

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.364 OF 2017

PRAVINKUMAR PITAMBAR DEORE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.M.S.Mohite a/w. Mr.Ashish S. Gaikwad, Advocate for the Applicant.

Mr.Deepak Thakre a/w. Mr.V.V.Gangurde, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 9th OCTOBER 2017

JUDGMENT :

1 By this revision petition, petitioner/original accused no.1 Pravinkumar Deore is challenging the order dated 17th May 2017 passed by the learned Special Judge under the Prevention of Corruption Act, 1988, Nashik, on an application Exhibit 4 in Special Case No.23 of 2016 between the parties, thereby partly rejecting the application filed by the revision petitioner/accused no.1 Pravinkumar Deore seeking discharge from the Special Case

bearing no.23 of 2016, for offences punishable under Sections 7, 12, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as P.C.Act for the sake of brevity). Along with him co-accused Prakash Lakaria is also being prosecuted in the said case. By this impugned order, the learned Special Judge under the P.C.Act, Nashik, discharged the revision petitioner/accused no.1 Pravinkumar Deore for offence punishable under Sections 7, 13(1)(d) read with 13(2) of the P.C.Act, 1988, by holding that cognizance of those offences cannot be taken against him for want of sanction under Section 19 of the P.C.Act, 1988. However, revision petitioner/accused no.1 Pravinkumar Deore is aggrieved by clause (2) of the impugned order whereby his prayer for discharge from the offence punishable under Section 12 of the P.C.Act, 1988, came to be rejected by holding that cognizance of the said offence can be taken, as no sanction as envisaged by Section 19 of the P.C.Act, 1988, is required for taking cognizance of the said offence punishable under Section 12 of the P.C.Act, 1988.

2 Heard Shri Mohite, the learned advocate appearing for the revision petitioner/accused no.1 Pravinkumar Deore. The learned advocate vehemently argued that perusal of the entire charge-sheet goes to show that case of the prosecution was to the effect that revision petitioner/accused no.1 Pravinkumar Deore was the main culprit in the matter, as he has demanded gratification other than legal remuneration for doing favour in official act of releasing arrears of salary, bonus and increment for the period of suspension of complainant Dr.Laxman Bagade as well as balance of pensionary benefit payable to another complainant Dr.Ravindra Dev. Prosecution has averred in the charge-sheet that it was accused no.2 Prakash Lakaria, who has aided revision petitioner/accused no.1 Pravinkumar Deore, Deputy Municipal Commissioner, in demand and acceptance of illegal gratification for showing favour to complainants Dr.Laxman Bagade and Dr.Ravindra Dev by releasing arrears of their emoluments and pension. However, as the State has refused to accord sanction as envisaged by Section 19 of P.C.Act, 1988, for prosecuting revision petitioner/accused no.1 Pravinkumar Deore,

the prosecution at the time of filing of the charge-sheet, modulated its case to show that the demand and acceptance of illegal gratification was by co-accused Prakash Lakaria, Senior Clerk, and the revision petitioner/accused no.1 Pravinkumar Deore aided him in demanding and accepting illegal gratification and thereby committed the offence punishable under Section 12 of the P.C.Act, 1988. In submission of the learned advocate appearing for revision petitioner/accused no.1 Pravinkumar Deore, there is no iota of evidence against revision petitioner/accused no.1 Pravinkumar Deore for commission of alleged offence punishable under Section 12 of the P.C.Act, 1988.

3 Shri Mohite, the learned advocate appearing for revision petitioner/accused no.1 Pravinkumar Deore further argued that provisions of offence of abetment of offences defined in Section 7 or Section 11 made punishable under Section 12 of the P.C.Act, 1988, is not applicable to public servants as special provision is made for punishing public servants abetting offences punishable under the P.C.Act, 1988. As special provisions are

made for punishing public servants for abetting offence punishable under P.C.Act, 1988, Section 12 of the P.C.Act, 1988, does not take public servants in its purview for imposing penal consequences prescribed thereunder. For this purpose, the learned advocate for revision petitioner/accused no.1 Pravinkumar Deore drew my attention to provisions of Sections 8, 9 and 12 of the P.C.Act, 1988, and submitted that for commission of offences punishable under these Sections, no sanction under Section 19 of the P.C.Act, 1988, is required. The principal accused cannot be an abettor. However, sanction is required for offences punishable under Sections 7, 10, 11, 13 and 15 of P.C.Act, 1988, only because those are offences committed by public servants. It is argued that Section 10 of P.C.Act, 1988, makes special provision for punishing public servants for abetment of offence defined in Sections 8 and 9, and therefore, it requires sanction under Section 19 of the said Act. However, as public servant is not covered by Section 12 of the P.C.Act, 1988, there is no need to obtain the sanction as envisaged by Section 19 of the said Act.

