

ORDER BELOW EXH.03

(Dated : 11.11.2021)

- 1] The present application is filed by the applicant/accused for discharging him from the offence.
- 2] The applicant/accused contended that he is prosecuted for the offence punishable under section 7, 7(A) of Prevention of Corruption Act.
- 3] It is the case of prosecution that defacto complainant Wahid Khan Ahmed Khan lodged complaint with ACB Akola, contending that he had received contract of construction of Nalla of Ward No.18 Municipal Corporation, Akola. Accordingly, on 06.08.2018 he completed the work as per contract. The bill to the tune of Rs. 8,50,000/- was pending with the Municipal Corporation. For the purpose of realising the bill amount, it was procedure that the Junior Engineer of Ward No.18 used to verify the work, thereafter the bill was prepared and submitted to the Corporation. He time and again had met applicant/accused for the purpose of sanctioning the bill, on which the applicant demanded an amount of Rs. 60,000/- as bribe for forwarding the bill. After having talks, the amount of bribe was fixed to Rs. 40,000/-. He was not intending to pay the bribe amount to applicant. Therefore, he lodged complaint with ACB, Akola. The ACB Akola, thereafter conducted raid proceedings and trapped the applicant. Thereafter the report is lodged against the applicant.
- 4] The applicant further contended that on perusal of charge-sheet it revealed that there is no material so as to frame charge against him for

the commission of said offence. He was appointed as Junior Engineer in Municipal Corporation on contractual basis. His services were not regular. The Corporation used to appoint him for specific period of 5 to 6 months on contract basis. He was lastly appointed for the period from 11.04.2018 to 10.10.2018. As per the terms of the contract after the period was over, his services were automatically terminated.

5] He further contended that the Municipal Corporation vide its order dated 21.02.2019 had again appointed 131 persons on contractual basis for the period from 12.10.2018 to 11.04.2019. The Corporation had not appointed him on contractual basis vide said order, which clearly shows that his services came to an end on 10.10.2018. The informant had lodged report against him on 11.12.2018 and on the day when the report was lodged and the ACB proceedings were carried on, he was not in service with the Corporation. On the day of the report lodged by informant he was not public servant within the meaning of section 2 (c) of the Prevention of Corruption Act. Therefore, he cannot be charged for the offence and prayed that he may be discharged from the offence.

6] The learned APP gave his say to the application. He contended that the appointing authority of the applicant had granted sanction to prosecute applicant. The said fact clearly shows that on the day when the complaint was made by the defacto complainant, the applicant was in service with Municipal Corporation. He further contended that the material available on record clearly shows that the applicant had demanded bribe amount as well as accepted the same from defacto complainant. There is ample material so as to proceed against applicant and prayed that the

application be rejected.

7] Heard learned advocates appearing for parties.

8] On the basis of material available on record and the arguments advanced by the learned advocates appearing for parties, following points arise for my determination and I answer them for the reasons stated below.

Sr.No.	Points	Findings
1	Whether there is sufficient material so as to proceed against applicant ?	Yes
2	What order ?	Application is rejected as per final order.

Reasons

9] **As to point No.1 :-**

The learned advocate appearing for the applicant submitted that the applicant was appointed on contractual basis. His last appointment was from 11.04.2018 to 10.10.2018. The defacto complainant had lodged complaint on 11.12.2018. This fact clearly shows that on the day when the defacto complainant lodged complaint against applicant, the applicant was not in service with the Corporation and he was not a public servant within the meaning of section 2 (c) of Prevention of Corruption Act, therefore, the charges cannot be framed against him and relied upon following authorities:

(a) State of West Bengal Vrs. Manmal Bhutoria, reported in 1977 CJ(SC) 310;

(b) Shailesh Ramanlal Mahimtura Vrs. The State of Maharashtra,

reported in 2015 ALL MR (Cri) 90;

He prayed that his application be allowed and the applicant be discharged from the offence.

