

**Spl.A.C.B.Case No.20/2019**  
**A.C.B.Washim Vs. Sharad + 1**  
**MHWS010006942019**

**ORDER BELOW EXH.20**

Accused No.2 has filed this application to discharge him from this offence. Accused applicant submitted that he chargesheeted along with accused No.1 Sharad Madhukar Chavhan and he discharged from the offences charged against him. Applicant submitted that he is accused No.2 in this case. He was appointed by the Bricks India Pvt.Ltd. Pune, which is providing manpower services to the BARTI Pune on temporary basis on contract for honorarium fixed by the said company. The agreement took place between the BARTI and Social Welfare Commissioner, Pune. It was agreed between the parties without prior permission the BARTI having no right to appoint any manpower or services on the above said departments. Applicant is prosecuted only for the offence punishable under section 7 of Prevention of Corruption Act, 1988. Accused is not public servant. Therefore, Prevention of Corruption Act is not applicable. Therefore, he deserves to be discharged from the offences. Nor he demanded the bribe neither he accepted any bribe amount from the complainant. He was not present in the office. He was on leave since 28/03/2017 to 03/04/2017 during trap. Therefore, prayed to discharge him from this offences.

2. A.P.P filed say and strongly opposed the application. He submitted that at the time of verification the demand by accused No.2 Vaibhav is recorded in voice recorder and Spectrographic Report is positive. Therefore, he submitted the application is without substance and liable to be rejected.

3. Heard advocate for the accused Shri. S.K.Undal and learned A.P.P for the State. Considering the record and submissions following points arose for my determination and I have recorded findings for the reasons followed thereafter :

**POINTS**

**FINDINGS**

- |  |                     |
|--|---------------------|
| 1] Whether there is abused of the process of law if charges framed against him ? | No.                 |
| 2] Whether accused is liable to discharge from the said offence ?                | No.                 |
| 3] What order ?  | As per final order. |

**REASONS**

**AS TO POINT NOS.1 & 2 :**

4. Advocate for the accused submitted that accused is working on contract basis. There was contract between Bricks India Pvt.Ltd. Pune and BARTI. There is no demand by the accused and there was acceptance from the accused. Accused is not 'Public Servant'. No offence made out against this accused. At the time of trap accused was not present. Therefore, section 7 of Prevention of Corruption Act, 1988 is not applicable against this accused.

5. I have gone through the record filed by the prosecution. There is the complaint of the complainant that on 16/03/2017 this applicant demanded the bribe of Rs.30,000/-. He was working as a office assistant in the office and he demanded the money from the name of one Saheb. Also there is verification panchnama. Name of the applicant

is mentioned and there is conversation between the informant and the accused No.2 and in the said conversation there was demand by the accused No.2. Considering the demand by the accused No.2 to the complainant the offence under section 7 of Prevention of Corruption Act is charged. There is the contention of the Advocate the the accused was not public servant. However, considering the record accused was appointed as a public servant. Though he is not permanent employee but his appointment was given by the Government of Maharashtra as per order 27 July 2010. Though he is appointed for some period it can not be considered that he is not the public servant appointed by the Government of Maharashtra. Therefore, he can be treated as a public servant. Therefore, this accused can not take the defence that he is not the public servant. On the ground that another accused is discharged from the offence, accused can not take benefit of the said order. Joint commissioner of Social Welfare, Washim gave the letter to Police Inspector, Anti Corruption Buaro. As per the letter accused No.2 was appointed by the Assistant Commissioner Social Welfare, Washim. It is mentioned that accused is appointed on contract basis. The appointment was given by the Bricks India Pvt.Ltd. Pune. The accused No.2 is appointed as office assistant of Social Welfare Office, Washim. His attendance registered is also produced and accused was appointed for public duty. Though he is working on contract basis but his work was as a public servant. On all these reasons accused can not deny that he is not a public servant. Accused was working in the public office and he did the work as a public servant. Therefore, he can be treated as a public servant.

6. Advocate for the accused relied upon the case law of **Hon'ble**

**High Court of Bombay 2015 ALL MR (Cri) 90 Shailesh Ramanlal Mahimtura Vs. The State of Maharashtra.** In the said case law it is held that appointment of applicant is not under any statute but pursuant to Government Resolution. Merely because he was performing a public duty does not make him ipso facto a public servant. It can not be said that applicant was holding an offence and consequently he is a public servant.

7. I have gone through the case law then it is revealed that the applicant was appointed in the case law by the committee is the expertise in his filed as Structural Engineer for a period of 3 years. His role was non official member and it is purely advisory and recommendatory and the Municipal Commissioner was under no obligation to accept the recommendation.

8. In this case the accused was working as a office assistant and as per the conversation between the informant and accused there was demand of the bribe to do the work of the informant. Though he is working on contract basis but his work was a public servant and he made the demand of the bribe. Therefore, I come to the conclusion that the facts of the case law and facts of case in hand are different. Therefore, the said case law is not applicable to this case. Prima-facie there is demand of bribe by accused No.2 as a public servant.

9. Advocate for the accused No.2 also submitted the case law **2019 ALL MR (Cri) 643, Smt. Archana Sahebrao Dhok Vs. The State of Maharashtra & Anr.** In this case it is held that there is no valid sanction to prosecute against the accused, sanction was give by President of Society and the president was not valid to to issue sanction. Therefore,

the accused was discharged.

10. Another case law cited by the advocate for the accused **Manoranjan Prasad Choudhar V. State of Bihar Supreme Court of India Aironline SC 570**. In this case also there is held that the sanction which was granted by the authority is not appointed to grant the sanction. Therefore, the proceeding is quashed and set aside.

11. He also cited relied upon the case **2011 Cri.L.J.4360, Chittaranjan Das V. State of Orissa**. In the said case law the cognizance was taken after retirement of public servant and it is held that he can not prosecute after his retirement. Considering the facts of the case and facts of the case in hand and above case laws are different than the case in hand. Therefore, the said case laws are not applicable in this case.

12. After gone through all the submissions of the advocate for the accused No.2 and the record. There is prima-facie case, accused made demand of the bribe as a public servant. As per the provision of Prevention of Corruption Act public servant means as per section 2 © of the Act. (i) any person in the service or pay of the payment or terminated by the Government by fees or commission for the performance of any public duty (viii) any person hold an office by virtue of fees he is authorized or required to perform any public duty.

13. Considering the definition of public servant this Court come to the conclusion that the accused was a public servant. He performed the public duty by holding fees of virtue and he is authorized to perform the public duty. Therefore, accused is come in the definition of public servant and therefore he can be considered as a public servant as per the provision of Prevention of Corruption Act. Therefore, offence is

attracted against the accused prima-facie.

14. Considering the prima-facie case accused can be charged for the offence punishable under section 7 of the Prevention of Corruption Act and therefore if charge is framed there is no abused of process of law. In such circumstances accused is not liable for discharge. Hence, findings for point Nos.1 and 2 are accordingly. Considering the findings, I pass following order.

**ORDER**

Application is hereby rejected.

Date : 18/10/2023

(S.S.Ghorpade)  
Assistant Sessions Judge,  
Washim.

<b><u>CERTIFICATE</u></b>	
I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order	
Name of the Stenographer :	S. V. Dere, Stenographer (Gr.III)
Name of the Court :	Shri. S S.Ghorpade Ad-hoc District Judge-2, Washim.
Date :	18/10/2023
Order signed by the presiding officer on :	18/10/2023
Order uploaded on :	19/10/2023