

M.P. Kini Vs. State

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Court : Andhra Pradesh

Decided On : Aug-08-1990

Reported in : [1992]75CompCas289(AP); 1991CriLJ272

Judge : Bhaskara Rao, J.

Acts : Prevention of Corruption Act - Sections 2, 5(1), 5(2), 10(7), 11 and 19; [Indian Penal Code \(IPC\), 1860](#) - Sections 21, 120B, 161, 171, 420, 468 and 471; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 - Sections 3(3), 8 and 14; [Banking Regulation Act, 1949](#) - Sections 2, 46A and 49-A; [Companies Act, 1956](#) - Sections 167 and 617; Criminal Law Act, 1958; Criminal Law Act, 1964; Transport Act

Appeal No. : Criminal Petition Nos. 916 and 917 of 1990

Appellant : M.P. Kini

Respondent : State

Advocate for Def. : E.V. Bhagiratha Rao, Public Prosecutor

Advocate for Pet/Ap. : D. Satyanarayana, Adv.

Judgement :

ORDER

1. The petitioner in Crl. Petition No. 916 of '90 is accused No. 1 while petitioner Nos. 1 and 2 in the other petition are accused Nos. 3 and 4 in C.C. No. 24 of 1989 on the file of the Special Judge for SPE and ACB Cases, Hyderabad at Secunderabad. A1 was the Assistant General Manager, Canara Bank while A3 and A4 were the proprietors of Pankaj Steel Corporation and Chetan Steel Traders respectively. All the accused are under prosecution for offences under sections 120B, 420, 468 and 471 I.P.C. and under Section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act. The main allegation against the accused is that in pursuance of their criminal conspiracy, current accounts were opened in September and October, '84 respectively in the names of A3 and A4 (A1 being the Manager of the Bank, A3 being the introducer for A4's account and A4 for A3's account) and thereafter A3 and A4 together submitted ten bills (i.e. each five bills) on 1-10-1984 of a total invoice value of Rs. 8.62 lakhs purported to be drawn on public sector undertakings, viz. E.H.I.C. and B.H.E.L., discounted them to Rs. 6.45 lakhs and withdrew the amounts. The investigation by the C.B.I., revealed that the ten bills were false. A1 is, thus, found to have intentionally and deliberately abused his position as public servant in the matter of sanction and disbursal of the ten bills presented by A3 and A4 for purposes of discounting the same and enabled A3 and A4 besides himself to obtain pecuniary advantage by cheating the Bank. The charge-sheet, therefore, was filed and the prosecution is at half-way the trial.

2. These two petitions are filed under Section 482, Cr.P.C. for quashing the charges framed against all the three petitioners on the ground that A1 is not a 'public servant' as defined in Section 2 of the Prevention of Corruption Act and therefore they cannot be prosecuted before the Special Judge for the alleged offence under the provisions of the Prevention of Corruption Act along with other offences under the Penal Code.

3. The simple question, thus, falls for consideration in these two petitions is, whether A1, who is an employee of the Nationalised Bank, is a public servant or not for purposes of prosecution under the provisions of the Prevention of Corruption Act.

4. It is not in dispute that A1 was working at the crucial period as the Asst. General Manager of the Canara Bank. By virtue of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 Canara Bank was taken over and its entire funds vested in the Central Government. Mr. Satyanarayana contends that even if it is a nationalised bank, still it cannot be said that the Bank is administered by the Central Government by executing its control over it. Section 8 of the Banking Companies Act, 1970 provides that every corresponding new bank (nationalised bank) shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give. It is therefore clear that the nationalised banks shall be guided by the directions of the Central Government. Again, according to Section 11 of the Act the nationalised bank shall be deemed to be an Indian company and a company in which the public are substantially interested. As per Section 19 of the Act the Board of Directors may make regulations only after consultation with the Reserve Bank of India and with the previous sanction of the Central Government. Further it is only by an order of the Central Government that a nationalised bank can be placed under liquidation. Thus, the entire management and control is vested in the Government and it can be dissolved only by the Government. Further, the balance of profit is required to be transferred to the Central Government under Section 10(7) of the Act. As seen, the nationalised bank - Canara Bank in the instant case - is an organ of the Central Government and therefore I see no force in the contention of Mr. Satyanarayana that it is only a body-corporate and not even a Corporation.

