A SANJAYSINH RAMRAO CHAVAN

v.

DATTATRAY GULABRAO PHALKE AND OTHERS

(Criminal Appeal No. 97 of 2015)

B JANUARY 16, 2015

[KURIAN JOSEPH AND ABHAY MANOHAR SAPRE, JJ.]

Code of Criminal Procedure, 1973 – ss.397 to 401 – C *Revisional jurisdiction – Scope of – Registration of criminal case under Prevention of Corruption Act – Closure report by police u/s 173(2) Cr.P.C. – Accepted by Magistrate – High Court in exercise of revisional jurisdiction set aside order of Magistrate and directed the Investigating Officer to make a* D *request for sanction for prosecution – On appeal, held: The court in exercise of revisional jurisdiction not to interfere, unless the decision which is sought to be revised is perverse, untenable in law, grossly erroneous, glaringly unreasonable, based on no material, or in disregard of material facts or where* E *judicial discretion is exercised arbitrarily and capriciously – In the present case, order of Magistrate in accepting the closure report was reasoned and not perverse – The High Court was not justified in setting aside the order of Magistrate – Since no case is made out to prosecute the accused,* F *sanction for prosecution is also not required – Prevention of Corruption Act, 1988 – ss.7, 12, 13(1)(d) and 13(2).*

Allowing the appeal, the Court

HELD: 1.1. At the stage of taking cognizance of a G **case what is to be seen is whether there is sufficient ground for taking judicial notice of an offence with a view to initiate further proceedings. The court is not bound by the report submitted by the police u/s 173(2) Cr.PC. If the report is that no case is made out, the Magistrate is still**

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free, nay, bound, if a case according to him is made out, to reject the report and take cognizance. It is also open to him to order further investigation under Section 173(8) of Cr.PC. [paras 11 and 14] [146-A; 148-B-D]

S.K. Sinha, *Chief Enforcement Officer v. Videocon International Ltd. and others* **2008 (2) SCR 36 = 2008 (2) SCC 492,** *Bhushan Kumar and another v. State (NCT of Delhi) and another* **2012 (2) SCR 696 = 2012 (5) SCC 424;** *Smt. Nagawwa v. Veeranna Shivalingappa Kinjalgi and others* **1976 (0) Suppl. SCR 123 = 1976 (3) SCC 736 – relied on**

1.2. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction. [para 14] [148-D-H]

1.3. In the first complaint filed by the second respondent - the *de facto* complainant, there is no allegation for any demand for bribe by the appellant. The allegation of demand is specifically against accused No.

A **2. That allegation against the appellant is raised subsequently. The only basis for supporting the allegation is the conversation that is said to be recorded by the voice recorder. The Directorate of Forensic Science Laboratories has stated that the conversation is**
B **not in audible condition and, hence, the same is not considered for spectrographic analysis. As the voice recorder is itself not subjected to analysis, there is no point in placing reliance on the translated version. Without source, there is no authenticity for the**
C **translation. Source and authenticity are the two key factors for an electronic evidence. [para 16] [149-C-F]**

Anvar P.V. v. P.K. Basheer and others **2014 (10) SCALE 660 – relied on.**

D **1.4. Prosecution becomes a futile exercise as the materials available do not show that an offence is made out as against the appellant. The process of the criminal court shall not be permitted to be used as a weapon of harassment. Unmerited and undeserved prosecution is**
E **an infringement of the guarantee under Article 21 of the Constitution of India. [para 17] [150-B, C, D]**

Pepsi Foods Limited and another v. Special Judicial Magistrate and others **1997 (5) Suppl. SCR 12 = 1998 (5) SCC 749;** *State of Karnataka v. L. Muniswamy and others*
F **1977 (3) SCR 113 = 1977 (2) SCC 699;** *State of Bihar v. P.P. Sharma, IAS and another* **1991 (2) SCR 1 = 1992 (1) Suppl. SCC 222 – relied on.**

2. Once the prosecution is of the view that no case
G **is made out so as to prosecute an accused, unless the court finds otherwise, there is no point in making a request for sanction for prosecution. If the prosecution is simply vexatious, sanction for prosecution is not to be granted. That is one of the main considerations to be**

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borne in mind by the competent authority while considering whether the sanction is to be granted or not. [para 18] [150-F-G; 151-A] A

