IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION
CR. REVISION APPLICATION NO. 497 OF 2008

The State Of Maharashtra …Applicant
V/s.
Dhananjay Sakharam Bhosale …Respondent

Mr. Anand S. Shalgaonkar, APP for the Applicant-State
None for the Respondent

CORAM : SHARMILA U. DESHMUKH, J.
DATED : OCTOBER 12, 2026

P.C.:

1. The Criminal Revision Application has been preferred against the order of discharge dated 10th March 2008 passed by the learned Special Judge, Satara in Special Case No. 8 of 2005 against the Respondent (original accused No. 1) for offences punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (For short **'PC Act'**).

2. The case of the prosecution was that accused No. 1, who was an Additional Public Prosecutor, had demanded a sum of Rs. 25,000/- to favour the accused in Sessions Case No. 190 of 1997. It was alleged that on 15th January 2004, the complainant made a phone call to the accused No. 1 at about 5:00 p.m. agreeing to pay a sum of Rs. 3,000/- and that the remaining amount would be paid later on. The complainant approached the Anti Corruption Bureau (For short 'ACB') and recorded the complaint on 16th January 2004 and a trap was arranged. Two pancha witnesses were called from the office of the

District Magistrate, Satara, and the complaint was verified in the presence of the panchas. The description of the currency notes of Rs. 3,000/- was noted in the panchnama and the characteristics of anthracene powder and ultraviolet light were explained to them. The anthracene powder was applied to the currency notes to be used as bribe amount through Constable Ajit Shinde of ACB and the complainant was instructed accordingly. It is claimed that the complainant and the panchas were sent to the office of accused No. 1 and when they approached accused No. 1, the accused told the complainant to pay the amount to another person who was sitting in front of him and the amount was paid to him. Accused No. 1 and accused No. 2 came to be apprehended, pursuant to which the crime was registered.

3. Accused No. 1, who was an Additional Public Prosecutor, filed an application for discharge under Section 227 of the Code of Criminal Procedure, 1973. The learned Special Judge framed the point as to whether accused No. 1 is a public servant within the meaning of Section 21 of the Indian Penal Code and Section 2(c) of the PC Act and whether accused No. 1 is entitled to be discharged. The learned Special Judge held that the accused is an Additional Public Prosecutor, who is not a public servant and cannot be prosecuted under the provisions of the PC Act. It is also noted the discrepancy in the statements which were recorded as far as the

panchas are concerned. It was further noted that the incident has taken place on 16th January 2004 and admittedly, on that date, the case of the complainant was not pending and accused No. 1 was not in charge of that case, and he did not have any control over the proceedings as on the date of the incident even in the capacity of Additional Public Prosecutor.

4. Learned APP would submit that there were no sufficient grounds to discharge accused No. 1. He submits that accused No. 1 had abused his position as an Additional Public Prosecutor and had demanded money, which was recovered as tainted bribe amount by the ACB from accused No. 2. He would submit that merely because accused No. 1 is a practicing lawyer and was appointed as Public Prosecutor, is not sufficient to discharge accused No. 1, particularly when the bribe money is recovered by ACB from accused No. 2. He would submit that there was no requirement of sanction as the act which was committed by accused No. 1 was not an act committed in his capacity of Public Prosecutor.

5. I have perused the order of discharge passed by the learned Special Judge, Satara. The learned Special Judge has noted that the case of the prosecution was that the bribe amount was demanded in order to help the complainant, who was the accused in Sessions Case No. 190 of 1997. The appeal, which was pending before the learned Sessions Judge, Satara, was allowed on 13th January 2004 and the

incident in question has taken place on 16th January 2004. There was no basis for accused No. 1 to demand any bribe amount in order to favour the complainant whose appeal was already allowed. The learned Special Judge has noted the discrepancy in the statements of the panchas as regards the incident which unfolded when the complainant entered the office of accused No. 1. It is not accused No. 1 who has accepted the bribe amount, but accused No. 2.

6. Accused No. 1 has been prosecuted under the provisions of the Prevention of Corruption Act and for the said purpose, it is necessary to demonstrate that accused No. 1, who was appointed as an Additional Public Prosecutor, is a public servant. The learned Special Judge has considered the judicial pronouncements on the subject and in particular has noted the ruling of the Hon'ble Apex Court in **State of U.P. and Another v. Johri Mal**[1], which sets out the distinction between the appointment of a Public Prosecutor or Additional Public Prosecutor on the one hand and an Assistant Public Prosecutor on the other hand. The decision holds that as far as Assistant Public Prosecutors are concerned, they are employees of the State, whereas a Public Prosecutor's appointment is a tenure appointment and the conditions of appointment are not governed by any statute or statutory rules. It is clearly held that a person holding the post of Additional Public Prosecutor is not at all a public servant and

[1] **AIR 2004 SC 3800**

therefore, cannot be prosecuted under the provisions of the PC Act.

7. No other decision to the contrary has been cited. The order of discharge does not deserve any interference in revisional jurisdiction.

8. As a result, the Criminal Revision Application stands dismissed.

(SHARMILA U. DESHMUKH, J.)