CASE NO.:
Appeal (crl.) 215 of 2004

PETITIONER:
State of Goa

RESPONDENT:
Babu Thomas

DATE OF JUDGMENT: 29/09/2005

BENCH:
H.K. SEMA & G.P.MATHUR

JUDGMENT:
J U D G M E N T

H.K.SEMA,J

The challenge in this appeal, filed by the State of Goa, by special leave is to the order of the High Court of Bombay at Goa, Panaji dated 19.9.2002 in Crl. Misc. application No. 99 of 2002. Briefly stated, the facts are as follows:

The respondent, herein, was employed as Joint Manager in Goa Shipyard Limited, a Govt. of India Undertaking under the Ministry of Defence in 1994. At the relevant time, he was officiating as Manager (Personnel & Administration). He was arrested by CID, Anti Corruption Bureau of Goa Police on the charge that he demanded and accepted illegal gratification from one Mr. M. Channaiah - the complainant, an Attorney of M/s. Tirumala Services in order to show favour for settlement of wages, bills/arrears, certification of pending bills and to show favour in the day-to-day affairs concerning the said contractor. It was further alleged that the respondent, on various occasions, demanded and accepted from the complainant a sum of Rs. 3,68,000/- as illegal gratification/reward for showing favour to the complainant in exercise of his official functions concerning the said contract. On the basis of the aforesaid allegations, an investigation was conducted. After completion of the investigation, the charge-sheet was filed under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter as 'the Act') and Sections 161 and 165 of the I.P.C. before the court of the Special Judge, N.A. Britto, appointed under Section 3 of the Act.

The charges framed by the Special Judge against the respondent are as follows:

"That you on or about the 14th day of September, 1994, you being a public servant, namely Manager (Personnel and Administration) in Goa Shipyard Ltd., Vasco-da-Gama, which is a Public Sector Undertaking, demanded and accepted illegal gratification, other than legal remuneration of Rs. 20,000/- from the complainant Shri M. Channaih, Attorney of M/s. Tirumalla Services, who were given a contract of sweeping, labour supply and security etc. in Goa Shipyard, in order to show favours for the settlement of wage bills/arrears, to certify pending bills as well as to show favours in various day to day affairs concerning the said contract, and thereby, you committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

Secondly, prior to the said date and place, you abused your position as a public servant and obtained for yourself large sums of money from the said M. Channaih to certify that the contract work was completed/performed satisfactorily, and thereby, you committed an offence punishable under Section

13(1)(d)(ii) of the said Prevention of Corruption Act, 1988 and within the cognizance of this Court."

Alongwith the charge-sheet, the prosecution had also filed a sanction order dated 2.1.95 issued under the signatures of the Company Secretary. In the said sanction order itself, it is noticed in paragraph 1 that the Chairman and the Managing Director of the Company is the appointing authority of the respondent. It is also noticed in paragraph 2 of the said sanction order that under the Goa Shipyard Officer's Conduct, Disciplines and Appeal Rules, 1979 (hereinafter 'the Rules'), the services of the respondent could be terminated after obtaining the approval of the Board of Directors/Company. In paragraph 3 of the said sanction order it is noticed that the sanction required under Section 19 of the Act was granted.

It is undisputed that the sanction for prosecution of the respondent was granted by the Company Secretary under Section 19 of the Act. It is also undisputed that the authority competent to remove the respondent from the post, he was holding, was the Board of Directors. It is also undisputed that the sanction order does not refer to any order/resolution of the Board of Directors of the Company pursuant to which Company Secretary was authorized by the Board of Directors to convey the sanction order having passed by the Board of Directors. Pursuant to the sanction order dated 2.1.95, cognizance was taken on 29.5.95.

In the interregnum, the respondent was dismissed from service w.e.f. 21.1.97. We are told, at the Bar, that the termination order was set aside by the High Court and an S.L.P. is pending before this Court. Another sanction order dated 7.9.97 came to be issued by the Chairman and Managing Director of Goa Shipyard Company Ltd. (the sanction order referred to in various documents submitted alongwith the charge). The sanction order further states that the order was passed in exercise of the powers vested and on behalf of the Board of Directors, sanction was accorded to prosecute the respondent under the Act. The sanction order also states that the sanction was accorded retrospectively w.e.f. 14.9.94.

