

(2026) 02 BOM CK 1576

In the Bombay High Court, Nagpur Bench

Case No : Criminal Application (Apl) No.1121 Of 2025

Nandkishor

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-02-2026

Acts Referred:

Constitution Of India, 1950 — Article 309
Prevention of Corruption Act 1988 — Section 2, 7
Bharatiya Nyaya Sanhita, 2023 — Section 2(28)
Companies Act, 1956 — Section 617

Citation : (2026) 02 BOM CK 1576

Hon'ble Judges : Urmila Joshi Phalke, J

Bench : Single Bench

Advocate : J.M.Gandhi, N.B.Jawade

Final Decision : Allowed

Judgement

Urmila Joshi Phalke, J

1. Heard learned counsel Shri J.M.Gandhi for the applicant and learned APP Shri N.B.Jawade for the State. Admit. Heard finally by consent.

2. By this application, the applicant seeks quashing of the FIR in connection with Crime No.0003/2025 registered for offence under Section 7 of the Prevention of Corruption Act, 1988 (the P.C.Act).

3. The applicant is working in the field of providing Intelligence Security as well as Labour Services in the name and style as "M/s.Abhijeet Intelligence Security and Labour Supplier" having its office at F/4, MIG Colony, Tukdoji Square, Manewada Road, Nagpur. The applicant participated into the tender process floated by various departments in the State of Maharashtra and submitted his bids and various other Tenderers also submitted their bids and whoever he is found eligible and beneficial, he provides services as per requirement of the Government or the Semi Government Organizations subject to terms and

conditions duly agreed between parties. He does not fall at all within category of "public servant" as provided under Section 2(28) of the BNS, 2023 as well as under Section 2 of the P.C.Act.

4. The crime was registered against him on the basis a report lodged by the non-applicant No.3 (the complainant) on allegations that the applicant has demanded amount Rs.25,000/- from him for appointing him as "Sweeper." Therefore, the complainant approached the Office of the Anti Corruption Bureau at Nagpur (the bureau). After verification panchanama, a raid was conducted and the applicant was found accepting amount Rs.35,000/- from the complainant. After following a due process, he was arrested by registering the crime against him. On the basis of the said report, the police registered the crime against the applicant.

5. Learned counsel for the applicant submitted that as far as allegations against the applicant are concerned, the same are false and baseless. He submitted that the applicant is not a "public servant" within the meaning of Section 2(28) of the BNS and under 2 of the P.C.Act. Therefore, the provisions of the P.C.Act are not applicable against him. He is working on contractual basis and, therefore, person working on contractual basis is not within the category of "public servant" and on this count alone, the entire process adopted by the investigating agency deserves to be vitiated and the FIR is liable to be quashed and set aside.

6. In support of his contentions, learned counsel for the applicant placed reliance on following decision:

1. Union Public Service Commission vs. Girish Jayantilal Vaghela and ors, reported in (2006)2 SCC 482; and

2. Special Leave Petition (Civil) Nos.17711-17713 of 2019 (Municipal Council, Rep.by its Commissioner Nandyal Municipality, Kurnool District, A.P. vs. K.Jayaram and ors, etc.) decided by the Supreme Court in 16.12.2025.

7. Per contra, learned APP for the State strongly opposed the said contentions and submitted that services rendered by the applicant come within the definition of "public servant" defined under Section 2 of the P.C.Act. He specifically placed reliance on the definition of Section 2(c)(i) of the P.C.Act, which deals with "public servant means," "any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty". He further submitted that the applicant has provided services on contractual basis and he was remunerated by the Government and, therefore, he is within the definition of "public servant". The allegations levelled against the applicant are substantiated by material collected during the investigation. He is not only found demanding the gratification amount but also he was found accepting the same. In view of that, the application deserves to be rejected.

