

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

CRIMINAL WRIT PETITION NO. 1076 OF 2016

Nivrutti S/o Hona Bhangare,
Age : 40 years, Occu. Service as a
Headmaster of Shriram Vidyalaya
at village Dhor-Jalgaon, Tq. Shevgaon,
Dist. Ahmednagar.

Petitioner...

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Deputy Superintendent of Police,
Anti-Corruption Bureau,
Opposite T.V. Center,
Satedi, Ahmednagar.
3. Sau. Sunanda Ganesh Pagar,
Age : 25 years, Occu. Household,
R/o. At Village Kunthephal,
Post. Tajanapur, Tq. Shevgaon,
Dist. Ahmednagar.
4. Ganesh S/o Ramnath Pagar,
Age : 32 years, Occu. Service,
R/o. At Village Kunthephal,
Post Tajanapur, Tq. Shevgaon,
Dist. Ahmednagar.
5. The Friends of the Depressed Lig,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar,
Through its Secretary.

Respondents...

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Mr R. N. Dhorde, Senior Advocate i/b Mr Vikram R. Dhorde,
Advocate for the petitioner
Mr S. J. Salgare, APP for respondent/State

Mr A. N. Kakade, Advocate for respondents No. 3 and 4
Mr R. L. Kute, Advocate for respondent No. 5

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**CORAM : R. M. BORDE &
A. M. DHAVALE, JJ.**

**RESERVED ON : 09.06.2017
PRONOUNCED ON : 23.08.2017**

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. The petitioner, who is Headmaster of school run by respondent No. 5 – Institution, by this writ petition under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, seeks quashing of First Information Report bearing Crime No. I-63/2016 dt. 04.03.2016 registered against him at Shevgaon Police Station, Dist. Ahmednagar, for offences under Sections 7 & 15 of the Prevention of Corruption Act, 1988.

3. The facts relevant may be stated as follows:

The petitioner, who belongs to Scheduled Tribe category, was appointed as Assistant Teacher by respondent No. 5 on

16.08.2002. He was promoted as Headmaster on 01.06.2010 and was transferred to Shriram Vidyalaya at Dhor-Jalgaon, Tq. Shevgaon, Dist. Ahmednagar, on 31.05.2015. Respondent No. 4 – Ganesh Ramnath Pagar was already serving there as Assistant Teacher. Respondent No. 3 – Sau. Sunanda is a wife of respondent No. 4 - Ganesh. Respondent No. 4 had a bad office record. His previous three ACRs' (Annual Confidential Reports) written by predecessor of the petitioner herein were adverse. Respondent No. 4 was repeatedly going on leave. He being a class teacher, was in possession of forms of Board examination of SSC & HSC 'B' division. Those were to be forwarded to the Board in time but he remained absent and, therefore, the petitioner was constrained to serve him with a notice. Respondent No. 4 refused to accept notice dt.07.11.2015. On 12.09.2014, the earlier Headmaster had lodged N.C. case against respondent No. 4 with Shevgaon Police Station for using filthy language and abusive threatening language and also demanding of Rs.50,000/- by a phone from unknown person on suspicion. On 07.11.2015, respondent No. 4 had used abusive, insulting and threatening language to the petitioner and abused him in the name of his caste and, hence, the petitioner was constrained to file FIR bearing Crime No. II-63/2015 dt. 09.11.2015 at Shevgaon Police Station, Dist. Ahmednagar, for offence u/s 3(1)(x) of the Scheduled

Castes & Scheduled Tribes (Prevention of Atrocities) Act & respondent No. 4 was required to obtain anticipatory bail from the Sessions Court at Ahemdnagar. Respondent No. 4's repeated absence on medical ground was also a cause for dispute between the petitioner and respondent No. 4. The management rejected his medical leave application for a period from 06.01.2016 to 15.01.2016. Respondent No. 4 was not permitted to join his duties on 11.04.2016, but according to the petitioner he merely sent the applications and had not been to the school and was creating a false record. He accordingly sent a letter to respondent No. 4 on 31.05.2016. As per impugned FIR lodged by respondent No.2 - Dy.Superintendent of Police, Anti-Corruption Bureau dt. 04.03.2016, respondent No. 4's wife Sau. Sunanda had reported to him over phone that the petitioner was demanding bribe of Rs. 1250/- under the pretext of school fees of her sister-in-law namely; Arti Satpute, who was studying in 12th Arts in the same college. The petitioner had refused to issue receipt for the said amount. Respondent No. 2 sent respondent No. 3-Sau. Sunanda and one panch to the petitioner for verification of information. They had carried tape-recorder with them. The petitioner made a demand of Rs. 1250/- from respondent No. 3. Respondent No. 3 told him that she was not having money and she would pay money on the next day i.e. on 09.02.2016. On

16.02.2016, again respondent No. 3 and one panch went to the petitioner along with voice recorder and notes of Rs. 1250/- smeared with anthracene powder, but, the petitioner refused to accept the bribe and stated that fees of the girl was already deposited by respondent No. 4. Respondent No. 2 deemed it fit to lodge FIR for demand of illegal gratification.

