



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 373 OF 2024

Bhaurao S/o Istari Munghate
Aged about 63 years, Occ : Retired
R/o : Samta Colony, Nagbhid,
Tah : Nagbhid, District : Chandrapur

... APPLICANT

...VERSUS...

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station Nagbhid,
Tq & District : Chandrapur
- 2) Deepak S/o Nathuji Ambade,
Aged about 43 years,
R/o : Gautam Nagar, Paoni,
Tah : Paoni, Distt : Bhandara
(Original Complainant)

...NON-APPLICANTS

Shri S.S. Sohoni, Advocate for applicant
Ms S.S. Dhote, APP for non-applicant No.1/State
Shri Aniruddh Ananthakrishnan, Advocate for non-applicant No.2

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 08.10.2025
PRONOUNCED ON : 07.11.2025

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

Heard. **Admit.** Heard finally with the consent of learned Counsel for both the parties.

2. This is an application seeking to quash and set aside the charge-sheet No. 22/2016, dated 30.05.2016, arising out of the First Information Report No. 3044/2014 (wrongly mentioned “charge-sheet No.3044/2014” in prayer clause), dated 10.11.2014, registered with the non-applicant No.1, Police Station Nagbhid, District Chandrapur, for the offences punishable under Sections 7, 13(1)(d), 13(2), and 9, of the Prevention of Corruption Act, 1988, and for quashing the proceedings in Special (ACB) Case No. 04/2016, pending before the Court of Additional Sessions Judge, Chandrapur.

3. As per the averments in the application, the applicant is a permanent resident of the address mentioned in the cause title and was appointed as an Assistant Teacher on 01.09.1988 at Sant Hardas Vidyalaya, Mindala, Tahsil Nagbhid, District Chandrapur. The said school is run by one Mahatma Jyotiba Fule Magaswargiya

Mandal, Mindala. After attending age of superannuation the applicant retired as a Head Master on 31.08.2018. The applicant is accused No.2, in Special (ACB) Case No. 04/2016.

4. As per the averments in the complaint, on 03.11.2014 one Dipak Ambade, allegedly claiming to be working as a Teacher at Sant Hardas Junior Arts College, Mindala, Tahsil Nagbhid, District Chandrapur, approached the office of Anti Corruption Bureau, Chandrapur, and lodged a complaint alleging that, the accused No.1 Ashok Narayan Khandale, the Secretary of Mahatma Jyotiba Fule Magaswargiya Mandal, Mindala, who runs the said junior college, has stated that since their likelihood of College getting grant-in-aid,. In order to regularize the service of Dipak Ambade, an amount of Rs.3,50,000/- will be required. It is further alleged in the said complaint that the said Dipak Ambade, since was not having that much amount, arranged Rs.1,00,000/-, and the same was given to the accused No.1, Ashok Khandale. The remaining Rs.2,50,000/-, was to be paid after the school being admitted on grant-in-aid basis.

5. It is further alleged in the complaint that on 26.10.2014, one Mr. Sudhir Girde, called the said Dipak Ambade and enquired whether he has arranged the amount and told him that it is to be paid till 30.10.2014. Since, the said Dipak Ambade was not willing to pay the amount, he approached the office of Anti-Corruption Bureau, Chandrapur. The said Bureau prepared a pre-trap panchanama in writing on 03.11.2014 and after completing the formalities arranged a trap on 10.11.2014.

6. Accordingly, on 10.11.2014, the complainant, Dipak Ambade, handed over an amount of Rs.2,00,000/- to the applicant, and he was caught in the raid. Thereafter, after completing the procedural formalities, the non-applicant No.1 registered an offence punishable under Section 7, 12, 13(1)(d), 13(2), 9, of the Prevention of Corruption Act, and a charge-sheet was filed. It is this charge-sheet and the consequent Anti Corruption Special Case number, which is challenged by way of the present application.

7. We have heard Shri S.S. Sohoni, learned Counsel for the applicant, Ms S.S. Dhote, learned Additional Public Prosecutor for

the non-applicant/State, and Shri Aniruddha Ananthakrushnan, learned Counsel for the non-applicant No.2.

8. Learned Counsel for the applicant submits that the learned Single Judge of this Court had an occasion to deal with the said matter in the earlier round of litigation. He states that there were total three accused in the matter and they had filed an application seeking discharge under Section 227 of the Criminal Procedure Code, before the Special Court. The said application came to be rejected by the Additional Sessions Judge, Chandrapur, on 01.04.2021. The matter was carried in a Criminal Revision, which was registered as Criminal Revision Application No. 87/2021, before this Court. However, the same was withdrawn on 13.04.2022, with liberty to raise a ground of absence of sanction. Thereafter, again an application for discharge was filed by accused Nos. 2 and 3, since accused No.1 expired on 29.08.2019. However, the said application was again rejected on 26.10.2023, by the Additional Sessions Judge, Chandrapur. A Criminal Revision bearing No. 98/2024, was filed challenging the said order which was allowed by the learned Single Judge of this Court on 13.02.2025.

9. Learned Counsel for the applicant submits that the present application is also identically placed, and the learned Single Judge of this Court has already dealt with the matter in hand and found that there was no proper sanction in the matter.

