

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.635 OF 2016**

**DISTRICT : NASHIK**

Shri Sahebrao Dhondu Jagtap. )  
Retired as Assistant Public Prosecutor, )  
R/o. Flat No.3, Shriram Building, )  
Ayodhya Nagari, Opp. Hotel Siddarth )  
(Kamath), Nashik-Pune Road, Nashik-11. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, )  
Mantralaya, Mumbai - 400 032. )
2. The Director of Prosecution. )  
M.S, Barrack No.6, Free Press )  
Journal Marg, Near Manora MLA )  
Hostel, Nariman Point, Mumbai 21. )...**Respondents**

**Mr. A.S. Deshpande with Mr. V.P. Potbhare, Advocates for Applicant.**

**Ms. N.G. Gohad, Presenting Officer for Respondents.**

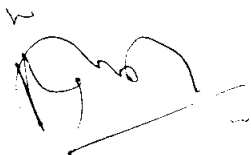
**P.C. : R.B. MALIK (VICE-CHAIRMAN)**



**DATE : 11.09.2017**

**JUDGMENT**

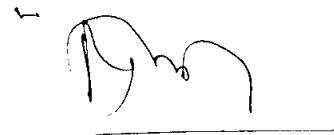
1. This Original Application (OA) brought by a retired Assistant Public Prosecutor now remains restricted to the manner in which the period of suspension pending prosecution of the Applicant under the Prevention of Corruption Act, 1988 should be treated.
2. I have perused the record and proceedings and heard Mr. A.S. Deshpande with Mr. V.P. Potbhare, the learned Advocates for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer (PO) for the Respondents. The Respondent No.1 is the State in Home Department and the Respondent No.2 is the Director of Prosecutions.
3. It is a common ground that as on 15.10.2007, the Applicant was functioning as Assistant Public Prosecutor attached to the Court of the Judicial Magistrate 1<sup>st</sup> Class at Soigaon. He allegedly demanded and accepted illegal gratification from one Mr. Syed Jeelani Syed Akbar. The Anti-Corruption Bureau swung into action and upon the complaint made by the said Mr. Syed Jeelani, the Applicant was allegedly trapped. He was placed under suspension w.e.f. 4.4.2008 and the record would show that



he continued to remain suspended till 31<sup>st</sup> May, 2013. The criminal case against him was Special Case No.14/2008 (The State of Maharashtra Vs. Sahebrao Jagtap). The penal provisions invoked against him were Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act' hereinafter). The learned Special Judge, Aurangabad by his Judgment and order of 20.2.2015 was pleased to hold *inter-alia* that demand was not proved and so also was not proved the acceptance and also there was no legal sanction to prosecute the Applicant and consistently, with this view of the matter, the Applicant came to be acquitted of the offence with which he was charged and for which he was tried.

4. Para 42 of the said Judgment of the learned Special Judge read as follows :

**“42.** For all the above mentioned reasons the above points are answered accordingly as indicated against each of them in terms of the above observations. I, therefore, find that benefit of doubt will have to be extended to the accused and hence he is entitled to acquittal. There is no consistent and cogent evidence to hold that the



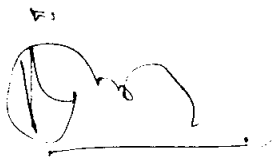
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accused is guilty for the offence with which he was charged.”

5. The Applicant retired on superannuation on 31.5.2013. He brought this OA on 28.6.2016 and initially, he claimed various reliefs including the one which now survives for determination including the payment of pension, the held-up pay and subsistence allowance, gratuity, leave encashment amount, differences, etc. It appears that pending OA, by an order dated 8<sup>th</sup> February, 2017, it was held by the Government in Home Department that the Applicant was acquitted by giving him benefit of doubt and it was decided that no appeal would be preferred thereagainst. It was also decided that no departmental enquiry (DE) would be held against the Applicant, and therefore, a decision was taken to revoke the order of suspension dated 4.4.2008.

6. However, the period from 4.4.2008 to 31.5.2013 was treated as period spent on duty only for the purpose of pensionary benefits and also the pay and allowances for that period of time should remain restricted only to the amount of subsistence allowance already paid. Therefore, it is very clear that, by way of the said order, the period of suspension was not treated as period spent on duty for all

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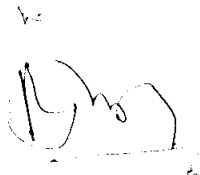
purposes except pension and this OA now aims at setting at naught what the Applicant considers to be injustice done to him.

