order dated 16.9.2025 also, the similar material was considered by the Sanctioning Authority.

17. Perusal of the sanction order shows that it is silent about refusal of sanction earlier on the proposal of the investigating officer. Similarly, subsequent sanction order dated 16.9.2025 is silent about the reasons for review despite the earlier sanction order was refused. It was not mentioned in the sanction order that the material submitted earlier for consideration was not properly considered while refusing the sanction. However, the subsequent sanction order is also replica of the earlier sanction order. The authority, according to the sanction, in view of refusal of sanction earlier, was

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required to record reasons. The subsequent sanction order does not mention reasons. Even, there is no passing reference of the refusal of sanction earlier in the subsequent sanction order and, therefore, in my view, in this case, review of refusal of sanction on earlier occasion, if examined, in the light of the law laid down by the Hon'ble Apex Court, it does not pass legal test. It needs to be stated that if the authority was aggrieved by the refusal of sanction, for one reason or the other, the remedy available to the authority was to challenge the order of refusal of sanction before the Court of law. The investigating agency did not challenge the earlier order of refusal of sanction in the court of law. Instead of challenging the said order before the court of law, the same material was considered and the sanction was granted and, therefore, the sanction has to be held "improper" and "illegal."

18. In my view, the case of the applicant is fully covered by the two decisions of the Hon'ble Apex Court relied upon by learned counsel for the applicant.

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19. In this view of the matter, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(1) The criminal application is allowed.

(2) The FIR in connection with Crime No.435/2017 registered for offences under Section 7(d) and 15 of the Prevention of Corruption Act, 1988 and the consequent proceeding arising out of the same bearing chargesheet No.389/2025 are hereby quashed and set aside to the extent of applicant Devendra Supda Umbarkar.

Application stand **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!