Mansukhlal Vithaldas Chauhan v. State of Gujarat **1997 (3) Suppl. SCR 705 = 1997 (7) SCC 622 – relied on.** B

Case Law Reference :

2008 (2) SCR 36	**relied on**	**para 11**
2012 (2) SCR 696	**relied on**	**para 12**
1976 (0) Suppl. SCR 123	**relied on**	**para 13**
2014 (10) SCALE 660	**relied on**	**para 16**
1997 (5) Suppl. SCR 12	**relied on**	**para 17**
1977 (3) SCR 113	**relied on**	**para 17**
1991 (2) SCR 1	**relied on**	**para 17**
1997 (3) Suppl. SCR 705	**relied on**	**para 18**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 97 of 2015. E

From the Judgment and Order dated 07.08.2013 of the High Court of Judicature at Bombay in Criminal Revision Application No. 361 of 2012. F

Harin Raval, Ravindra Keshavrao Adsure, Siddeshwar Biradar for the Appellant.

Arun Pednekar, Sunil Kumar Verma, Aniruddha P. Mayee, Charudatta Mahindrakar, A. Selvin Raja for the Respondents. G

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. Appellant is accused no.1 in C.R. No. 3446 of 2010 of H

A Bund Garden Police Station in the State of Maharashtra. The case is registered by the Anti-Corruption Bureau under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act').

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3. Genesis is Annexure-P7-complaint dated 22.11.2010 given by the first respondent. According to him, he had to pay an amount of Rs.75,000/- by way of bribe for getting a certificate for non-agricultural use of his land. To quote from the complaint:

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"On 5th October 2009 an advertisement of "Bharat Petroleum Corporation Ltd. Pune" appeared in daily Lokmat and Loksatta newspapers. The advertisement was for giving dealership of Petrol Pump. I had duly applied to D the company Bharat Petroleum Corporation Ltd. for the same. As per the procedure my interview was arranged on 30th March 2010. I was selected for this work. As per the terms and conditions of Bharat Petroleum Corporation Ltd. Pune it was binding on me to submit a "non E agricultural certificate" of my land at Pimpalsuti, Tal Shirur, District Pune. To get the said certificate I applied to the Maval Sub Divisional Officer and Magistrate Pune on dated 9/9/2010. After the application I fulfilled all the documents required as per their demand.

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After this today on date 22/11/2010 at 11/20 a.m. I went to the office of Maval Sub Divisional Officer and Magistrate Pune for enquiring about the non agricultural certificate which I had not received till then. That time I met the clerk Shri Suhas Soma. He asked me to meet clerk G Shri Landge. When I personally met Shri Langde he asked me to meet Shri Sanjaysingh Chavan Sub Divisional Officer Maval. As per that I met Shri Sanjaysingh Chavan Sub divisional Officer Maval personally in his office. At that time he asked me the reason as to why I require the non H agricultural land certificate. I told him the reason of petrol

pump and also told him the area of land. After that he asked me to meet the clerk Suhas Soma. After I went out of his office, he called his clerk Suhas Soma in his cabin. After Shri Soma came out of the cabin he asked me "At what extent you are ready to pay?". At that time I asked him "What will be the amount of challan?". That time he said that "Challan amount is meager, an additional amount of Rs. 1,00,000/- will have to be paid as practice. If your matter was for house then I would have requested the boss for less amount. But as you are going to do business you should not have any objection to pay Rs.1,00,000/-. At that time I requested the Office Superintendent Mr. Soma that "this amount is huge, some concession be given to me". On that a compromise was made between me and him and he demanded an amount of Rs.75,000/- as a bribe."

4. On the basis of the above complaint, the vigilance arranged a trap. The First Information Report narrates the events as follows:

"As the complaint filed by the complainant Mr. Dattatraya Phalke is of a crime which comes under Anti Corruption Act and as we are authorized to take cognizance of such crime on the basis of complaint filed by Mr. Phalke by deciding to arrange for a trap for arresting Mr. Chavan, Sub-Divisional Officer and Sub-Divisional Magistrate, Sub Division Maval, Pune and Mr. Soma, Office Superintendent (Shirastedar), Sub Divisional Office, Maval Pune while taking bribe from complainant Mr. Phalke and for that purpose by giving a written letter to the Hon'ble Medical Superintendent, Regional Mental Hospital, Yerawada, Pune from their office, the services of 1) Dr. Amol Ranganath Jadhav, age 25 years, Occupation-Service–Medical Officer, Regional Mental Hospital, Yerawada, Pune-6, residing at C-43, B. J. Medical College Hostel, Near Collector Office, Pune-48, 2) Dr. Sham Bandu Badse, age 55 years, Occupation–Service, Medical

