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

CRIMINAL REVISION NO.199/2025

APPLICANT : Madhukar s/o Ranglal Pawar,
Aged about 65 years,
Occupation – Private, (President -
Pratibha Shikshan Prasarak Mandal)
R/o Januna, Tah. Barshi Takli,
District – Akola.

...VERSUS...

NON-APPLICANTS : 1. State of Maharashtra,
RESPONDENTS Through its Police Station Officer,
Police Station Barshi Takli,
Tah. Barshi Takli, District – Akola.

2. Sandesh s/o Kashiram Pandhare,
Aged about 50 years,
Occupation – Service,
R/o, 201/B, 48, Chandralekha
Sector – 3, Shanti Nagar,
Meera Road, Thane – 401 107.

Mr. V.R. Deshpande, Advocate for applicant
Mrs. Prachi Joshi, APP for respondent No.1/State

CORAM : MEHROZ K. PATHAN, J.

Date of reserving the Judgment : 02/09/2026
Date of pronouncing the Judgment : 03/09/2026

J U D G M E N T :

1. Heard. Admit. Taken up for final disposal with the consent of the learned Counsel for the rival parties.

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2. The applicant has filed the present revision application, thereby praying for quashing and setting aside the order dated 01/11/2025, passed by the learned Additional Sessions Judge, Akola below Exh.23 in Sessions Trial No.93/2023 and further praying for quashing and setting aside the order of framing of charge dated 01/11/2025, passed by the learned Additional Sessions Judge, Akola below Exh.47.

3. Mr. V.R. Deshpande, the learned Counsel for the applicant submits that the informant, an employee of State Bank of India does not fall under the definition of public servant, so as to attract the offence under Section 353 of the Indian Penal Code (IPC), which is necessarily registered for an assault against the public servant. The definition of public servant is given in Section 21 of IPC. The employees of the Bank are not covered under the definition, as provided under Section 21 of IPC. The offence under Section 353 of IPC thus cannot be said to be made out against the applicant and the applicant ought to have been discharged. Learned Counsel for the applicant submits that this objection goes to the root of the matter and ought to have been dealt with by the learned Trial Court while deciding the application for discharge filed by the accused. The learned Trial Court has mechanically decided the said application without considering the definition of Section 351 and 353 of IPC.

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4. The learned Counsel for the applicant relies upon the judgment of Delhi High Court in the case of ***Sh. Raghunath Rai Kumar Vs. Sh. B.N. Khanna and others***, reported in ***1983 Cri. L.J. (NOC 154) 63*** and the judgment of the Bombay High Court in the case of ***N. Vaghul, Chairman and Managing Director, Bank of India, Bombay and others Vs. The State of Maharashtra***, reported in ***1987 Cri LJ 385***, whereby the Bombay High Court as well as Delhi High Court have discussed Section 46-A and 51 of the Banking Regulation Act, 1949 and thereafter observed that the employees of the State Bank of India are not the public servants under Section 21 of IPC and they cannot be therefore treated as public servants to the extent of Chapter-IX of the IPC. The offence under Section 353 of IPC falls under Chapter-XVI and therefore, the informant would not fall under the definition of public servant being the employee of the State Bank of India. The offence under Section 353 of IPC thus cannot be said to be made out. The learned Counsel submits that on this ground alone the charge against the present applicant needs to be dropped and the impugned order needs to be quashed and set aside. The discharge application filed by the applicant needs to be allowed. The applicant shall be discharged from the aforesaid Sessions Trial No.93/2023, pending before the Additional Sessions Judge, Akola.

