

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 94 OF 2024

Balasaheb Panditrao Khopkar

...Applicant

vs.

The State of Maharashtra

...Respondents

Mr. Abhishek R. Avachat a/w Mr. S. H. Deshpande - Advocate for the Applicant

Mr. V. A. Kulkarni - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 14th FEBRUARY, 2024

P.C. :-

1. Heard learned Advocate Shri Avachat for the Applicant who are 15 accused persons out of 16 accused and also heard learned APP.
2. These Applicants were charge-sheeted by Karveer Police Station for the offence punishable under Section 143, 144, 146, 148, 149, 323, 324, 353 of the Indian Penal Code in Crime No. 180 of 2012. They have applied for discharge for the reason that Police have wrongly invoked the provisions of Section 353 of the Indian Penal Code. Their applications were rejected by the Court of Assistant Sessions Judge,

Kolhapur, on 19/12/2023, at page no. 105. That is why present revision.

3. Learned Advocate Mr. Avachat submitted that the first informant and other victims are teaching and non teaching staff of the private school and even though they are getting grant from the Government, they do not fall within the purview of 'Public servant' for the purpose of Section 353 of the Indian Penal Code. He invited my attention to the following facts:-

- a) The meaning of the 'Public Servant' is given in Section 21 of the Indian Penal Code. Clause No. Twelfth (a) deals with the following categories:-
 - (i) A person who is in service of the Government.
 - (ii) A person who receives the pay from the Government.
 - (iii) A person who is remunerated by fees or commissions for the performance of any public duty by the Government.
- b) According to him, the word 'Public Servant' defined in Section 2 (c) of the Prevention of Corruption Act is of wide amplitude.
- c) He submitted the difference in between the meanings given to the word 'Public servant' in both the provisions. According to him Clause No. (xii) of Section 2 (c) of the Prevention of Corruption

Act does not finds place in Section 21 of the Indian Penal Code.

4. He also relied upon the observations of the Hon'ble Supreme Court in case of R. S. Nayak Vs. A. R. Antulay¹.

5. Learned APP submits that the Office of the Public Prosecutor is not served. Learned Advocate Mr. Avachat undertakes to serve office again.

6. Let learned APP to address the Court on this aspect and to address whether the provisions of Section 353 of the Indian Penal Code can be invoked in present set of the facts.

7. Matter be kept on **06/03/2024**.

[S. M. MODAK, J.]

1 1984 (2) SCC 183.