

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2999 OF 2012

The State of Maharashtra

... Petitioner.
(Org.Complainant)

V/s.

Narendra Lalchandji Mehta

... Respondent.
(Org.Accused)

Mr. V. B. Konde-Deshmukh, APP for the Petitioner -State.

Mr. A.P. Mundargi a/with Sandesh Patil for Respondent No.1.

Mr. M.M. Nazmi a/w. Dilip Shukla for the Intervener/First informant.

CORAM : M.L.TAHALIYANI,J.

DATE : 03rd MARCH, 2015

P.C. :

1 Admit. Heard finally by consent of the parties.

2 This criminal writ petition is allowed to be converted in to a Cri. Revision Application. It be registered accordingly.

3 This Criminal Revision Application is filed by the State against the judgment and order passed by the Special Judge (Anti Corruption), Thane in Special Case No. 11 of 2004, discharging the Respondent, original accused, of the offences

punishable under section 7, 13(1)(d) r/w. section 13(2) of the Prevention of Corruption Act, 1988.

4 Admittedly, the Respondent was a Corporator of the Municipal Corporation of Mira Bhyander, District Thane. The learned Special Judge held that the Respondent was not a public servant and, therefore, he could not have been prosecuted for the offences punishable under the provisions of Prevention of Corruption Act.

5 In my opinion, it is not necessary to discuss the facts of the case in detail. Suffice it to say a trap was laid by the officers of the Anti Corruption Bureau and the respondent was caught, accepting the amount of Rs. 20,000/- from the complainant -Hanumant Malusare.

6 As already stated, the learned Special Judge took the view that the respondent was not a public servant and therefore, the prosecution against him under the Prevention of Corruption Act, 1988 was bad in law. The learned additional public prosecutor Mr. Konde - Deshmukh has submitted that the Hon'ble Supreme Court of India in the case of **Manish Trivedi vs. State of Rajasthan**, reported in AIR 2014 Supreme Court 648, has held that the corporators and councillors are “public servants” as they hold an office by virtue of which they are authorized or required to perform any

public duty. It is submitted by the learned additional public prosecutor Mr. Konde- Deshmukh that the respondent is, therefore, a “public servant” within the meaning of section 2(c) (viii) of the Prevention of Corruption Act.

7 Learned counsel Mr. Mundargi for the Respondent has submitted that the reliance placed by the learned additional public prosecutor on the judgment of the Supreme Court in the case of **Manish Trivedi vs. State of Rajasthan**, (cited supra) to canvass his point is not correct. It is submitted by the learned counsel that the said judgment supports the contention of the Respondent. It was brought to my notice that in the said case 'the member (councillor)' was declared as a public servant because of the provisions of section 87 of the Rajasthan Municipalities Act, 1957. Section 87 of the said Act, reads as under :

“87. Members etc., to be deemed public servants.
– (1) Every member, officer or servant, and every lessee of the levy of any municipal tax, and every servant or other employee of any such lessee shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (Central Act XLV of 1860).

(2) The word “Government” in the definition of “legal remuneration” in section 161 of that Code shall, for the purposes of sub-section (1) of this section, be deemed to include a municipal board”.

8 After having gone through the judgment, I have come to the conclusion that as far as the new Act i.e. Prevention of Corruption Act, 1988 is concerned, the definition of 'public servant' under section 21 of the Indian Penal Code has no relevance. Whether the accused is a public servant or not has to be decided on the basis of the definition of 'public servant' given under section 2 of the new Act of 1988. Section 2(c) defines 'public servant' as under :

“2(c) “public servant” means, –

(i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii) any person who holds an office by virtue of which he is authorized or required to perform any public duty;

(ix)

(x)

(xi)

(xii)

Explanation 1. --- Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2. --- Whenever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

The Hon'ble Supreme Court while dealing with this issue, has observed in para 19 of the judgment as under :

“19. The present Act envisages widening of the scope of the definition of the expression 'public servant'. It was brought in force to purify public administration. The legislature has used a comprehensive definition of 'public servant' to achieve the purpose of punishing and curbing corruption among public servants. Hence, it would be inappropriate to limit the contents of the definition clause by a construction which would be against the spirit of the statute. Bearing in mind this principle, when we consider the case of the Appellant, we have no doubt that he is a public servant within the meaning of Section [2\(c\)](#) of the Act. Sub-section (viii) of Section [2\(c\)](#) of the present Act makes any person, who holds an office by virtue of which he is authorized or required to perform any public duty, to be a public servant. The word 'office' is of indefinite connotation and, in the present context, it would mean a position or place to which

certain duties are attached and has an existence which is independent of the persons who fill it. Councillors and members of the Board are positions which exist under the Rajasthan Municipalities Act. It is independent of the person who fills it. They perform various duties which are in the field of public duty. From the conspectus of what we have observed above, it is evident that Appellant is a public servant within Section [2\(c\)\(viii\)](#) of the Prevention of Corruption Act, 1988.

9 It is very clear from the judgment of the Hon'ble Supreme Court that the Appellant in that case was not declared as a public servant because of the provisions of section 87 of the Rajasthan Municipalities Act. He was declared as a public servant on the basis of the definition given in section 2(c)(viii) of the Prevention of Corruption Act, 1988. It is thus obvious that the reliance placed by the learned Special Judge on the judgment which took into consideration the definition of "public servant", as defined under the old Act of 1947, was absolutely wrong. The said order is required to be set aside.

10 Hence, I pass following order :

- i. This Criminal Revision Application is allowed.
- ii. The order passed by the Special Judge (Anti Corruption), Thane, below Exh. 15 in Special Case No. 11 of 2004 is set aside.

iii. Trial to proceed further in accordance with the law.

This order is stayed for a period of four weeks, on the request of the learned counsel Mr. Mundargi for the Respondent.

(JUDGE)

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