A Officer, Regional Mental Hospital, Yerawada, Pune-6, residing at Sunderban Sadan, Nandanwan, Lohagon, Pune-48, got available as the Panch witnesses. The complainant and the Panch witnesses were introduced to each other. The complaint filed by the complainant was B briefly stated to the Panchas. Accordingly, we gave the complaint filed by the complainant for reading to panch witnesses and after getting assured that the same is correct, they signed below it. Thereafter, it was unanimously decided to verify the complaint filed by the C complainant Mr. Phalke in connection with the bribe demanded by the Sub–Divisional Officer and Sub-Divisional Magistrate, Sub Division Maval, Pune Mr. Sanjaysingh Chavan and Office Superintendent (Shirastedar).

D Thereafter on 22/11/2010 at 16.30 o'clock, myself, complainant Mr. Phalke, aforesaid two panchas, Police Inspector Mr. B.R. Patil, Police inspector Shri Belsare from the office of Anti Corruption Bureau came walking via Sadhu Waswani Chowk and went to new administration E Building Pune-1. At that time, we started voice recorder from our custody and suppressed it and its mike below the shirt of complainant and started the recording button of the same. Thereafter as per our instructions, firstly complainant Mr. Phalke and Panch No. 1 Mr. Jadhav went to the office F of the Sub-Divisional Officer and Sub-Divisional Magistrate, Sub Division Maval, Pune which is in the New Administrative building. Immediately behind them, myself, Pancha No. 2 Mr. Bedase and police officer and employees stood separately around the office of Sub-G Divisional Officer and Sub-Divisional Magistrate Maval, Sub Division Pune so that no doubt will be created to anyone. After half an hour from the said place, complainant Shri Phalke and panch No.1 Mr. Jadhav came out. Thereafter, we all came back from there to Pune Office of H Anti Corruption Bureau. After coming back to the said

office, we took out the recording machine placed upon complainant Shri Phalke and closed its button of recording and heard along with the panchas the conversation which took place among complainant Mr. Phalke, public servant Mr. Chavan and Mr. Soma and it revealed that the public servant Mr. Chavan and Mr. Soma have demanded a bribe of Rs. 75,000/- from the complainant Mr. Phalke. With the consent of myself, panchas and complainant, it was decided to take further action on 23/11/2010. Accordingly, the complainant and aforesaid panchas were instructed to remain present in the office of the Anti-Corruption Bureau, Pune on 23/11/2010 at 10.00 o'clock in the morning.

On 23/11/2010 at 10:00 o'clock in the morning the aforesaid panchas, complainant Mr. Phalke appeared in the Pune office of Anti-Corruption Bureau. Thereafter, the list of all the valuable things which were with the complainant Mr. Phalke was made. The complainant and panch wintnesses were informed about the Anthrasin powder and ultraviolet light and its demonstration was also shown. Anthrasin powder was applied to all the notes of amount Rs. 75,000/- presented by the complainant for giving it as bribe and the said notes were folded and kept in the right side pocket of the complainant's pant. Mr. S.K. Satpute, Police/614, who applied Anthrasin powder to the notes and who showed demonstration were eliminated from the action of trap. The detailed instructions were given to panch witnesses, complainant and other officers/staff from team of trap regarding the action of trap. Accordingly, a detailed pre-trap panchanama was drawn in our office. The trap was arranged on 23/11/2010 at the office of Sub-Divisional Officer and Sub Divisional Magistrate Maval, Pune, Sub-Division 1 in the new administration building when at about 12.02 o'clock afternoon in the presence of panch No.1 Mr. Jadhav, the public servant Mr. Suhas Ramesh Soma, age 46 years, Office Superintendent (Shirastedar), Sub Divisional Office Maval, Sub Division Pune, demanded the amount of

