

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

CRIMINAL APPLICATION NO. 1931 OF 2016

The State of Maharashtra
Through Police Inspector,
Anti Corruption Bureau,
Jalgaon.

... Applicant
(Orig. Complainant)

VERSUS

Sunil Parshuram Verma,
Age : 47 years, R/o. Plot No. B-2,
Gat No. 2/2, R.L. Colony, Jalgaon,
Taluka District Jalgaon.

... Respondent

.....
Mr A. R. Borulkar, APP for the applicant
Mr Pramod Gaikwad, Advocate h/f Mr A. G. Talhar, Advocate for
respondent
.....

CORAM : A. M. DHAVAL, J.
DATE : 22ND SEPTEMBER, 2017.

ORDER:

1. This is an application filed by the State u/s 378(1)(3) of the Code of Criminal Procedure seeking leave to file appeal against the Judgment & Order dt. 17.12.2015 passed by ld. Addl. Sessions Judge, Jalgaon in Special (ACB) Case No. 02 of 2015, thereby acquitting the respondent of the offences punishable u/s 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

2. The accused-Sunil was working as Asst. Teacher in Sadguri Secondary School, Khedi Bk., Dist. Jalgaon. Sopan Hari Patil was also serving as Asst. Teacher in Sadguru Primary School, Dist. Jalgaon. The primary school is receiving grant-in-aid whereas the secondary school does not receive grant-in-aid. It is alleged that, the accused-Sunil demanded from Sopan Patil an amount of Rs.10,000/- as contribution payable by each teacher towards expenditure of audit program of the previous year and the current year. He was not permitted to sign the muster roll till he pays the said amount. On account of this, Sopan went to the office of Anti Corruption, Jalgaon and communicated the said information. After following the due procedure, a trap was laid and the respondent was caught red handed while receiving Rs.10,000/- from Sopan Patil. After obtaining sanction of the Secretary of the trust i.e. Sadguru Primary & Secondary School, the charge-sheet was submitted in Special Court at Jalgaon.

3. Charge was framed. The accused pleaded not guilty. The prosecution examined in all four witnesses. The Id. Special Judge in view of the contradictions noticed in the evidence of Sopan Patil, a panch witness and Investigating Officer, disbelieved the prosecution theory of demand and acceptance. Id. Special Judge accepted the

prosecution case that the accused was a public servant on the ground that his appointment was governed by a statute of Maharashtra Employees of Private Schools Act and he was serving in a school approved by the Government.

4. Heard Shri. A. R. Borulkar, learned APP for State and Shri. Pramod Gaikwad, learned counsel for the respondent.

5. Mr Borulkar argued that there is ample evidence of demand and acceptance of bribe and the learned trial Judge committed an error in discarding the evidence of PW1 to PW3 on account of some minor contradictions.

6. Per contra, learned Advocate Shri Pramod Gaikwad argued that the finding regarding demand and acceptance recorded by the ld. trial Court is right. Besides, the accused is not a Government servant as he is serving in a secondary school, which is not receiving grant-in-aid. He is getting honorarium of Rs. 3,000/- per month.

7. After recording of the statement of the accused u/s 313 of the Code of Criminal Procedure, he has filed written statement which shows that as per the decision of the management, the Headmaster

was collecting annual donations from the teachers for providing free bus service, free text books and note books, uniform and shoes to the students and for meeting the expenses of guests called in the school. All the teachers were extending cooperation except the complainant - Sopan Patil. When the donation was demanded by the Headmistress, Sopan got annoyed and left the school without signing the muster. The accused was helping the Headmistress for collection of donation. Later on, Sopan offered him donation and the said amount received by the accused was not a bribe but was a donation.

8. In the light of this defence, *prima facie*, it appears that the case of demand and acceptance should have been admitted and the question as to whether the amount received was gratification or legal remuneration should have been considered. The definitions of gratification and legal remuneration read as under.

7(b) **“Gratification.”** The word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money.

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.

9. It is alleged that the amount was allegedly received for management. It was interesting point to decide whether it was gratification or not and on this count the appeal could have been admitted. However it is admitted fact that the accused is serving in secondary school. Though there is grant for primary school, there is no grant-in-aid for secondary school. The relevant Section 2(c) of the Prevention of Corruption Act, 1988 defines public servant. The relevant clauses thereof read as under:

2(c) ***“public servant”*** means—

(i) to (vii)

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

(ix) to (xi)

(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.*

10. It is common knowledge that, imparting education is one of the functions of the Government but it is not exclusively done by the

Government. There are many private schools which are imparting education. Therefore, mere imparting education cannot be said to be performance of a public duty so as to be covered under sub-clause (viii) of Section 2(c).

11. In the present case, clause (xii) of Section 2(c) is relevant. The accused is employee of educational institution.

12. Learned APP drew my attention to Section 2(b) which defines "public duty", as under:

2(b) *"public duty" means a duty in the discharge of which the State, the public or the community at large has an interest;*

13. Learned advocate for respondent relied on the judgment of the Hon'ble Supreme Court in the case of **State of Gujarat Versus Manshankar Prabhashankar Dwivedi: Sh. Valiabhdas Gordhandas Thakkar 1973 AIR (SC) 330**. In this case, the accused was a Lecturer of a Government College. He was appointed by University as examiner. The issue was whether he was public servant as defined u/s 21(9) of Indian Penal Code as, was applicable under the old law. At that time, provisions of a public servant were totally different. He

has further relied upon the judgment of the Apex Court in the case of **Dilawar Balu Kurane Versus State of Maharashtra 2002 AIR (SC)**

564. In this case, it was held that the appellant was serving as a Lecturer in a private college and, therefore he was not a Government servant. As he was appointed by University for specified work of evaluation, he was public servant within the meaning of Section 73(4) of the Shivaji University Act, 1974.

14. In the light of this judgment, it is not acceptable that the person doing a job of imparting education in a private institution or private school will be a government servant. The Prevention of Corruption Act makes a specific provision to declare office bearers or employees of educational institutions as a public servant as per clause (xii) of Section 2(c) referred to above.

15. Thus, the distinguishing feature is whether the school or college or the institution was receiving or having received any financial assistance from the Central Government or any State Government or local or public authority. If it is receiving such financial assistance, the employee becomes a public servant. If no such grants are received, the employee is not a public servant.

16. In the present case, admittedly, the secondary school where the respondent is serving is not getting any financial assistance. It is a permanent non-granted school. Primary school is receiving grants but the accused is not an employee of primary school. In similar situation, in the case of **Shivaji Madhavrao Pawar versus State of Maharashtra & Ors (Criminal Writ Petition No. 366 of 2016) decided on 24.08.2017** by this Court to which I was a party, held that if the school is not receiving any grants, the person employed therein is not a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988. The said judgment is binding on me. No other judgment has been cited by the learned APP taking a contrary view. Hence, though I disagree with the learned trial Judge on both the issues, I agree with the ultimate decision of acquittal of the respondent. Since the respondent was not a public servant, he could not be punished under the offence of Prevention of Corruption Act notwithstanding the fact that his act of collecting huge money from the other teachers is deplorable. Hence, leave to file appeal cannot be granted. The Criminal Application stands rejected.

[A. M. DHAVAL]
JUDGE

sgp