Nanjappa vs State Of Karnataka on 24 July, 2015

Equivalent citations: AIR 2015 SUPREME COURT 3060, 2015 AIR SCW 4432, 2015 (3) AKR 801, 2015 CRI. L. J. 4012, AIR 2015 SC (CRIMINAL) 1458

Author: T.S. Thakur

Bench: Amitava Roy, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1867 OF 2012

Nanjappa …Appellant

Vs.
State of Karnataka …Respondent

J U D G M E N T

T.S. THAKUR, J.

1. This appeal arises out of a judgment and order dated 9th February, 2012 passed by the High Court of Karnataka at Bangalore whereby the High Court has, while reversing an order of acquittal passed by the Trial Court, convicted the appellant under Sections 7 and 13 read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced him to undergo imprisonment for a period of six months under Section 7 and a period of one year under Section 13 besides fine and sentence of imprisonment in default of payment of the same. The facts giving rise to the filing of the appeal may be summarised as under:

2. The appellant was working as a Bill Collector in Sabbanakruppe Grama Panchayath, in S.R. Patna Taluk of the State of Karnataka. The prosecution case is that the complainant who was examined at the trial as PW-1, appeared before the Lokayukta Police to allege that the appellant had demanded a bribe of Rs.500/- from him for issue of a copy of a certain resolution dated 13th March, 1998 passed by the Sabbanakruppe Grama Panchayath. Since the complainant was unwilling to pay the bribe amount, he prayed for action against the appellant. The Lokayukta Police appears to have secured panch witnesses, prepared an entrustment memo and handed over the intended bribe amount to the

complainant after applying phenolphthalein powder to the currency notes for being paid to the appellant upon demand. The prosecution case is that the bribe amount was demanded by the appellant and paid to him by the complainant whereupon the raiding party on a signal given by the complainant arrived at the spot and recovered the said amount from his possession. The appellant's hands were got washed in sodium carbonate solution which turned pink, clearly suggesting that the bribe money had been handled by the appellant. On completion of the investigation, the police filed charge-sheet before the jurisdictional court where the prosecution examined as many as 5 witnesses in support of its case. The appellant did not, however, adduce any evidence in his defence. The Trial Court eventually came to the conclusion that the prosecution had failed to prove the charges framed against the appellant and accordingly acquitted him of the same. The Trial Court held that the prosecution had failed to prove that the appellant had any role in the passing of the resolution by the members of the Panchayat, a copy whereof was demanded by the complainant. The Trial Court further held that there was no material to suggest that the Sabbanakruppe Grama Panchayat had joined hands with the appellant in converting the road running in front of the complainant's house into sites for allotment to third parties. The Trial Court found that the property purchased by the complainant did not actually show a road on the northern side of the said property. The Trial Court, on those findings, concluded that the complainant's accusation about the appellant demanding bribe from him was unreliable and unworthy of credit. Relying upon the decision of this Court in Kaliram vs. State of Himachal Pradesh (AIR 1973 SC 2773), the Trial Court held that since two views were possible on the evidence adduced in the case, one pointing to the guilt of the appellant and the other to his innocence, the view that was favourable to the appellant had to be accepted. The Trial Court further held that the sanction for prosecution of the appellant had not been granted by the competent authority and was, therefore, not in accordance with Section 19 of the P.C. Act. Relying upon the deposition of PW-4 examined at the trial, the Trial Court held that the Chief Officer, Zilla Panchayat was the only competent authority to grant sanction for prosecution in terms of Section 113 of the Panchayat Raj Act. The prosecution case against the appellant was on those findings rejected by the Trial Court and the appellant acquitted.