4. The petitioner obtained anticipatory bail order from Sessions Court, Ahmednagar. The aggrieved petitioner has filed this writ for quashing of the FIR.

5. Shri. R. N. Dhorde, learned Senior Counsel has taken us through the documentary evidence on record and submitted that there was strong enmity between respondent No. 4 and the petitioner and, therefore, respondent No. 3 made a complaint to implicate the petitioner in a false case. He submitted that, apart from the fact that the petitioner has not accepted any bribe, the transcript of voice-recording clearly shows that the petitioner had not demanded any bribe. The petitioner was not knowing respondent No. 3 and when she came to him for paying fees of student namely; Aarti Satpute, he told her to deposit the requisite fees and other charges with the concerned teacher. The conversation between the petitioner and

respondent No. 3 clearly discloses that the demand was made for the fees as prescribed by the management and approved in the meeting held by the Parents & Teacher's Association. The petitioner had stated that he has not demanded a single rupee for himself and the payment was to be made to the Institute. Respondent No. 4 wanted to take revenge and, therefore, he has filed a false case with the help of his wife to implicate the petitioner.

6. Per contra, learned APP for respondent-State and Shri. A. N. Kakade, learned counsel for respondents No. 3 and 4 submitted that the school was a grant-in-aid school and there was no any reason to demand any fees from the students. Besides, as per GR dt. 06.07.1987, the girls are exempted from the fees to be paid to the Board. Besides, no receipt was issued for the said payment and therefore it was an illegal gratification which attracts provisions under the Prevention of Corruption Act, 1988.

7. After considering the arguments and going through the papers placed on record, we find that the trap has failed as the petitioner had declined to receive money from respondent No. 3. Therefore, the FIR is restricted only to the extent of demand of gratification, which is an offence u/s 7 r/w Section 15 of the

Prevention of Corruption Act. The petitioner has not disputed that fees of Rs. 1250/- was demanded from each student. According to him, said fees was not by way of gratification but it was fees as prescribed by the management. The fees paid was not going to be utilized by the petitioner or the co-accused for personal use. It was going to be credited to the account of the management and therefore it does not amount to illegal gratification. The alleged demand was made on 09.02.2016 and 16.02.2016 from respondent No.3. The conversation at the time of visit of respondent No. 3 along with panch no. 1–Vaishali Pimple is in the form of audio recording. On going through the transcript of audio recording, it is revealed that respondent No. 3 herself visited the petitioner stating that she wanted to pay the fee of her sister-in-law for HSC Board examination. Initially inquiry was made with Peon and after arrival of the petitioner, peon disclosed to him that respondent No. 3 had been there to deposit the fees of her sister-in-law. The petitioner asked her what was the difficulty and told the peon that fee should be accepted and amount would be known to the concerned teacher. There was inquiry whether Aarti was in arts faculty or science faculty and whether she had undertaken IT course or computer course. The fee was offered but principal told them that it should be paid on the next day to the concerned teacher i.e. Mr Deshmukh. Then the

respondent No. 3 talked with concerned teacher - Mr Deshmukh and he told her that fees was Rs. 1250/-. The Principal explained that the fees of the board was Rs. 750/- and other charges were towards holding six monthly exam and providing papers. The respondent No. 3 told him that she had heard that fees was only Rs. 300/- or Rs. 350/- and she had not brought sufficient money to pay the entire fees as well. The Principal told her that similar fee was taken from other students. The principal explained to her that the Board fee was Rs. 350/- and rest of the fees was charged for other three practice exams. The informant asked him whether he would issue receipt and Principal replied her that there would be no receipt. The informant told him that fee of Rs. 1250/- was too much. Principal told her that she should make inquiry with other children and the said fees was for entire year. There was inquiry regarding exemption from fees and principal explained that the exemption was granted only for reserved category candidates and the persons suffering from more than 50% famine.