A bribe from complainant Mr. Phalke and personally opened the drawer No.2 which is on the right hand side of his table and asked complainant Mr. Phalke to keep the amount in it. Accordingly, as complainant Mr. Phalke kept the said amount in the said drawer the public servant Mr. Soma was caught red B handed. When the documents/papers which came in contact of the bribe amount were examined in the lamp of ultraviolet light, then the faint bluish shine of anthrasin powder was seen upon it. The numbers of notes from bribe amount were compared with the numbers of notes mentioned in the pre-trap C panchanama. It was seen that they are absolutely accurate with all the numbers of notes mentioned in the pre-trap panchnama. As the said amount of bribe is the same amount which public servant Mr. Soma received from complainant Mr. Phalke and as the shining of anthrasin powder was seen on it, the same D was seized and sealed in presence of panchas. All the conversations regarding demand of bribe amount between complainant Mr. Phalke, public servant Shri Chavan and Soma was recorded and it was heard in the presence of panchas and its script was prepared and its mention has been made in panchanama. Likewise, when an enquiry was made with Panch E No.1 Mr. Jadhav he told that public servant Mr. Soma personally said that he has received the said amount of bribe as per the instructions of Mr. Sanjaysingh Ramrao Chavan, age 44 years, Sub-Divisional Officer and Sub-Divisional Magistrate, Maval Sub Division Pune. A detailed Panchnama of all the incidences F which took place at the time of trap was drawn in the presence of panchas and the copy of the same was given to public servant Shri Sanjaysingh Chavan and Suhas Soma and their signatures were obtained."

G 5. The investigating officer submitted his report under Section 173(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.PC") though wrongly mentioned as 169 Cr.PC. To quote from the closure report:

"From overall investigation of the said crime and from H

documents and evidence received, for filing case under Section 7, 12, 13(1) (D) r/w. 13(2) of Prevention of Corruption Act, 1988 as per the provisions in Confidential Circular No.CDR/1099/Pra.Kra.62/99/11-A dated 03/04/2000 of the Maharashtra Government, General Administration, against the Accused public servant herein (1) Shri Sanjaysinh Ramrao Chavan, Sub-Divisional Officer and Sub-Divisional Magistrate, Maval Sub-Division, District Pune, (2) Shri Suhas Ramesh Soma, Awal Karkoon (Shirastedar), Sub-Divisional Officer Office, Maval Sub-Division, Pune, when report was submitted by the then Investigating Officer Shri P.B. Dhanvat, Assistant Commissioner of Police, Deputy Superintendent of Police, Anti-Corruption Bureau, Pune vide outward No.PBG/ACP/DSP/ACB/Pune/2011-283 dated 21/02/2011 to the Director General, Anti-Corruption Bureau, Maharashtra State, Mumbai through the Deputy Commissioner of Police/Superintendent of Police, Anti-Corruption Bureau, Pune for writing to the Competent Officer Maharashtra Government (Revenue and Forests) Mantralaya, Mumbai, of APS for obtaining pre-prosecution approval/sanction as required under Section 19 of Prevention of Corruption Act, 1988, and the Deputy Superintendent of Police/Superintendent of Police, Anti-Corruption Bureau, Pune has vide his Outward No.CR/438/Pune/2010-1591 dated 20/05/2011 sent such report to the Director General, Anti-Corruption Bureau, M.S. Mumbai, after scrutinizing the investigation documents of the crime, the Director General, Anti-Corruption Bureau, Maharashtra State, Mumbai has issued orders vide his Order No.CR/438/Pune/2010-4812 dated 03/06/2011 that "since there is no evidence available to the extent of filing charge-sheet against APS Shri Sanjaysinh Ramrao Chavan, Sub-Divisional Officer and Magistrate, Maval, District Pune in the said trap case, decision is taken not to file charge sheet against him and by taking legal action against him, for preparing and sending proposal of Departmental Inquiry to the

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A Competent Officer and since evidence is available against APS Shri Suhas Ramesh Soma, Awal Karkoon (Shirastedar), Sub-Divisional Officer Office, Maval, District Pune, orders are issued for submitting pre-prosecution sanction proposal to his Competent Officer for filing B prosecution in Competent Court against him. The said Orders are received vide O.No.CR/438/Pune/2010-1846 dated 09/06/2011 of the Deputy Commissioner of Police/ Superintendent of Police, Anti-Corruption Bureau, Pune and Xerox copy of abovementioned order is submitted C herewith for perusal.

