



Judgment

409 revn36. 17

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

CRIMINAL REVISION APPLICATION NO.36 OF 2017

Sanjay Lakhanlal Parashar,
aged: 44 years, occupation: private service,
residing at N.H.Khatri, Balaji Ward
No.1, Jain Bhavan, taluka and district:
Chandrapur. **Applicant.**

:: V E R S U S ::

The State of Maharashtra, through the
Police Station Officer, Chandrapur City
Police Station, taluka and district
Chandrapur. **Non-applicant.**

Shri Rahul Dhande, Counsel for the Applicant.
Mrs.S.S.Dhote, Additional Public Prosecutor for the Non-
applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 23/04/2025
PRONOUNCED ON : 13/06/2025

JUDGMENT

1. Heard learned counsel Shri Rahul Dhande for the
applicant and learned Additional Public Prosecutor
Mrs.S.S.Dhote for the State.

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2. The matter is already admitted on 14.8.2017 and *interim* stay is operating in favour of the applicant by order dated 6.4.2017.

3. By this revision, the applicant has challenged order dated 20.2.2017 passed below Exh.17 by learned Additional Sessions Judge, Chandrapur (learned Judge of the trial court) in Special ACB Case No.21/2015 whereby the application filed by the applicant under Section 227 of the Code of Criminal Procedure for discharging him of offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (the P.C.Act) has been rejected.

4. Facts of the prosecution case in a nutshell are as follows:

The applicant has been appointed on Ad-hoc basis in Study Centre in the name of “Dnyandeep Shikshan

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Prasarak Mandal, Chandrapur” (DSPM). The DSPM also runs “Arts; Commerce and, Science College” along with the said Study Centre. The said DSPM is defined under Section 2(18) of The Yashwantrao Chavan Maharashtra Open University Act, 1989 (YCMOU Act). The applicant was appointed as an Assistant Coordinator of the Study Centre in the year 2013-2014 by the Executive Committee Meeting of the said DSPM. A student, who sought admission in B.Com. Part-1, the course conducted by Yashwantrao Chavan Maharashtra Open University (YCMOU), is to deposit additional amount of Rs.500/- towards fees. However, the applicant demanded from him Rs.1000/- and passed a receipt of Rs.500/-. Thus, the applicant demanded an illegal gratification of Rs.500/- for admitting the said student. As the said student, who is complainant, was not willing to pay the said amount, he approached the office of the Anti

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Corruption Bureau at Chandrapur (the bureau) and lodged a complaint. The applicant was caught in trap by the bureau. After the successful trap and on completion of investigation, chargesheet was submitted against the applicant.

5. During pendency of the trial, the applicant has filed an application under Section 227 of the Code for discharging him on ground that he is not a “public servant” within meaning of Section 2(c)(iii) of the P.C.Act and, therefore, offences alleged are not attracted against him. As the offence is not made out against him, in view of Sections 7 and 13(1)(d) read with 13(2) of the P.C.Act, he be discharged from charges levelled against him.

6. The said application is strongly opposed by the State on ground that the applicant was discharging public duty and, therefore, he is a “public servant” within the

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meaning of Section 2(c) of the P.C.Act. He was also taking remuneration for the services held by him and after the trap, he was dismissed from services and, therefore, he falls under definition of “public servant. In view of that, the application for discharge is rightly rejected by learned Judge of the trial court.

7. Learned counsel for the applicant submitted that the applicant was not discharging his duties as a “public servant”. He has also not received any remuneration from the Government. He was also not appointed by the YCMOU. The requirement of Section 2(c) of the P.C.Act is not fulfilled and, therefore, he is not a “public servant” within the meaning of Section 2(c) of the P.C.Act as he was not holding the office as “public servant” and, therefore, the offence as alleged cannot be attracted against him. As no *prima facie* material is on record to frame the charge

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against him, the applicant is to be discharged from charges by allowing this revision.

8. *Per contra*, learned Additional Public Prosecutor for the State submitted that the Study Centre is run under the provisions of the YCMOU Act. The applicant was also discharging his duties as a “public servant.” Thus, he is a “public servant” within the meaning of Section 2(c) of the P.C.Act and, therefore, learned Judge of the trial court has rightly rejected the application and no interference is called for. The revision being devoid of merits is liable to be dismissed.

9. Issue falls for consideration is, whether the applicant serving in the Study Centre run under the provisions of the YCMOU Act is a “public servant” for the purposes of the P.C.Act or not.

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10. In view of Section 2(c)(i) of the P.C.Act, “public servant” means 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.

11. A person would be “public servant” under Section 2(c)(i) of the P.C.Act if he is in the service of the Government or in the pay of the Government or Remunerated by fees or commission by performance of any public duty.

12. There is no dispute that the applicant is not permanent employee of the said Study Centre. He was appointed on an honorarium basis. The communication by the Information Officer of the DSPM shows that appointment of the applicant is on honorarium. Section 5(1)(xa) of the YCMOU Act states about starting or conducting a sub-centre or study centre in any territory in

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the State of Maharashtra and outside the State of Maharashtra, with the approval of the Government concerned. The provisions of the YCMOU Act states about manner of appointment of teachers and other University employees, their emoluments, qualifications, code of conduct, and other conditions of service including manner of termination of service and other disciplinary action.

