

M.C.O.C. SPECIAL CASE NO. 21 OF 2006**DATE:3RD NOVEMBER 2011****EXT. NO.1699****DEPOSITION OF WITNESS NO.160 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Awadhesh Prasad Sinha

Age : 64 years

Occupation : Service

Res. Address : 91, Praneet, Dr. Jaywant Palkar Road, Mumbai-30

Examination-in-chief by SPP Raja Thakare for the State

1. I am the Vice-Chairman of the Maharashtra Administrative Tribunal, Mumbai Bench at present. I retired from the Indian Administrative Service on 30/06/07 as Addl. Chief Secretary, Home, Government of Maharashtra. I worked as such from 2005 till my retirement. As per provisions of Section 45 of the Unlawful Activities (Prevention) Act, the power to accord sanction for the prosecution of the offences under Chapter-III vests in the Central Government and by an order the Central Government had delegated that power to the Secretary, Home Department, Government of Maharashtra. As far as offences under Chapter-IV and VI are concerned, the powers are

vested in the State Government and are exercised by the minister in-charge of the Home Department. As far as the offences under the Passport Act are concerned, the power to accord sanction for prosecution vests in the Central Government and by an order the Central Government had delegated the power to the State Government, which are to be exercised by the minister in-charge of the Home department.

2. The Commissioner of Police sent a proposal for according sanction for prosecuting the accused, who were caught in the case of the bomb blasts of 11/07/06 in the railways, under the provisions of various Acts. That proposal was initiated by the ATS, Mumbai and it was received through the Commissioner of Police. It was a detailed proposal running into more than 40 pages and was accompanied by two volumes of supporting papers. As per the usual practice, such proposals are examined at different levels in the Home Department and then by the Law and Judiciary Department in the State Government before being put up to the competent authority for according sanction. The Home Department was competent to accord sanction under the Unlawful Activities (Prevention) Act and the

Passport Act, therefore, they considered the proposal under these two Acts only. After the proposal was examined at the lower level in the Home Department and in the Law and Judiciary Department, it came to me for the sanction under Chapter-III of the UA (P) Act and through me for the sanction for prosecution under Chapter-IV and VI under the UA (P) Act and under the Passport Act.

3. As secretary in-charge of the Home Department, I studied the entire proposal together with the comments of other officers and departments and after I was *prima facie* and subjectively satisfied that the prosecution under the provisions of the above law was justified, I accorded the sanction for prosecution for the offences under Chapter-III of the UA (P) Act. I then forwarded the file to the minister in-charge of the Home Department for consideration of the rest of the proposal under the UA (P) A and the Passport Act. I also agreed with the proposal of the department that if the minister thinks it fit to accord sanction for prosecution under the above two Acts, then a common sanction order would be issued under my signature in accordance with the rules and regulations of the government. The proposal was received in the Home Department in the middle of November 2006

and the sanction for prosecution was accorded in the first week of January 2007. The sanction order now shown to me is the same, it bears my signature and its contents are correct. (It is marked as **Ext. 1700**).

Cross-examination by Adv Wahab Khan for A2, 7, 10, 12 & 13

4. It is not true that I and the Government of Maharashtra did not have the power to accord sanction under clause-(i) of sub section (1) of section 45 of the UA (P) Act. These powers are in respect of sections 10 and 13 of that Act under Chapter-III. It is not true that these powers were only vested in the Central Government upto 21/06/07 and were not vested in the secretary in-charge of the Home Department of the Government of Maharashtra. Before that date the Central Government had issued an order delegating the said power to the secretary in-charge of the Home Department of the Government of Maharashtra. (Witness is shown a photocopy of a letter addressed to the Chief Secretaries of all State Governments by the Under Secretary to the Government of India forwarding a photocopy of a notification dated 21/06/07 authorizing the secretaries of the State Government to exercise powers to sanction prosecution

in respect of offences punishable under Chapter-III of the Act). I have nothing to say about this notification, but as on 02/01/07 I had the power to accord sanction. I will not be able to produce the order or notification empowering me to accord sanction, because I am a retired person now and the prosecution may be in a position to produce it. (Learned advocate calls upon the witness and the prosecution to produce the order/notification. The learned SPP hands over a photocopy of an order to the witness, which is taken from the file that is with an assistant in the Home Department, Government of Maharashtra by name Prasad Gangurde, who is sitting in the court. It is shown to the learned advocate. It is taken on record and marked as **Ext.1706.** Prosecution is directed to give copies of the order to the learned advocates for the accused). The power to accord sanction for prosecution in me as well as the Government of Maharashtra was in force on 02/01/07. The powers under the Act as they stood on that date were exercised by me. As per the order dated 27/09/01, Ext. 1706, the Central Government authorized the secretaries of all State Governments and Union Territory Administration in-charge of the Home Department to exercise the powers to sanction prosecution in

respect of offences punishable under the UA (P) Act, 1967 triable by a court in their respective States and Union Territory. The Act was amended in 2004. The power to accord sanction was under clause (i) of Section 45 of the Act and it is not changed by the amendment Act of 2004.