7. The only reason why the entire period of suspension has not been treated as period spent on duty is for all one knows the fact that, according to the authorities, the acquittal was with the aid of benefit of doubt. I have already reproduced Para 42 from the Judgment of the learned Special Judge. Read as a whole, it by itself would make it clear that, even as the words to the effect of benefit of doubt were used, but at the same time, in the same Paragraph, it was clearly and categorically observed that there was no consistent and cogent evidence to hold the Applicant guilty of the offence, he had been charged with. That is one very significant aspect of the matter. In my opinion, however, academically other factors remaining constant which I shall be presently pointing out are not constant here in this matter, the authorities might perhaps have failed to treat the Applicant in the manner they did provided and this is a very important proviso, the acquittal was really with the aid of benefit of doubt. The Judgment of the learned Special Judge will, therefore, have to be read somewhat closely and I do not think, there is any impediment in doing so nor is

  
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there is any impropriety much less illegality because the order of the authorities impugned herein is such as to be legally scrutinized by this Tribunal. I make it very clear that the facts at issue such as they were before the learned Special Judge cannot be questioned at all before me nor am I entering there into but to the extent, the said Judgment is relevant for the present purposes, it will have to be read as it is without any addition thereto or subtraction therefrom. It will have to be taken as it is without making any effort to scrutinize it. I do not wish to, nor do I scrutinize the said Judgment.

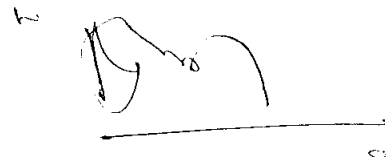
8. With this abundant caution, I find that, even as it may not be necessary for me to delve into the finer details of an offence under P.C. Act, 1988, if the provision relevant herefor and to the extent merited hereby and that Act are considered, then what really happened was that the Applicant as a public servant allegedly demanded illegal gratification from a certain complainant Mr. Syed Jeelani and accepted the same and upon sanction under Section 19 of the P.C. Act, he was sent up for trial. Any further details into the academic aspect of that particular enactment will be out of place. But it needs reiteration that the facts at issue in those prosecutions were such that the facts of demand of illegal gratification and acceptance



thereof, had got to be established and further the sanction had to be legal.

9. The perusal of the Judgment of the learned Special Judge would show that the complainant Mr. Syed Jeelani himself was an accused before the learned Magistrate and the present Applicant was representing the prosecution in that matter. Very pertinently and this is clearly stated in the Judgment of the learned Special Judge as a fact surrounding the fact at issue therein, the said complainant Syed Jeelani had applied for discharge and this Applicant as APP opposed his move and did it successfully. His application for discharge was rejected. For the sake of record, it also needs to be mentioned that, in the ultimate analysis, the things that they unfolded themselves in fact, the said complainant Syed Jeelani came to be convicted and sentenced. He was accused No.2 in that particular prosecution.

10. In the above background, turning to the Judgment of the learned Special Judge, one finds that, till Para 9, the facts were set out. In Para 10, the points for determination were formulated. It was found that the Applicant was a public servant. In so far as the point at issue about the demand of Rs.2000/- was concerned, it



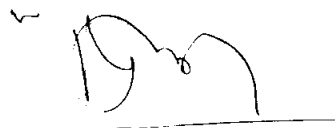
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was clearly held in negative and similarly, on the point at issue of acceptance of that amount also, the point was found in the negative. There was no specific point raised about the sanction aspect of the matter but in the discussion in the body of the Judgment, it was held that the sanction was not accorded at all. The learned Judge observed that, in such prosecutions, the evidence of the complainant must be corroborated in material particulars. He then set out the facts forming the *teraferma* of the case of the prosecution against the complainant himself before the learned Magistrate. It will not be necessary for me to set out the details thereof. In Para 17 of the Judgment of the learned Special Judge, it was observed from the evidence of the complainant Mr. Syed Jeelani that he met the Applicant on 12.10.2007 and the Applicant asked him as to whether he would give him a bribe of Rs.2000/- to acquit him in that criminal case. In the body of that Judgment, there are observations of the learned Special Judge which show that, regard being had to the position that the Applicant held at that time and the stage at which the trial before the learned Magistrate had reached, the prosecution led by the Applicant had already examined six witnesses and nothing more had really remained for him to do in the direction of obliging the said complainant in asking for bribe. Further, it was for the Court and not for





the Applicant who was a APP to acquit the said complainant. It was held that the Applicant was in no position to favour the complainant in his official capacity. Further, the said complainant was not an undefended litigant as it were. Advocate Mr. Choudhary was appearing for him and in this set of circumstances, observations came to be made by the learned Special Judge that the story of the prosecution in that behalf appeared to be highly improbable. I have already mentioned above as to how the circumstance of the accused having successfully frustrated the attempt of the said complainant in getting discharged was highlighted in the Judgment of the learned Special Judge. The learned Special Judge took a specific note of the fact that the complainant filed the complaint against the Applicant after the statements of material witnesses were already recorded before the learned Magistrate and then found that, by an order dated 18.4.2008, the said complainant and all his co-accused came to be convicted. On the issue of demand, the learned Special Judge was pleased to note the contradiction in the evidence of the complainant Mr. Syed Jeelani and the Punch Gopal Gaiwad. It is a matter of common knowledge that, in the prosecutions under the Prevention of Corruption Act, the testimony of the Punchas and the Punchnamas drawn at the vital point of time assume



central significance and if the contradictions are found to be fatal or even near fatal, then the prosecution does not succeed. It is in this context that the conflict in the evidence of the complainant and the Punch Gaikwad would assume significance. In Para 22 of the Judgment of the learned Special Judge, it was found that the evidence was silent on the point of demand of the bribe, and therefore, there was no material to raise the presumption under Section 20 of the P.C. Act and that would be a significant failing of the prosecution. Certain other facts and circumstances including those from the evidence of the Investigating Officer Dy. S.P. Mr. Kamble were noted and on the issue of demand of bribe, it was held, "I find it difficult to act upon their version in that regard".

