

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

CRIMINAL WRIT PETITION NO. 366 OF 2016

Shivaji Madhavrao Pawar,
Age : about 32 years, Occu- Service,
R/o. At Warud (Samad), Post-Paheni,
Tal. Sengaon, Dist. Hingoli. ... Petitioner

VERSUS

1. The State of Maharashtra.
2. The Police Inspector, Anti Corruption Bureau at
Hingoli, Dist. Hingoli.
3. Kai. Miratai Madhyamik Vidyalaya,
Through its Head Master,
Having Office address at Sawad,
Tal. & Dist. Hingoli.
4. Shri Ganesh Shikshan Prasarak Mandal,
Through its President/Secretary,
Sawad, Tal. & Dist. Hingoli. ... Respondents

.....
Mr R. B. Narwade Patil, Advocate for the petitioner
Mr S. P. Deshmukh, APP for respondent/State
Mr A. S. Barlota, Advocate for respondents No. 3 & 4
.....

**CORAM : S. S. SHINDE &
A. M. DHAVAL, JJ.**

RESERVED ON : 18.08.2017.
PRONOUNCED ON : 24.08.2017.

JUDGMENT (Per A. M. Dhavale, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally with
the consent of the parties and taken up for final disposal at admission
stage.

2. This is a petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure for quashing of First Information Report bearing No. 3017 of 2015 registered with Hingoli Rural Police Station against the petitioner for offences punishable u/s 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, on 26.06.2015 and for prohibiting the respondents from taking action on the basis of the same.

3. The petitioner came to be appointed as Asst. Teacher in respondent No. 3 - school namely; Kai. Miratai Madhyamik Vidyalaya run by respondent No. 4 - Trust, on 21.08.2012. As per the FIR lodged by Police Inspector – V. P. Kale, Anti Corruption Bureau, Hingoli, he received information about demand of bribe by the petitioner and hence on 25.06.2015 Mr Hanumant Borkar- Complainant along with one panch were sent to the petitioner for verification of the complaint and the conversation between them was tape-recorded. Having convinced about the demand of bribe, he laid a trap on 26.06.2015 and it was found that the petitioner demanded and accepted Rs. 300/- as a bribe from Mr. Hanumant Borkar for issuing transfer certificate (T.C.) and again the conversation was tape-recorded. The petitioner was found on the spot and the notes smeared with anthracene powder were seized from his shirt-pocket

and FIR came to be lodged against him.

4. Learned Advocate Shri. R. B. Narwade Patil seeks quashing of the FIR on the two grounds namely;

- (i) Respondent No.3-School is a non-grant-in-aid school and, therefore, the petitioner is not a Public Servant.
- (ii) The amount received by the petitioner is not a bribe or illegal gratification but it was accepted as per directions of the management and resolution passed in the meeting of the Executive Body for meeting the expenses of the school. It was not accepted for personal gain or benefit.

5. Learned APP for respondents No. 1 and 2 invited our attention to the Investigation Note (Exh. R-1) of the Education Officer to submit that the school was receiving grants at the relevant time. He submitted that, neither the Institute nor the petitioner had any authority to accept any amount from the student for issuing transfer certificate and the amount received by the petitioner amounts to bribe.

6. Shri. A. S. Barlota, learned counsel for respondents No. 3 and 4 supported the petitioner and stated that the petitioner had received the amount as per resolution of respondent No.4 and it was not bribe. The school was not receiving grant-in-aid till 19.09.2016.

The amount received has been accounted for in the statement of receipt and expenditure and similar amounts were received from other students as fees by issuing receipts.

7. After having considered the arguments and after going through the papers produced, we find that the school was not receiving grant-in-aid for 8-10th std. By Govt. Resolution dt. 07.03.2017, 20% grants were first time released in the name of the school from 19.09.2016 onwards. The incident has taken place on 26.06.2015 when there was no grant-in-aid to the school. Even the Investigation Note of the Education Officer shows that the grant of 20% was released to the school from 19.09.2016 onwards.

8. Public Servant is defined is defined in Section 2 of the Prevention of Corruption Act, 1988 as follows:

2(c) "public servant" means-

(i) to (xi) Not relevant.

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

9. Since the School of the petitioner was not receiving any grant-in-aid and since such fact is mentioned in the Investigation

Note of the Education Officer, we hold that the petitioner is not a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988.

10. Besides, having gone through all the papers, we find that the amount of Rs. 300/- was demanded and accepted by the petitioner on behalf of the organization namely; respondent No. 3 – school. Since it was non-granted school, as per Govt. Resolution dt. 27.05.2013, the management had right to decide the tuition fees and other charges. If the charges were exorbitant and any incident of profit making was observed, there was provision to make complaint to the Dy. Director of Education, who was authorized to take appropriate decision in the matter. As per resolution passed by respondent No. 4 dt. 15.05.2015, it was decided that transfer certificate fees of Rs. 100/- and charges towards development fund of Rs. 200/- should be accepted from student with their consent.

11. The petitioner has produced copies of several such receipts showing acceptance of such amount of Rs. 300/- from several students towards transfer certificate and development fund. Respondents No. 3 and 4 have admitted that the petitioner was collecting these charges on behalf of the organization-respondents No. 3 and 4 and such amount was accounted for in statement of

receipt and expenditure.

12. As per Section 7 of Prevention of Corruption Act, whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

7(c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

13. Thus, if a public servant is collecting any charges permitted

by the Government or the organization which he serves, it cannot be called as illegal gratification.

14. We find that, the petitioner has not received Rs. 300/- for his personal gain or personal benefit as a motive or reward but he had collected the same as per the directions of the organization and same was accounted for in the receipt and expenditure. In the present case, the petitioner was caught by Anti Corruption Bureau before issuance of receipt and, therefore, the receipt could not be issued to Hanumant Borkar, the complainant herein.

15. It is an altogether different matter whether this collection of Rs. 300/- for issuing transfer certificate is legal or illegal. If it is illegal, the organization will have to face the consequences under the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011 but the petitioner, who has acted merely as an agent of organization, cannot be prosecuted for offence of receiving gratification otherwise than legal remuneration.

16. Thus, on both the counts, the charges against the petitioner even if all the facts are accepted at their face value, are not sustainable. Therefore, the lodging of FIR and the action taken on the basis of the same against the petitioner is abuse of process of the

Court. In this regard, we are fortified by the law laid down by the judgment of the Division Bench of this Court in the matter of **Dr. Ramchandra S/o Munjaji Bhise Versus The State of Maharashtra & Ors.** delivered on 21.10.2015.

17. Before parting with the judgment, we direct that the Anti Corruption Bureau should apply mind before laying trap as to whether the school concerned receives grant-in-aid or not and whether the demand of money will amount to illegal gratification or not.

18. We clarify that, we are not expressing any opinion as to whether the receipt of such amount by the petitioner on behalf of the organization is legal or illegal, but if it is at all illegal, appropriate action can be taken against the organization by following the procedure prescribed under the law. We, therefore, hold that this petition deserves to be allowed. Hence, the following order.

ORDER

- (i) The Criminal Writ Petition is allowed.
- (ii) First Information Report bearing No. 3017/2015 registered against the petitioner with Hingoli Rural Police Station for offences punishable u/s 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, on

26.06.2015 and the prosecution initiated on the basis of the same are hereby quashed.

(iii) Rule is thus made absolute. No order as to costs.

[A. M. DHAVALE]
JUDGE

[S. S. SHINDE]
JUDGE

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