5. I did not prepare any file as there was no question of preparing any file at my level. I do not know whether the file containing the documents of this proposal is available in the court. I do not know whether the concerned officer from the Mantralaya has come to the court with the file. I do not know whether the learned SPP has taken the order from the concerned officer from the Mantralaya and given it to me. I do not see the need to verify from the file brought by the concerned officer from the Mantralaya. I cannot produce the sanction file as I retired from the State Government service.
6. It is true that detailed description of the documents that were perused is not given in the sanction order. The sanction order does not reflect my meeting with any of the ATS officers. I did not have meeting with any ATS officer at that time. It is true that the proposal is not before me now. I cannot recall the exact date when the proposal

was received in my office, which official received it and whether any inward number was given to the proposal. The sanction order does not mention the inward number. I do not remember for how many days I personally studied the proposal. It was studied by at least ten people from my and other departments. I do not remember the number of pages of the two volumes of supporting papers that were with the proposal. I do not remember how much time I consumed for studying the proposal or the time consumed by the officers of my department. The file was studied by the officers of my department individually. I do not recall on which dates they studied it. I do not recollect whether a draft sanction order was sent, however I clearly recall that the sanction order that was signed by me was prepared in my department under my directions and supervision. I do not remember whether I have accorded another sanction against the accused no.4 in this case on the same set of facts. I know about the doctrine of double jeopardy. (Witness is shown a certified true photocopy of a sanction order dated 15/01/07). This order bears the facsimile of my signature. (The certified true photocopy of covering letter dated 15/01/07 from Jt. Secretary to the Government of

Maharashtra, Home Department (Special) to the Special IG and Jt. CP, ATS, Mumbai is received in evidence and marked as **Ext.1708**. The certified true photocopy of sanction order dated 15/01/07 is marked as **Ext.1709**). I cannot say whether this order is based on the same set of facts and books that were considered while giving the sanction dated 02/01/07. Booklets purportedly published by SIMI were a part of the material that was sent with the proposal for which I gave the sanction on 02/01/07. I do not recollect whether they were in original or photocopy form. I had not gone through the booklets, because all of them were not in a language that I could read. Translation of those booklets were not sent to me. I did not ask for its translation from the ATS. Some of the books were in Arabic script. I am saying this as per my knowledge. I cannot tell the language used in those books. I did not try to find out whether any translator was available. If the books are shown to me and if I recollect then I will identify them.

7. It is not true that I signed the draft sanction order sent by the ATS without application of mind, that no proposal or document or books or pamphlet in any language was sent to me.

8. I did not suspect any discrepancy in the sanction order signed by me. I did not instruct the Jt. Secretary to convey to the ATS to report in case of any discrepancy. (Witness is shown the forwarding letter dated 02/01/07 by the Jt. Secretary to the Government of Maharashtra, home Department (Special) addressed to the Special IG, Jt. CP, ATS, Mumbai. As the contents are referred, it is marked as **Ext.1710**). It is true that in the last two lines it is so written. It is not true that I gave a blanket sanction order. Witness volunteers – I recollect that I accorded sanction for a much more limited ambit than what was asked for. I had also accorded sanction for prosecution of the accused for any other offences committed by them. Witness volunteers - the intention was to cover other offences, if any, under the UA (P) Act. The schedule in the order was not provided by the ATS. It was prepared by my department on the basis of the proposal submitted by the ATS. It comprises of three columns. First column is about the name and address of the accused. Second column relates to the provisions of law under which the crime was registered in the relevant police stations. The contents of the second column do not show the sections for which sanction was accorded. The third column

contains summary of the facts regarding the criminal act of the accused person. All the three columns do not mention the particular sections of particular Act for which sanction was asked for.

9. The first para is about the contains of the proposal. The second, third and fourth paragraphs are the observations and conclusions of the government on the basis of the report received by the government. The fifth paragraph is in respect of exercise of power. It is true that it does not mention the particular section of a particular Act for which the sanction was given. That is the last paragraph before the schedule. Witness volunteers – the sections are mentioned in the second paragraph.