4 Shri Mohite, the learned advocate appearing for revision petitioner/accused no.1 Pravinkumar Deore further argued that the prosecution has not taken any step to challenge the order rejecting the request of the prosecution to prosecute revision petitioner/accused no.1 Pravinkumar Deore for offence punishable under Sections 7, 13(1)(d) read with 13(2) of the P.C.Act, 1988. The prosecution has not obtained any sanction as envisaged by Section 197 of the Code of Criminal Procedure (Cr.P.C.) for prosecuting revision petitioner/accused no.1 Pravinkumar Deore by alleging that he conspired with co-accused Prakash Lakaria, Senior Clerk, for commission of offence punishable under the P.C.Act, 1988. Act of dealing with files of Dr.Laxman Bagade and Dr.Ravindra Dev can certainly be termed as an official act, and therefore, if it is the case of the prosecution that revision petitioner/accused no.1 Pravinkumar Deore has indulged in criminal conspiracy with co-accused Prakash Lakaria, then it was incumbent on the part of the prosecution to obtain sanction to prosecute revision petitioner/accused no.1 Pravinkumar Deore, as provided by Section 197 of the Cr.P.C. He

drew my attention to Section 5 of the Cr.P.C. as well as Section 28 of the P.C.Act, 1988, to buttress this submission. By relying on judgments of the Hon'ble Apex Court in the matter of Subramanian Swamy vs. Manmohan Singh and Another¹, Romesh Lal Jain vs. Naginder Singh Rana and Others² and in N.K.Ganguly vs. Central Bureau of Investigation, New Delhi³, Shri Mohite, the learned advocate, argued that prosecution is alleging that there was conspiracy and as indulging in criminal conspiracy is an offence punishable under Section 120B of the IPC, the prosecuting agency ought to have obtained sanction of the State, as per requirement of Section 197 of the Cr.P.C.

With these submissions, Shri Mohite, the learned advocate appearing for the revision petitioner argued that the learned Special Judge under the P.C.Act, Nashik, erred in not discharging the revision petitioner, so far as the offence punishable under Section 12 of the P.C.Act, 1988, is concerned.

1 (2012) 3 Supreme Court Cases 64
 2 (2006) 1 Supreme Court Cases 294
 3 (2016) 2 Supreme Court Cases 143

5 As against this, learned APP Shri Gangurde argued that accused no.2 Prakash Lakaria accepted the amount of illegal gratification on behalf of revision petitioner/accused no.1 Pravinkumar Deore, Deputy Municipal Commissioner, Nashik, and therefore, revision petitioner/accused no.1 Pravinkumar Deore has committed the offence punishable under Section 12 of the P.C.Act, 1988. He drew my attention to the First Information Report (FIR) as well as complaints of Dr.Laxman Bagade and Dr.Ravindra Dev to demonstrate that the demand and acceptance of illegal gratification by co-accused Prakash Lakaria was for and on behalf of revision petitioner/accused no.1 Pravinkumar Deore. With this, the learned APP further argued that perusal of Section 19 of the P.C.Act, 1988, shows that for taking cognizance of the offence punishable under Section 12 of the P.C.Act, 1988, sanction of the Competent Authority is not required, and therefore, order rejecting the application for discharge moved by revision petitioner/accused no.1 Pravinkumar Deore before the learned Special Judge under the P.C.Act, Nashik, was rightly rejected by it. Shri Thakre, learned Public Prosecutor, placed on judgment of the

Hon'ble Apex Court in the matter of State through Central Bureau of Investigation vs. Parmeshwaran Subramani & Anr.⁴

and submitted that abetment of offence punishable under Sections 7 or 11 of the P.C.Act, 1988, itself is a distinct offence, and the court by process of interpretation cannot read Section 12 into Section 19 as it may amount to rewriting the very Section 19 itself.

6 I have carefully considered the relevant submissions and also perused the entire charge-sheet minutely. Now, let us examine whether the learned Special Judge under the P.C.Act, Nashik, has rightly rejected the prayer of revision petitioner/accused no.1 Pravinkumar Deore for his discharge, so far as the offence punishable under Section 12 of the P.C.Act, 1988, is concerned. It is well settled that the revisional jurisdiction is exercised in exceptional cases where there is glaring defect of the procedure or manifest error on the point of law resulting in miscarriage of justice. In the case in hand, it will have to be seen whether the learned Special Judge under the P.C.Act, Nashik, in rejecting the application for discharge from the offence