8. After carefully going through the transcript, we find that the petitioner was demanding Rs. 1250/- as fees of the school for the entire year and not by way of any bribe or illegal gratification to favour the girl student by admitting her for HSC examination. The

transcript of conversation between respondent no.3 and the petitioner and peon dt. 16.02.2016 does not show any illegal demand of money as bribe. Respondent No. 3 had asked how much fee to be paid and the petitioner told her that respondent No. 4 has paid the requisite fees. Respondent No. 3 told him that she has not paid the fees. Assurance was given that the student for whom respondent No.3 had visited the school will face no problem at the time of examination. Thus, the trap was not only unsuccessful with regard to acceptance of bribe but it was equally unsuccessful in respect of demand of bribe.

9. The letter of Education Officer dt. 02.05.2016 shows that under the scheme of Free Education to Girls, the girls are exempted from the payment of tuition fees as well as examination fees. The G.R. dt. 06.07.1987 shows that tuition fee, term fee, admission fee and lab fee should not be taken from the girls as they are entitled for exemption from the payment of fees. As far as grant-in-aid private schools and non-granted schools are concerned, the girls were exempted from the payment of fees upto authorized limit and the fees charged over and above the authorized fee, will have to be paid by the parents of the girl. It shows that the exemption is applicable only to first three children of the parents and another condition is

that the guardian of the girl should be resident of Maharashtra for 15 years and the exemption would be withdrawn in case the girl fails in an examination, but it will be revived after passing of the examination. The circular dt. 30.08.2010 shows that the examination fees for 12th std was Rs. 325/-, admission fees was Rs. 10/-, Marks verification fee was Rs. 50/- and admission fee for medium schools and Junior colleges upto 100 students was Rs. 1000/-. There was additional fee of Rs.200/- for Information Technology subject and Rs. 15/- for each subject of science faculty for each examination.

10. Laxman Bajirao Bitai has filed his affidavit-in-reply on behalf of respondent No. 5 – Institution. It shows that, fees of Arti Satpute was paid on 10.09.2015. The examination fee of all 185 students was deposited by the petitioner. The said fee of Rs. 85,255/- for 185 students was credited to the saving account on 10.09.2015. He has supported the petitioner on the point of conduct of respondent No. 4 and his adverse ACRs written by predecessor of petitioner. He has also stated that respondent No. 4 was regularly remaining absent and was seeking medical leave.

11. In the written notes of arguments submitted on behalf of

respondent No. 5, it has been recorded that there was a Parents Teachers Association's resolution fixing fee structure of Rs. 1250/- for the student of 12th std. Thus, if there was demand of Rs. 1250/- it was as per the decision of the Management and not by the petitioner of his own and it was not for his personal gain or benefit.

12. The FIR registered under Section 7 r/w Section 15 of the Prevention of Corruption Act, which reads as under: -

7. Public servant taking gratification other than legal remuneration in respect of an official 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 1[three years] but which may extend to 2[seven years] and shall also be liable to fine.

(a)

(b)

(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.

(d) “A motive or reward for doing.” A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e)

15. Punishment for attempt.-Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

13. In the present case, the fees of Rs. 1250/- was approved by the management as per resolution passed by Parents' Teachers' Association. Therefore, the said amount cannot be said to be other than the legal remuneration in respect of an official act.

14. The prosecution has not recorded statement of Aarti Satpute. As per the record, her fees was deposited on 31.07.2015 and her name was forwarded to the Board in September-2015. She was permitted to appear for the examination on 18.02.2016. Nowhere there is even whisper that there was any threat or apprehension that if Rs. 1250/- was not paid, Aarti Satpute would not have been issued hall-ticket and permitted to appear for examination. The transcript of conversation between respondent No. 3 and the petitioner dt. 09.02.2016 shows that respondent No. 3 had reported that she had earlier met the Headmaster and he had demanded Rs. 1250/- is false and concocted. The conversation dt. 09.02.2016 shows that respondent No. 3 was not even knowing the petitioner. The conversation shows that there was no demand by the petitioner but there was attempt by respondent No. 3 to extract a demand when Aarti Satpute had already deposited the fees and her name was cleared in August-September 2015, there was no necessity for respondent No. 3 to meet the petitioner for payment of fees. The petitioner had stated that he was not even aware how much was the fees and the relevant information would be available with the concerned class-teacher, still respondent No. 3 in order to implicate the petitioner continued talk inviting the petitioner to make some

submissions regarding the fees. The petitioner was telling her that she should come on the next day and she should make the payment to the concerned class-teacher and he was not concerned with the same. Respondent No. 3 did not ask the petitioner to issue hall ticket and it is not her case that for issuance of hall ticket, the petitioner made a demand. The conversation shows that the fees towards incidental expenses was for holding the practical exams and for holding six monthly exams. No doubt, there was a statement that no receipt would be issued for the same. The subsequent conversation dt. 16.02.2016 shows that the petitioner got a hint that the respondent No. 3 was trying to implicate him and she is wife of respondent No. 4, therefore, he told her that respondent No. 4 has deposited the entire amount and declined to accept any money. He clearly stated that he was not accepting a single rupee.

