IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 117 OF 2020

Shivaji s/o Narayan Sarnaik
Age 40 years, Occ. Nil
R/o. Plot No.48, Gat No.88,
Near Garware Society,
Satara Parisar, Aurangabad ...Applicant
Tq. and Dist. Aurangabad (Ori. Complainant)

versus

1. The State of Maharashtra
Through the Secretary,
Home department
Mantralaya Mumbai
(Copy to be served on Public
Prosecutor, High Court, Bench
at Aurangabad)

2. Central Bureau of Investigation
ACB, 3rd floor, CGO Complex
Block C, Central Office Campus
Futala Road, Seminary Hills,
Nagpur, Maharashtra 440 006 ...Respondents

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Mr. Aniruddha S. Usmanpurkar, advocate for the applicant
Mrs. Geeta L. Deshpande, A.P.P. for respondent No.1
Mr. A.G. Talhar, advocate for respondent No.2.

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CORAM : BHARAT P. DESHPANDE, J.

Date of Reserving the Order : 23.08.2022

Date of pronouncing the Order : 24.08.2022

O R D E R :-

1. The applicant who is one of the accused in Special Case CBI,

ACB 07 of 2019 pending on the file of Sessions Judge at Parbhani, preferred present revision application under Section 401 of Cr.P.C. thereby challenging the impugned order dated 12.02.2020 passed below Exh.20 whereby his application for discharge was rejected.

2. Heard learned counsel for the applicant, learned A.P.P. for respondent No.2 State and learned counsel for respondent No.2 CBI. With the assistance of learned counsel for the respective parties, I have perused entire record.

3. The only question which arises in the present revision application is whether the applicant/accused could be considered as public servant in view of the provisions of Prevention of Corruption Act, 1988 and more specifically Section 21 of I.P.C.

4. The complainant by name Ashok Gore lodged a complaint against the applicant alleging that the applicant has committed offence punishable under Sections 7, 13(1) (d) r.w. 13(2) of Prevention of Corruption Act as well as Sections 419 and 420 of I.P.C. The complaint disclosed that on 24.02.2015 the applicant claimed to be Recovery Officer of Bank of Maharashtra, Branch at Sailu, demanded bribe of Rs.10,000/- for the purpose of cancellation of notice issued by Lok Adalat for reducing the loan amount up to Rs.1,00,000/-. After verification panchnama and confirming the demand, a raid was conducted by the CBI on 25.2.2015 by arranging

a trap wherein the present applicant was allegedly caught red handed while demanding and accepting the bribe amount from the complainant. Accordingly, the post trap panchanama was conducted and the trapped money was recovered from the applicant. After investigation was over, the charge sheet was filed before the learned trial court.

5. The applicant filed an application for discharge vide Exh.20 which was resisted by respondent/CBI by filing their reply. The impugned order was passed by the learned trial court dated 12.02.2020 thereby rejecting the said application, which is challenged in the present revision application.

6. Learned counsel for the applicant forcefully submitted that the applicant was working as commission agent with Bank of Maharashtra and therefore he cannot be termed as public servant. In this respect, he relied upon the case of ***Vijay Kumar Ojha vs. Superintendent of Police (C.B.I.) Jabalpur reported in 2001 (3) M.P.L.J. 246.*** Learned counsel further submitted that by no stretch of imagination the duties performed by the applicant could be termed as public duty or involving the concept of public office. He therefore, submitted that the learned trial court erred in holding that the applicant was performing public duty.

7. Learned counsel appearing for C.B.I. submitted that the issue

is no more *res-integra* and it is well settled now that even an agent working and performing public duty is covered under the definition of public servant. In this respect, he placed reliance on the decision of the Supreme Court in the case of ***Central Bureau of Investigation, Bank Securities and Fraud Cell vs. Ramesh Gelli and others, reported in AIR 2016 (SC) 1063***. Learned counsel then invited the attention of this Court to the definition of public servant and public duty as provided under Section 2 of Prevention of Corruption Act, 1988 as well as Section 21 of I.P.C. He submitted that admittedly the applicant was working as recovery agent of Bank of Maharashtra which is a public undertaking and duty of the accused was to recover the debt from the borrowers which clearly covered under the definition of public duty. He therefore, submitted that no interference is warranted with the order passed by the learned trial court rejecting the discharge application.