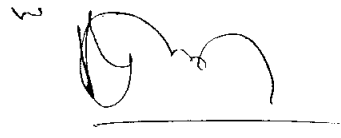
11. In so far as the acceptance is concerned, the discussion by the learned Special Judge in Para 30 and subsequent Paras would show that there were fatal contradictions as to various fact components of the acceptance aspect of the matter. In such investigations, a certain chemical substance is employed which in the case at hand was enthracin powder. The property including the currency notes, clothes are subjected to the treatment of ultra-violet rays. For example, if the allegations are that the concerned public servant handled the smeared



currency notes, then his hands would be tested to find out if a particular chemical reaction would take place upon the chemical test. If it was alleged that the said public servant post acceptance placed the currency notes in his pocket, then his cloth will be similarly subjected to the chemical treatment and on all these aspects of the matter, learned Special Judge found the prosecution completely wanting in the matter of the proof of guilt of the Applicant. In Paras 33 and 34, relying upon the Judgment in the matter of **Mr. Pradeep P. Pimperkhede Vs. The State of Maharashtra : 2014 ALL MR (Cri) 3064**, the learned Special Judge held that the very deposition of the complainant would have to be over-looked and once it was done, the theory of demand and acceptance would fall to the ground. In this set of facts, it was held that the prosecution failed to prove the demand of illegal gratification by the Applicant and also the fact that he accepted the said amount.

12. As already discussed above, it was held that the sanction was not in accordance with law, and therefore, also the prosecution was liable to fail.

13. It is in the above set of facts that the observations of the learned Special Judge in Para 42 fully quoted hereinabove will have to be appreciated. It is very



clear in my opinion that upon a close reading of the said Judgment, the categorical finding was that the prosecution failed to bring the guilt home to the Applicant, and therefore, in so far as the words, "benefit of doubt" are concerned, I cannot accord to them the meaning which the concerned authority ended up doing. The entire Judgment will have to be read fully which when done to my mind would make it very clear that, no adversity could be visited upon the Applicant on account of that particular portion in the Judgment of the learned Special Judge. How I wish, even the authority had read the entire Judgment rather than relying upon a stray sentence.

14. Ms. N.G. Gohad, the learned Presenting Officer referred me to the Finance Department G.R. dated 24<sup>th</sup> December, 1987, a copy of which is annexed to the Affidavit-in-reply. It is stated therein that, in the matter of treating the period of suspension, the orders in that behalf are found to be riddled with various defects and that aspect of the matter has been amplified in the context of Rules 70, 71 and 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. It is further mentioned therein that, it must be closely examined as to



whether the acquittal in case the said employee was acquitted was for technical reasons or on merit.

15. In my opinion, this particular G.R. is for the guidance of the authorities. It is quite another matter that in actual fact in the set of these circumstances, the purpose thereof will be sub-served by the above discussion although the ultimate result may not be to the liking of the authorities below.

16. My attention was invited by Mr. Deshpande to **Dattatraya Vasudeo Kulkarni Vs. Director of Agriculture, Maharashtra and others : 1984 MLJ 406 (DB)**. Pertinently, in that particular matter, Their Lordships were told on behalf of the Petitioners that there was nothing in the criminal law like honourable acquittal or benefit of doubt, etc. and reading of the Judgment of the Hon'ble High Court would show that those arguments were approved. Further, reliance was placed by Mr. Deshpande on **Brahma Chandra Gupta Vs. Union of India : AIR 1984 SC 380** with particular reference to Para 6 thereof.

17. The upshot, therefore, is that the order herein impugned dated 8.2.2017 (Exh. 'H') will have to be quashed and set aside and directions will have to be given



to treat the period of suspension of the Applicant from 4.4.2008 to 31.8.2013 as 'period spent on duty for all purposes' and not for the limited purpose therein indicated. The said order (Exh. 'H') stands hereby quashed and set aside. The Respondents are hereby directed to treat the period of suspension as the period spent on duty for all purposes and to make all necessary orders and take all necessary steps to effectuate this order both in the matter of payment of arrears as well as pension and post retiral benefits. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**VICE-CHAIRMAN**  
**11.09.2017**

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Mumbai

Date : 11.09.2017

Dictation taken by :

S.K. Wamanse.

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