5. It is next contended by Mr. Satyanarayana that under Section 46A of the [Banking Regulation Act, 1949](#) every chairman, director, auditor, liquidator, manager and any other employee of a banking company and under Section 14 of the Banking Companies Act, 1970 every custodian of a nationalised bank, shall be deemed to be a public servant for purposes of Chapter IX (consisting of Sections 161 to 171) of the Indian Penal Code only and consequently they are not 'public servants' in terms of Section 21 of the Penal Code for being prosecuted for offences other than those covered by Chapter IX and muchless under the provisions of the Prevention of Corruption Act inasmuch as Section 2 of the Prevention of Corruption Act defines 'public servant' as the one given under

Section 21 of the Penal Code. No doubt, this definition underwent an amendment in 1988, but we have no concern with that amendment. According to twelfth clause of Section 21 every person in the service or pay of a corporation established by a Central Act or a Government Company as defined in Section 167 of the [Companies Act, 1956](#) is a 'public servant'. As found supra, Canara Bank is a creature of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, a Central Act, besides a Corporation. Even otherwise also Canara Bank is a 'Government Company' within the meaning of Section 617 of the Companies Act and therefore, the employees of the said bank are 'public servants' within the meaning of clause twelfth (b) to Section 21 of the Penal Code. No doubt, Canara Bank is not a registered company but surely a company, in which more than fifty per cent. of the paid-up share capital is held by the Central Government and thereby it has satisfied the definition under Section 617 of the Companies Act. As a matter of fact the entire share capital of the Bank vested in the Central Government as per Section 3(3) of the Banking Companies Act, 1970. I accordingly conclude that the Canara Bank after nationalisation is a Government Company within the meaning of Section 617 of the Companies Act and consequently every person in its service is a 'public servant'.

6. Before adverting to the other aspects of the matter it is necessary to notice Section 21, I.P.C. It runs :

'21. Public Servant : The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely :-

Second to Eighth -

Ninth - Every officer, whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to execute any revenue process 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;

Tenth and Eleventh -

Twelfth - Every person -

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

(b) in the service or pay of the local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company as defined in Section 617 of the [Companies Act, 1956](#).

Explanation 1 : Persons falling under any of the above description are public servants, whether appointed by the Government or not

Therefore, every person in the service or pay of a nationalised bank (Canara Bank) established under a Central Act - Banking Companies Act, 1970 in the instant case - is a 'public servant'. The contention of Mr. Satyanarayana that in view of the definition under Section 46A of the [Banking Regulation Act, 1949](#) and under Section 14 of the Banking Companies Act, 1970 the employees of the Banking Company are only liable to be prosecuted for offences covered by Chapter IX of I.P.C. and not for other offences in view of the definitions given to 'public servant' thereunder is patently misconceived since Section 2 of the [Banking Regulation Act, 1949](#) makes it clear that the provisions of that Act shall be in addition to and not in derogation of any other law for the time being in force. So much so, S. 2(h) of the Banking Companies Act, 1970 adopts the definitions given by Section 2 of the [Banking Regulation Act, 1949](#). Since the provisions of the Banking Regulation Act and Banking Companies Act, 1970 are in addition to and not in derogation of any law for the time being in force, it cannot be said that the definition of 'public servant' given in Section 21 of I.P.C., is excluded. Further [Banking Regulation Act, 1949](#) came into force on 10-3-49 while Section 49-A thereof was introduced by way of an amendment and came into force from 14-1-57.

