CASE NO.:
Appeal (crl.) 8 of 2002

PETITIONER:
DILAWAR BALU KURANE

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 08/01/2002

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

PHUKAN, J.

Leave is granted.

The appellant at the relevant time was a Lecturer in Y.B. Chavan College, Kolhapur, State of Maharashtra , a college run by the Municipal Corporation and affiliated to the Shivaji University, Kolhapur. The appellant received a letter from the University inviting him to evaluate the papers in Accountancy (theory) at the B.Com. IInd Year examination, which was accepted. On 1st May, 1986, one Ashok Salokhe, who also appeared in the said examination, approached the appellant and expressed his inability to clear the above paper which was to be examined by the appellant. According to the prosecution, the appellant demanded Rs.400/- from him and on the next day, around 4.30 p.m., the appellant accepted Rs.400/- from him and thereafter scored out the previous marks given on the answer script and increased the number to enable the said student to get through the paper in question. It was the further case of the prosecution that private individuals tried to lay trap on 2nd May to prove acceptance of the amount by the appellant. The Registrar of the University on getting information of the alleged occurrence took away all the answer scripts from the appellant. After one week, i.e. on 9th May, 1986, the Deputy Registrar of the University filed a First Information Report before the police against the appellant. On the next day, the police searched the house of the appellant in his absence but nothing incriminating was found. Ten months after the above alleged occurrence, statements of Salokhe and one Sawant were recorded by police and thereafter charge sheet was filed against the appellant under Section 161/477A of the Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and process was issued to the appellant calling upon him to stand trial for the alleged offences. The appellant approached the High Court of Judicature of Bombay by filing a Writ Petition under Article 227 of the Constitution read with Section 482 of the Code of Criminal Procedure for quashing the charges which was disposed of with the observation that 'prima facie the prosecution case seemed to be resting on flimsy foundation'. However, instead of quashing the charges

directed the appellant to approach the trial court. Accordingly, an application under Section 227 of the Code of Criminal Procedure was filed before the Special Judge, which was dismissed. Being aggrieved by the said order, the appellant filed a Revision Petition before the High Court, which was also dismissed by the impugned judgment.

Two points need our consideration, namely, (1) whether the appellant was a public servant at the relevant time for invoking Section 5 of the Prevention of Corruption Act, 1947, and (2) whether the charges against the appellant on the very face of it are redolent of improbability and absurdity and there is not even remote chance of the charges ultimately culminating into conviction.

We may state here that Special Judge while considering the application under Section 227 of the Code of Criminal procedure did not at all consider the application on merit and mainly proceeded to decide whether the appellant was a public servant. The High Court without analysing the material on records rejected the contention on the ground that 'certainly a grave suspicion is created by the appellant committing offences other than that under Section 477A.' The Special Judge held that the appellant was a public servant but the High Court left this question open.

Admittedly, the appellant being a lecturer of a private college would not come within the definition of public servant as contained in Section 21 of the Indian Penal Code. There is a special provision in the Shivaji University Act, 1974, namely, sub-section (4) of Section 73, which is extracted below:

?Conditions of Services : Section 73:

1).....

2).....

3).....

4) All salaried officers and employees of the University, including those appointed by the University for specified periods or for specified work, or who receive any remuneration such as allowances, fees or other payments from the University Fund, shall be deemed to be public servants for the purposes of all criminal laws for the time being in force.?

We have to consider whether in view of the above sub-section, the appellant would be deemed to be a public servant.

On a plain reading of the above sub-section, the following categories of persons shall be deemed to be a public servant for the purposes of all criminal laws. These categories are:

1. all salaried officers and employees of the university;

2. those appointed by the university for specified purpose or for specified work;

3. persons who receive any remuneration such as allowances, fees or other payments from the fund of the university.

Learned counsel for the appellant has contended that sub-section (4) consists of two categories of salaried officers and employees, that is, (I) those officers or employees who were appointed for a specified period or for a work or (II) those officers and employees who receive remuneration such as allowances, fees and other payments and in other words, according to learned counsel to be a public servant under sub-section (4) a person must be first of all salaried officers or employee of the University. According to the learned counsel if the intention of the legislature was to cover under this provision all persons who receive any type of remuneration, then the words 'any person' would have been used instead of using the word 'or' before 'who' and the word 'or' indicates an alternative and not addition.

This is a settled principle of interpretation that words in a statute should not be brushed aside as the courts always presume that legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. Language of sub-section (4) is clear and the intention of the legislature was to bring the categories of persons, as indicated above, under the purview of sub-section (4) and these persons would be deemed to be a public servant. We are, therefore, unable to accept the contention of the learned counsel as any other interpretation would go contrary to the intention of the legislature.

Drawing our attention to the marginal note of Section 73, learned counsel for the appellant contended that sub-section (4) of Section 73 would apply as Conditions of Service to the employees of the University. We need not refer to the marginal note as the language of sub-section (4) is clear and unambiguous and at any rate the marginal note cannot restrict the meaning of the Section. Therefore, the said contention is not acceptable to us.

Our attention was drawn to the decision of this court in State of Gujarat versus Manshankar Prabhasankar Dwivedi [1973 (1) SCC 313]. In that case, a lecturer of Government College was appointed as an examiner by the University and it was alleged that he took Rs. 400/- from a candidate at the examination for showing favour. On these facts, this court held that a person appointed as an examiner by the University even if he was a lecturer of a Government College would not be a public servant within the meaning of Section 21 of the Indian Penal Code. We have already observed that the appellant would not come under the purview of the said Section 21 and therefore that decision is of no help. In the case in hand, the appellant was appointed by the University for a specified work, namely to evaluate answer scripts and therefore he was a public servant at the relevant time under sub-section (4) of Section 73 of the Act.

Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See Union of India versus Prafulla Kumar Samal & Another (1979 3 SCC 5)].

As stated earlier, neither the Special Judge nor the High Court considered the materials on records while framing charge and there was no application of mind and the Special Judge merely acted as a post office. All the materials produced by the prosecution against the accused were duly considered by the High Court while disposing of the Writ Petition filed by the appellant. In coming to the conclusion that the prosecution case rests upon flimsy foundation and it is quite possible that the chances of a conviction are bleak, the High Court recorded as follows:

? Without in any way prejudging the issue I must say that the vital content of the prosecution case seems somewhat amazing. An association of students provides money to an examinee to get his marks increased. This is said to have been done and the answer-books attached. The First Information Report is given some seven days after this incident. Information of the offence is conveyed to a police station and yet investigation by the A.C.B. is taken up as late as March 1987. Nothing incriminating has been found with the Petitioner.?

We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant.

We find merit in the present appeal and accordingly it is allowed by setting aside the impugned judgment and consequently the criminal proceeding against the appellant is quashed.

..J.
[Syed Shah Mohammed Quadri]

.....J.
[S. N. Phukan]

January 08, 2002