Therefore, if approved, it is requested to acquit accused public servant Shri Sanjaysinh Ramrao Chavan, Sub-Divisional Officer and Magistrate, Maval Sub-Division, Pune, (Class-1) from the said offence as per Section 169 D of Criminal Procedure Code."

6. Learned Magistrate on 15.01.2012, after notice also to the *de facto* complainant, accepted the closure report. To quote the relevant portion fro-m the order:

E "7. ... Record shows that the complainant lodged report. If complaint is perused, it appears that role of accused No. 1 is to the effect that on 22.11.2010 when complainant met accused No.1, he inquired about the purpose for which N.A. certificate was F required and he asked the complainant to meet accused No.2. The complaint shows the demand of money and acceptance was made by accused No. 2. Accused No. 1 has filed bunch of papers consisting of his representation for false G implication, so also other relevant papers. He has placed on record the application for N.A. Certificate filed by the complainant's wife, then all correspondence between the complainant and office of the accused No.1 to show that the H application of the complainant's wife was under

process. Besides this, the accused No.1 has also filed copy of his leave application showing that he was on medical leave for six days from 15.11.2010 to 20.11.2010 with permission to suffix Sunday falling on 21.11.2010. The applicant has filed the tickets to show that he travelled during this period. The applicant has also placed on record a news item published in Daily Lokmat on 24.11.2010 (*sic*) in which it is mentioned that when the amount of Rs.75,000/- was accepted, the accused No. 1 was not in his office and it was accepted by accused No. 2 Suhas Soma.

8. It is to be considered that Anti-Corruption Bureau has filed papers and given reasons why decision not to proceed against accused No. 1 was taken. If these papers are perused, it appears that the Director General of Police, Anti-Corruption Bureau has considered the relevant papers and after considering all aspects, passed a well-reasoned order. It is also mentioned that the vague conversation between the complainant and accused No.1 recorded at the time of so-called verification will not help the Prosecution and there is absolutely no evidence of demand and acceptance against the accused No.1. It cannot be said that the Director General of Anti-Corruption Bureau did not apply his mind to the documents before him. When the order was passed giving reason and, as it is a speaking order, it cannot be said that the direction given by the Director General of Police, Anti-Corruption Bureau for submitting report under Section 169 of Cr.P.C. is bad in law.

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12. I am well aware that in view of judgment in Vasanti Dubey Vs. State of Madhya Pradesh, the

A Court can discard closure report and may proceed under Section 190 r.w. 156 of Cr.P.C. or it may take cognizance upon the complaint and direct inquiry under Section 202 Cr.P.C. However, after going through the case papers, it is found that the
B authority under the Anti-Corruption Bureau has come to the correct conclusion that there is no sufficient ground to proceed against the accused No.1. As a result of this, I accept the report under Section 169 of Cr.P.C.

C The proceedings against accused No.1 are closed and accused No.1 is discharged."

7. Dissatisfied, the first respondent - *de facto* complainant, approached the High Court in Revision leading to the impugned
D judgment. The High Court set aside the order passed by the learned Magistrate and directed the Director General of Police to forward the request for sanction for prosecution to the competent authority. The trial court was also directed to follow the legal course in the matter. To quote paragraphs-10 to 15
E of the impugned judgment:

"4. The crux of the matter is, the conversation between complainant/applicant and accused no.1 on 22.11.2010 was recorded by the applicant as was directed by the Investigating Agency, which
F clearly prima facie reveals demand by accused-respondent no.1.

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G 10. The legal Advisor has presumably a legal knowledge, could not adversely comment on supplementary statement of the complainant recorded during the trap, as the supplementary statement is signed by panch witness. He could
H have, prima facie, indicated his legal knowledge in

proper frame which is lacking. He has no business at the end of report to write that case against accused no. 2 is weak, as this report could be flashed, used and raised as a defence by the concerned in the prosecution. Such unwanted effort will frustrate and fracture the prosecution.

11. Affidavit of Shri. Hemant V.Bhat though supports the accused-respondent, however, he should have also equally gone through the papers, he had no reason to accept the doubtful findings of CFSL in respect of recorded conversation between the complainant and accused-respondent no.1. He has given reference to the Manual. There should not be contest to the Manual, however, it has been twisted for the benefits of the accused-respondent no.1.