3. Aggrieved by the order of acquittal passed by the Trial Court, the State preferred Criminal Appeal No.1260 of 2006 which, as noticed earlier, has been allowed by the High Court in terms of the judgment and order impugned in this appeal. The High Court held that since the validity of the sanction order was not questioned at the appropriate stage, the appellant was not entitled to raise the same at the conclusion of the trial. On the merits of the case, the High Court held that the depositions of PWs 1 and 2, who were none other than the complainant and the shadow witness had sufficiently proved that the appellant had demanded bribe amount and received the same. The High Court held that the discrepancies in the evidence regarding the manner of giving the amount were inconsequential. The High Court also placed reliance upon the explanation of the appellant as recorded in the trap mahazar to hold that the appellant had admitted the receipt of the amount, no matter he had offered an explanation according to which the amount represented "tap charges", which explanation was not supported by any defence. The High Court has, on those findings, held the charges framed against the appellant to have been proved. He was accordingly convicted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act and sentenced to imprisonment for six months and one year respectively besides a fine of Rs.3,000/- under Section 7 and Rs.5,000/- under Section 13(1)(d) read with Section 13(2) of the P.C. Act with a

default sentence of one month and two months respectively. The sentences were directed to run concurrently.

4. We have heard learned counsel for the parties at considerable length. This appeal must, in our opinion, succeed on the short ground that in the absence of a valid previous sanction required under Section 19 of the Prevention of Corruption Act, the trial Court was not competent to take cognizance of the offence alleged against the appellant. Section 19 of the Prevention of Corruption Act reads as under:

> "19. Previous sanction necessary for prosecution (1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,- (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government; (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office.
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> (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.
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> (3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,- (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. (4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.-For the purposes of this section,- (a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

5. We may also, at the outset, extract Section 465 of the Cr.P.C. which is a cognate provision dealing with the effect of any error, omission or irregularity in the grant of sanction on the prosecution. Section 465 Cr.P.C. runs thus:

"465. Finding or sentence when reversible by reason of error, omission or irregularity.

(1) Subject to the provisions hereinbefore contained, on finding sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

6. A plain reading of Section 19(1) (supra) leaves no manner of doubt that the same is couched in mandatory terms and forbids courts from taking cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 against public servants except with the previous sanction of the competent authority enumerated in clauses (a), (b) and (c) to sub-section (1) of Section 19. The provision contained in sub-section (1) would operate in absolute terms but for the presence of sub-section (3) to Section 19 to which we shall presently turn. But before we do so, we wish to emphasise that the language employed in sub-section (1) of Section 19 admits of no equivocation and operates as a complete and absolute bar to any court taking cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 of the Act against a public servant except with the previous sanction of the competent authority. A similar bar to taking of cognizance was contained in Section 6 of the Prevention of Corruption Act, 1947 which was as under:

""6. (1) No Court shall take cognizance of an offence punishable under section 161 or section 165 of the Indian Penal Code or under sub-section (2) of section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government....., [of the] Central Government;

(b) in the case of a person who is employed in connection with the affairs of [a State] and is not removable from his office save by or with the sanction of the State Government....., [of the] State Government;

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

(2) where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

7. In Baij Nath Tripathi vs. The State of Bhopal and Anr. (AIR 1957 SC

494), a Constitution Bench of this of Court was dealing with the case of a sub-inspector of police from the then State of Bhopal, who was prosecuted by the Special Judge, Bhopal and convicted of offences punishable under Section 161 of the IPC and Section 5 of the Prevention of Corruption Act, 1947. He was sentenced by the Trial Court to undergo nine months' rigorous imprisonment on each count. In an appeal before the Judicial Commissioner against the said conviction and sentence, it was held that since no sanction according to law had been given for the prosecution of the accused, the Special Judge had no jurisdiction to take cognizance of the case and that the trial was invalid and void ab-initio, hence quashed relegating the parties to the position as if no legal charge-sheet had been submitted against the appellant. The accused was then tried for a second time before another Special Judge to which prosecution, the accused took exception on the ground that a second trial was impermissible having regard to the provisions of Article 20(2) of the Constitution of India and Section 403 of the Code of Criminal Procedure. A similar contention was raised by Sudhakar Dube, another Sub-Inspector of Police who was similarly tried and prosecuted but the Special Judge finding the sanction order to be incompetent had quashed the proceedings. Dube was also thereupon sought to be tried for the second time which second trial was assailed by him in writ petition before this Court. The short question that fell for consideration in the above backdrop, was whether the petitioners had been prosecuted and punished within the meaning of Article 20 of the Constitution of India or tried by a Court of competent jurisdiction within the meaning of Section 403(1) of the Code of Criminal Procedure. It was urged on behalf of the respondent, that in case the previous trial was null and void and non-est, a second trial was legally permissible. That contention found favour with the Court. Relying upon Yusofalli Mulla vs. The King AIR 1949 PC 264, Basdeo Agarwalla vs. King Emperor AIR 1945 FC 16 and Budha Mal vs. State of Delhi, Criminal Appeal No.17 of 1952, it was held that the accused had neither been tried by a Court of competent jurisdiction nor was there any accusation or conviction in force within the meaning of Section 403 of Cr.P.C. to stand as a bar against their prosecution for the same offences. The following passage from the decision succinctly sums up the legal foundation for accepting the contention urged on behalf of the State of Bhopal:

