

**Ganesh Damodar Datar, Manager, United Commercial Bank Vs. State of Maharashtra and anr.**

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**Court :** Mumbai

**Decided On :** Aug-17-1982

**Reported in :** 1982(2)BomCR612

**Judge :** B.J. Rele, J.

**Acts :** [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 102B, 109 and 477; [Evidence Act, 1872](#) - Sections 35

**Appeal No. :** Criminal Revision Application Nos. 558 and 559 of 1981

**Appellant :** Ganesh Damodar Datar, Manager, United Commercial Bank

**Respondent :** State of Maharashtra and anr.

**Advocate for Def. :** J.A. Barday, A.P.P.

**Advocate for Pet/Ap. :** R.M. Agarwal, Adv. in Rev. App. No. 558 of 1981, ;S.M. Paranjape, Adv. in Rev. App. No. 559 of 1981

**Judgement :**

B.J. Rele, J.

1. These two revision applications are disposed of by this common order as the facts giving rise to these two revision applications are identical and the order passed by the learned Special Judge are also in identical terms.

2. The petitioner was at the relevant time Manager of the Aurangabad Branch of the United Commercial Bank. The second respondent in both these cases are the customers of the bank. It is the prosecution case that between January 1971 and July 1973 the petitioner and the second respondent in each of the above two cases hatched a criminal conspiracy to cheat the bank. In the first case, that is Special Case No. 1 of 1976, it is the prosecution case that the bank was cheated by discounting bills and cheques without there being any sanctioned limit in favour of the customer and by crediting the proceeds by such bills and cheques before realisation from the drawee bank viz., Saraswat Co-operative Bank Limited, in the account of M/s. Anjali Cinerium, Aurangabad or M/s. Anjali Theatres, Aurangabad, of which the second respondent was a partner or M/s. Savera Tourist Transport, Aurangabad, of which the second respondent is the proprietor. It is the further case of the prosecution that the petitioner did this without charging over-due interests and commission, and, therefore, in respect of these bills, the bank claimed to have suffered a loss of Rs. 2198.52 on account of over due interest and Rs. 254/- on account of commission. In

the second item, the bank is stated to have suffered a loss of Rs. 4110.95 on account of over-due interest and Rs. 304.20 on account of commission, and in the third item, the bank is alleged to have suffered a loss of Rs. 13,035.28 on account of over-due interest and Rs. 175/- on account of commission.

3. In Special Case No. 2 of 1976, the bank is alleged to have been cheated by one bill of Rs. 48,061.20 drawn on Controller of Defence Accounts (Southern Command) Poona, was falsely shown in the bill purchase register as purchased by the bank in the account of the second respondent and credit for the said amount was given in the said account and a false statement of realisation was also shown, thereby defrauding the bank in the sum of Rs. 48,061.20 plus Rs. 3649.22 being interest on the said amount. Further 22 call-deposit receipts of a total amount of Rs. 1,84,090/- were issued on 2-1-1973 by the petitioner to the second respondent in which the balance at the close of business on 1-1-1973 was debit of Rs. 47,706.28 and balance at the close of business on 2-1-1973 was credit of Rs. 23,294.12. There was neither a debit voucher nor a cheque debt in consideration of the said call-deposits. That in respect of this, it is the prosecution case that instead of 22 bills, only 11 bills are shown in the books and records of the bank.

4. On these facts, two special cases were filed before the learned Special Judge, Bombay, being Special Case No. 1 of 1976 wherein the petitioner and M.D. Save, the customer are joined as the accused, and Special Case No. 2 of 1976 wherein the petitioner and Sardar Tarlochansingh are joined as accused.

5. On the above mentioned facts, charges under section 120-B of the Indian Penal Code as also under section 5(1)(d) of the [Prevention of Corruption Act, 1947](#) read with section 5(2) of the said Act, as also under section 477 read with section 109 of the Indian Penal Code were framed against the petitioner and the second respondent in each of the above two cases. Before even the hearing of the cases commenced, the order granting sanction was challenged by the petitioner. The learned Special Judge, therefore, proceeded to consider the objection to the order granting sanction and recorded evidence of Shankaran Subramanian, the then Deputy General Manager of the bank in Special Case No. 1 of 1976, and of Vishashwar Desai, Managing Director and the Chairman of the Board of Directors of the bank at the relevant time, in Special Case No. 2 of 1976. It was urged on behalf of the petitioner before the learned Special Judge that in Special Case No. 1 of 1976 witness Subramanian did not apply his mind before granting the sanction. Secondly, there was no material before witness Subramanian for according sanction and the authority of witness Subramanian to accord sanction was also challenged. The authority was challenged on the basis that there is nothing on record to show that the person who issued the power of attorney on behalf of the bank in favour of witness Subramanian had in fact the authority to do so, inasmuch as the Rules of the bank were not produced inspite of several opportunities being granted to the bank to produce the same. In Special Case No. 2 of 1976 it was urged that original sanction to prosecute was given by Subramanian, but then another sanction to prosecute was issued by witness Desai as Managing Director and Chairman of the Board of Directors of the bank. It was urged that in passing the order of sanction of prosecute, witness Desai has not applied his mind, but the order of sanction granted by Subramanian was mechanically copied and only the signature has been put, and, therefore, there being no application of mind, the order of sanction is bad.