8. Learned A.P.P. appearing for respondent No.1 State adopted the arguments advanced by learned counsel appearing for respondent No.2 CBI.

9. It is an admitted fact that the applicant at the relevant time was working as recovery agent of Bank of Maharashtra. The contract executed between the bank and the applicant is already placed on record. The learned counsel for the applicant submitted that there was no master servant relationship between the applicant and the

Bank of Maharashtra which is clear from the agreement executed with the applicant and placed on record at page 175 onwards.

10. It is no doubt true that there was no master and servant relationship between the Bank of Maharashtra and the applicant. However, it is a fact that he was engaged by the Bank of Maharashtra as recovery agent. The appointment order as Recovery agent which is produced on record dated 5.5.2014 shows that the present applicant was appointed as Recovery Agent for a period of one year. The conditions while appointing the applicant as Recovery Agent are as under:-

> “1. As recovery agents you will assist the bank’s officials at their directions (I) follow up with the borrowers/ guarantors, (ii) follow up for legal / revenue recovery / Lok Adalat cases (iii) arranging for buyers for assets / properties pledged / hypothecated / mortgaged / or otherwise charged to the Bank (iv) collecting details of personal properties of the borrowers / guarantors and exploring the possibility of bringing them to sale and (v) arranging for marketing Banks scheme for compromise / One Time Settlement with the borrowers / guarantors. The means/ procedure stated in paragraph 2 above for recovery are indicative and you may use any other means/procedure for affecting the recovery.
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> 2. However, please note that all the means / procedure adopted for recovery should be legally permissible and should not result in adverse publicity of the bank. All compromise cases should be taken up after confirmation

of the branch concerned and negotiations should be held with the branch manager of the concerned branch. The compromise amount finalized should be as per the directions / guidelines of the Bank.

3. All payments should be made to the bank directly by the borrowers / guarantors. No recovery by way of cash or cheque drawn in your favour should be accepted for the borrowers/ guarantors.

4. Commission payable by the Bank towards recovery affected shall be paid only in the accounts identified by the branch; a list of these accounts will be given in advance. Commission shall be paid on the actual recovery affected and credited to the account. Such commission shall be paid in monthly intervals after the branch concerned confirms the recovery affected.

5. Commission shall be paid as per revised C.O. guidelines which are as under:

   (Other than agents appointed for recovery under SARFAESI)

6. This is a contract and the consideration/ compensation for which will be the commission payable on the recovery affected by you and it creates no obligations as master and servant or employer and employee.

7. Please note that the above arrangements will be for one year up to 31.03.2015 subject to satisfactory performance to be reviewed quarterly and that no right will vest with you to continue to work for and on behalf of the Bank permanently.

8. All information that may come to your knowledge by the branch shall be kept confidential and the same should

not be divulged to any outsider.

9. Notwithstanding anything stated herein above the bank may at its discretion withdraw this arrangement at any time without notice and this arrangement shall cease to be operative thereafter.

10. Banks name or symbol/ Logo shall not be used by you on any Letterheads, Sign boards, name places, visiting cards etc.

11. You should not use this empanelment as “Recovery Agents” for canvassing your business.”

11. On perusal of these clauses in the appointment letter, it is clear that the applicant as Recovery Agent was required to assist the bank officials in connection to follow up with the borrowers, guarantors, recovery, Lok Adalat cases and also arranging for buyers for assets/properties pledged, hypothecated, mortgaged or otherwise charged to the bank.

12. Clause Nos. 1 and 2 quoted above, are very material so as to consider the duties which the agent is required to perform while assisting the bank officials and more particularly with regard to the borrowers/ guarantors. It is made clear that the procedure adopted for recovery should be legally permissible and should not result any adverse publicity of the Bank. Clause 3 further provides that all payment should be made to the Bank directly by the borrowers/guarantors. No recovery by way of cash or cheque drawn

in favour of agent should be accepted from the borrowers/guarantors. Clauses 4 and 5 of the appointment letter further say that the applicant is entitled for commission payable by the bank towards recovery effected by the agent. The commission shall be paid on actual recovery effected and credited to the account.

13. With these contentions, it would be necessary to examine whether the duties performed by the applicant are covered under the definition of Section 2 of Prevention of Corruption Act, 1988.