⁴ MANU/SC/1625/2009

punishable under Section 12 of the P.C.Act, 1988, has committed manifest error of law warranting interference of this court in its revisional jurisdiction. For proper appreciation of facts involved in the instant case, it is necessary to put on record relevant provisions of law. The charge-sheet was filed by the respondent / Anti Corruption Bureau (ACB) of the State in the court of the learned Special Judge under the P.C.Act, Nashik, on 23rd November 2016, by showing revision petitioner/accused no.1 Pravinkumar Deore, the then Deputy Municipal Commissioner, Nashik Municipal Corporation, Nashik, as accused no.1. Prakash Lakaria, Senior Clerk in Establishment Section of Nashik Municipal Corporation is shown as accused no.2 in the said charge-sheet. Commission of offences punishable under Sections 7, 12, 13(1)(d) read with 13(2) of the P.C.Act, 1988, by accused persons is alleged in the said charge-sheet. Accordingly, Special Case No.23 of 2016 came to be registered against revision petitioner/accused no.1 Pravinkumar Deore and co-accused Prakash Lakaria. Sections 7, 12, 13(1)(d) and 13(2) of the P.C.Act, 1988, read thus :

“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 six months but which may extend to five years and shall also be liable to fine.”

“12 Punishment for abetment of offences defined in section 7 or 11 — Whoever abets any offence punishable under section 7 or section 11

whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

“13 Criminal misconduct by a public servant –

(1) A public servant is said to commit the offence of criminal misconduct -

(a).....

(b).....

(c).....

(d) if he -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or”

“13 Criminal misconduct by a public servant –
(2)Any public servant who commits criminal
misconduct shall be punishable with imprisonment
for a term which shall be not less than one year but
which may extend to seven years and shall also be
liable to fine.”

7 Section 12 of the P.C.Act, 1988, makes abettor of offence punishable under Sections 7 and 11 thereof liable for punishment prescribed therein. The term “abetment” is not defined in P.C.Act, 1988. As such, one will have to resort to the definition of the term “abetment” as found in the Indian Penal Code (IPC). Section 107 thereof defines “abetment of a thing”. Section 107 of the IPC reads thus :

“107 Abetment of a thing — A person abets the doing of a thing, who —

First – Instigates any person to do that thing; or

Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.”

8 At this juncture, it is apposite to quote provisions of Section 197(1) of the Cr.P.C. which deals with prosecution of public servants, which reads thus :

197 Prosecution of Judges and public servants -

(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:”

9 Simultaneously, it will be beneficial to quote relevant provisions of Section 19 of the P.C.Act, 1988, which deals with previous sanction necessary for prosecuting the public servant, which reads thus :

“19 Previous sanction necessary for prosecution —

(1)No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

10 Careful perusal of provisions of Section 19 of the P.C.Act, 1988, and that of 197 of the Cr.P.C. makes it clear that both these sections operate in conceptually different fields. Offences contemplated in P.C.Act, 1988, are those which cannot be treated as acts directly or either purportedly done in discharge of official duties by a public servant. On the other hand, Section 197 of the Cr.P.C. deals with a public servant who is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty. Sanction required under Section 197 of the Cr.P.C. and the one required under Section 19 of the P.C.Act, 1988, stands on different footing. Sanction under Section 197 of the Cr.P.C. is required when the act complained of is an offence and when there is reasonable connection between such act and the official duty of the public servant. If the act and the official duty are so inter-related that one can postulate reasonably that it was done by an accused in performance of official duty though possibly in excess of needs and requirement, then sanction under Section 197 of the Cr.P.C. is necessary. Valuable reference can be had to this proposition from

judgments in the matter of **Subramanian Swamy (supra)** and **Romesh Lal Jain (supra)**. The court is required to examine the allegations contained in the final report in order to decide whether previous sanction is required to be obtained under Section 197 of the Cr.P.C. and if act complained of his directly concerned with official duty of a public servant, then sanction is necessary. A court is precluded from entertaining the charge or taking notice of it or exercising jurisdiction if the same is in respect of a public servant who is accused of an offence, alleged to have been committed during discharge of his official duty, if the Appropriate Government does not accord sanction to prosecute such public servant, as envisaged by Section 197 of the Cr.P.C. In a similar way, the Special court is precluded from entertaining a complaint or the charge by taking notice of it or by exercising jurisdiction in respect of the public servant for alleged offences punishable under Sections 7, 10, 11, 13 and 15 of the P.C.Act, 1988. Keeping in mind this position of law, let us put on record facts of the instant case as reflected from the case of the prosecution found in the charge-sheet filed against accused

persons.