6. The learned Special Judge held that the sanction was granted on the report of the

C.B.I. Bombay and the report was an exhaustive one covering both Special Cases Nos. 1 & 2 of 1976 and 'if the sanction order is read in between the lines it shows that the facts were placed before the sanctioning authority. The sanctioning authority came to the conclusion that these facts amount to an offence. It also shows that the sanctioning authority did feel the bank was defrauded. In my judgment, this is tantamount to the disclosure of facts leading to the offence and the grant on satisfaction of the sanctioning authority'. On this basis, the learned Special Judge repelled the contentions raised by the defence Counsel that the sanctioning authority did not apply its mind and there was no material before the authority. In regard to the power of attorney, the learned Special Judge observed that what was produced before the Court was a power of attorney as certified by the Notary Public and applying section 35 of the Evidence Act, the learned Special Judge raised a presumption in favour of the holder and hence passed an order that the sanction order Exh. 9 in Special Case No. 1 of 1975 was proper, and so also sanction order Exh. 12 is also proper. As against the said order, the petitioner has preferred these two revision applications.

7. Shri Agarwal, the learned Advocate appearing on behalf of the petitioner, has submitted that there was no application of mind on the part of the sanctioning authority, that it is not shown that the person who granted the power of attorney in favour of witness. Subramaniyan had the power to do so and in absence of such an evidence, the mere production of power of attorney is not sufficient to hold the power within the agent and that no grounds of satisfaction are disclosed on the face of the sanction. Shri Paranjape has also adopted the arguments of Shri Agarwal and he has submitted that in his case the original sanction was given by witness Subramaniyan and later on the sanction was given by witness Desai which is word by word the same as granted by Shri Subramaniyan, and hence there was no application of mind on the part of witness Desai in granting the sanction. Shri Barday expressed his indignation during the arguments that inspite of all efforts made by him the Rules of the bank have not been produced, the original power of attorney has also not been produced, so also the report of the C.B.I. Bombay has not been produced and inspite of this he endeavoured to sustain the order of sanction.

8. Section 6 of the [Prevention of Corruption Act, 1947](#) states that no Court shall take cognizance of an offence punishable under section 161 or 164 or of section 165 of the Indian Penal Code or sub-section (2) or sub-section (3)(a) of section 5 of the Act alleged to have been committed by a public servant except with the previous sanction and (c) in the case of any other person of the authority competent to remove him from the office. The grant of sanction is not an idle formality, but is a sacrosanct Act meant to uphold protection to public Government servants against frivolous prosecutions, and the provisions of the Act in regard to the granting of sanction must be complied with. If any authority is needed for this proposition, it is to be found in the case of Mohd. Iqbal Ahmed v. State of Andhra Pradesh, : 1979CriLJ633 . In Special Case No. 1 of 1976 the sanction has been accorded by witness Subramaniyan. Shri Subramaniyan has in his evidence stated, that he got himself satisfied from the report of the C.B.I. It is only the report of the C.B.I. that was seen by witness Subramaniyan and on the basis of that report witness Subramaniyan granted the sanction. The report is not produced before the learned Special Judge, and inspite of ample opportunities being given to the prosecution to produce the report before me, the report has not been produced before me. In the absence of the report, it is not possible to Judge as to what were the contents of the report and what were the Acts which were taken into consideration by the sanctioning authority in according the

sanction. There is nothing on record to show whether the report was accompanied by any papers, and on the facts and circumstances of the present case, it was necessary to show that for the reasons that a charge has been framed as follows :

'That in pursuance of the said conspiracy and in prosecution of the said common object, you, during the aforesaid period at Aurangabad cheated the United Commercial Bank, Aurangabad by dishonesty inducing them to deliver to you or to consent for your retaining property of the United Commercial Bank of a total value of Rs. 1,55,948.17'.

and thereafter four items have been given as follows :

Item 1-Rs. 2198.52 Plus Rs. 54/-.

Item 2-Rs. 4810.95 Plus Rs. 304/-.

Item 3-Rs. 7038.22 Plus Rs. 80/-.

Item 4-Rs. 13035.28 Plus Rs. 175/-.

