



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION NO. 1296 OF 2023

Mangesh Prabhakar Rathod,
Aged about 43 yrs, Occ. Doctor,
R/o. Near Dr. Doiphode Hospital,
Pusad Naka, Washim,
Tq. and Dist. Washim

.....**APPLICANT**

...V E R S U S...

1. The State of Maharashtra,
Through Anti Corruption Bureau, Washim,
Tq. and Dist. Washim.

2. Sadanand Gajanan Tayade,
Aged about 34 yrs,
Occ. Social Worker,
R/o Chandika Ves, Malipura,
Washim, Tq. Dist. Washim.

.....**NON-**

APPLICANT

Mr. S.V. Sirpurkar, Advocate for applicant.
Mr. H.D. Marathe, APP for non-applicant No.1/State.

CORAM:- RAJNISH R. VYAS, J.

Date : 23.09.2025

ORAL JUDGMENT

Heard. With the consent of the parties, application is decided
finally at the stage of admission.

2. By the present application, the applicant, who is original accused, is assailing order dated 03.08.2023, passed by Assistant Sessions Judge, Washim, rejecting his application for discharge.

3. In short, it is the case of prosecution that on 22-7-2015 a complaint was lodge by non-applicant no. 2, in which he alleged that he was doing social work and his maternal brother Vilas Wankhede was taking treatment from mental Hospital. According to the complaint, complainant along with his maternal brother, Vilas went to civil Hospital, Washim and obtained one chit and applied for mental certificate of Vilas. According to the case of prosecution, chit was given mentioning that they should visit applicant's clinic(who was a psychiatrist) and it was told to them by the concern Employee to bring the signature and stamp of the applicant on the papers. According to the prosecution, informant along with Vilas visited private clinic and showed necessary papers about mental treatment, where upon the applicant demanded amount of ₹300. After negotiation, the applicant agreed to accept amount of ₹200 which, as per prosecution was bribe accepted by the applicant. Trap laid by the anticorruption bureau became successful and applicant was caught red handed while accepting bribe of ₹200 on 29-7-2015.

4. learned counsel Mr. Sirpurkar, for applicant has contended that initial appointment of the applicant as Psychiatric with District Civil Surgeon's office as a Member of Medical Board was for a particular period, and therefore, after lapse of period, it cannot be called as a service rendered by the Public Servant. In order to buttress his contention, he has brought my attention to the documents, more particularly, the appointment order which is at page 39 of the application. If the said appointment order is perused, it would reveal that the appointment of the applicant was on contractual basis from 11.9.2014 till 31.3.2015 on the post of Psychiatric. The appointment order further shows that the payment/ honorarium was to be made 'on call basis'. According to Mr. Sirpurkar, since the offence in question is committed on 29.7.2015, he cannot be held liable since his services had already come to an end on 31.3.2015. He further contends that after 31.3.2015, his services were not continued and therefore, on the day of incident i.e. 29.07.2015, he cannot be called as a Public Servant, as defined under the provisions of the Act and consequently, cannot be prosecuted for commission of offence under the Act.

5. Mr. Sirpurkar has also invited my attention to the document dated 6.8.2015 which is a Query Report. A query was put by the

Investigating Officer to the District Civil Surgeon in which a question was put as to on 29.7.2015 which persons were occupying the post. A query was also put to provide information regarding the present applicant's promotion and other service details. According to Mr. Sirpurkar, queries were answered on 21.8.2015 which are totally vague. He further contends that no specific answer has been given which would implicate the present applicant. He has also brought to my notice further communication dated 1.9.2015, issued by the Investigating Officer to District Civil Surgeon. By way of said communication, it was specifically requested by the Investigating Officer to provide information of the persons, who were occupying the post on the Medical Board from 1.4.2015 till 29.7.2015. This query was answered by communication dated 7.9.2015 by the District Civil Surgeon, Washim wherein name of present applicant is missing. He in the aforesaid background contends that the prosecution has not brought any material on record to show that the present applicant is a Public Servant and therefore, cant be chargesheeted or prosecuted for commission of offences under the provisions of the Act. It is also contended by Mr. Sirpurkar that the alleged incident has taken place in the private clinic of the applicant and the charges which were quoted to the informant were the fees for the services rendered by him.