5. As against this, Mrs. Prachi Joshi, the learned Additional Public Prosecutor for the respondent No.1/State strongly opposes the

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revision application on the ground that the employees of the State Bank of India, fall within the definition of Section 21 of IPC and can be said to be the public servants. She further relies upon the judgment of the Hon'ble Supreme Court in the case of ***Central Bureau of Investigation, Bank Securities & Fraud Cell Vs. Ramesh Gelli and others***, reported in ***(2016) 2 SCC (Cri) 222***, particularly paragraph No.27, which reads as under :-

> *"27. In the light of law laid down by this Court as above, it is clear that object of enactment of the PC Act, 1988, was to make the anti-corruption law more effective and widen its coverage.* **In view of the definition of "public servant" in Section 46-A of the Banking Regulation Act, 1949 as amended the Managing Director and Executive Director of a banking company operating under the licence issued by Reserve Bank of India, were already public servants, as such they cannot be excluded from the definition of "public servant"**. *We are of the view that over the general definition of "public servant" given in Section 21 IPC, it is the definition of "public servant" given in the PC Act, 1988, read with Section 46-A of the Banking Regulation Act, which holds the field for the purposes of offences under the said Act. For banking business what cannot be forgotten is Section 46-A of the Banking Regulation Act, 1949 and merely for the reason that Sections 161 to 165-A IPC have been repealed by the PC Act, 1988, relevance of Section 46-A of the Banking Regulation Act, 1949, is not lost."*

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6. The learned Additional Public Prosecutor, therefore, submits that taking into consideration the observations of the Hon'ble Supreme Court in the aforesaid judgment, the applicant falls within the definition of public servant and therefore, the application came to be rightly rejected by the learned Trial Court. The charge was therefore correctly framed under Section 353 of IPC. The revision application, therefore, is devoid of substance and merit and is thus liable to be rejected.

7. I have gone through the judgment of the Delhi High Court in the case of ***Sh. Raghunath Rai Kumar*** (supra) and the judgment of the Bombay High Court in the case of ***N. Vaghul*** (supra). In the above judgments the Delhi High Court as well as the Bombay High Court have discussed Section 46-A and 51 of the Banking Regulation Act, 1949 and held that the employees of the State Bank of India are not the public servants under Section 21 of IPC.

8. Perusal of the aforesaid judgments would show that the observations of the Delhi High Court deals with the definition of public servant, as defined under Clause-9 of Section 21 of IPC, whereas the judgment of the Bombay High Court refers to the definition of public servant in Clause-12 (b) of Section 21 of IPC.

9. The Delhi High Court in the case of ***Sh. Raghunath Rai Kumar*** (supra) was pleased to observe as under :-

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"46-A. Chairman, Director, etc. to be public servants for the purposes of Chapter IX of the Penal Code, 1860:-Every Chairman Director, auditor, liquidator, manager and any other employee of of a banking company shall be deemed to be a public servant for the purposes of Chapter IX of the Penal Code, 1860."

Since, this section made the chairman, Director, manager and other employees, etc. of a nationalised bank to be public servants only for the purposes of offences by or relating to public servants chiefly those dealing with graft specified in Chapter IX of the Penal Code, 1860, and for no other, two of the nationalised banks took up the position in Oriental Bank of Commerce v. Delhi Development Authority, 1982 Cri. L.J 2230, that their Chairman-cum-Managing Directors were public servants under sub-clause (b) of clause Twelfth of Section 21 IPC and claimed that they cannot be prosecuted for offences under the Delhi Development Act, 1957 without sanction under Section 197 of the Code of Civil Procedure, 1973. I overthrew that contention. Amongst other grounds, the one most important was that the Bank, though a body corporate, was not a corporation because it had no membership and a memberless corporation was a contradiction in terms and unknown to Indian jurisprudence. One has to note that the definition of a public servant contained in Section 21 of the Penal Code, 1860 applies only to the provisions of that Code and does not automatically apply for the construction of any other enactment unless it is incorporated or adopted by it. **The intention of the legislature, therefore, patently was that the employees and other authorities of a nationalised bank will be public servants only for a limited purpose**. *It could have done otherwise, but did not. The legislature made this provision by amendments in Section 51 of the Banking*