12. The learned Special Judge, basically travelled through the report or the opinion of the Advocate which was not expected. He was swayed away himself by accepting the defences. He should have gone through the root of the matter, applied his mind. There should not be dearth to a legal thought. He could have seen brazen attempt of a colourable exercise of power by a mighty officer, but the learned Special Judge missed the track.

13. Reference to the Judgment of "Vasanti Dubey Vs. State of Madhya Pradesh ((2012)2 SCC 731)", was certainly misplaced. In the said case the Judge dealing with the matter was frustrated by the persistent negative report furnished by the police. However, on appreciation of material, the Supreme Court recorded, already there were findings of Lokayukta of a particular State of no material against the said accused. The learned Judge should not have ignored this aspect.

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14. The Hon'ble Supreme Court in the matter of "State of Maharashtra Through CBI Vs. Mahesh G. Jain" in Criminal Appeal no. 2345 of 2009 decided on May 28, 2013 also indicated about the parameters concerning sanction.

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15. In the result, the order of the learned Special Judge, accepting report under Section 169 of the Cr.P.C. is set aside. The report under Section 169 of Cr.P.C. is rejected. The learned Special Judge or the Investigator to follow the legal course in the

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matter. Learned DGP to forward case papers to appropriate Sanctioning Authority to pass orders in accordance with law. Observations are prima facie in nature."

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8. Heard learned counsel appearing for the parties. Learned Senior Counsel submits that the appellant has unblemished service since 1995 and he has been falsely implicated in this case so as to tarnish his image and spoil his career. The legal advisor in the Anti-Corruption Bureau was a

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retired Judge of the special court for trying offences under the PC Act, and on his legal advice only, the Director General of Police came to the conclusion that there was no ground for proceeding against the appellant. It is further submitted that the Magistrate of competent jurisdiction, after going through the

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entire records and having taken an informed decision not to proceed against the appellant, the High Court is not justified in setting aside the said order merely because another view is also possible. Learned Counsel for the respondents on the other hand submit that the High Court in revision was fully

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justified in looking into the merits of the case and directing to proceed against the appellant. Whether there is evidence so as to ultimately enter conviction is not what is required to be seen at the time of taking cognizance; what is required is only to see whether there is sufficient ground for proceeding in the case.

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9. At the outset, we make it clear that wherever the reference is made by the investigating officer or the courts to 169 Cr.PC, the same has to be read as a reference to Section 173 Cr.PC. Section 169 Cr.PC provides for the release of the accused when evidence is deficient, whereas the report on completion of investigation is under Section 173 Cr.PC. For easy reference, we may quote the relevant provision:

> "**169. Release of accused when evidence deficient.**- If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial."

What is submitted by the investigating officer on 05.07.2011 is in fact a report on completion of investigation under Section 173 Cr.PC.

10. Two questions arise for consideration:

> i. Once the Magistrate of competent jurisdiction, on proper application of mind, decides to accept the closure report submitted by the police under Section 173(2) Cr.PC, whether the High Court is justified in setting aside the same in exercise of its revisional jurisdiction merely because another view may be possible?
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> ii. Whether the High Court is within its jurisdiction to direct the investigating officer to make a request for sanction for prosecution from the competent authority?

A 11. At the stage of taking cognizance of a case what is to be seen is whether there is sufficient ground for taking judicial notice of an offence with a view to initiate further proceedings. In *S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. and others,*[1] this Court has analysed the B process and it has been held as follows:

> "**19.** The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with C reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiate proceedings in respect of such offence said to have been committed by someone.
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> **20.** "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal E proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and F no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

12. The above view has been further endorsed in *Bhushan Kumar and another v. State (NCT of Delhi) and another*[2] holding that:

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> "**11.** In *Chief Enforcement Officer* v. *Videocon International Ltd.* (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely

1. (2008) 2 SCC 492.

H 2. (2012) 5 SCC 424.

means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code."

13. In *Smt. Nagawwa v. Veeranna Shivalingappa Kinjalgi and others*[3], the extent to which the Magistrate can go at the stage of taking cognizance has been discussed. To quote:

"5. ... It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the

3. (1976) 3 SCC 736.

A Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. ..."

B 14. Cognizance is a process where the court takes judicial notice of an offence so as to initiate proceedings in respect of the alleged violation of law. The offence is investigated by the police. No doubt, the court is not bound by the report submitted by the police under Section 173(2) of Cr.PC. If the report is that no case is made out, the Magistrate is still free, nay, bound, if C a case according to him is made out, to reject the report and take cognizance. It is also open to him to order further investigation under Section 173(8) of Cr.PC. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has D passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable E misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with F the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly G unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.