11 Revision petitioner/accused no.1 Pravinkumar Deore is an officer from the cadre of the Deputy Collector working in Revenue and Forest Department of the State of Maharashtra. He is Class I Gazetted Officer of the State. By order dated 22nd August 2008, he came to be appointed by way of deputation on the post of the Deputy Commissioner (Administration) with Municipal Corporation, Nashik. Accused no.2 Prakash Lakaria was initially recruited as a sweeper with Municipal Corporation, Nashik, and with passage of time, he came to be promoted and at the relevant time, he was holding the post of Senior Clerk in Establishment Department of the Municipal Corporation, Nashik.

12 On 8th February 2011, Dr.Laxman Sadashiv Bagade, Medical Officer working with Municipal Corporation, Nashik, lodged a complaint with ACB, Nashik. Following averments were made in the said complaint :

Dr.Bagade alleged that on 25th July 2006, he came to be suspended with allegations that because of his negligence, a

patient named Gangubai More died. As the departmental inquiry against him could not be completed within a period of one year, he came to be reinstated. On 30th April 2010, the Inquiry Officer had submitted his report stating that charges leveled against Dr.Laxman Bagade are not proved. The complainant alleged that he was not paid full salary of period of suspension, bonus as well as annual increment. With this, Dr.Laxman Bagade has stated in his complaint that he met revision petitioner/accused no.1 Pravinkumar Deore, the then Deputy Municipal Commissioner, and asked him to release payments in respect of suspension period. In January 2011, revision petitioner/accused no.1 Pravinkumar Deore told him that without payment of money, no work can be done in the Municipal Corporation. The complaint further contains an averment that revision petitioner/accused no.1 Pravinkumar Deore informed complainant Dr.Laxman Bagade that he (revision petitioner/accused no.1 Pravinkumar Deore) has already told co-accused Prakash Lakaria about the money required for doing work of the complainant. With this, complainant Dr.Laxman Bagade was asked by revision

petitioner/accused no.1 Pravinkumar Deore to discuss the matter with co-accused Prakash Lakaria and if what is stated by the co-accused is agreeable to the complainant, then only the order in favour of the complainant will be issued. Complainant Dr.Laxman Bagade further averred that revision petitioner/accused no.1 Pravinkumar Deore informed him that otherwise the complainant may continue to make applications in the matter. In his complaint to the ACB, complainant Dr.Laxman Bagade further averred that thereafter he met co-accused Prakash Lakaria who told him that revision petitioner/accused no.1 Pravinkumar Deore has instructed to inform the complainant to make arrangement for payment of Rs.2 lakh. Complainant Dr.Laxman Bagade in his complaint further reported to the ACB that on 3rd February 2011 co-accused Prakash Lakaria came to his house and told him that revision petitioner/accused no.1 Pravinkumar Deore told him to inform that the complainant will have to pay the amount equivalent to the amount paid by one Dr.Palod for getting the work done. Co-accused Prakash Lakaria further told that Dr.Palod had paid an amount of Rs.2.50 lakh. Complainant Dr.Laxman

Bagade further reported to the ACB that when he expressed his inability to pay that much amount, co-accused Prakash Lakaria told him to contact revision petitioner/accused no.1 Pravinkumar Deore and negotiate the amount with revision petitioner/accused no.1 Pravinkumar Deore.

13 Plain reading of the complaint dated 8th February 2011 unerringly points out that revision petitioner/accused no.1 Pravinkumar Deore, who was holding the key post in the administration, he being Deputy Municipal Commissioner, in-charge of the Administration department of the Municipal Corporation, Nashik, had demanded illegal gratification from complainant Dr.Laxman Bagade for doing official act of releasing monetary dues in respect of period of suspension undergone by complainant Dr.Laxman Bagade and for this purpose, he had taken aid of co-accused Prakash Lakaria, Senior Clerk.

14 The charge-sheet is also in respect of the complaint made by another person i.e. Dr.Ravindra Dev, Retired Medical

Officer of Municipal Corporation, Nashik, on 1st March 2011 to the ACB. In his complaint, Dr.Ravindra Dev alleged that when he retired from the services of the Municipal Corporation on 31st May 2009, one departmental inquiry was pending against him, and therefore, his 25% pension came to be withheld by his employer/Municipal Corporation. In September 2009, he came to be exonerated of the charges leveled against him. In December 2010, he met revision petitioner/accused no.1 Pravinkumar Deore, Deputy Municipal Commissioner. In that meeting, revision petitioner/accused no.1 Pravinkumar Deore warned him that if he continues to make applications under the Right to Information Act, nothing will happen. Dr.Ravindra Dev further alleged that revision petitioner/accused no.1 Pravinkumar Deore informed him that he (revision petitioner/accused no.1 Pravinkumar Deore) has told Prakash Lakaria about the money required for getting the work done. Complainant Dr.Ravindra Dev alleged that with this, revision petitioner/accused no.1 Pravinkumar Deore directed him to meet co-accused Prakash Lakaria, Senior Clerk. When complainant Dr.Ravindra Dev met co-accused Prakash Lakaria, he

told that revision petitioner/accused no.1 Pravinkumar Deore has informed him (Prakash Lakaria) to tell him (Dr.Ravindra Dev) to pay Rs.50,000/- for getting the work of release of pension done. With this, complainant Dr.Ravindra Dev requested ACB to take action against revision petitioner/accused no.1 Pravinkumar Deore and co-accused Prakash Lakaria.

