

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 775 OF 2021

Prashant S/o. Vinayakrao Sable,
Age 43 years, Occ. Unemployed,
R/o. M-16, Flat No. 183, CBS Road,
Near MHADA Office, MHADA colony,
Aurangabad, Dist. Aurangabad.

... Applicant.

Versus

The Union of India
(Through Investigating Officer,
Central Bureau of Investigation,
ACB – Pune.

... Respondent.

Advocate for Applicants : Mr. A.P. Avhad
ASG for Respondent No. 1 : Mr. A.G. Talhar.

**CORAM : SMT. VIBHA KANKANWADI
& RAJESH S. PATIL, JJ.
DATE : 18th AUGUST, 2022.**

JUDGMENT [PER : RAJESH S. PATIL, J.] :-

1] The present Criminal Application is filed under Section 482 of the Cr.PC., by the applicant seeking two substantive reliefs therein :

1.1] The FIR No. RC PUNE/2021/A/0001 dated 18.1.2021 lodged in CBI, ACB, Pune under Section 7 of the Prevention of Corruption Act, be quashed and set aside.

1.2] The charge sheet filed in Special Case No. 51 of 2020 dated 25.3.2021 submitted in the Court of Special Judge, CBI cases, Jalgaon, be quashed and set aside.

A. The parties.

2] The applicant was working as a Recovery Officer in one Yash Consultancy Services (Recovery Agency of Dena Bank now known as Bank of Baroda). The Informant (Complainant) is a borrower of vehicle loan from Dena Bank.

B. First Information Report's Contents :-

3.1] It is the case of the complainant – Subhash Kashinath Rane in his complaint dated 12.1.2021 lodged with CBI, ACB, Pune which was registered as FIR No. RC *PUNE* 21/A/001, dated 18.1.2021 that, he had obtained a loan from Dena Bank (now Bank of Baroda) from Chalisgaon Branch in the year 2010-11 for purchase of tractor. He defaulted in payment of installments of the said loan. On 8.1.2021, at about 8.30 a.m. in the morning, the present Applicant, claiming to be the Recovery Officer of the Bank of Baroda, came to his house and showed him one notice of the bank and further stated that the complainant had taken loan of Rs. 5 Lakhs which has now become 12 Lakhs, due to non payment of installments. Hence, he had come to seize the tractor. The complainant has further stated that, he then requested the Recovery Officer not to seize the tractor. The said Recovery Officer then demanded Rs. 20,000/- in cash from the complainant and further mentioned that only after he receives Rs. 20,000/-, he will not seized the tractor. It is further case of the complainant in his complaint that he paid Rs. 10,000/- as a part payment immediately, and further agreed to pay the balance Rs. 10,000/- on 21.1.2021. So also, agreed to compromise and put an end to the said loan account which has now become 12 Lakhs by fixing the outstanding amount as Rs. 5 Lakhs.

3.2] Thereafter, the complainant- Subhash Rane on 12.01.2021 lodged a complaint with CBI, ACB, Mumbai. Accordingly, on 19.01.2021 a trap was laid at Chalisgaon. The applicant Prashant Vinayakrao Sable came to the spot and was caught red handed. He was arrested by the CBI team and taken into custody, and after two days was granted bail on 21.01.2021.

3.3] The applicant has now challenged the FIR by filing the present criminal application under Section 482 of the Code of Criminal Procedure.

C. Averments in Criminal Application.

4.1] It is the case of the applicant in Criminal Application filed under Section 482 of Cr.p.c. That, he was working in the firm M/s. Yash Consultancy Services. It is further his case that Yash Consultancy Services used to work as Recovery Agent with various banks. Amongst them, one bank was Dena Bank (now known as Bank of Baroda). The applicant further stated that on 18.1.2021, the FIR was registered against him based on alleged complaint of complainant Mr. Subhash Rane.

4.2] It is further case of the applicant that, applicant applied for bail before the learned Sessions Judge, Jalgaon. The said bail application was allowed by order dated 21.1.2021 and soon the applicant was released on bail.

