

(2024) 01 BOM CK 0101

In the Bombay High Court

Case No : Criminal Revision Application No.20 Of 2020

Madhuri Bharat Upadhey

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 29-01-2024

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act,
1977 — Section 2(12)(c), 4A, 4(6)
Code Of Criminal Procedure, 1973 — Section 397
Prevention Of Corruption Act, 1988 — Section 7, 11, 13, 13(1)(d), 13(2), 15, 19(1),
19 (1) (c)

Citation : (2024) 01 BOM CK 0101

Hon'ble Judges : M. S. Karnik, J

Bench : Single Bench

Advocate : Zubi Ansar, Ritesh Thobde, S. H. Yadav, S. V. Koli

Final Decision : Disposed Of

Judgement

M. S. Karnik, J

1. Heard learned counsel for the applicant and learned APP for the State.
2. The challenge in this revision application filed under Section 397 of the Code of Criminal Procedure (Cr.P.C.) is to an order dated 12/11/2019 passed by the Special Judge (ACB), Solapur, below Exhibit-8 in Special Case (ACB) No.15/2015.
3. The application (Exhibit – 8) was filed by the applicant for discharging her as there is no sanction as required under Section 19 (1) (c) of the Prevention of Corruption Act, 1988 (hereafter 'the PC Act' for short) from the competent authority.
4. The applicant was working as a junior clerk in Lalbahdhur Shastri Primary School, Solapur. The allegation is that the applicant demanded bribe of Rs.150/- for issuing leaving certificate to the sister of the complainant. The complainant reported the matter to the Anti-Corruption Bureau (ACB). The demand was

verified and the trap was laid. The trap was successful. Accordingly, the offence under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act was registered with the Jail Road Police Station, Solapur. After the completion of the investigation, a proposal was submitted by the prosecution to the Administrative Committee of Sanmati Dnyan Prasarak Mandal, Solapur (hereafter 'the said Mandal' for short) for sanction.

5. A reference needs to be made to page 87 of the paper-book which is a letter addressed by the said Mandal to the Assistant Police Commissioner, ACB, Solapur, which indicates that the competent authority to remove the applicant is the Managing Committee of the said Mandal. As per the resolution of the said Mandal, the powers are delegated to the Secretary of the said Mandal. Section 19(1) (c) of the PC Act relevant for the purpose of sanction by the competent authority reads thus:-

"19. Previous sanction necessary for prosecution. - (1) No Court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013] -

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

6. The Secretary of the said Mandal refused to give sanction for the prosecution of the applicant. The prosecution, thereafter, applied for the sanction to the Director of Education (Primary), Pune, Maharashtra State. The sanction was accordingly granted vide order dated 25/4/2016 by the Director of Education (Primary), Pune. The trial Court was of the opinion that there was no quarrel about the ratio in *Sou. Jyoti Ramesh Upase vs. State of Maharashtra* CrI. W.P. No.630/2013 decided on 21/10/2013. which reads as under :-

"The service conditions of the petitioner are governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of service) Regulation Act, 1977. Appointing authority is the Management of the school as defined under section 2(12) (c) of the Act and therefore, competent authority to remove the petitioner from service is the Management of the School. When the Management refused to grant sanction there is no sanction and the prosecution cannot continue without proper sanction."

Having noted thus, the trial Court was of the opinion that Section 4A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereafter 'the Act, 1977' for short) was not brought to the notice of this Court and since the same is not considered, the issue of absence of sanction is to be raised during the trial in view of the decision of the Supreme Court in CBI vs. Pramila Virendra Kumar CrI. Appeal No.1489/1490/2019 decided on 25/9/2019. According to the trial Court, the present is a case of defective sanction but not a case of no sanction at all and therefore, in view of the ratio of the Supreme Court, invalidity of sanction or the sanction being defective can be raised during the trial and the matter cannot be disposed of at the threshold.

7. Learned counsel for the applicant submitted that the issue is no more *res integra* as the same is squarely covered by the decisions of this Court in *Pranita Prakashrao Katewale vs. State of Maharashtra, through ACB, Yavatmal* (2019) 3 AIR Bom R (Cri) 247. and *Anant Shesharao Hadgekar and others vs. State of Maharashtra, through the Police Inspector 4* (2019) 4 Bom CR (Cri) 516.

8. Learned APP supported the order passed by the trial Court and submitted that the aspect of invalidity of sanction or otherwise cannot be decided at the threshold and the matter must go to trial.

9. Having considered the rival submissions, I am of the opinion that the impugned judgment and order of the trial Court cannot be sustained and calls for interference in view of the law settled by this Court in the case of *Pranita Prakashrao Katewala* (*supra*) and *Anant Shesharao Hadgekar* (*supra*).