15. It is an altogether different case whether the recovery of such amount is legal or illegal. The case of the prosecution is that, since the girls were exempted from payment of exam fee and tuition fee and since the school was aided school, the management as well as the Headmaster had no authority to collect the said fees. Even if, all these facts are assumed to be true, still it may be a different offence under the Maharashtra Educational Institutions (Regulation of Fee)

Act, 2011 (in short “Fees Act”). Section 3 r/w Section 16 & 17 reads as under:

3. No school itself on its behalf shall collect any fee in excess of the fee fixed or approved under this Act.

16. (1) Whoever contravenes any of the provisions of this Act or the rules made thereunder shall, on conviction,-

(a) for the first offence, be punishable with the fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or twice the amount taken in excess of the fee as determined under this Act, whichever is higher;

(b) for the second or subsequent offence, be punishable with the fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees or twice the amount taken in excess of the fee as determined under this Act, whichever is higher or with imprisonment for a term which shall not be less than three months but which may extend to six months.

(2) The person convicted under this section shall refund the excess fee to the student from whom it was collected in contravention of this Act.

(3) The person who repeatedly contravenes the provisions of this Act or the rules made thereunder shall be ineligible for holding official post in any management or school, as the case may be.

17.(1) Where an offence under this Act or rules made thereunder is committed by a management, every person, who, at the time when the offence was committed, was in charge of, and was responsible to, the management for the conduct of the business of the management, as well as the management, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that, nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he has taken due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act or rules made thereunder has been committed by a management and it is proved that the offence has been committed with the consent or convenience of, or is attributed to any neglect on the part of any office bearer or officer or servant of the management, such office bearer, officer or servant concerned shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

16. When the management has taken the decision, the offence will be primarily against the management and not against the petitioner. In that case, as per Section 19, the sanction of the Dy. Direction of Education was necessary.

17. As per schedule of fees, every student has to pay Rs. 50/- per day for delayed charges and when there is an extra-ordinary delay the charges were Rs. 100/- per day. If the form fee was taken and deposited in August-2015 and the name of the student Aarti Satpute was already communicated, respondent No. 3 lied by stating that she had yet to deposit fees of Aarti Satpute. If the delayed charges are taken into consideration, there would have been huge amount due from Aarti Satpute. In the circumstances, without going into the question whether the petitioner has committed any offence or not, we hold that the petitioner has certainly not committed any offence under the Prevention of Corruption Act as the so-called demand of Rs. 1250/- is not demand of illegal gratification.

18. There is voluminous evidence on record to show that there was enmity between the petitioner and respondent No. 4. The ACRs of the respondent No. 4 maintained by the predecessor of the petitioner are strongly adverse. There are remarks about his arrogant & disrespectful behaviour & his poor performance in teaching. Respondent No. 4 had preferred an appeal challenging his remarks but his appeal was rejected. The petitioner was not directly concerned with all this but after the rejection on 12.10.2015,

respondent No. 4 was served with a notice by petitioner as to why he should not take action against the seven students who were regularly remaining absent. Thereafter, it is alleged that the respondent No. 4 had abused the petitioner in the name of his caste and the petitioner lodged FIR dt. 09.11.2015 for offence u/s 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act. At the same time, on 17.11.2015, the petitioner served respondent no. 4 with a notice for non-furnishing forms of 7 HSC students for March-2016 examination. Thereafter, from 07.12.2015, respondent No. 4 regularly remained absent on medical ground, his medical leave from 06.01.2016 to 15.01.2016 was rejected by the petitioner as per resolution of the management. Thus, respondent No. 4 was very much aggrieved and his wife attempted to implicate the petitioner. In the present case, the FIR is lodged by the officer of the ACB u/s 7 and 15 of Prevention of Corruption Act. The FIR as well as the prosecution is not sustainable.

19. In the light of the observations made herein above, we hold that the FIR bearing Crime No. I-63/2016 dt. 04.03.2016 lodged by respondent No. 2 at Shevgaon and the prosecution of the petitioner on the basis of the said FIR deserves to be quashed and same is accordingly quashed.

20. Rule made absolute in the above terms.

21. We make it clear that, if demand and/or acceptance of money by the management from the students is found against the provisions of law, the concerned will be at liberty to take appropriate action against the management.

[A. M. DHAVALE]
JUDGE

[R. M. BORDE]
JUDGE

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