15 Plain reading of complaint of Dr.Ravindra Dev clearly indicates that complainant Dr.Ravindra Dev has alleged that it was revision petitioner/accused no.1 Pravinkumar Deore, Deputy Municipal Commissioner, who had demanded gratification other than legal remuneration for doing official act of releasing his balance pension.

16 Undisputedly, acting on complaints of Dr.Laxman Bagade and Dr.Ravindra Dev, subsequently, routine formalities were undertaken by the prosecuting agency – ACB, Nashik. Panch witnesses were called. Pre-trap verification was done. Subsequently, the trap was laid and resultantly, the FIR came to be

lodged by Kalyanrao Vidhate, Deputy Superintendent, ACB, Nashik, which ultimately resulted in filing of the charge-sheet against revision petitioner/accused no.1 Pravinkumar Deore and co-accused Prakash Lakaria, leading to the registration of the Special Case No.23 of 2016. Perusal of the charge-sheet goes to show that during the course of pre-trap verification conducted on 8th February 2011 and 9th February 2011, revision petitioner/accused no.1 Pravinkumar Deore was not available at his office. The charge-sheet further reveals that on 21st February 2011 and 22nd February 2011 the prosecuting agency laid traps but revision petitioner/accused no.1 Pravinkumar Deore was not available, and therefore, traps failed. The charge-sheet contains the transcript of audio recording of conversation amongst Dr.Laxman Bagade, Dr.Ravindra Dev and co-accused Prakash Lakaria allegedly done on 11th February 2011, for the purpose of pre-trap verification. Perusal of this transcript goes to show that co-accused Prakash Lakaria had informed complainants Dr.Laxman Bagade and Dr.Ravindra Dev that Saheb told each of them to pay an amount of Rs.50,000/-. Ultimately, the trap was

laid lastly on 1st March 2011. Transcript of audio recording of conversation between complainants Dr.Laxman Bagade and Dr.Ravindra Dev with revision petitioner/accused no.1 Pravinkumar Deore and with co-accused Prakash Lakaria is also annexed along with the charge-sheet. At that time, both complainants along with shadow panch - Yerurkar were sent with the digital recorder for meeting accused persons. The transcript reveals that complainants Dr.Laxman Bagade and Dr.Ravindra Dev met revision petitioner/accused no.1 Pravinkumar Deore. They requested revision petitioner/accused no.1 Pravinkumar Deore to make phone call to co-accused Prakash Lakaria. Revision petitioner/accused no.1 Pravinkumar Deore refused to make such call and told complainant Dr.Laxman Bagade that he has already spoken to co-accused Prakash Lakaria. The transcript reveals that then Dr.Laxman Bagade and Dr.Ravindra Dev met co-accused Prakash Lakaria. He told complainants that Saheb informed him and he will move the file in the morning of next working day. Co-accused Prakash Lakaria further told complainants that he will come in the evening to take money. The transcript further reveals

that he told both complainants that Saheb told him not to receive money in the office. As seen from the transcript of conversation between both complainants and co-accused Prakash Lakaria, it was decided to give money at the house of complainant Dr.Ravindra Dev in the evening of that date i.e, 1st March 2011. The transcript further shows that co-accused Prakash Lakaria then went to the house of complainant Dr.Ravindra Dev and he was there from 6.05 p.m. to 6.20 p.m. of 1st March 2011. As revealed from the transcript of conversation between them, co-accused Prakash Lakaria had received an amount of Rs.1 lakh from complainants at the house of complainant Dr.Ravindra Dev.

17 Perusal of the charge-sheet further shows that after acceptance of illegal gratification by co-accused Prakash Lakaria, pre-arranged signal was given. Raiding party then apprehended co-accused Prakash Lakaria and tainted currency notes worth Rs.1 lakh came to be recovered from him. Then, as stated earlier, on 2nd March 2011, Kalyanrao Vidhate, Deputy Superintendent of Police, ACB, lodged FIR with Police station Bhadrakali, which has ultimately resulted in registration of the subject special case on filing of the

charge-sheet.

