

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 565 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUNVATRAI RAGHUNATHJI DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 565 of 2001
MR TS NANAVATI for Petitioner No. 1
Mr B D Desai, APP for Respondent No. 1
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 31/01/2002

ORAL JUDGEMENT

Rule. Mr B D Desai, learned APP waives service of
notice of rule on behalf of respondent no.1.

The present revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') has been filed by the petitioner above named for challenging an order dated 18.10.2001 recorded by the learned Special Judge, Bharuch acting under the Prevention of Corruption Act, 1988 in Special Case No.6/98 under which the learned Special Judge dismissed the said application Exh.5 filed by the petitioner for his discharge from the prosecution on the ground that sanction to prosecute the petitioner has not been legally accorded by the competent authority.

2. The petitioner is being prosecuted before the aforesaid Court for offence punishable under the Prevention of Corruption Act, 1988 (for short, 'the Act'). Sanction to prosecute the petitioner was produced on the record of the said matter. The petitioner made an application that the sanction ought to have accorded by the Home Department. That the Under Secretary could not accord sanction and that proper procedure was required to be followed before according sanction. That has not been done. On the aforesaid three contentions, it was prayed by the petitioner that he may be discharged.

3. After hearing the learned Advocates for the parties, the learned Special Judge found that the contentions were not well founded and therefore, the application was dismissed. Feeling aggrieved by the said order of the trial court, this revision application has been filed before this court. It has been mainly contended here that the order of the trial court is illegal on the face of it and, therefore, it may be quashed and set aside.

4. During the course of hearing, it was noticed that so far as the second contention is concerned, the trial court has dealt with the same in accordance with the document produced on record. However, so far as the first and third contentions are concerned, it is found that the said contentions have not been dealt with by the trial court. The petitioner had contended that under the Government Rules of business, the sanction to prosecute was required to be accorded by the Home Department which is in charge of the cases relating to the Prevention of Corruption Act.

5. Learned APP, Mr B D Desai states that this aspect of the case has not been considered by the learned Special Judge and there is no finding on this aspect of the case recorded by the learned Special Judge.

6. In above view of the matter, it appears that the application of the petitioner Application Exh.5 dated 11.1.2001 was partly considered by the trial court and it was not considered with respect to other aspects of the case. This means that application Exh.5 of the petitioner has not been completely decided and at least two contentions have been left out. In that view of the matter, it would be in the fitness of things to remand the matter to the trial court for due consideration on the point as to whether sanction accorded by the Industries and Mine Department is a legal and valid sanction or whether sanction was required to be accorded by the Home Department. Another point relates to the point whether the procedure required to be followed, has, actually been followed before sanctioning prosecution.

7. In above view of the matter, when the trial court has not appreciated the above contentions raised by the petitioner, this revision application is partly allowed. The order passed by the trial court dismissing the said application Exh.5 is quashed and set aside. The matter is remanded to the trial court for fresh decision on the aforesaid points.

Rule is made absolute to the aforesaid extent.

31.1.2002 [D P Buch, J.]

msh