6. Per contra, learned APP Mr. H.D. Marathe, contends that the argument advanced by Mr. Sirpurkar are contrary to the record. According to him, the applicant was working even after the period mentioned in his appointment order. In order to support his stand, he has brought to my notice a certificate dated 22.7.2015. If the said certificate dated 22.7.2015 is perused, it would reveal that it is a certificate issued by the Medical Board. It bears signature of the present applicant as a Psychiatric/Member of the Medical Board. According to Mr. Marathe, this document clearly shows that even after lapse of service period, the applicant was working on the post of Psychiatric/Member of the Board. He further contends that whether the incident had taken place in the private premises and whether the amount charged was towards fees can be decided during the course of trial.

7. In the backdrop of aforesaid contentions, I have considered the material on record. A copy of chargesheet is produced by the learned APP.

8. In short, the issue involved is whether the present applicant is a 'Public Servant' as defined under Prevention of Corruption Act (for the sake of brevity, referred as "Act"). It is necessary to reproduce relevant

clauses of definition of Public Servant under Section 2(C)(viii) of of the Act:

- i) Any person who holds an office by virtue of which he is authorized or required to perform any public duty.
- ii) Any person in the service or pay of local authority.

For deciding the aforesaid factor, documents are required to be discussed. Perusal of charge sheet more particularly the document dated 22.7.2015 which is a certificate issued by the Office of Civil Surgeon, General Hospital, Washim under the heading 'Certificate for the Persons with Disability', would reveal that the present applicant has signed as a consulting member on the aforesaid certificate. By way of Certificate dated 22.7.2015, it is prima facie, clear that even after lapse of service period, the applicant has worked as a Member of the Medical Board. Though the period of applicant came to an end on 31.3.2015 but even according to the case of prosecution, it was orally extended. The stand taken by the prosecution regarding oral extension corroborates from the Certificate dated 22.7.2015. Therefore, it cannot be said that after 31.3.2015, the applicant was not holding the post of consulting member of the Medical Board. It is further pertinent to mention here that the Act has specifically defined the Public Servant which means 'any person, who holds an office by virtue of which he is

authorized or required to perform any public duty.

9. Needless to mention medically examining disabled person and issuing certificate which will have effect of getting various benefits under the Government Schemes and in the service field can very well be called as performing a public duty. In that view of the matter, I am of the opinion that the applicant is a Public Servant.

10. Learned counsel Mr. Sirkpurkar has further contended that after 31.3.20025 he has not received a single pai towards remuneration/honorarium. According to him, since there is absolutely no payment, it cannot be said that the applicant was working as a Public Servant. At this stage, it is made clear that just because salary has not been received/claimed or remuneration has not been received, it cannot be said that applicant was not working as Public Servant.

11. Mr. Sirpurkar, in order to support his case has has relied upon a judgment delivered by Bombay High Court in case of State of *Maharashtra Vs. Dr. Rustom Franroza Hakim* reported in *2000 SCC OnLine Bombay 161*, more particularly, paragraphs 11 and 12 and contended that when the incident took place i.e. on 29.7.2015, there

was no master and servant relationship and no employer and employee relationship, therefore, applicant cannot be termed as Public Servant. The facts and the ratio laid down by the aforesaid judgment, cannot be disputed. The distinguishing factor between the aforesaid case and case in hand is that there is a certificate dated 22.7.2015 which is signed by the present applicant as a Psychiatric/Member of the Medical Board shows that even after 31.3.2015, the applicant had worked with the employer. Statement of Dr Surekha Mendhe, dated 18-9-2025, who was working on the post of District civil surgeon, Washim, clearly shows that though the period of appointment of the applicant has come to an end on 31-3-2025, the applicant was informed that the appointment for the period 2015-16 would be issued at latter point of time since the grants were not received at the relevant time. That being so, the said ratio cannot be made applicable to the case in hand.

12. Learned counsel Mr. Sirpurkar, has also contended that if according to the case of prosecution, the present applicant is Public Servant, then there should have been sanction for his prosecution. It may be true but Mr. Sirpurkar cannot blow both, hot and cold. Either he can say that he is Public Servant and sanction required or say that he is not the Public servant, therefore, provisions of Act of 1988 would not be

applicable. Stand taken by the applicant through his counsel cannot be decided at this stage. The matter is required to be dealt during trial by appreciation of evidence.

13. In the aforesaid background, I am of the view that no case is made out by the applicant which calls for interference and therefore, application is dismissed.

(RAJNISH R. VYAS, J.)

R. Belkhede,
Personal Assistant