18 The charge-sheet apparently filed on 23rd November 2016 reflects that on completion of investigation, proposal for issuance of sanction as contemplated under Section 19 of the P.C.Act, 1988, was sent with requisite documents in respect of Crime No.3017 of 2011 for offences punishable under Sections 7, 12, 13(1)(d) read with 13(2) of the P.C.Act, 1988. The charge-sheet contains order dated 23rd June 2014 (page 73 of the record) issued by the State Government in Revenue and Forest Department, rejecting sanction to prosecute revision petitioner/accused no.1 Pravinkumar Deore in Crime No.3017 of 2011 for offences punishable under Sections 7, 12, 13(1)(d) and 13(2) of the P.C.Act, 1988. The charge-sheet further contains letter dated 15th July 2014 issued by the ACB to the State Government in Revenue and Forest Department (page 745 of the record) for review of the decision to reject sanction to prosecute revision petitioner/accused no.1 Pravinkumar Deore. After re-considering the matter, the State Government in Revenue and Forest Department vide order dated 25th January 2017 (record

page no.781) again informed to the ACB that the State has decided to confirm its order of rejecting sanction to prosecute revision petitioner/accused no.1 Pravinkumar Deore. This development makes it clear that prior to filing of the charge-sheet against revision petitioner/accused no.1 Pravinkumar Deore in the month of November 2016, the State Government vide order dated 23rd June 2014 had refused to accord sanction to prosecute revision petitioner/accused no.1 Pravinkumar Deore to the knowledge of the prosecuting agency i.e. the ACB. Proposal of the ACB to review this rejection was then pending with the State. The matter will have to be examined in the light of this factual position, in order to ascertain what was the prosecution case against revision petitioner/accused no.1 Pravinkumar Deore.

19 Knowing fully well that the State has refused to accord sanction to prosecute revision petitioner/accused no.1 Pravinkumar Deore in subject Crime No.3017 of 2011, the charge-sheet came to be filed, which contains description of the charge in Column No.16 of the charge-sheet. Perusal of this Column No.16

of the charge-sheet giving description of the charge as per version of the ACB, makes the prosecution case against revision petitioner/accused no.1 Pravinkumar Deore clear. It is alleged by the prosecuting agency i.e. ACB that for deciding the entitlement of the complainant Dr.Laxman Bagade, revision petitioner/accused no.1 Pravinkumar Deore demanded gratification other than legal remuneration amounting to Rs.50,000/- from complainant Dr.Laxman Bagade through accused no.2 Prakash Lakaria. The description of charge in Column No.16 of the charge-sheet further reveals that according to the prosecuting agency, for releasing 25% pension of complainant Dr.Ravindra Dev, withheld by Municipal Corporation, revision petitioner/accused no.1 Pravinkumar Deore, through accused no.2 Prakash Lakaria, demanded gratification other than legal remuneration amounting to Rs.50,000/- from Dr.Ravindra Dev. Column No.16 of the charge-sheet further makes it clear that according to the prosecuting agency, as per directions of revision petitioner/accused no.1 Pravinkumar Deore, accused no.2 Prakash Lakaria, Senior Clerk, had demanded gratification other than legal

remuneration amounting to Rs.50,000/- each from Dr.Laxman Bagade and Dr.Ravindra Dev. It is further averred in Column No.16 of the charge-sheet that as per instructions of revision petitioner/accused no.1 Pravinkumar Deore, accused no.2 Prakash Lakaria had gone to the house of Dr.Ravindra Dev on 1st March 2011 for receiving the amount of illegal gratification and accepting Rs.1,00,000/- from complainant Dr.Laxman Bagade and Dr.Ravindra Dev. Thus, the prosecuting agency i.e. ACB has unequivocally stated in Column No.16 of the charge-sheet that the demand of illegal gratification was emanated from revision petitioner/accused no.1 Pravinkumar Deore, the then Deputy Municipal Commissioner, Nashik, and accused no.2 Prakash Lakaria has aided him in the matter, by meeting complainants Dr.Laxman Bagade and Dr.Ravindra Dev, by going to the house of complainant Dr.Ravindra Dev and received the amount of illegal gratification totaling Rs.1,00,000/-. The entire case of the prosecution, since inception, as such, was to the effect that revision petitioner/accused no.1 Pravinkumar Deore demanded illegal gratification from complainants Dr.Laxman Bagade and

Dr.Ravindra Dev for releasing their dues, and in that process, accused no.2 Prakash Lakaria has aided him for demand and receipt of illegal gratification. However, only in the last paragraph of Column No.16 of the charge-sheet, obviously because the State had refused to sanction prosecution of revision petitioners Pravinkumar Deor, the Investigator averred that the revision petitioner/accused no.1 Pravinkumar Deore aided accused no.2 Prakash Lakaria, by taking complete “U” turn. In the FIR lodged by Kalyanrao Vidhate, Deputy Superintendent, ACB, against accused persons, also it is averred that as per directions of revision petitioner/accused no.1 Pravinkumar Deore, accused no.2 Prakash Lakaria aided and assisted accused no.1 revision petitioner/accused no.1 Pravinkumar Deore in receiving amount of illegal gratification by visiting house of complainant Dr.Ravindra Dev.