10. The observations in the aforesaid decisions of this Court squarely apply in the present facts as well. Relevant to a decision on this application are the observations in paragraphs 9 and 14 of *Anant Shesharao Hadgekar* (*supra*) which reads thus:-

"9. There is no dispute about the fact that the petitioners are the employees of the private school and are governed by the M.E.P.S. Act. By virtue of provisions of section 4(6) of the M.E.P.S. Act, it is the Management which alone is competent to suspend, dismiss or remove them from the employment. By virtue of section 4A of the M.E.P.S. Act it is only when the Enquiry Committee enquiring into the misconduct or misbehaviour of an employee unreasonably exonerates him that it empowers the Director of Education to direct the Management to impose penalty upon such an employee. It further empowers the Director of Education to hold an enquiry if in spite of his instructions the Management fails to initiate the action. By virtue of Section 4(6) of the M.E.P.S. Act it is only the Management which has the power to remove its employees. The powers conferred upon the Director are only contingent. Therefore it cannot be said that the Director of Education independently derives any power under section 4A of the M.E.P.S. Act to remove an employee of a private school. If such is the legal position, by virtue of Section 19 of the Prevention of Corruption Act it would be the Management of a private school which alone would be competent to accord

sanction and nobody else i.e. not even the Director of Education can usurp that power.

14. For that matter, a coordinate bench of this Court at Nagpur bench in Criminal Revision Application No. 198 of 2018; Pranita Prakashrao Katewale Vs. The State of Maharashtra by the judgment and order dated 10.07.2019 relying upon the decision in case of Jyoti Ramesh Upase (supra) has considered this aspect in the light of Government Resolution dated 05.11.2015 and has made following observations in para No. 15 and 16.

"15. In the backdrop of said position of law clarified by the aforesaid Judgments of this Court, it cannot be said that sanction granted in the present case for prosecution against the applicant by the Director of Education was sustainable because it was in terms of Government Resolution dated 05.11.2015. The said Government Resolution is nothing but an executive instruction issued by the State and such executive instructions can certainly not prevail over statutory provisions of the MEPS Act and Rules and the aforesaid judgment of this Court, wherein it has been categorically laid down that only the management of the school has the power and authority to grant sanction for prosecution of a teacher or Headmistress for offences under the provisions of the Prevention of Corruption Act, 1988. The said conclusion has been given in the aforesaid judgment upon analysis of the provisions of the MEPS Act and Rules and such position of law cannot be circumvented by issuing executive instructions in the form of aforesaid Government Resolution dated 05.11.2015.

16. Thus, the contention raised on behalf of non- applicant State that the Director of Education was competent to grant sanction for prosecution against the applicant in the present case is wholly unsustainable and it is a fallacious argument raised on behalf of the non - applicant State that as long as the Government Resolution dated 05.11.2015 exists and it is not set aside, the Director of Education is entitled to grant sanction. This is because in no case can an executive instruction like the Government Resolution dated 05.11.2015, prevail over the statutory provisions of the MEPS Act and Rules and the Judgments rendered by this Court. Therefore, it is found that the Court below committed a grave error in rejecting the contention raised on behalf of the applicant regarding defective sanction as ground for discharge".

11. In the present case, there is no dispute that the competent authority in terms of Section 19(1)(c) of the PC Act is the Secretary of the Management (Mandal) who refused to give sanction for the prosecution of the applicant. The Director of Education who granted the sanction has no power or authority to grant such sanction. The present is not a case where the question is of invalidity of sanction but a clear case where the Director of Education has absolutely no power or authority to grant such sanction. Due regard to the mandate of Section 19 (1)(c) of the PC Act will have to be kept in mind, in as much as, the Special Court cannot take cognizance of the offence for want of sanction by the competent authority. This is not a case of there being a defective sanction, in

which case the learned APP would have been justified in contending that the question cannot be decided at the threshold and should be raised during the trial. The Director is not empowered to grant the sanction for prosecution so far as the applicant is concerned as he cannot be regarded as an authority competent to do so within the meaning of Section 19(1)(c) of the PC Act.

12. In the light of the observations of this Court in Anant Shesharao Hadgekar (supra) in paragraph 9 which has considered the scope of Section 4A of the Act, 1977, the finding of the trial Court that Section 4A of the Act, 1977 was not brought to the notice of this Court in Sou. Jyoti Ramesh Upase (supra) will have to be disregarded. Resultantly, the application succeeds and is accordingly, allowed.

13. The impugned order dated 12/11/2019 passed by the Special Judge (ACB), Solapur, below Exhibit-8 in Special Case (ACB) No.15/2015 is quashed and set aside. The application (Exhibit 8) on the file of the Special Judge (ACB), Solapur in the aforesaid Special Case is accordingly allowed.

14. The applicant stands discharged.

15. The criminal revision application is disposed of.