4.3] It is the applicant's case that immediately after bail was granted, he has filed the present criminal application under Section 482 on 15.3.2021 for quashing of the FIR, on various grounds which are stated in the application. It is contended that on reading the FIR, it can

be seen that the offence under Section 7 of the Prevention of Corruption Act is not attracted. It is further stated that the applicant was the Recovery Officer of M/s. Yash Consultancy and was not Recovery Officer of Bank of Baroda. Hence, the applicant is not “Public Servant” within the definition of Section 2(c) of the Prevention of Corruption Act. It is further stated that the applicant is not involved in any offence, as stated in the complaint. All the allegations made in complaint are false without any proof.

D. Submissions of Counsel :-

5] Learned Advocate Mr. Avhad submitted that the applicant being an employee of Yash Consultancy Services, he cannot be treated as a Recovery Officer of Bank of Baroda. The applicant is not a Public Servant as defined under Section 2 (c) of the Prevention of Corruption Act. Therefore, the offence as contemplated under Section 7 of the Prevention of Corruption Act is not attracted.

6] The learned counsel further submitted that the complainant has alleged in the complaint that the applicant had assured him that the loan will be settled at Rs. 5 Lakhs when the actual amount to be recovered was Rs. 12 Lakhs. The applicant having no such power to reduce the outstanding amount, therefore, the allegation in that regard is totally false and baseless. The FIR, therefore, needs to be quashed and set aside.

7] It is further submitted on behalf of the applicant that the complainant himself was a defaulter as he had not paid the installments and when the applicant went to recover the said amount, to pressurize the applicant, he has made this bogus and concocted complaint against

the applicant, thereby, falsely implicating him and hence, the FIR needs to be quashed and set aside.

8] Per contra, learned ASG Mr. Talhar, submitted that the ingredients of offence under Section 7 of the Prevention of Corruption Act, are clearly attracted as the applicant has not only demanded bribe but was also caught red handed while accepting an amount of Rs. 10,000, in the trap which was laid for him. Further statements have been recorded, pursuant to which charge-sheet has been filed on 25.03.2021 in the Court of Special Judge for CBI case at Jalgaon and hence, there is no substance in the application and the same may be dismissed.

E. Analysis :-

9] The complainant had availed loan from Dena Bank, now known as Bank of Baroda. In July 1969, the government of India nationalized Dena Bank, along with thirteen other major banks. Dena Bank thereby became a Public Sector bank constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. Further pursuant to the Union Cabinet and the boards of the banks approval for the merger on 2 January 2019, Dena Bank merged with Bank of Baroda (Public Sector Bank) on 1/4/2019. Therefore, the Dena Bank (now known as Bank of Baroda) is a public sector bank; and complainant had availed loan from it.

10] The Respondent C.B.I. has produced various documents on record which are part of Charge Sheet. Amongst, this is the Bank of Baroda's letter dated 19/6/2020 addressed to Yash Consultancy Services,

empanelling it as Recovery Agent, on terms and conditions mentioned therein : Amongst other terms, is Item no.2 which states “The recovery agent is authorised to represent the Bank only before concerned defaulting Borrower/Guarantor/ Mortgagor for the purpose of speedy and effective recovery of the monies due and payable to the bank.”

11] Along with Charge Sheet, statements recorded of various witnesses, are produced on records by the C.B.I. One such statement is recorded on 19/2/2021, of Shri Sandeep Ashok Murterte, proprietor of M/s. Yash Consultancy Service; his statement records, *“On being asked I state that I know Shri Prashant Sable. He is employee of my agency and he is working with me since 7/8 years. He is my business partner since 2015-16 but this partnership not on the paper.”*

Thus, it appears from this statement that Applicant is business partner of Recovery Agency also of a public sector Bank.