10. It is therefore his submission that being identically placed, the present application for quashing also needs to be allowed.

11. This Court, on an earlier occasion, has elaborately dealt with one of the co-accused, namely Sudhir Narayan Girde, in Criminal Revision Application No. 98/2024, and held that there is no proper sanction for prosecuting the accused persons. Relevant paragraphs are as under :

“11. By virtue of Section 4(6) of MEPS Act, it is only the Management which has powers to remove its employees. The powers conferred upon the Director of Education are only contingent. Therefore, it cannot be said that the Director of Education has any powers to remove an employee under Section 4(1) of the MEPS Act who is serving in private school.

12. In the light of the above legal position, by virtue of Section 19 of the P.C.Act, it would be the Management of a private school which alone would be competent to

accord sanction and nobody else that is not even the Director of Education can exercise that power.

13. Here, in the present case, the applicant serving as Assistant Teacher is prosecuted on an allegation that he abetted the other co-accused to accept the bribe amount. The co-accused was found accepting the bribe amount. After initial investigation, on 4.2.2016 the Investigating Officer issued communication to the Director of Education requesting for sanction against the applicant as well as the other co-accused. By communication dated 4.4.2016, the Director of Education has accorded the sanction. The Director of Education, in view of Section 4(6) of MEPS Act, is not the authority who can remove the applicant from the employment. The office of the bureau has obtained such sanction under Section 19 of the P.C.Act from the Director of Education who is not the competent authority. The provisions of Section 19 of the P.C.Act requires sanction to be accorded by an authority competent to remove the employee from his office and in view of the above discussion, it has been found that it is the Management of such a private school which alone has power to remove such an employee by virtue of sub-section (6) of Section 4 of the of MEPS Act irrespective of the Government Resolution dated 5.11.2015, the Director of Education would not be competent to accord the sanction under Section 19 of the P.C.Act. Therefore, without going into the intricate question as to whether the State Government could by an executive order superseded the provisions of Section 19 of the P.C.Act and without examining its virus, it can be safely concluded on a conjoint reading of Section 19(1) (c) of the P.C.Act and sub-section (6) of Section 4 of the MEPS Act, that it is only the Management of a private school

which would be competent authority to remove an employee of the school being run by it and the Director of Education will not have any such power. Consequently, the sanction to prosecute the applicant accorded by the Director of Education stating to have derived the power under the Government Resolution dated 05.11.2015 is indeed an illegal which goes to the root of the matter and the very prosecution of the applicant.”

12. We have perused the order granting sanction dated 04.04.2016. The role attributed to the applicant in the Criminal Revision No 98/2024, as also, the present applicant is identical in nature. The sanction to prosecute is granted by the Education Officer, who is not the Competent Authority as per the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 & 1981 (for short ‘the MEPS Act’). The said sanction is granted jointly to prosecute the present applicant, as also, the applicant in the said criminal revision. A similar role is attributed to both of them. As per the provisions of the MEPS Act, it is only the Management who is the Competent Authority to sanction for prosecution. In view of Section 4(6) of the said Act, the powers conferred upon the Director of Education are only contingent. Therefore, by virtue of Section 19 of the

Prevention of Corruption Act, it would be the management of a private school alone which would be competent to accord sanction, and nobody except the said management can exercise that power. The Director of Education, in view of Section 4(6) of the MEPS Act, is not the authority who can remove the applicant from employment. Thus, the conjoint reading of the 19(1)(c) of the Prevention of Corruption Act and sub-section (6) of Section 4 of the MEPS Act, it is only the management of a private school which would be the Competent Authority to remove an employee of the school. As held by decision of the Federal Court in ***Basdeo Agarawalla vs. King Emperor AIR 1945 FC 16***, it is held that “*in our view the absence of sanction prior to the institution of the prosecution cannot be regarded as a mere technical defect. The clause in question was obviously enacted for the purpose of protecting the citizen, and in order to give the Provincial Government in every case a proper opportunity of considering whether a prosecution should in the circumstances of each particular case be instituted at all.*”

13. In view of the decision in the case of the ***Rajasthan State***

Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and ors, (2013)5 SCC 427, in paragraph No.19, it is held that, “*executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines etc. which run contrary to statutory laws cannot be enforced.*” This is with regard to the Government Resolution dated 05.11.2015, which according to prosecution is the source of power to the Director of Education to grant sanction on which reliance is placed by the prosecution.

14. In that view of the matter, we are of the considered view that the Director of Education has no power to grant any sanction, and it is only the Management of the School. The sanction is void for want of authority. We, therefore, proceed to pass the following order :

ORDER

- i) The application is allowed.
- ii) The charge-sheet No. 22/2016, dated 30.05.2016, arising out of the First Information Report No. 3044/2014 (wrongly mentioned “charge-sheet

No.3044/2014” in prayer clause), dated 10.11.2014, registered with the non-applicant No.1, Police Station Nagbhid, District Chandrapur, for the offences punishable under Section 7, 13(1)(d), 13(2) and 9 of the Prevention of Corruption Act, 1988, and for quashing the proceeding in Special (ACB) Case No. 04/2016, pending before the Additional Sessions Judge, Chandrapur, are hereby quashed and set aside.

15. Pending applications, if any, shall stand disposed of accordingly.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..