

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

CRIMINAL WRIT PETITION NO. 1107 OF 2016

1. Anant S/o Kacharu Hiwale,
Age : 56 years, Occu. Service as
Headmaster, R/o. Ghrushneshwar Colony,
Shatri Nagar, Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.
2. Sanjay S/o. Sakharam Pawar,
Age : 51 years, Occu. Service,
R/o. Shikshak Colony, Tejas Konark,
Dhule Road, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon. **Petitioners...**

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Deputy Superintendent of Police,
Anti-Corruption Bureau at Jalgaon,
Dist. Jalgaon.
3. Chalisgaon Education Society,
Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon,
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 R. L. Kute, Advocate for respondent No. 3

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

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

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

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

2. The petitioners, who are Headmaster & Asst. Teacher, respectively, of a primary 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, seek quashing of First Information Report bearing Crime No. 3071/2016 dt. 04.08.2016 at Chalisgaon Police Station, Dist. Jalgaon, for offences under Sections 7, 12, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and further directions for prohibiting respondents No. 1 and 2 from taking any action against them on the basis of the same.

3. The facts relevant may be stated as follows:

The petitioners no. 1 & 2 joined respondent No. 3 trust as Assistant Teachers on 30.05.1982 and 19.08.1988, respectively. Eventually on 19.02.2012, petitioner no. 1 was promoted as Headmaster in Hirubhai Himabhai Patel Primary School run by respondent No. 3. The impugned FIR dt. 04.08.2016 was lodged by

Ms Nita Kayate, Police Inspector, Anti-Corruption Bureau, Jalgaon (hereinafter shall be referred to as "ACB"), after laying trap and petitioner no.2/accused No. 2 - Sanjay Pawar was caught red handed while accepting a tainted amount of Rs. 3105/- from one Umesh Rama Thombre for admitting his son Veer in the first standard. Earlier Umesh Thombre had reported the ACB that, he had applied on 01.08.2016 for admitting his son Veer in 1st std. At that time, petitioner no. 1 demanded bribe of Rs. 3105/- and asked him to deposit the said amount with petitioner no. 2. Umesh Thombre-Informant was not willing to pay the said bribe. He was convinced that if he would not pay the said amount, his son would not be admitted in the school. Accordingly, he submitted report to the ACB, Camp at Chalisgaon. Thereafter, following pre-trap procedure, respondent No.2 forwarded the informant Umesh Thombre along with panch No. 1 - Pandurang Survase to the petitioners for verification of demand. Their conversation was taperecorded. Respondent No. 2 was convinced that there was demand of Rs. 3105/- by petitioner no. 1 and he gave a chit showing the said figure for acceptance of the amount by petitioner no. 2. After following the procedure, Umesh along with panch no. 1 - Pandurang Survase visited the school on 04.08.2016 at 10:50 a.m. The team of ACB and one panch were following the accused. On the same day at 11:20

a.m. he gave a signal of acceptance of bribe amount by petitioner no. 2. Thereafter, petitioner no. 2 was caught in 'C' division of 1st std classroom while accepting the amount of bribe. The statements and audio recording shows that he had demanded Rs. 3105/- and he received the said amount from Umesh Thombre. He had agreed to issue receipt only for Rs. 900 to 1000/- and not for the entire amount stating that he was a servant and was obeying the directions of superiors. Thereafter, impugned FIR came to be lodged and appropriate actions were taken in connection with the investigation.

4. Shri. Dhorde, learned Senior Counsel for the petitioners argued that the amount demanded and accepted was not bribe. There was a meeting of Parents' Teachers Association on 31.08.2015 and by unanimous resolution it was agreed that fees of Rs. 1105/- for Marathi medium and Rs. 3105/- for semi-English medium shall be received. The earlier resolution passed in the Parents Teachers Association dt. 11.08.2014 shows bifurcation of the said amount of Rs. 3105/- as follows:

Admission form fee	-	Rs. 100/-
Incident fee	-	Rs. 400/-
Computer fee	-	Rs.400/-
Stationery	-	Rs. 100/-
Parents Teachers Association	-	Rs. 5/-
Sanchayika (File)	-	Rs. 100/-
Cultural Development Fee	-	Rs. 2000/-
Total	-	Rs. 3105/-

5. The Parents Teachers Association's resolution is signed by the Chairman of Hirubhai Himabhai Patel Primary School Parents' Teachers' Association. The documents filed by the petitioners show that such fees is taken since the year 2005. The computer education is not the the part of curriculum and the said education is given by the school for which school is required to purchase the computers and employ teacher of computer. These charges are periodically revised and increased as per the requirement. Resolutions dt. 07.04.2013, 11.08.2014, 12.02.2015 and 31.08.2016 show that, the fees of Rs. 3105/- was maintained by the Parents Teachers Association for the year 2016-17. Mr Dhorde invited our attention to the statement of receipt and expenditure which shows the receipt of fees of Rs. 4,34,800/- towards extra-curriculum activities, Rs. 4,35,200/- towards computer studies, Rs.1,08,800/- towards stationery and Rs. 34,200/- towards form fee. It shows that, the expenses of Rs. 1,21,439/- for teacher for extra curriculum activities, Rs. 1,65,442/- for computer teacher besides bonus of Rs. 7600/- and 11,700/- under respective heads. It also shows, Rs. 45,948/- for examination and Rs. 37030/- for printing and Rs. 30,471/- for cultural program. The petitioners have produced a statement for the year 01.04.2015 to 31.03.2016.