20 Section 7 of the P.C.Act, 1988, deals with public servant taking gratification other than legal remuneration in respect of an official act. Acceptance of any gratification as a

motive or reward for doing any official act or for showing favour in exercise of his official function by a public servant is made punishable under this Section and for prosecuting a public servant for the offence punishable under this Section, previous sanction as contemplated by Section 19 of P.C.Act, 1988, is required from the Competent Authority, which in the instant case is the State of Maharashtra. Section 13(1)(d) of P.C.Act, 1988, deals with criminal misconduct by a public servant and obtaining any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant, makes a public servant liable for penalty under this Section. A public servant can be prosecuted for commission of an offence punishable under Section 13 of the P.C.Act, 1988, only with prior sanction of the Competent Authority, as per provisions of Section 19 of the P.C.Act, 1988.

21 In the case in hand, State of Maharashtra, which is an authority to sanction prosecution of revision petitioner/accused no.1 Pravinkumar Deore, has refused to accord sanction to

prosecute him not only once, but twice. On this backdrop, if impugned order is examined, then it is seen that the learned Special Judge under P.C.Act, Nashik, decided to take cognizance of the offence punishable under Section 12 of the P.C.Act, 1988, against present revision petitioner/accused no.1 Pravinkumar Deore, without undertaking examination of material before it, as found in the charge-sheet. In a shortcut manner, the subject was dealt by the learned Special Judge under P.C.Act, Nashik. The only reasoning for deciding to take cognizance of the offence punishable under Section 12 of the P.C.Act, 1988, against revision petitioner/accused no.1 Pravinkumar Deore, is to the effect that for prosecuting a public servant for the offence punishable under Section 12 of the P.C.Act, 1988, no sanction as envisaged by Section 19 of the said Act is necessary. The learned Special Judge under P.C.Act, Nashik, while deciding the application for discharge moved by revision petitioner/accused no.1 Pravinkumar Deore, has not undertaken scrutiny of the charge-sheet in order to decide whether the offence punishable under Section 12 of the P.C.Act, 1988, is attracted against revision petitioner/accused no.1

Pravinkumar Deore. It was expected of the learned Special Judge under P.C.Act, Nashik, to undertake examination of material available against revision petitioner/accused no.1 Pravinkumar Deore in order to satisfy himself as to sufficiency of that material for framing the charge-sheet for the offence punishable under Section 12 of the P.C.Act, 1988. Though the learned Special Judge under P.C.Act, Nashik, was not expected to go deep into probative value of the material on record, what was expected of him was to consider whether there is ground for presuming that the offence punishable under Section 12 of the P.C.Act, 1988, has been committed by revision petitioner/accused no.1 Pravinkumar Deore. He ought to have examined the material gathered by the Investigator in order to arrive at a conclusion, whether it indicates existence of factual ingredients constituting the offence punishable under Section 12 of the P.C.Act, 1988, indicting revision petitioner/accused no.1 Pravinkumar Deore. The learned Special Judge under P.C.Act, Nashik, ought to have examined whether there is a ground for presuming that the offence punishable under Section 12 of the P.C.Act, 1988, has been committed by revision

petitioner/accused no.1 Pravinkumar Deore. Exercise of evaluating the material and documents on record with a view of finding out if facts emerging from the charge-sheet, taken at their face value, discloses existence of all the ingredients constituting the offence punishable under Section 12 of the P.C.Act, 1988, was expected from the learned Special Judge under P.C.Act, Nashik, while deciding the application for discharge, moved by revision petitioner/accused no.1 Pravinkumar Deore. However, the learned Special Judge under P.C.Act, Nashik, it appears, has merely taken into consideration the order of the State Government rejecting sanction to prosecute revision petitioner/accused no.1 Pravinkumar Deore issued on 23rd June 2014 and concluded that sanction to prosecute the public servant for the offence punishable under Section 12 of the P.C.Act, 1988, is not necessary, as Section 19 of the said Act does not mandate it. However, the learned Special Judge under P.C.Act, Nashik, has not examined the matter from the angle as to ascertain, whether there is any prima facie material on record to frame the charge for the offence punishable under Section 12 of the P.C.Act, 1988, against revision

petitioner/accused no.1 Pravinkumar Deore.