8. On hearing both the sides and perusing the entire investigation papers, it reveals that the applicant is running a firm in the name and style as "M/s.Abhijeet Intelligence Security and Labour Supplier." He is proprietor of the said

firm. As per the allegations, on 8.01.2025, the complainant lodged the report alleging that the applicant has given offer to recruit the complainant as well one Mrs. Alka Italwar on the posts of "Craft Instructor" and "Sweeper". The complainant was working as "Craft Instructor" and at the Government Industrial Training Institute, Nagbhid, district Chandrapur on hourly basis. The applicant, who runs the business of man power supply to the Government Agency by tender, has got bid for supplying man power to the Government Industrial Training Institute, Nagbhid, district Chandrapur. The applicant has been on the contract with the Government Industrial Training Institute for supply of man power by external agency on a commission basis. As per the allegations, for providing the recruitment, the applicant has demanded amount Rs.25,000/- from him and Rs.10,000/- from Mrs. Alka Italwar who was appointed as "Sanitary Worker" on contract basis. Thus, the applicant allegedly demanded Rs.25,000/- from the complainant and Rs.10,000/- from Mrs. Alka Italwar. On filing the complaint with the bureau, verification panchanama was drawn and the applicant was found accepting the amount when the raid was conducted. The allegations, admittedly, were substantiated by verification panchanama which shows that there was a demand by the applicant and post-panchanama shows that he has accepted the amount as per the demand.

9. Now, only question is, whether the applicant is "public servant" within the meaning of Section 2(28) of the BNS and Section 2 of the P.C. Act.

10. Learned counsel for the applicant has placed reliance on the decision in the case of Union Public Service Commission vs. Girish Jayantilal Vaghela and ors supra, wherein the definition of the "Government Servant" is defined in view of Rule 2(h) of Central Civil Service (Classification, Control and Appeal) Rules and it is observed that, "a private employer in India enjoys almost a complete freedom to select and appoint anyone he likes and there is no statutory provision mandating advertisement of the post or selection being made strictly on merit, even where some kind of competitive examination is held. The employment under the Government is a matter of status and not a contract even though the acquisition of such a status may be preceded by a contract, namely, an offer of appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by statutory rules which are framed by the Government in exercise of power conferred by Article 309 of the Constitution and the service rules can be unilaterally altered by the rule making authority, namely, the Government".

It has further been held, by referring the decision of the Constitution Bench in State of Gujarat vs. Framan Lal Keshav Lal Soni, reported in AIR 1984 SC 161, as under:

"We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be

considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not."

11. In another judgment, in the case of Municipal Council, Rep.by its Commissioner Nandyal Municipality, Kurnool District, A.P. supra, point involved was, whether the employment/relationship of the appellant with the respondent and its nature and it is observed that, "when employees/workmen are taken through a contractor, it is the absolute discretion of the contractor as to whom and through which mode he would choose such persons to be sent to the principal".

12. Thus, learned counsel for the applicant submitted that the applicant was providing services on contractual basis and, therefore, he is not within the definition of "public servant". He also referred Section 2(c) of the

P.C.Act and submitted that by no stretch of imagination, even accepting the definition as it is, the applicant can be said to be "public servant".

13. Section 2(28) of the BNS, which is relevant, is reproduced below for reference:

"Section 2(28). public servant means a person falling under any of the descriptions, namely:-

(a) every commissioned officer in the Army, Navy or Air Force;

(b) every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(c) every officer including a liquidator, receiver or commissioner whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised to perform any of such duties;

(d) every assessor or member of a panchayat assisting a Court or public servant;

(e) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court, or by any other competent public authority;

(f) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(g) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(h) every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

(i) every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

(j) every person who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(k) every person-

(i) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(ii) in the service or pay of a local authority as defined in clause (31) of section 3 of the General Clauses Act, 1897, a corporation established by or under a Central or State Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013.

Explanations: -

(a) persons falling under any of the descriptions made in this clause are public servants, whether appointed by the Government or not;

(b) every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation is a public servant;

(c) "election" means an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of election to which is by, or under any law for the time being in force".