13. In view of Section 23(e) of the YCMOU Act, office bearers of the said University can inspect the study centres and the recognized institutions.

14. Thus, the YCMOU is established for the promotion of the Open University and distance education system in the educational pattern of the State of Maharashtra, as a measure in the decentralization and reorganization of University education in that State.

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15. Sub-section (18) of Section 2 of the YCMOU Act, defines “study centre” means a centre established, maintained or recognised by the University for the purpose of advising, counselling, evaluating or for rendering any other assistance required by the students.

16. Section 25 of the YCMOU Act states that the University shall establish a fund to be called the University Fund. The following shall form part of, or be paid into, the University Fund, namely -

(a) all contributions or grants made by the State Government, the Central Government, the Indira Gandhi National Open University and the University Grants Commission;

(b) all income of the University from any source whatsoever including income from fees and charges;

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(c) all income or moneys from trusts, bequests, donations, endowments, subventions and other grants;

(d) any sums borrowed from the banks, with the previous permission of the State Government.

17. Thus, the provisions show that the University runs the said “study centre” in view of the definition given in the said Act and it is maintained and recognized by the University for various purposes.

18. The applicant is facing the prosecution of offences under Sections 7 and 13(1)(d) read with 13(2) of the P.C.Act. The Statement of Objects and reasons attached to it show the intention of the legislature in providing a very comprehensive definition of the words “public servant”. It also gives background in which the Act was enacted. The

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P.C.Act contains a much wider definition of “public servant”.

19. The Hon’ble Apex Court in the case of **Aman Bhatia vs. State (GNCT of Delhi)**, reported in **MANU/SC/0625/2025**, by referring its earlier decision in the case of **State of Gujarat vs. Mansukhbhai Kanjibhai Shah**, reported in (2020) 20 SCC 360 observed as follows:

“Our attention was also drawn to the notes on clauses of Prevention of Corruption Bill dated 20-2-1987. Clause 2 of the Notes on Clauses in the Gazette of India, Extraordinary, Part II, Section 2, clarifies the legislative intent, wherein it was commented as under:

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

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employing and the authority remunerating. In the proposed definition the emphasis is on public duty.”

20. In the case of **State of M.P. vs. Ram Singh, reported in (2000)5 SCC 88**, the Hon’ble Apex Court observed as under:

“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 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

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giving them a wide discretion with the result of luring them to the glittering shine of wealth and property. In order to 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.”

What is relevant to note from the aforesaid is that the P.C.Act was enacted after the repeal of the 1947 Act with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in

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the working and implementation of the 1947 Act. While holding that a deemed University would fall within the ambit of the P.C.Act, a three-Judge Bench of the Hon'ble Apex Court in **State of Gujarat vs. Mansukhbhai Kanjibhai Shah** (supra) observed that it falls upon the courts to interpret provisions of an anti-corruption legislation in a manner to strengthen the fight against corruption. It was further added that in case two views are possible, the court should accept the one that seeks to eradicate corruption over the one which seeks to perpetuate it.

21. The Hon'ble Apex Court in the case of **Aman Bhatia vs. State (GNCT of Delhi)** (supra) observed that heart of the definition of "public servant" under Section 2(c)(i) of the P.C. Act lies in the expressions "remunerated by the Government" and "for the performance of any public duty", and not in the mode of remuneration, such as "fees

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or commission". The 'commission' referred in "remunerated by the Government by fees or commission for the performance of public duty" is not analogous to the 'commission' in Section 194H of the 1961 Act. It is further observed that the definition of "public servant" under Section 2(c)(i) of the P.C.Act can be said to have three parts, as they are disjunctive: first, a person who is in the service of the Government; secondly, a person who is in the pay of the Government; thirdly, a person who is remunerated by fees or commission for the performance of any public duty. The expression "remunerated" in the third part has to be read in context and in line with the expressions in the first and the second part i.e., "in the service" and "in the pay". The three key expressions, "in the service", "in the pay" and "remunerated" by the Government belong to the same genus and have the same flavour. In the first two parts, a person is rendering his

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services for the Government which implicitly means discharging a public duty. Whereas, in the third part, even though a person is not rendering his services for the Government but is being remunerated for discharging a public duty. In this context, the terms “fees or commission” must be construed so as to give full effect to the definition and the other provisions of the statute.

22. The Hon’ble Apex Court in the case of **State of Gujarat vs. Mansukhbhai Kanjibhai Shah** (supra) held that the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him/her. It is observed in paragraph No.34 as under:

“On a perusal of Section 2(c) of the PC Act, we may observe that the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him/her. In this regard, the legislative intention was not to provide an

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exhaustive list of authorities which are covered, rather a general definition of ‘public servant’ is provided thereunder. This provides an important internal evidence as to the definition of the term “University”.