Cross-examination by Adv P. L. Shetty for A3, 8, 9, 11

10. (Witness is shown Ext. 1706). I do not recollect having received any such letter delegating the power after 27/09/01 upto 02/01/07. I acted on the basis of the power given in this letter. I do not recollect that there were many occasions for me to accord sanction under the UA (P) Act between 2001 and 2007. I retired in 2007. I am not sure whether the mention of section 17 in this order is a mistake. It may be a typographical/clerical mistake, but I am not sure. I did not

ask the Central Government any clarification about it upto the date of my retirement. I did not point it out to the Central Government as I did not feel it necessary. I am not aware whether I have received any such order after the amendment in the UA (P) Act in 2004 till I gave the sanction in this case. (Witness is shown Ext. 1703). I do not know why this order was issued because section 45 (i) was never amended. This letter was received in my department after the date of my retirement on 30/06/07.

11. R. N. Deshmukh was a subordinate officer. He did not prepare the letter Ext. 1710 under my supervision or to my knowledge. I do not know who typed page 1 of the sanction order or the other pages. I cannot tell the exact date of the proposal. There was a covering letter with which the proposal was sent. There were numerous documents in two volumes that were sent with the proposal. There were books, pamphlets, statements, police reports and copies of ban order. There were several books, but I do not remember their number. All the books were not in Arabic script, some were in English. I do not remember the number of books in English and Arabic. I did not go through the books in English. I just glanced

through them. I do not recollect where they were printed. I do not remember now the name of the publisher. The note that was received from the Law and Judiciary Department was finally approved by the secretary, but I do not recollect his name. I do not remember the dates when the file was sent to them, when it was considered and when it was received back. The file had been considered by the Jt. Secretary in-charge of the subject, the Jt. Secretary (Law), Home Department and some other officers at the lower level, till the file come to me. I recollect that R. N. Deshmukh was one of the officers who processed the file. Every officer does not prepare a separate note. I do not recollect who of my subordinate officers actually wrote the notes in the file, but they all agreed with the proposal. I finalized and signed the sanction order on the basis of the notes of officers at the lower levels and study of the material that was produced before me. If an error apparent on the face of the record is brought to my notice by the proposing or any other authority, then I may issue corrigendum or may take some other corrective measures. It may be that R. N. Deshmukh, Jt. Secretary has so written in his covering letter, Ext. 1710, by way of abundant precaution. I do not know

whether it was his usual practice, but there is nothing objectionable about it.

(Adjourned as court time is over).

Date: 03/11/11

**(Y.D. SHINDE)
SPECIAL JUDGE**

Date : 04/11/11
Resumed on SA

12. The delegation of power by the Central Government to accord sanction for the offences under Chapter-III of the UA (P) Act are to the Secretary in-charge of the Home department of the State Government. The power of according sanction under section 45 (ii) vests in the State Government and is exercised by the Home Minister. I may not be able to say now which official from my department prepared the draft of the order including the schedule. According to my recollection the proposal was not accompanied with the draft of the sanction order and the schedule. According to my recollection it is not correct that the proposal was accompanied with the draft of the sanction order and the schedule. I do not agree that the sanction that I have to accord would be uninfluenced by the observations made by the subordinate officers. The sanction order was placed before the Home Minister R. R. Patil. I do not remember the date when it was placed. The sanction order Ext. 1700 does not bear the signatures or initials of approval of the Home Minister as it was done under my signature under his authority and as this is not the procedure. The

entire order including the schedule reflects my subjective satisfaction. I cannot indicate any specific paragraph in the order reflecting my subjective satisfaction. The format of the paragraphs in the first page of the order is as per the recognized practice in government and is prepared under my directions and supervision. The paragraph 3 is not the only contents of the order that reflect my subjective satisfaction.

Q. Whether the words '*prima facie*' in paragraph 3 that are written in bold letters and are underlined are as per your instructions?

A. The phrase *prima facie* has been highlighted with my approval.

There is no other reason except to highlight the words. I have no idea as to at which table was the computer from which the printout of the sanction order and schedule was taken out. I have no idea whether the format of the sanction order was available in the computer. I do not know whether the printout of each page of the sanction order including the schedule was taken out from the same computer. It is true that the forwarding letter Ext. 1710 and the sanction order have continuous page numbers 1 to 8. I do not know whether all these eight pages are printed by one person. I do not know whether the