This surely does not total Rs. 1,55,948.17. It is not known as to on what basis sanction to prosecute the accused for the said amount of Rs. 1,55,948.17 was issued. Shri Barday, the learned Public Prosecutor has, however, tried to explain this discrepancy by stating that this amount has been taken from the sanction. Now, in the sanction the amount referred to is Rs. 1,28,000/- in respect of five bogus bills. As to why it is stated that the bills are bogus is not stated in the sanction itself. What prompted the sanctioning authority Shri Subramaniyan to come to a conclusion that the five bills were bogus is not stated in the sanction. Shri Subramaniyan further admits in the cross-examination that it was only the report that was submitted to the bank. Therefore, the sanctioning authority has granted sanction without looking into the facts and circumstances of the case and has granted the sanction only on the basis of this police report.

9. Shri Subramaniyan admitted that the sanction order was drafted by the Legal Department attached to the office. He then scrutinised the draft. Shri Subramaniyan does not state that the sanction order was drafted in accordance with the instructions issued by him. Neither does he state that on scrutiny he found that the sanction order was in accordance with such instructions. In absence of this evidence a probable conclusion that can be reached is that the sanction order was drafted by the Legal Department and witness Subramaniyan merely put his signature on it. This conclusion is fortified by the further evidence of witness Subramaniyan. He stated 'I do not know whether the cheques which are mentioned in the sanction order were genuine or otherwise, because I had not seen these bills or cheques. Similarly I do not know the particulars of these cheques of Rs. 40,000/- which is mentioned in the sanction order, because I did not see that cheque. I have not verified from the official record whether these Rs. 40,000/- have been reimbursed to the bank. I do not know whether it was a genuine or a bogus cheque because I did not see it'. This evidence shows that in all probability witness Subramaniyan had merely signed the draft sanction order which was prepared by the Legal Department of the bank.

10. It was also necessary for the prosecution to show by cogent and reliable evidence that the person who granted the power of attorney to Subramaniyan to appoint and

dismiss employees in the bank had in fact the authority to do so. The mere production of the power of attorney is not sufficient to show the authority in the executant of the power of attorney to execute such a power of attorney and to confer such power. It was necessary for the prosecution to show that the executant of the power of attorney had the power to execute the power of attorney also the power to confer powers upon the attorney holder. In the absence of any evidence to that effect, it cannot be presumed by a mere production of power of attorney that the executant of the power of attorney had the power to execute the power of attorney and the power to confer powers upon the power of attorney holder. It was specifically for these reasons that I had given ample opportunity to the prosecution to produce the rules of the bank and it is rather surprising that the rules were not produced, neither before the Special Judge nor are the rules produced before me inspite of ample opportunity. In the absence of the Rules, no presumption can be raised that the power of attorney was duly executed and that the executant had the power to execute the power of attorney. There is further aspect of the matter and that is that the report of the C.B.I. is not before the Court. It was not produced before the learned Special Judge and has not been produced before me and no explanation is forthcoming as to why the bank has not produced that report. In the absence of the report, the only facts that are before the Court in regard to the sanction is the evidence of Subramaniyan that he had read the report. The contents of the report are not produced before the Court and the satisfaction of the sanctioning authority based on the report, is therefore, cannot be Judged in the absence of the report, and this is another infirmity, in my opinion, in the grant of sanction in this case.

11. In Special Case No. 2 of 1976, the sanction is accorded by the Chairman. Witness Desai stated that he was appointed Managing Director and Chairman of the Board of Directors in December 1972, and in 1975 the powers of removal were vested in the respective officers by virtue of the powers of attorney issued by the Board of Directors of the bank. The powers of attorney are kept permanently at the Head Office at Calcutta. There is such a power of attorney issued by the Board of Directors in his favour. In regard to the sanction, witness Desai states that he directed the Department to send the C.B.I. regard to the Law Department of the bank for preparing the draft of the order for sanctioning prosecution. He has satisfied himself before sending these papers that there was a case for sanctioning prosecution. The power of attorney which he has relied upon, is a power of attorney granted to him as Deputy General Manager. He has not produced the power of attorney granted to him as Chairman of the bank and since it is on the basis of this power of attorney by which Shri Desai claims to be authorised to remove the petitioner that he granted the sanction. He has, however, denied that he cannot Act as Managing Director under the power of attorney. As Managing Director he was the Chief Executive of the bank. This may be so, but as Chief Executive whether he had the power to remove an employee is not stated. Witness Desai having acted on the power of attorney which he has in his favour as Deputy General Manager, he cannot rely upon that power of attorney to sanction prosecution as Chairman of the bank. This, in my judgment, is an infirmity in the sanction granted by the Chairman in Special Case No. 2 of 1976 and, therefore, in conclusion it must be stated that the sanction accorded in both the cases is not legal and proper. The prosecution, however, would be entitled to grant fresh sanction for prosecuting the accused.

12. It follows from this that the special cases based on these sanctions cannot proceed. It is, however, clarified that the prosecution may accord fresh sanctions. Rule absolute accordingly.