10] The learned APP submitted that there is ample material available on record to show that applicant had demanded bribe amount and accepted the same from defacto complainant. He further submitted that the Sanctioning Authority of applicant had granted sanction to lodge prosecution against applicant. The said fact clearly shows that on the date of incident the applicant was in service with Municipal Corporation, Akola. The applicant was public servant within the meaning of section 2 of Prevention of Corruption Act. The applicant was performing public duty as Junior Engineer at the time of incident. Therefore, on the basis of material available on record the charges can be framed against him. He prayed that the application be rejected.

11] I have considered the oral argument advanced by the learned advocates appearing for parties as well as gone through the authorities relied upon by the learned advocate appearing for applicant.

12] On perusal of material available on record it appears that the defacto complainant had lodged complaint on 11.12.2018 alleging therein that he had received contract for construction of Nali in Ward No. 18 of Municipal Corporation, Akola. He had completed said work as per tender. As per the procedure, after completion of work, the same has to be verified by Junior Engineer and thereafter the bill is submitted to the concern department for its approval. The bill to the tune of Rs. 8,50,000/- was pending. For said purpose he had time and again met applicant, who was

working as Junior Engineer. The applicant demanded an amount of Rs. 60,000/- for verification of work and forwarding the bill to concern department. After having talks the amount of bribe was reduced to Rs. 40,000/-. The defacto complainant was not intending to pay said amount to applicant. Therefore, he had lodged complaint against applicant at ACB, Akola. Pursuant to said complaint, the ACB Akola, laid trap and apprehended applicant while accepting bribe amount. The demand verification panchanama as well as trap panchanama clearly shows that applicant had demanded and accepted the bribe amount from defacto complainant.

13] The applicant claims that on the day of incident he was not in service with Municipal Corporation. He was not public servant on the day of incident. Therefore, the charge cannot be framed against him. The prosecution has annexed sanction order issued by Commissioner, Municipal Corporation, Akola. On perusal of said sanction order, it appears that applicant was appointed on contractual basis on the post of Junior Engineer from 11.12.2015 to 12.12.2018. The sanctioning authority had accorded sanction to lodge prosecution against applicant. The contents of sanction order shows that on 12.12.2018 the applicant was in service with the Corporation as Junior Engineer. The applicant has filed order dated 21.02.2019 issued by Corporation, in which the names of the employees employed on contractual basis from 12.10.2018 to 11.04.2019, are mentioned. The names of applicant is not mentioned in said list. The said order is having retrospective effect. The order is issued on 21.02.2019 and is issued for the period from 10.12.2018 to 11.04.2019. Apart from the said

order the applicant has not annexed any other document to show that on the day of incident he was not working with Municipal Corporation, Akola. The sanction order which is on record shows that on the day of incident, the applicant was working as Junior Engineer with Municipal Corporation, Akola. The said fact clearly shows that on the day of incident, the applicant was public servant and was performing public duty. Therefore, prosecution should be given chance to prove that on 11.12.2018 i.e. on the day of incident applicant was in service on contractual basis with the Corporation. The sanction order prima facie show that on the day of incident the applicant was in service on contractual basis as Junior Engineer with Municipal Corporation, Akola. The material further shows that the applicant had demanded and accepted the bribe amount. The facts of authorities relied upon by the learned advocate appearing for applicant, are completely different from the facts of present case. Therefore, the same are not helpful to the applicant. Hence, I answer point No.1 as “Yes” and to proceed following order.

Order

- i) The application is rejected.

Date : 11.11.2021

[H.K.Bhalerao]
Addl. Sessions Judge, Akola.

CERTIFICATE

I affirm that the contents of this PDF file are same word for word as per original order.

*Name of the Steno : A.R.Raipure,
Court's name : District Judge-II & Addl. Sessions
Judge, Akola.
Date of decision : 11.11.2021
Signed by P O on : 18.11.2021
Uploaded on : 18.11.2021*