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Regulation Act, 1949. That further displayed its intention to keep in this respect the nationalised banks at par with other banking companies. **They could not be held public servants for all purposes, for if that were done, all the employees of the banking companies shall have to be declared so and that would have thrown the scope of Penal Code, 1860 at large, much against the express provision made by the legislature**. *Therefore, the position is that they could not claim the protection of Section 197 CrPC for prosecution of the offences under any provision of law except Chapter IX of the Penal Code, 1860 and that too if they satisfied the other conditions of the said section and not otherwise."*

10. For proving the offence under Section 353 of Indian Penal Code, following ingredients must be mandatorily established :-

(a) that the victim is a public servant.

(b) the accused have committed a physical assault or used intentional criminal force.

(c) the act must be done by the accused with an intention to prevent or deter the public servants from carrying out their official duties.

11. The Hon'ble Supreme Court in the case of ***Ramesh Gelli*** (supra) was pleased to hold as under :-

"29. A law which is not shown ultra vires must be given proper meaning. Section 46-A of the Banking Regulation Act, 1949, cannot be left meaningless and requires harmonious

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> *construction. As such in our opinion, the Special Judge (CBI) has erred in not taking cognizance of offence punishable under Section 13(2) read with Section 13(1)(d) of the PC Act, 1988.* **However, we may make it clear that in the present case the accused cannot be said to be public servant within the meaning of Section 21 IPC** *as such offence under Section 409 IPC may not get attracted, we leave it open for the trial court to take cognizance of other offences punishable under the Penal Code, if the same gets attracted."*

Thus, the observations of the Hon'ble Supreme Court in the case of ***Ramesh Gelli***, cited supra, show that the accused, who was an employee of the Bank, was held not to be a public servant within the meaning of Section 21 of IPC. There is no reason why the definition of public servant under Section 21 of IPC would apply only to an accused, who is employee of Bank and not to the informant, who is also an employee of Bank. The prosecution shall also compulsorily first satisfy that the informant is a public servant then only an offence under Section 353 of Indian Penal Code can be said to be made out against the accused.

12. Thus, unless the first informant is found to be a public servant, as defined under Section 21 of IPC, in my opinion, an offence cannot be said to be made out under Section 353 of IPC. To charge an accused under Section 353 of IPC, the informant/complainant shall first

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fall within the definition of public servant, as defined under Section 21 of IPC. Taking into consideration the judgments of the Delhi High Court in the case of ***Sh. Raghunath Rai Kumar*** (supra) as well as Hon'ble Supreme Court in the case of ***Ramesh Gelli*** (supra), I am of the opinion that as the informant himself does not fall within the definition of public servant, as defined under Section 21 of IPC, no case under Section 353 of IPC can be said to be made out against the applicant.

13. Thus, in the present case from the discussion made hereinabove, very first claim that the victim should be a public servant itself is not established by the prosecution. Rather it is clear from the law as discussed hereinabove that the victim/informant herein, does not fall within the category of public servant, as defined under Section 21 of IPC and as such, offence under Section 353 of IPC cannot be said to be made out. Insofar as other offences under Sections 504 and 506 of IPC are concerned, the same are non-cognizable offences, which can be prosecuted only after obtaining the requisite permission from the concerned Magistrate under Section 155 of the Code of Criminal Procedure. Since cognizable offence under Section 353 of IPC itself is not made out against the applicant, the non-cognizable offences cannot be allowed to stand. The impugned orders, ignoring such legal aspect of the matter, call for an interference of this Court under its revisional jurisdiction. Hence, I am inclined to pass the following order :-

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ORDER

(i) Criminal Revision Application is allowed.

(ii) The impugned order dated 01/11/2025, rejecting the discharge application (Exh.23) is hereby quashed and set aside.

(iii) The order dated 01/11/2025, passed below Exh.47 framing charge against the applicant under Section 353 of IPC is also quashed and set aside.

(MEHROZ K. PATHAN, J.)

Wadkar

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