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15. The whole purpose of taking cognizance of an offence under Section 190(1)(b) Cr.PC is to commence proceedings under Chapter XVI of the Cr.PC by issuing process under Section 204 Cr.PC to the accused involved in the case. No doubt, it is not innocence but involvement that is material at this stage. Once the legal requirements to constitute the alleged offence qua one of the accused are lacking, there is no point in taking cognizance and proceeding further as against him.

16. It is to be noted that in the first complaint filed by the second respondent - the *de facto* complainant, there is no allegation for any demand for bribe by the appellant. The allegation of demand is specifically against accused no.2 only. That allegation against the appellant is raised only subsequently. Be that as it may, the only basis for supporting the allegation is the conversation that is said to be recorded by the voice recorder. The Directorate of Forensic Science Laboratories, State of Maharashtra vide Annexure-B report has stated that the conversation is not in audible condition and, hence, the same is not considered for spectrographic analysis. Learned Counsel for the respondents submit that the conversation has been translated and the same has been verified by the panch witnesses. Admittedly, the panch witnesses have not heard the conversation, since they were not present in the room. As the voice recorder is itself not subjected to analysis, there is no point in placing reliance on the translated version. Without source, there is no authenticity for the translation. Source and authenticity are the two key factors for an electronic evidence, as held by this Court in *Anvar P.V. v. P.K. Basheer and others.*[16]

17. The Magistrate, having seen the records and having heard the parties, has come to the conclusion that no offence is made out against the appellant under the provisions of the PC Act so as to prosecute him. Even according to the High Court, "the crux of the matter is the conversation between the

4. 2014 (10) SCALE 660.

A complainant and the accused no.1 of 22.11.2010". That conversation is inaudible and the same is not to be taken in evidence. Therefore, once the 'crux' goes, the superstructure also falls, lacking in legs. Hence, prosecution becomes a futile exercise as the materials available do not show that an offence B is made out as against the appellant. This part, unfortunately, the High Court missed. "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. ..."*(Pepsi Foods Limited and another v. Special Judicial Magistrate and others*[5], Paragraph-28). The C process of the criminal court shall not be permitted to be used as a weapon of harassment. "Once it is found that there is no material on record to connect an accused with the crime, there is no meaning in prosecuting him. It would be a sheer waste of public time and money to permit such proceedings to continue D against such a person"(See *State of Karnataka v. L. Muniswamy and others*[6]. Unmerited and undeserved prosecution is an infringement of the guarantee under Article 21 of the Constitution of India. "... Article 21 assures every person right to life and personal liberty. The word person1al liberty is of the widest amplitude covering variety of rights which E goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme law, the Constitution. ..."(*State of Bihar v. P.P. Sharma, IAS and another*[7], Paragraph-60).

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18. Once the prosecution is of the view that no case is made out so as to prosecute an accused, unless the court finds otherwise, there is no point in making a request for sanction for prosecution. If the prosecution is simply vexatious, sanction G for prosecution is not to be granted. That is one of the main considerations to be borne in mind by the competent authority

5. (1998) 5 SCC 749.

6. (1977) 2 SCC 699.

H 7. 1992 Supp(1) SCC 222.

while considering whether the sanction is to be granted or not. In *Mansukhlal Vithaldas Chauhan v. State of Gujarat*[8], this Court has in unmistakable terms made it clear that no court can issue a positive direction to an authority to give sanction for prosecution. To quote:

> **"32.** By issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction and to act only in one way, namely, to sanction the prosecution of the appellant. The Secretary was not allowed to consider whether it would be feasible to prosecute the appellant; whether the complaint of Harshadrai of illegal gratification which was sought to be supported by "trap" was false and whether the prosecution would be vexatious particularly as it was in the knowledge of the Government that the firm had been blacklisted once and there was demand for some amount to be paid to the Government by the firm in connection with this contract. The discretion not to sanction the prosecution was thus taken away by the High Court."

19. The High Court exceeded in its jurisdiction in substituting its views and that too without any legal basis. The impugned order is hence set aside. Appeal is allowed.

Kalpana K. Tripathy Appeal allowed

1. (1997) 7 SCC 622.