12] CBI also recorded statement of Shri Niranjan Ghadki, Manager (Scale II), Recovery, Bank of Baroda, Chalisgaon Branch, Jalgaon on 26.2.2021, which states :-

“The recorded conversations were heard carefully and with all attention before the Panch witnesses I identify the voice of Shri Prashant Sable as he was directed to report me regularly status of NPA accounts allotted to M/s. Yash Consultancy services, Aurangabad, for seizure of assets. He used to talk to me directly and over mobile with Shri Prashant Sable i.e. Recovery Agent of M/s. Yash Consultancy Services ?”

Statements and act of Applicant goes on to show that he was acting as Recovery Agent of a public sector Bank.

13] In the documents filed with charge sheet, there is a document dated 10/4/2019, written by Office of the Commissioner of Police, Aurangabad, to proprietor of Yash Consultancy Services, regarding Verification of Character & antecedents. The said letter records that two offences have been registered against him viz. Criminal Complaint No. 1059/13, under Sections 406, 409, 418, 442, 520 of I.P.C. and R.C.C.No.1719/2016 u/S.406, 420 of I.P.C. Both the cases were however dismissed.

14] The Counsel for the applicant has vehemently argued that he does not fall within the definition of “Public Servant” as defined in Section 2(c) of the Prevention of Corruption Act. Therefore, it is necessary to reproduce relevant part of Section 2 (c) of Prevention of Corruption Act, which reads as under :

“Section 2 (c) “public servant” means –

(i)

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

.....

Explanation 1.— Persons falling under any of the above sub- clauses are public servants, whether appointed by the Government or not.”

15] Therefore, the definition of “Public Servant’ under sub-clauses (viii) contained in Section 2(c) of the Prevention of Corruption Act includes any person who holds an office by virtue of which he is

authorised or required to perform any public duty is a public servant. So also Explanation 1 clarifies that such persons falling under above sub clauses may be appointed by the Government or not.

16] It is also necessary here to reproduce Section 2(b) of the Prevention of Corruption Act, which defines “Public Duty”, which reads thus :-

“Section 2 (b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest.”

The above definition of Public Duty very clearly mentions the duty in the discharge of which State, Public or Community at large has an interest. Therefore the definition of public duty is wide. Discharge of duties in which the community at large has an interest has been brought within the ambit of the expression ‘public duty’.

17] Section 7 of the Prevention of Corruption Act, is relevant in this regard, which reads thus :-

“Section 7. Any public servant who, –

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to

perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Explanation 2.—For the purpose of this section, – (i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.”

18] Therefore, any person who is a government employee or not a government employee directly accepts an undue advantage with

intention to perform public duty improperly or dishonestly or cause forbearance to perform such duty, shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and shall also be liable to fine.

19] The provisions of Prevention of Corruption Act, have been construed by Supreme Court, in *Manish Trivedi Vs. State of Rajasthan, reported in (2014)14 SCC 420*, wherein the Supreme Court while interpreting the words 'public servant' made the following observation in para 19 :

"19. The present Act (the 1988 Act) envisages widening of the scope of the definition of the expression "public servant". It was brought in force to purify public administration. The legislature has used a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing corruption among public servants. Hence, it would be inappropriate to limit the contents of the definition clause by a construction which would be against the spirit of the statute. Bearing in mind this principle, when we consider the case of the appellant, we have no doubt that he is a public servant within the meaning of Section 2(c) of the Act. Sub-clause (viii) of Section 2(c) of the present Act makes any person, who holds an office by virtue of which he is authorised or required to perform any public duty, to be a public servant. The word "office" is of indefinite connotation and, in the present context, it would mean a position or place to which certain duties are attached and has an existence which is independent of the persons who fill it. Councillors and Members of the Board are positions which exist under the Rajasthan Municipalities Act. It is independent of the person who fills it. They perform various duties which are in the field of public duty. From the conspectus of what we have observed above, it is evident that the appellant is a public servant within Section 2(c) (viii) of the Prevention of Corruption Act, 1988." (emphasis supplied)."