6. The respondent No. 3 is the trust, which is running the school. Its Secretary has filed affidavit supporting the petitioners that there were such resolutions fixing the fees of primary school and fees of Rs. 3105/- was fixed by the association for the year 2014-15, 2015-16 & 2016-17. He has produced certain receipts showing payment of fees paid by other students during the year 2017-18.

7. Learned APP for the State relied on the affidavit of Parag Sonawane, Dy. Superintendent of Police, ACB and certain resolutions and provisions of the Act to submit that, the school was not authorized to receive such fees. The amount received by petitioner No. 2 at the instance of petitioner No. 1 amounts to bribe and they being Government servants are liable for prosecution. Letter of Education Office dt. 29.09.2016 shows that, school management and the Headmaster had no authority to receive such amount. Such amount can be agreed in the meeting of Parents Teachers Association only in respect of non-grant schools whereas; respondent No. 3 runs a school having grants for all four divisions of 1st std. Reliance was placed on the provisions of Sections 3, 4, 6, 16 & 17 of Maharashtra Educational Institutions (Regulation of Fee) Act, 2011. Section 2(k) of the Act defines fees as follows:-

2k. "Fee" means the amount, fixed as a fee under sections 5 and 6 and includes-

- (i) Tuition fee;
- (ii) Term fee, which shall not exceed one month tuition fee per term;
- (iii) Library fee and deposit;
- (iv) Laboratory fee and deposit;
- (v) Gymkhana fee;
- (vi) Caution money;
- (vii) Examination fee;
- (viii) Hostel fee and Mess charges;
- (ix) Admission fee;
- (x) deposit as security amount or amount payable for any curricular or co-curricular item as may be prescribed;

8. Section 3 of the said Act 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.

9. Section 4 provides for formation of Parent-Teachers Association. Section 5 authorises the Government to regulate the fee in Government schools and aided schools. Section 6 permits the management of private unaided schools and permanently unaided schools to propose the fees for their schools which is subject to approval of executive committee. Section 16 provides for punishment for contravention of any provisions of the Act or rules made

thereunder which shall not be less than Rs. 1,00,000/- but it may extent to Rs. 5,00,000/- or twice the amount taken in excess of fee as determined under this Act whichever is higher. Section 17 provides for punishment to the person who is incharge of the management.

10. After considering the submissions advanced by both the sides and going through the documents on record, we find that the petitioner No. 2 demanded fee of Rs. 3105/- from Umesh Thombre for admitting his son Veer in the 1st std in view of resolution passed by Parents Teachers Association and approved by the management. The said amount was not demanded or accepted as an illegal gratification or for personal gain. The word 'gratification' is defined in Section 7(b) of the Prevention of Corruption Act, as under:

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

11. Legal remuneration in Section 4(2)(c) reads as under:

4(2)(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 organization, which he serves, to accept.

12. In Madhukar Joshi Versus State 2001 Cri.L.J. 175 SC it is held that the gratification must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

13. In the facts of the present case, petitioner No. 2, as per directions of petitioner No. 1, received amount of Rs. 3105/- from Umesh Thombre as per the decision of the management towards the expenses otherwise than the school fees. It cannot be termed as demand other than legal remuneration. The demand and acceptance of the said amount was neither for the benefit of petitioner no. 1 nor for petitioner no. 2. The payment made was accounted in the record of school and the profit & loss account discloses that the fees were collected. There are resolutions of Parents Teachers Association prescribing the amount of fees. As per Section 19, such a complaint requires sanction of Dy. Director of Education or any superior authority as may be authorized by the Government in this behalf.

14. It is altogether different case as to whether the said payment is legal or illegal. Even if it is illegal, it will be an offence under the provisions of Maharashtra Educational Institutions (Regulation of Fee) Act, 2011 and the management will be responsible for receiving the payments. However, the petitioners cannot be prosecuted for such act under the Prevention of Corruption

Act. Therefore, the FIR filed by respondent No. 2 against the petitioners and the prosecutions of the petitioners in pursuance thereof under the Prevention of Corruption Act, is not sustainable. We deem it necessary to invoke inherent powers u/s 482 of the Code of Criminal Procedure to quash the FIR impugned and the prosecution under the Prevention of Corruption Act. We make it clear that, if the recovery of the amount from the students by the petitioners was contrary to the provisions of the Maharashtra Education Institutions (Regulation of Fee) Act, 2011, the concerned are at liberty to take appropriate action against the petitioners or the management. Hence, the following order.

ORDER

1. The Writ Petition is allowed.
2. First Information Report bearing Crime No. 3071/2016 dt. 04.08.2016 registered against the petitioners at Chalisgaon Police Station, Dist. Jalgaon, for offences under Sections 7, 12, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and the prosecution launched against them on the basis of the same, is quashed.
15. Rule made absolute accordingly with no order as to costs.

[A. M. DHAVALA]
JUDGE

[R. M. BORDE]
JUDGE