23. In the case of **G.Krishnegowda vs. State of Karnataka, reported in MANU/KARNATAKA/3037/2021** the Karnataka High Court dealt with the issue whether project manager in a society registered under the provisions of the Karnataka Societies Registration Act, 1960 is a “public servant” and the relevant observation are as under:

“From the reading of the definition of the word ‘public servant as found in the P.C.Act, it is very clear that a person who holds an office by virtue of which he is authorized or required to perform any public duty, and any person or employee of any institution if it has been receiving or if it has

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received any financial assistance from the State or Central Government, shall be considered as a public servant. The explanation to Section 2(c) of the P.C. Act would further go to show that such a person may be appointed by the Government or not. Therefore, a public servant need not be a Government/civil servant, but a Government/civil servant is always a public servant”.

24. Section 2(b) defines “public duty” as a duty where the State, the public, or the community at large has an interest in its discharge.

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.

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25. While analyzing the public duty, a bare perusal of the aforesaid definition clause of the Act, it can be inferred that to designate a person as a “public servant” and to thereby hold such person liable under the P.C.Act, the thrust lies upon the nature of duty i.e. public duty carried out by such person and not the position held by him or her. The term “public servant” lists down the categories of individuals under sub-clauses (i) to (xii) of Section 2(c) of the P.C.Act who shall be classified as a 'Public Servant'. The first explanation to the said provision also clarifies that persons falling under the said sub-clauses shall be deemed to be public servants irrespective of their appointing authority. The second explanation further expands the ambit to include every person who *de facto* discharges the functions of a public servant, and that he/she should not be prevented from being brought under the ambit of

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“public servant” due to any legal infirmities or technicalities. There is no doubt that in the objects and reasons stated for enactment of the P.C.Act it has more clear and widens the scopes of definition of “public servant”.

26. Thus, a bare reading of the definition of word 'public servant' as defined in the P.C.Act, it is emphatically clear that a person who holds the office by virtue of which he is authorized or required to perform any public duty and any person or employee of any institution, receiving or having received any financial assistance from the Central Government or State Government or local or other public authority, shall be considered as “public servant”. The explanation to Section 2(c) of P.C.Act would further go to show that such a person may be appointed by the Government or not, therefore, a “public

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servant” need not be a Government / civil servant, but a Government / civil servant is always a “public servant”.

27. In the light of the above well settled law, if the facts of the present case are considered, it would show that the applicant was serving in “study centre” which is established in view of the provisions of YCMOU Act which gets grants from the Government. The applicant was serving as an Assistant Coordinator of the said “study centre”. The said centre, in view of the provisions of the YCMOU Act, is a centre established or maintained or recognized by the University for the purpose of for the purpose of advising, counselling, evaluating or for rendering any other assistance required by the students.

28. Section 25 of the YCMOU Act shows that the University can raise fund from the contributions or grants made by the State Government, the Central Government,

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the Indira Gandhi National Open University and the University Grants Commission. Thus, the said University is getting funds from the Government and the said “study centre” is run to assist the students. Thus, the applicant was appointed to discharge public duty. Generally, an employee of “study centre” run by the University is considered to be “public servant” under Section 21 of the IPC, because the University being a public body is often viewed as a public institution and its employees including those at affiliated “study centres” are deemed to be performing public duties. “Study Centres” being part of University are typically viewed as extension of the University operations. Their staff even if not directly employed by the University itself, are often considered part of the University organizational structure and are performing the public duties.

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29. In view of the above, contention of learned counsel for the applicant that the applicant was not a “public servant” is not sustainable.

30. On going through the entire chargesheet, it reveals that the allegation levelled against the applicant is that he has demanded the gratification amount from the complainant who intends to seek admission in the B.Com Part-I and accepted the same. He was found accepting the gratification amount and the tainted amount was also recovered from him. Thus, investigation papers reveal his involvement in the crime.

31. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the

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facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

32. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao**, reported in **MANU/SC/1113 2023**, adverting to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors**, reported in (2014) 11 SCC 709 and **The State of Maharashtra vs. Som Nath Thapa**, reported in (1996) 4 SCC 659 and **The State of MP Vs. Mohan Lal Soni**, reported in (2000) 6 SCC 338, has held as under:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in

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order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of **Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709** adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the

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prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The

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law does not permit a mini trial at this stage."

33. Thus, at the stage of considering the application for discharge, the defence of the accused is not to be looked into. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure do not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage

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of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

34. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting to the various decisions, the Hon'ble Apex Court has enumerated the following principles:

“(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of

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finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a

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mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

35. After having sifting and weighing the evidence on record, it is clear that the applicant was serving as “public servant” and while discharging duty as a “public servant”, he demanded and accepted the gratification amount. Thus, there is an ample material to frame the charge against the applicant. The evidence is to be weighted for the limited purpose to find out whether a *prima facie* case against the applicant is made out or not and, therefore, after applying the test, the material on record is

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sufficient to frame the charge against the applicant. Learned Judge of the trial court has considered the material on record and has rightly rejected the application.

36. The revision being devoid of merits is liable to be dismissed. Accordingly, the revision is **dismissed**.

37. The *interim* order in operation is vacated.

Rule stands **discharged**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!