20] Further, it is relevant to mention that in ***Govt. of A.P. Versus P. Venku Reddy, reported in (2002)7SCC631***, in which the supreme Court while interpreting words "Public Servant" has made the following observations in para 9 to 12 :

"9. It cannot be lost sight of that the 1988 Act, as its predecessor, that is, the repealed Act of 1947 on the same subject, was brought into force with the avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repeals and replaces the Act of 1947 contains a very wide d definition of "public servant" in clause (c) of Section 2 of the 1988 Act. The Statement of Objects and Reasons contained in the Bill by which the Act was introduced in the legislature throws light on the intention of the legislature in providing a very comprehensive definition of the words "public servant".

Para 3 of the Statement of Objects and Reasons reads:

"3. The Bill, inter alia, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under Sections 161 to 165-A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included."

10. Clause 2 of the Notes on Clauses in the Gazette of India, Extraordinary, Part II, Section 2, further clarifies the legislative intent thus:

"2. This clause defines the expressions used in the Bill. Clause 2(c) defines 'public servant'. In the existing definition the emphasis is on the authority employing and the

authority remunerating. In the proposed definition the emphasis is on public duty. The definition of 'election' is based on the definition of this expression in the Indian Penal Code."

11. Under the repealed Act of 1947 as provided in Section 2 of the 1988 Act, the definition of "public servant" was restricted to "public servants" as defined in Section 21 of the Indian Penal Code. In order to curb effectively bribery and corruption not only in government establishments and departments but also in other semi-governmental authorities and bodies and their department where the employees are entrusted with public duty, a comprehensive definition of "public servant" has been given in clause (c) of Section 2 of the 1988 Act.

12. In construing the definition of "public servant" in clause (c) of Section 2 of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of the legislature. In that view the Statement of Objects and Reasons contained in the Bill leading to the passing of the Act can be taken assistance of. It gives the background in which the legislation was enacted. The present Act, with a much wider definition of "public servant", was brought in force to purify public administration. When the legislature has used such a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing growing corruption in government and semi-government departments, it would be appropriate not to limit the contents of the definition clause by construction which would be against the spirit of the statute. The definition of "public servant", therefore, deserves a wide construction."

21] Similarly in *State of M. P. Vs. Kedarilal Vaishya reported in (2000) 5 SCC 88*, the Hon'ble Supreme Court speaking through R.P. Sethi J, held in para no.8 to 11, as follows :

"8. Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to malignise (sic) the

polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence - shaking of the socio-economic-political system b in an otherwise healthy, wealthy, effective and vibrating society.

9. The menace of corruption was found to have enormously increased by the First and Second World War conditions. Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large c amounts of government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property. In order to d consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act 49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act. The law relating to prevention of corruption was essentially made to deal with the public servants, not as understood in common parlance but specifically defined in the Act.

10. The Act was intended to make effective provisions for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servants and is f designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act this Court in *R.S. Nayak v. A.R. Antulay*² held: (SCC p. 200, para 18).

"18. The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such 9 construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it."

If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self- defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it."

11. Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it."

22] In *Asian Resurfacing of Road Agency Pvt. Ltd. Vs. C.B.I. reported in (2018) 16 SCC 299*, three Judges Bench of Supreme Court held in para no.39 and 42, as follows :

“Rohinton Fali Nariman, J. (concurring)- The cancer of corruption has, as we all know, eaten into the vital organs of the State. Cancer is a dreaded disease which, if not nipped in the bud in time, causes death. In British India, the Penal Code dealt with the cancer of corruption by public servants in Chapter IX thereof. Even before Independence, these provisions were found to be inadequate to deal with the rapid onset of this disease as a result of which the Prevention of Corruption Act, 1947, was enacted. This Act was amended twice-once by the Criminal Law (Amendment) Act, 1952 and a second time by the Anti-Corruption Laws (Amendment) Act, 1964, based on the recommendations of the Santhanam Committee. A working of the 1947 Act showed that it was found to be inadequate to deal with the disease of corruption effectively enough. For this reason, the Prevention of Corruption Act, 1988 was enacted (hereinafter referred to as "the Act").