14. Section 2(c) of the P.C.Act is reproduced for reference, as under:

"Section 2(c). - "public servant means",

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) any person authorised by a Court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a Court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central

Government or any State Government, or local or other public authority.

Explanation 1. - Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2. - Wherever the words public servant occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

15. The Hon'ble Apex Court in the case of Aman Bhatia vs. State (GNCT of Delhi), reported in MANU/SC/0625/2025, by referring its earlier decision in the case of State of Gujarat vs. Mansukhbhai Kanjibhai Shah, reported in (2020) 20 SCC 360 observed as follows:

"Our attention was also drawn to the notes on clauses of Prevention of Corruption Bill dated 20-2 1987. Clause 2 of the Notes on Clauses in the Gazette of India, Extraordinary, Part II, Section 2, clarifies the legislative intent, wherein it was commented as under: This clause defines the expressions used in the Bill. Clause 2(c) defines "public servant". In the existing definition the emphasis is on the authority employing and the authority remunerating. In the proposed definition the emphasis is on public duty."

16. In the case of State of M.P. vs. Ram Singh, reported in (2000)5 SCC 88, the Hon'ble Apex Court observed as under:

"The menace of corruption was found to have enormously increased by the First and Second World War conditions. Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act 49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act. The law relating to prevention of corruption was essentially made to deal with the public servants, not as understood in common parlance but specifically defined in the Act."

What is relevant to note from the aforesaid is that the P.C.Act was enacted after the repeal of the 1947 Act with the object of dealing with the circumstances,

contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act. While holding that a deemed University would fall within the ambit of the P.C.Act, a three-Judge Bench of the Hon'ble Apex Court in State of Gujarat vs. Mansukhbhai Kanjibhai Shah (supra) observed that it falls upon the courts to interpret provisions of an anti-corruption legislation in a manner to strengthen the fight against corruption. It was further added that in case two views are possible, the court should accept the one that seeks to eradicate corruption over the one which seeks to perpetuate it.

17. The Hon'ble Apex Court in the case of Aman Bhatia vs. State (GNCT of Delhi) supra, observed that heart of the definition of "public servant" under Section 2(c) (i) of the P.C. Act lies in the expressions "remunerated by the Government" and "for the performance of any public duty", and not in the mode of remuneration, such as "fees or commission". The 'commission' referred in "remunerated by the Government by fees or commission for the performance of public duty" is not analogous to the 'commission' in Section 19H of the 1961 Act. It is further observed that the definition of "public servant" under Section 2(c)(i) of the P.C.Act can be said to have three parts, as they are disjunctive: first, a person who is in the service of the Government; secondly, a person who is in the pay of the Government; thirdly, a person who is remunerated by fees or commission for the performance of any public duty. The expression "remunerated" in the third part has to be read in context and in line with the expressions in the first and the second part i.e., "in the service" and "in the pay". The three key expressions, "in the service", "in the pay" and "remunerated" by the Government belong to the same genus and have the same flavour. In the first two parts, a person is rendering his services for the Government which implicitly means discharging a public duty. Whereas, in the third part, even though a person is not rendering his services for the Government but is being remunerated for discharging a public duty. In this context, the terms "fees or commission" must be construed so as to give full effect to the definition and the other provisions of the statute.

18. The Hon'ble Apex Court in the case of State of Gujarat vs. Mansukhbhai Kanjibhai Shah supra, held that the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him/her. It is observed in paragraph No.34 as under:

"On a perusal of Section 2(c) of the PC Act, we may observe that the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him/her. In this regard, the legislative intention was not to provide an exhaustive list of authorities which are covered, rather a general definition of 'public servant' is provided thereunder. This provides an important internal evidence as to the definition of the term "University".