22 Perusal of definition of the term “abetment” found in Section 107 of the IPC makes it clear that “abetment” can be done by instigating a person to do a thing or by intentionally aiding in doing of the thing. In the case in hand, the prosecution is not alleging that both accused persons namely Pravinkumar Deore and Prakash Lakaria have entered in criminal conspiracy, in order to obtain illegal gratification from complainants. Charge for the offence punishable under Section 120B of the IPC is not leveled against any of the accused persons. Even otherwise, if such charge was leveled, then, it might have required sanction under Section 197 of the Cr.P.C. and the record does not reveal that any step in that direction was ever contemplated by the prosecuting agency. Ultimately, dealing with files of complainants -Dr.Laxman Bagade and Dr.Ravindra Dev, was the official duty of revision petitioner/accused no.1 Pravinkumar Deore, he being holder of the post of Deputy Municipal Commissioner, in-charge of the Administration Department of Nashik Municipal Corporation. Thus, apparently, it is not the case of the prosecution that

“abetment” in the case in hand was by indulging in “conspiracy”. Reasoning given in foregoing paragraphs by this court, after appreciating the entire material found in the charge-sheet, makes it clear that case of the prosecution is that of “abetment by intentionally aid.” Section 12 of the P.C.Act, 1988, enunciates the principle that “a bribe giver is as much a criminal, as a bribe taker.” If a person offers to pay illegal gratification or to give a valuable thing to a public servant, as a motive or reward for showing favour in exercise of official function, such proposal, by itself, is an offence under this Section. When accused brings money and gives it to a public servant for the purpose enumerated in Section 7 of the P.C.Act, 1988, his conduct shall amount to “intentional aid” and would constitute the offence punishable under Section 12 of the P.C.Act, 1988. So far as the case in hand is concerned, the entire charge-sheet shows that according to the prosecution, Section 12 of P.C.Act, 1988, was invoked because accused no.2 Prakash Lakaria has intentionally aided revision petitioner/accused no.1 Pravinkumar Deore in commission of offences punishable under Sections 7, 13(1)(d) read with 13(2) of

the P.C.Act, 1988. In other words, in-depth scrutiny of the entire charge-sheet does not reveal an iota of evidence to infer commission of the offence of abetment punishable under Section 12 of the P.C.Act, 1988, by revision petitioner/accused no.1 Pravinkumar Deore. As such, the charge for the offence punishable under Section 12 of the P.C.Act, 1988, sought to be leveled against revision petitioner/accused no.1 Pravinkumar Deore, is obviously groundless. Learned Special Judge under P.C.Act, Nashik, as such, has committed manifest error of law in rejecting the application for discharge, moved by revision petitioner/accused no.1 Pravinkumar Deore, in respect of the offence punishable under Section 12 of the P.C.Act, 1988, with the only reasoning that this offence does not require sanction under Section 19 thereof.

23 As the revision petition succeeded on the point that there is no material to infer commission of the offence punishable under Section 12 of the P.C.Act, 1988, I do not consider it necessary to examine and decide other points urged by the

learned advocate for revision petitioner/accused no.1 Pravinkumar Deore.

24 By this order, I may not be understood that there is any material to infer commission of offences punishable under Sections 7, 13(1)(d) read with 13(2) of the P.C.Act, 1988, against revision petitioner/accused no.1 Pravinkumar Deore, the then Deputy Municipal Commissioner, Nashik Municipal Corporation. That cannot be subject matter of this revision petition. The scrutiny and discussion in that regard is only in order to ascertain what is the prosecution case against revision petitioner/accused no.1 Pravinkumar Deore. Whether there is evidence for commission of those offences or not, is not at all examined by this court. Needless to state, that post trap verification, so far as present revision petitioner/accused no.1 Pravinkumar Deore, attempted by the prosecuting agency failed on two occasions and there is no evidence of direct demand by him. In the result, the revision petition succeeds and the following order :

ORDER

- i) The Revision Petition is allowed.
- ii) The impugned order dated 17th May 2017 passed by the learned Special Judge under P.C.Act, Nashik, below Exhibit 4 in Special Case No.23 of 2016, between the parties, so far as it relates to taking cognizance of the offence punishable under Section 12 of the P.C.Act, 1988, against revision petitioner/accused no.1 Pravinkumar Deore, is quashed and set aside.
- iii) Revision petitioner/accused no.1 Pravinkumar Deore is discharged from the Special Case No.23 of 2016 pending on the file of learned Special Judge under P.C.Act, Nashik.

(A. M. BADAR, J.)