"If no Court can take cognizance of the offences in question without a legal sanction, it is obvious that no Court can be said to be a Court of competent jurisdiction to try those offences and that any trial in the absence of such sanction must be null and void, and the sections of the Code on which learned counsel for the petitioners relied have really no bearing on the matter. Section 530 of the Code is really against the contention of learned counsel, for it states, inter alia, that if any Magistrate not being empowered by law to try an offender, tries him, then the proceedings shall be void. Section 529(e) is merely an exception in the matter of taking cognizance of an offence under s. 190, sub-s. (1), cls.

(a) and (b); it has no bearing in a case where sanction is necessary and no sanction in accordance with law has been obtained."

8. In Yusofalli Mulla's case (supra), the Privy Council was examining whether failure to obtain sanction affected the competence of the Court to try the accused. The contention urged was that there was a distinction between a valid institution of a prosecution on the one hand and the competence of the Court to hear and determine the prosecution, on the other. Rejecting the contention that any such distinction existed, this Court observed:

"The next contention was that the failure to obtain a sanction at the most prevented the valid institution of a prosecution, but did not affect the competency of the Court to hear and determine a prosecution which in fact was brought before it. This suggested distinction between the validity of the prosecution and the competence of the Court was pressed strenuously by Mr. Page, but seems to rest on no foundation. A Court cannot be competent to hear and determine a prosecution the institution of which is prohibited by law and Section 14 prohibits the institution of a prosecution in the absence of a proper sanction. The learned Magistrate was no doubt competent to decide whether he had jurisdiction to entertain the prosecution and for that purpose to determine whether a valid sanction had been given, but as soon as he decided that no valid sanction had been given the Court became incompetent to proceed with the matter. Their Lordships agree with the view expressed by the Federal Court in Agarwalla's case A.I.R. (32) 1945 F.C. 16 that a prosecution launched without a valid sanction is a nullity."

9. The Federal Court had in Basdeo Agarwalla's case (supra), summed up the legal position regarding the effect of absence of a sanction in the following words:

"In our view the absence of sanction prior to the institution of the prosecution cannot be regarded as a mere technical defect. The clause in question was obviously enacted for the purpose of protecting the citizen, and in order to give the Provincial Government in every case a proper opportunity of considering whether a prosecution should in the circumstances of each particular case be instituted at all. Such a clause, even when it may appear that a technical offence has been committed, enables the

Provincial Government, if in a particular case it so thinks fit, to forbid any prosecution. The sanction is not intended to be and should not be an automatic formality and should not so be regarded either by police or officials. There may well be technical offences committed against the provisions of such an Order as that in question, in which the Provincial Government might have excellent reason for considering a prosecution undesirable or inexpedient. But this decision must be made before a prosecution is started. A sanction after a prosecution has been started is a very different thing. The fact that a citizen is brought into Court and charged with an offence may very seriously affect his reputation and a subsequent refusal of sanction to a prosecution cannot possibly undo the harm which may have been done by the initiation of the first stages of a prosecution. Moreover in our judgment the official by whom or on whose advice a sanction is given or refused may well take a different view if he considers the matter prior to any step being taken to that which he may take if he is asked to sanction a prosecution which has in fact already been started."