19. In the case of G.Krishnegowda vs. State of Karnataka, reported in MANU/KARNATAKA/3037/2021 the Karnataka High Court dealt with the issue whether project manager in a society registered under the provisions of the Karnataka Societies Registration Act, 1960 is a "public servant" and the relevant

observation are as under:

"From the reading of the definition of the word 'public servant as found in the P.C.Act, it is very clear that a person who holds an office by virtue of which he is authorized or required to perform any public duty, and any person or employee of any institution if it has been receiving or if it has received any financial assistance from the State or Central Government, shall be considered as a public servant. The explanation to Section 2(c) of the P.C. Act would further go to show that such a person may be appointed by the Government or not. Therefore, a public servant need not be a Government/civil servant, but a Government/civil servant is always a public servant".

20. Section 2(b) defines "public duty" as a duty where the State, the public, or the community at large has an interest in its discharge.

Explanation – In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956.

21. While analyzing the public duty, a bare perusal of the aforesaid definition clause of the Act, it can be inferred that to designate a person as a "public servant" and to thereby hold such person liable under the P.C.Act, the thrust lies upon the nature of duty i.e. public duty carried out by such person and not the position held by him or her. The term "public servant" lists down the categories of individuals under sub-clauses (i) to (xii) of Section 2(c) of the P.C.Act who shall be classified as a 'Public Servant'. The first explanation to the said provision also clarifies that persons falling under the said sub-clauses shall be deemed to be public servants irrespective of their appointing authority. The second explanation further expands the ambit to include every person who de facto discharges the functions of a public servant, and that he/she should not be prevented from being brought under the ambit of "public servant" due to any legal infirmities or technicalities. There is no doubt that in the objects and reasons stated for enactment of the P.C.Act it has more clear and widens the scopes of definition of "public servant".

22. Thus, a bare reading of the definition of word 'public servant' as defined in the P.C.Act, it is emphatically clear that a person who holds the office by virtue of which he is authorized or required to perform any public duty and any person or employee of any institution, receiving or having received any financial assistance from the Central Government or State Government or local or other public authority, shall be considered as "public servant". The explanation to Section 2(c) of P.C.Act would further go to show that such a person may be appointed by the Government or not, therefore, a "public servant" need not be a Government / civil servant, but a Government / civil servant is always a "public servant".

23. In the light of the above well settled law, if the facts of the present case are considered, it would show that the applicant was providing contractual services

to the various Government Sectors as well as Semi Government Sectors. The prosecution case shows that he has demanded and accepted the amount from the complainant and one more person for providing them contractual services through him as "Sweeper" and "Craft Instructor." The entire investigation papers show that he was running a firm in the name and style as "M/s.Abhijeet Intelligence Security and Labour Supplier."

24. After applying the law laid down by the Hon'ble Apex Court, by no stretch of imagination, it can be said that the applicant is a "public servant" and was discharging public duty.

25. While analyzing the public duty, a bare perusal of the aforesaid definition shows that to designate a person as a "public servant" and to thereby hold such person liable under the P.C.Act, the thrust lies upon the nature of duty i.e. public duty carried out by such person and not the position held by him or her. The term "public servant" lists down the categories of individuals under sub-clauses (i) to (xii) of Section 2(c) of the P.C.Act who shall be classified as a 'Public Servant'. The first explanation to the said provision also clarifies who is covered under the said definition.

26. In the present case, by applying the same to the applicant, admittedly, he is not within the domain of "public servant" and he was not discharging the public duty and, therefore, the contentions of learned counsel for the applicant, that the applicant is not "public servant" and the provisions of the P.C.Act are not applicable against him and application of Section 7 of the P.C.Act is wrong and erroneous and, therefore, the FIR deserves to be quashed and set aside, are sustainable. In view of that, I proceed to pass following order:

ORDER

(1) The Criminal Application is allowed.

(2) The FIR in connection with Crime No.0003/2025 registered for offence under Section 7 of the Prevention of Corruption Act, 1988 is hereby quashed and set aside to the extent of the applicant.

Application stands disposed of.