printouts of all the pages were taken out from the same computer. I cannot explain about the fine print at the bottom of all the pages, as it is a clerical noting and does not form part of the order. I do not remember whether R. N. Deshmukh, Jt. Secretary to the Government of Maharashtra, Home Department was given power to accord sanction for prosecution under any Act. I have not gone through the file of the proposal after I accorded the sanction. I did not direct the staff in the Home Department to produce the file before me after I received the summons in this case to attend for giving evidence, as I received the summons late in the evening at my residence the day before yesterday. Some officer from the ATS brought the summons. I have not directed any ATS officer to produce the file before me till now. (Witness is shown Ext. 1603). I have no recollection whether I had no role to play in passing this order. It cannot be said that I am seeing the order for the first time. In this order also the phrase *prima facie* are made bold and underlined. The first page of the sanction order also contains five paragraphs and the format is similar. It is true that if these paragraphs are compared with the five paragraphs in the first page of Ext.1700, it can be said the except the particulars of the

name of the accused, material facts of the case, sections under which he is prosecuted and the section and Act under which the sanction is given, all other contents are similar.

- 13.** The proposing authority had asked for sanction for prosecution for all the offences that are described in the second column of the schedule in the order. The ATS and the Commissioner of Police both asked for the sanction. I do not remember whether I had the power to accord sanction for prosecution under the provisions of the MCOC Act. I do not know whether sanction for prosecution for the offences under the Indian Penal Code mentioned in the column was necessary. I was not the authority to accord the sanction for prosecution under the provisions of the Explosives Act, 1884, the Explosives Substances Act, 1908, the Prevention of Damage to Public Property Act, 1985 r/w the provisions of the Railways Act, 1989. I do not know whether prior sanction of the State Government is necessary for prosecution under these Acts. I have no record with me now from which I can point out that the proposing authority had asked for sanction for prosecution under all the above Acts.

Q. The proposing authority will not ask for sanction for the offences where sanction is not necessary or for the offences for which I was not authorized to accord sanction.

A. In this case they had asked for sanction for prosecution for all the offences mentioned in the second column of the schedule.

It is not mentioned in the sanction order anywhere about the proposing authority asking me for sanction under all the above Acts and I refusing the sanction. The words 'any other offences' used in the last paragraph are by way of abundant precaution and are intended to cover offences under the said two Acts for which I had power to grant sanction on the basis of the same facts. It did not occur to me on going through the proposal and supporting documents that any other offences other than those alleged were made out. The act of according sanction has a sanctity. The words 'any other offences' are included in the order as per the legal advice to cover offences which may not have been noticed at that time on the basis of the same set of facts. As a sanctioning authority I cannot give a blanket sanction order.

Q. Before according sanction you have to satisfy yourself that the

ingredients of the offences for which the sanction is sought are *prima facie* fulfilled on the basis of the material placed before you?

A. On the basis of the material placed before me I have to be satisfied that in all probability the offences for which the sanction is sought for have been *prima facie* and in all probability occurred.

It is necessary to see from the material whether the ingredients of the offences for which the sanction is sought are *prima facie* and broadly made out. It is not correct that I will not accord sanction even if one ingredient of an offence is missing, because I look at the material broadly. I have to be broadly satisfied that the offences have been committed.

14. (Witness is shown Ext. 1603). In this order also the Jt. Secretary has written the words 'any other offences' as is written in my order. It is not the practice to put the signature below the first page of the order. The government seal is there.

15. It is not true that the sanction order is hopelessly vague, that I had not applied my mind properly and I signed the sanction order that was prepared by my subordinates.

16. I had an occasion to go through the provisions of the

UA (P) Act, 1967 before its amendment. I was not aware about the provisions of the Act as it stood in 2006 and 2007, therefore, I cannot say whether under the original unamended Act of 1967, for any offence under the Act, without the previous sanction of the Central Government no cognizance of any offence under this Act could be taken. I do not remember whether this was the provision under section 17 of the original Act. (Witness is shown section 17 of the original Act). It is true that this provision says that no cognizance can be taken of any offence under this Act except with the previous sanction of the Central Government. It may be that provision for according sanction is made in section 45 after the amendment in 2007. I cannot say whether section 17 mentioned in Ext. 1706 is the correct section as per the original unamended Act. I have acted on the basis of this order. I do not know whether my department has not received the authorization after the amendment in the Act in 2004. It is not true that I did not have the authority to accord sanction under the provisions of the UA (PA) Act after the amendment in 2004.

Cross-examination by Adv Ashiwn Rasal h/f Rasal for A1 & 4 to 6

17. Cross-examinations by adv Wahab Khan and Shetty-

adopted

No re-examination.

R.O.

Special Judge

Date:-04/11/2011

**(Y.D. SHINDE)
SPECIAL JUDGE
UNDER MCOC ACT,99,
MUMBAI.**