42. Section 2(c) defines "public servant". The definition is extremely wide and includes within its ken even arbitrators or other persons to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority [See Section 2(c)(vi)]. Also included are office-bearers of registered cooperative societies engaged in agriculture, industry, trade or banking, who receive financial aid from the Government [See Section 2(c)(ix)]. Office-bearers or employees of educational, scientific, social, cultural or other institutions in whatever manner established, receiving financial assistance from the Government or local or other public authorities are also included [see Section 2(c)(xii)]. The two Explanations to Section 2(c) are also revealing - whereas Explanation 1 states that in order to be a public servant. One need not be appointed by the Government, Explanation 2 refers to a de facto, as opposed to a de jure, public servant, discounting whatever legal defect there may be in his right to hold that "situation".

23] In recent judgment of Supreme Court in ***State of Gujarat Vs. Mansukhbhai K Shah reported in AIR 2020 Supreme Court 2203***, para no. 44, 47, 49 and 50 :

“44. As discussed earlier, the object of the PC Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the PC Act was to shift focus from those who are traditionally called public officials, to those individuals who perform public duties. Keeping the same in mind, as rightly submitted by the learned senior counsel for the appellant- State, it cannot be stated that a "Deemed University" and the officials therein, perform any less or any different a public duty, than those performed by a University simpliciter, and the officials therein.

47. This Court in the case of P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626: (AIR 1998 SC 2120), has clarified the word "office" in the following manner :

"61. ... The word 'office' is normally understood to mean 'a position to which certain duties are attached, especially a place of trust, authority or service under constituted authority'. (See Oxford Shorter English Dictionary, 3rd Edn., p. 1362.) In *McMillan v. Guest*, (1942) 1 All ER 606 (HL), Lord Wright has said:

...The word "office" is of indefinite content. Its various meanings cover four columns of the New English Dictionary, but I take as the most relevant for purposes of this case the following:

"A position or place to which certain duties are attached, especially one of a more or less public character."

In the same case Lord Atkin gave the following meaning:

..."an office or employment which was subsisting, permanent, substantive position, which had an existence

independent of the person who filled it, which went on and was filled in succession by successive holders."

In *Statesman (P) Ltd. v. H.R. Deb*, AIR 1968 SC 1495 and *Mahadeo v. Shantibhai*, (1969) 2 SCR 422 (AIR Online 1968 SC 74) this Court has adopted the meaning given by Lord Wright when it said:

'An office means no more than a position to which certain duties are attached.'

49. In order to appreciate the amplitude of the word "public servant", the relevance of the term "public duty" cannot be disregarded. "Public duty" is defined under Section 2(b) of the PC Act. which is reproduced below:

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

50. Evidently, the language of Section 2(b) of the PC Act indicates that any duty discharged wherein State, the public or community at large has any interest is called a public duty. The first explanation to Section 2 further clarifies that any person who falls in any of the categories stated under Section 2 is a public servant whether or not appointed by the government. The second explanation further expands the ambit to include every person who de facto discharges the functions of a public servant, and that he should not be prevented from being brought under the ambit of public servant due to any legal infirmities or technicalities."

24] The *Karnataka High Court in State Vs. Sadashiva S Yelagod*, reported in *2016 Criminal L. J. 4805*, while deciding the criminal revision petition , held that even person appointed as Consultant entrusted with work done by contractor – performs public duty – such person is public servant irrespective whether he is appointed as Consultant. Para 19 and 20 are reproduced :

"19. The above clauses in the agreement clearly indicate that there was some assignment of work and while executing the assigned work, the petitioner must be very loyal to the institution and he has to maintain highest ethical standard and integrity. Therefore, the Court has to see, as to what exactly the nature of assignment of work that was entrusted to the petitioner and whether in executing the said assignment he could have committed any offence. The petitioner himself has produced before the Court the terms of reference under Jala Nirmal Project. At item No. 6 of the said document, the tasks/responsibilities of the consultant are broadly enumerated. The eighth dotted point of item No. 6 of Clause 'C' clearly discloses the work that has been assigned to the accused which reads as under:

C. Outline of the Tasks/Responsibilities of the Consultant.

6. The tasks/responsibilities of the consultant are broadly enumerated as under :

"Technical monitoring the contract of SAS and to conduct the quality check and quality surveillance of works implemented by GPs and contractors along with random surprise visit for qualitative monitoring." The above assignment of work clearly discloses that accused not only should monitor the contract entered into by Gram Panchayath with contractors but he has to conduct quality check and quality surveillance of works implemented by GPs and contractors. That means he must have surveillance over the work done by the contractors. Therefore the arguments of the accused that he could not have any control or contract with the contractors cannot be accepted.