Admittedly, the second sanction order dated 7.9.97 was granted retrospectively w.e.f. 14.9.94 after the cognizance was taken on 29.5.95. It is also undisputed that though the sanction order was issued under the signatures of the Chairman and Managing Director, the same has not referred to any resolution of the Board of Directors passed in this regard pursuant to which the Chairman and Managing Director issued sanction order.

Section 19 of the Act of 1988 reads:

"19. Previous sanction necessary for prosecution. \026 (1) No Court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) \005\005\005\005\005
(b) \005\005\005\005..
(c) in the case of any other person, of the authority competent to remove him from his office."

The Goa Shipyard Officer's Conduct, Disciplines and Appeal Rules 1979 provide that the authority competent to appoint and to remove the respondent from his office is the Board of Directors. Learned counsel for the appellant does not dispute any of the aforesaid mentioned facts, as adumbrated above.

In the present case, the appellant does not dispute that the sanction order dated 2.1.95 was issued under the signatures of the Company Secretary. There was no reference to the decision/resolution being passed by the Board of Directors pursuant to which the sanction order was issued under the signatures of the Company Secretary. It is also not disputed that

the second sanction order dated 7.9.97 issued by the Chairman and Managing Director of the Company also did not refer to any resolution/decision taken by the Board collectively pursuant to which the second sanction order was issued. In the facts and circumstances, as adumbrated above, the view taken by the High Court cannot be said to be unjustified.

Learned counsel for the appellant, however referred to sub-section 3 of Section 19 of the Act. Sub-section 3 of Section 19 reads as under:

"(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."

Referring to the aforesaid provisions, it is contended by learned counsel for the appellant that the Court should not, in appeal, reverse or alter any finding, sentence or order passed by a special Judge on the ground of the absence of any error, omission or irregularity in, the sanction required under sub-section (1), unless the Court finds a failure of justice has in fact been occasioned thereby. In this connection, a reference was made to the decision of this Court rendered in the case of State By Police Inspector v. T. Venkatesh Murthy (2004) 7 SCC 763. Reference was also made to the decision of this Court in the case of Shri Durga Dass v. State of Himachal Pradesh (1973) 2 SCC 213 where this Court has taken the view that the Court should not interfere in the finding or sentence or order passed by a special Judge and reverse or alter the same on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless the Court finds that a failure of justice has in fact been occasioned thereby. According to the counsel for the appellant no failure of justice has occasioned merely because there was an error, omission or irregularity in the sanction required because evidence is yet to start and in that view the High Court has not considered this aspect of the matter and it is a fit case to intervene by this Court. We are unable to accept this contention of the counsel. The present is not the case where there has been mere irregularity, error or omission in the order of sanction as required under sub-section (1) of Section 19 of the Act. It goes to the root of the prosecution case. Sub-section (1) of Section 19 clearly prohibits that the Court shall not take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction as stated in clauses (a), (b) and (c).

As already noticed, the sanction order is not a mere irregularity, error or omission. The first sanction order dated 2.1.95 was issued by an authority that was not a competent authority to have issued such order under the Rules. The second sanction order dated 7.9.97 was also issued by an authority, which was not competent to issue the same under the relevant rules, apart from the fact that the same was issued retrospectively w.e.f. 14.9.94, which is bad. The cognizance was taken by the Special Judge on

29.5.95. Therefore, when the Special Judge took cognizance on 29.5.95, there was no sanction order under the law authorising him to take cognizance. This is a fundamental error which invalidates the cognizance as without jurisdiction.

This being the law, we are unable to sustain the submission of learned counsel for the appellant.

Having regard to the gravity of the allegations levelled against the respondent, we permit the competent authority to issue a fresh sanction order by an authority competent under the Rules and proceed afresh against the respondent from the stage of taking cognizance of the offence and in accordance with law.

The appeal stands disposed of in the above terms.