14. First of all, Section 2(b) of the Prevention of Corruption Act reads thus:-

*"**2. Definitions**.-*

…….

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

Explanation,- In this clause 'State" includes a Corporation established by or under a Central, Provincial or State Act or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956

"(c) "public servant" means—

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorized by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

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

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any

governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

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

Explanation 2.- Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

[(d) "undue advantage" means any gratification whatever, other than legal remuneration.
Explanation.—For the purposes of this clause,—
(a) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money;
(b) the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organization, which he serves, to receive.]

15. Section 21 of I.P.C. defines "public servant" and clause Twelfth is material in the present matter which reads thus:-

"**21. "Public Servant**" – The words "public servant" denote a person

falling under any of the descriptions hereinafter following, namely;-
……...
Twelfth: Every person -
(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956."

16. The question arising in the present matter is to be answered firstly whether the duty performed by the applicant are to be public duties and whether the applicant could be brought within the ambit of public servant under Section 2(c) (iii) of the Prevention of Prevention Act, 1988.

17. The definition of public duty in Section 2(b) of the Prevention of Corruption Act 1988 is very wide. The discharge of public duty in which State, Public or community at large has the interest has been brought within the ambit of expression of public duty. Performance of such public duty by a person who is holding the office which requires or authorized him to perform such duty is sine qua non of the definition of public servant contained in Section 2(c) (iii) of the Prevention of Corruption Act and exception "office of public duty" appearing in Section 2 of Prevention of Corruption Act are required to be read together and not in isolation. It is made clear that the

position or place to which certain duties are attached specially when on more or less public character is akin to performing public duty.

18. The specific objects and reasons for enactment of Prevention of Corruption Act, 1988 clearly envisages widening of the scope of definition of public servant contained in Section 2(b) would be capable of encompassing any duty attached to any office inasmuch as in the contemporary scenario there is hardly any office whose duties cannot, in the last resort, be traced to having bearing on public interest or the interest of the community at large. Such a wide understanding of the definition of public servant may have the effect of obliterating all distinctions between the holder of a private office or a public office which, in my considered view, ought to be maintained. Therefore, according to me, it would be more reasonable to understand the expression “public servant” by reference to the office and the duties performed in connection therewith to be of a public character.

19. The above observations are found in para 7 of the Apex Court in the case of ***CBI vs. Ramesh Gelli and others (supra)*** which are very relevant for the purpose of understanding the duties performed by the applicant as Recovery Agent of the Bank of Maharashtra, which is a public undertaking and considered as the State within the meaning of Article 12 of the Constitution of India.

20. The duties which the applicant is required to be performed are also quoted above and therefore, it clearly goes to show that such duties are in connection with the State i.e. the Bank involving the public at large i.e. recovery of loan amount from the borrowers, in fact it is the amount of creditors.

21. Learned counsel for the applicant placed reliance in the case of ***Vijay Kumar Ojha (supra)***. The ratio laid down in the said decision by the Hon’ble Madhya Pradesh High Court is clearly distinguishable. In that matter, the L.I.C. agent was not considered as public servant. However, in view of the Apex Court decision in the case of ***C.B.I. vs Ramesh Gelli and others (supra)*** it is clear that the observations of the Hon’ble Madhya Pradesh High Court cannot be looked into.

22. The applicant demanded bribe from the complainant and accordingly a complaint was lodged. The verification of the complainant was carried out, in which demand of bribe was confirmed. Accordingly, a trap was laid, during which accused was found demanding and accepting the bribe amount from the complainant in order to show him favour. The tainted currency notes were recovered from the possession of accused and during post trap panchanama.

23. As per the conditions of appointment of agent, he is not

supposed to accept the amount from the borrowers, which is clear from condition No.3 quoted above. Similarly, condition No.2 shows that the applicant has performed his duties by legal and permissible means. Thus, one thing is clear that the duties performed by the applicant was clearly brought within the ambit of public duty performed by the public servant as defined under Section 2 of the Prevention of Corruption Act, 1988. There is no need for master and servant relationship. The applicant was performing such duties on commission basis. Therefore, the observations of the learned trial court while rejecting the application for discharge are fully justified and no interference is warranted. The revision application therefore, fails and hence I pass the following order:-

O R D E R

Criminal revision application stands dismissed.

(BHARAT P. DESHPANDE, J.)

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