20. There is no dispute that the accused was working as on the date of the incident and executing the work assigned to him. He has worked as Assistant Technical Consultant. The above assignment of work clearly discloses that the petitioner has been entrusted with public work. This analogy can be very well illustrated in the following :

"Suppose if the department has appointed a regular Assistant Civil Engineer and entrusted this work, if the said person committed any offence under the Act whether he would have been liable for prosecution or not".

The answer must be in the affirmative that if any public servant who is appointed to do some public work commits any wrong or offence while discharging his duty as a public servant he will become liable to be punished under the Act. Therefore, the work that ought to have been entrusted to the regular employee has been entrusted to the accused by way of contract, in my opinion, though nomenclature was that of a consultant, but in view of the assignment of public work to the accused, it stands on different footing as that of discharging a public duty. Because the accused is entrusted with the work of supervising the work of a contractor and to check the quality of work and he will have surveillance over the contractors' work that means he will have control over the contractors and he can give his opinion with regard to the quality of the work done by the contractor. Therefore, in my opinion, the arguments of petitioner that he was never entrusted with any public work and he is only a consultant and there is no work entrusted to him under which he can come in contact with any contractor is not acceptable. The definition of 'public servant' as noted above in Section 2(c) (viii) of the PC Act also supports the case of the prosecution which says, any person who holds an office by virtue of which he is authorized or required to perform any public duty is a public servant. That means he need not be a person appointed as Government servant by the Government or a permanent employee. If the Court holds that some public duty has been entrusted to the accused then he is also liable for prosecution under the PC. Act."

25] The applicant was working as Recovery Agent for recovery of outstanding amount which the complainant had taken from Dena Bank (public sector bank). The said money of the Bank was ultimately public money, which the applicant was recovering officially as being entrusted

by the Bank. As per the contract Bank would be giving commission to M/s. Yash Consultancy and then M/s. Yash Consultancy would be giving salary to applicant. Therefore, the salary of applicant was from public money.

26] The allegations in the FIR are that the applicant, being a recovery agent of Bank of Baroda, approached the applicant asking him to pay the arrears of installments, otherwise, he will have to seize the tractor. He also demanded Rs. 20000/- for settling the dues of Rs. 12 Lakhs at Rs. 5 Lakhs, and also accepted Rs. 10,000/- and was caught red handed by team of C.B.I. The statement recorded of Shri Sandeep Murkute of Yash Consultancy Services, states that the applicant is business partner since 2015-16. While the applicant has disputed the said fact as he claims to be an employee (recovery agent). Even if, both these facts are alternatively considered, yet, applicant would be person discharging 'public duty'.

27] Section 7 deals with offence related to any public servant. We conclude that there is evidence to show that applicant will squarely fall within the definition of "Public Servant" since he is recovering public money for the public sector Bank. Therefore, Section 7 of the Prevention of Corruption Act would apply to him. In other words, if the definition of "public duty" is seen, it would be clear that the applicant was discharging a public duty as the State, public or community at large had an interest in it. *Prima facie*, the ingredients of the said offences are clearly attracted.

28] The present case does not fall within the parameters of

“State of Maharashtra Vs. Bhajanlal” 1992 Supp (1) SCC 335. Taking into consideration the above mentioned facts and the ratio laid down by Supreme Court in various judgments as mentioned, supra, we are of the considered view that this is not a fit case, wherein, we should exercise our discretion to quash the FIR. Hence, no case is made out for interference. There is no merit in the application. The same stands dismissed.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

grt/-