

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1433 OF 2015

BHAGWAT JAYRAM JADHAV
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

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WITH
CRIMINAL APPLICATION NO. 5305 OF 2015

SHIVAJI GAURAM TEMKAR
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

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Advocate for Petitioner in WP1433/15 : Mr. K. C. Sant &
Mr. A. V. Pavse

Advocate for Applicant in Appln5305/15 : Mr. Ajit B. Kale

APP for Respondent/State : Mr. S. G. Karlekar

Advocate for Respondent No.4 : Mr. D. D. Pokharkar

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CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ

DATE : 9TH DECEMBER, 2015

PER COURT :

1. The petitioner in Criminal Writ Petition No. 1433/2015 and the applicant in Criminal Application No. 5305 of 2015, both are prosecuted for the offence punishable under Sections 7, 12, 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988. The present petition and the application are filed for quashing of the complaint *inter-alia* charge sheet.

2. The applicant in Criminal Application 5305 of 2015 is the Talathi of village Devlali Pravara, whereas the petitioner in Criminal Writ Petition No. 1433 of 2015 is said to be a helper of the said Talathi. The petitioner in Criminal Writ Petition 1433 of 2015

is not a public servant. He not an employee of the State.

3. The complaint is based on the fact that respondent Nanasaheb Davkhar went to the office of respondent No. 3 with a complaint that for taking entry about the existence of well in the relevant 7/12 extract, Bhagwat Jadhav demanded amount of Rs.600/- on behalf of Shivaji Temkar, Talathi. Amount is accepted by Bhagwat Jadhav and a trap is laid to that effect. On the said averment, charge sheet is also filed.

4. Mr. Sant, learned counsel for the petitioner in Criminal Writ Petition No. 1433 of 2015 states that Bhagwat Jadhav is not a public servant. He is not concerned with working of the office of Talathi. The provisions of Prevention of Corruption Act, 1988 are not applicable to him. According to the learned counsel, when the provisions of statute, under which the offence is alleged, itself is not applicable, the complaint could not have been registered against the petitioner. According to the learned counsel, the complaint, as such, deserves to be quashed.

5. Mr. Kale, the learned counsel for applicant in Criminal Application No. 5305 of 2015 submits that at no point of time, the applicant Shivaji Temkar had demanded any amount nor had accepted any amount from the complainant. As such, the offences as charged against him are also not attracted. Even the complainant, at no point of time, stated that applicant Temkar had

at any point of time demanded amount. The offences as levelled are not attracted. Applicant Temkar had also not authorized any person to accept any amount on his behalf.

6. Mr. Pokharkar, learned counsel for the complainant accepted the fact that the complainant had never made a complaint that Mr. Temkar had at any point of time, demanded any amount. Even affidavit to that effect is filed before the Court and his grievance was only against the applicant Mr. Jadhav.

7. Mr. Karlekar, learned APP submits that as offence is also alleged against Mr. Temkar under Section 12 of the Prevention of Corruption Act, 1988, sanction is not necessary. According to the learned APP, it is the Talathi Mr. Temkar who was authorized to make an entry regarding existence of well which the complainant wanted on his 7/12 extract, to get benefit of Government Scheme. Applicant Mr. Jadhav is a helper of Talathi Mr. Temkar and that Mr. Jadhav had accepted the amount in the office of Mr. Temkar. This fact would establish the offence as alleged against the applicants. The circumstances on record indicate, prima facie, commission of offences on the part of both the applicant and the petitioner. There was no reason for Mr. Jadhav to accept the amount from complainant in the office of Mr. Temkar. The facts on record speak for themselves.

8. We have considered the submissions.

9. The learned APP, on going through the record, eventually had to accept that as far as applicant Mr. Temkar is concerned, there is no demand. Mr. Jadhav, who has accepted the amount and against whom the trap is successful, is not an employee of any Government office. He is not a public servant. The person, who is not a public servant at all, against him the provisions of Prevention of Corruption Act, 1988 are made applicable and offence is registered under the said Act. No provision or position of law is pointed out by the respondents to buttress the view that though Mr. Jadhav is not a public servant and is not an employee of the said office at all, the charges can be leveled against him under the said Act.

10. Section 12 would not apply to the extent of Talathi Mr. Temkar. It reads as under :

“12. Punishment for abetment of offences defined in section 7 or 11.— Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

11. The question of abetment also does not arise here because the said abetment should be in respect of offence punishable under Sections 7 and 11 of the said Act, which is required to be committed by a public servant.

12. Considering the aforesaid aspect of the matter, offence is not made out against the applicant. Even sanction is not obtained as far as applicant Mr. Temkar is concerned.

13. Considering the aforesaid view of the matter, the offence registered with Rahuri Police Station bearing Crime No. II-101/2015 dated 23.09.2015 and Special Case No. ACB/25/2015 pending before the Sessions Court, Ahmednagar, are quashed and set aside.

14. The Criminal Writ Petition and the Criminal Application are accordingly disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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