10. So also the decision of this Court in Budha Mal vs. State of Delhi [Criminal Appeal No.17 of 1952 disposed of on 3/10/1952], this Court had clearly ruled that absence of a valid sanction affected the competence of the Court to try and punish the accused. This Court observed:

"We are satisfied that the learned Sessions Judge was right in the view he took. Section 403 CrPC applies to cases where the acquittal order has been made by a court of competent jurisdiction but it does not bar a retrial of the accused in cases where such an order has been made by a court which had no jurisdiction to take cognizance of the case. It is quite apparent on this record that in the absence of a valid sanction the trial of the appellant in the first instance was by a Magistrate who had no jurisdiction to try him."

11. The above line of reasoning was followed by this Court in State of Goa vs. Babu Thomas (2005) 8 SCC 130, where this Court while dealing with a case under Section 19 of the Prevention of Corruption Act, 1988 held that absence of a valid sanction under Section 19(1) went to the very root of the prosecution case having regard to the fact that the said provision prohibits any Court from taking cognizance of any offence punishable under Sections 7, 10, 13 and 15 against the public servant, except with the previous sanction granted by the competent authority in terms of clauses

(a), (b) and (c) to Section 19(1). This Court was in that case dealing with a sanction order issued by an authority who was not competent to do so as is also the position in the case at hand. The second sanction order issued for prosecution of the accused in that case was also held to be incompetent apart from the fact that the same purported to be retrospective in its operation. This Court noted that on 29th March, 1995 when cognizance was taken by the Special Judge, there was no order sanctioning prosecution with the result that the Court was incompetent to take cognizance and

that the error was so fundamental that it invalidated the proceedings conducted by the Court. The Court accordingly upheld the order passed by the High Court but reserved liberty to the competent authority to issue fresh orders having regard to the serious allegation made against the accused.

12. The legal position was reiterated once more by this Court in State of Karnataka vs. C. Nagarajaswamy (2005) 8 SCC 370, where this Court summed up the law in the following words:

"In view of the aforementioned authoritative pronouncements, it is not possible to agree with the decision of the High Court that the trial court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that [pic]even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Code as, even then, it would be held to have been rendered illegally and without jurisdiction."

13. What is important is that, not only was the grant of a valid sanction held to be essential for taking cognizance by the Court, but the question about the validity of any such order, according to this Court, could be raised at the stage of final arguments after the trial or even at the appellate stage. This Court observed:

"Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefore or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage.

But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court."

14. In B. Saha & Ors. vs. M.S. Kochar (1979) 4 SCC 177, this Court was dealing with the need for a sanction under Section 197 of the Cr.P.C. and the stage at which the question regarding its validity could be raised.

This Court held that the question of validity of an order of sanction under Section 197 Cr.P.C. could be raised and considered at any stage of proceedings. Reference may also be made to the decision of

this Court in K. Kalimuthu vs. State by DSP (2005) 4 SCC 512 where Pasayat, J., speaking for the Court, held that the question touching the need for a valid sanction under Section 197 of the Cr.P.C. need not be raised as soon as the complaint is lodged but can be agitated at any stage of the proceedings. The following observation in this connection is apposite:

> "The question relating to the need of sanction under Section 197 of the Code is not necessarily 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. Further, in cases where offences under the Act are concerned the effect of Section 19, dealing with question of prejudice has also to be noted."
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> 15. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.
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> 16. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to Section 19, which starts with a non-obstante clause. Also relevant to the same aspect would be Section 465 of the Cr.P.C. which we have extracted earlier.

It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny. A careful reading of sub-section (3) to Section 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. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional proceedings on the ground 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 sub-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 Section 19(1). Sub-section (3), in our opinion, 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 sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-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 sub- sections 19(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. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision.

