

A.C.B.No.123/2015
State Vrs. Kishore

ORDER BELOW EXH.21

1. Read application, say filed. Heard both the Ld. Advocates.
2. This is application by applicant/accused for discharge under section 227 of CRPC.
3. Perused the file. Accused is being tried for offences punishable under section 7,13(1)(d) r/w 13(2) of Prevention of Corruption Act,1988 (Hereinafter referred as "P.C.Act" in short).
4. It is averment of accused that he is working in M.C.Washim since 2005 as Assistant Project Officer on contract as well as honorary basis by the order of Collector, Washim. Therefore, he is not public servant though he is performing public duty. Provisions of P.C.Act are not made out against him. There is no demand on part of accused nor he has accepted any bribe. He is falsely implicated. There is no cogent, convincing evidence against him. Therefore, he has moved present application.
5. Ld. advocate for accused argued in lines of averments in his application and relied upon observations in:-
 1. **Narayana Swamy V State of Karnataka and Ors. AIR 2016 SC 4125**

An order directing further investigation under Section 156(3) of the Cr.PC cannot be passed in the absence of valid sanction.

2. **Shailesh Ramanlal Mahimtura Vs. The State of Maharashtra, 2015 All MR(Cri.)90**

Appointment of applicant is not under any statute but pursuant to Govt.

Resolution. Merely because he was performing a public duty does not make him ipso facto a public servant. It cannot be said that applicant was holding an office and consequently he is a public servant.

6. Ld.A.PP has also argued in lines of contention in his reply. He has also relied upon observations in:-

A. **Anil Kumar Singh Vs. State of U.P Thru. Superintendent of on 28 August,2023**

“The object of P.C.Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the P.C.Act was to shift focus from those who are traditionally called public officials, to those individuals who perform public duties.”

7. I have given anxious consideration to arguments of both the sides. Perused the observations in all the citations. In his application, accused has admitted that he is performing public duty. According to him, as he is working on honorary and contract basis, he is not public servant.

8. The Hon'ble apex court has very clearly observed in the **State of Gujarat Vrs. Mansukhbai Kanjibhai Shah(2020)20 SCC 360** that the object of P.C.Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. **The purpose under the P.C.Act was to shift focus from those who are traditionally called public officials to those individuals who perform public duties.**

9. It is further observed in aforesaid citation that the explanation appended to Section 2(c) of P.C.Act provide that **for**

deciding whether the person is public servant or not it is not relevant whether he has been appointed by government or not and only this much is relevant whether he is in actual possession of the situation of the public servant.

10. In light of aforesaid observations, it becomes crystal clear that accused if is doing public duty though appointed under contract or working on honorary basis, he is in actual possession of situation of public servant. As the person who performs public duty is public servant as observed in the aforesaid citation, the averments in the present application lacks merits.

11. As regards the observations in the cited case of **Shailesh Mahimtura** relied upon by Ld.advocate of accused, same will not be helpful to accused in light of aforesaid observations of Hon'ble apex court in the case of **State of Gujrat Vrs. Mansukhbai Kanjibhai Shah**. The objection raised in present application is answered in aforesaid citation relied upon by Ld.A.PP.

12. As regards the observations in the citation of **Narayana Swamy**, there cannot be any doubt but same cannot be ground for discharging accused.

13. The verification panchanama, the trap panchanama all are reflecting demand at the hands of accused prima-facie at this stage. Similarly, prima-facie it reflects that accused was caught red handed during trap dtd.23/7/2015. Therefore,the averments in the application that there is no evidence against accused also has no substance.

14. For all aforesaid discussion, the application lacks merits. It

deserves to be rejected. In result, I proceed with following order.

ORDER

1. Application Exh.21 is hereby rejected.

DT:-25/03/2025.

(C. P. Jain)
Additional Sessions Judge-1,
Washim.

Certificate.

I affirm that the contents of this P.D.F. file Judgment/Order are same word to word, as per the original order.

Name of the Stenographer :- R.M.Rajurkar, Stenographer (Grade - 1)

Court Name :-Ad Hoc District Judge –1 and A.S.J.
Washim

Date :- 25.03.2025

Order signed by the
Presiding Officer on :- 26.03.2025

Order uploaded on :-26.03.2025