17. In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. 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 before us. The only error which the trial Court, in our opinion, 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. As observed by this Court in Baij Nath Prasad Tripathi's case (supra), the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent Court was bound to be invalid and non-est in law.

18. To the same effect is the decision of this Court in Mohammad Safi vs. The State of West Bengal (AIR 1966 SC 69). This Court observed:

> "As regards the second contention of Mr. Mukherjee it is necessary to point out that a criminal court is precluded from determining the case before it in which a charge has been framed otherwise than by making an order of acquittal or conviction only where the charge was framed by a court competent to frame it and by a court competent to

try the case and make a valid order of acquittal or conviction. No doubt, here the charge was framed by Mr. Ganguly but on his own view he was not competent to take cognizance of the offence and, therefore, incompetent to frame a charge. For this reason the mere fact that a charge had been framed in this case does not help the appellant.

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12. In addition to the competent of the court, s. 403 of the Code speaks of there having been a trial and the trial having ended in an acquittal. From what we have said above, it will be clear that the fact that all the witnesses for the prosecution as well as for the defence had been examined before Mr. Ganguly and the further fact that the appellant was also examined under s. 342 cannot in law be deemed to be a trial at all. It would be only repetition to say that for proceedings to amount to a trial they must be held before a court which is in fact competent to hold them and which is not of opinion that it has no jurisdiction to hold them. A fortiori it would also follow that the ultimate order made by it by whatever name it is characterised cannot in law operate as an acquittal. In the Privy Council case it was interpreted by Sir John Beaumont who delivered the opinion of the Board to be an order of discharge. It is unnecessary for us to say whether such an order amounts to an order of discharge in the absence of any express provision governing the matter in the Code or it does not amount to an order of discharge. It is sufficient to say that it does not amount to an order of acquittal as contemplated by s. 403(1) and since the proceedings before the Special Judge ended with that order it would be enough to look upon it merely as an order putting a stop to the proceedings. For these reasons we hold that the trial and eventual conviction of the appellant by Mr. Bhattacharjee were valid in law and dismiss the appeal."

19. In Babu Thomas (supra) also this Court after holding the order of sanction to be invalid, relegated the parties to a position, where the competent authority could issue a proper order sanctioning prosecution, having regard to the nature of the allegations made against accused in that case.

20. The High Court has not, in our opinion, 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, it appears, realise that the issue was not being raised before it for the first time but had been successfully urged before the trial Court.

21. The next question then is whether we should, while allowing this appeal, set aside the order passed by the High Court and permit the launch of a fresh prosecution against the appellant, at this distant point of time. The incident in question occurred on 24th March, 1998. The appellant was, at that point of time, around 38 years old. The appellant is today a senior citizen. Putting the clock back at this stage when the prosecution witnesses themselves may not be available, will in our

opinion, serve no purpose. That apart, the trial Court had, even upon appreciation of the evidence, although it was not required to do so, given its finding on the validity of the sanction, and had held that the prosecution case was doubtful, rejecting the prosecution story. It will, therefore, serve no purpose to resume the proceedings over and again. We do not, at any rate, see any 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 appellant has already suffered the ignominy of a trial, conviction and a jail term no matter for a short while. We, accordingly, allow this appeal and set aside the order passed by the High Court.

.....J. (T.S. THAKUR) .....J. (AMITAVA ROY) New Delhi July 24, 2015 ITEM NO.1G-For Judgment COURT NO.2 SECTION IIB S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Criminal Appeal No(s). 1867/2012 NANJAPPA Appellant(s) VERSUS STATE OF KARNATAKA Respondent(s) Date : 24/07/2015 This appeal was called on for pronouncement of JUDGMENT today.

For Appellant(s) Mr. S. N. Bhat,Adv.

For Respondent(s) Mr. V. N. Raghupathy,Adv.

Hon'ble Mr. Justice T.S. Thakur pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Amitava Roy.

The appeal is allowed in terms of the Signed Reportable Judgment.

(VINOD KR.JHA) (VEENA KHERA)
COURT MASTER COURT MASTER

(Signed Reportable judgment is placed on the file)