7. The next contention of Mr. Satyanarayana that the insertion of Twelfth clause to Section 21, I.P.C. whereunder every officer in the service or pay of a corporation established by Central Act is covered by the definition of 'public servant' being one brought-in by Criminal Law Act, 1958 and 1964 and not one already in the statute

on the date of coming into force of the Prevention of Corruption Act, which borrowed the definition under I.P.C., the insertion so brought in by way of amendment cannot be read into the Prevention of Corruption Act, is devoid of substance inasmuch as a similar contention advanced before the Supreme Court in *State of M.P. v. M. V. Narasimham*, : 1975 CriLJ1639 was rejected by observing (at page 1836 of AIR) :

'Having regard to the preamble and the object of the 1947 Act and the Penal Code, there can be no doubt that the Act was a statute, supplemental to the Penal Code. Therefore, the definition of 'public servant' borrowed from Section 21 of the Penal Code must be read into Section 2 of the Act not only at the time when it was borrowed (i.e. 1947) but even at the material date when the offence is committed. This being the position, it is manifest that, by virtue of the amendments of 1958 and 1964 which inserted Twelfth clause to Section 21 of the Penal Code, an employee of the ... committing an offence under the 1947 Act after 1964, clearly comes within the meaning of 'public servant'. Further, the Prevention of Corruption Act, being a social legislation, its provisions must be liberally construed so as to advance the object of the Act.'

In view of this decision of the Supreme Court, though the extended definition of Section 21. I.P.C. is later in point of time to the date when the definition was borrowed by Section 2 of the Prevention of Corruption Act, the definition so extended has to be given effect to for purposes of securing the object of the Prevention of Corruption Act.

8. Turning to the case law on the question of 'public servant' it is to be noticed that this Court in *K. Ch. Prasad v. J. Vanalatha Devi*, 1987 Cri LJ page 697 had to consider the necessity for prior sanction to prosecute an employee of the nationalised bank, viz. Andhra Bank, and in that context it was held that 'Although an employee of a bank since nationalised might be a government servant, he being not removable from service by the State or the Central Governments prior sanction from the Government to prosecute him was not needed.' The matter was taken in appeal before the Supreme Court. The Supreme Court held in *K. Ch. Prasad v. Vanalatha Devi* : 1987 CriLJ697 that an employee of a nationalised bank

does not hold a post where he could not be removed from service except by or with the sanction of the Government. Therefore, though he is a public servant (in terms of the decision) still on his criminal prosecution the provisions of Section 197 are not attracted at all. Though it is an obiter the view of the Supreme Court is that an employee of the nationalised bank is a public servant.

9. A Division Bench of the Kerala High Court in *Kurian v. State of Kerala*, 1982 Cri LJ page 780 was to consider the question as to whether an employee of the nationalised bank is a 'public servant' or not. Considering that question, it held positively that an employee of the Nationalised Bank is a 'public servant'. Punjab and Haryana High Court was also to consider a similar question in *Kundan Lal v. State of Punjab*, 1985 Cri LJ 1411. So considering, it held that the employees of a Nationalised Bank can be treated as public servants for the purposes of Section 21, I.P.C. bringing them within the meaning of Section 5 of the Corruption Act to be tried by a Special Judge for misconduct committed by them.

10. Mr. Satyanarayana sought to place reliance upon a decision of the Bombay High Court in *Vaghul v. State of Maharashtra*, 1987 Cri LJ 385 in support of his submission that an employee of the nationalised bank is not a 'public servant'. It is to be noticed that this decision was referred to in a later decision by the same High Court (Bombay High Court) in *State of Maharashtra v. Kanchan*, 1989 Cri LJ page 697 wherein it is noted that the observations made in the earlier decision are merely in the nature of 'obiter'. In view of this specific reference and noting that the observations are 'obiter' the earlier decision of the Bombay High Court, on which reliance is sought to be placed, is of no help. Further, it is held in the later decision that employees of the nationalised bank are 'public servants'.

11. Mr. Satyanarayana, next placed reliance upon a decision of the Supreme Court in *State of Maharashtra v. Jagatsingh*, : [1964]4SCR299 . That is a decision where the employee involved was working in State Transport Corporation. Interpreting the term 'acting or purporting to act', the Supreme Court held that receiving a bribe cannot be while acting or purporting to act in pursuance of any provisions of the Transport Act and therefore the accused there when he took the money could not be said to be acting or purporting to act in pursuance of any of

the provisions of the Transport Act or of any other law in order that he may be a 'public servant' within the meaning of Section 21 of the Penal Code. It is in that context and background that the Supreme Court held that the employee of a State Transport Corporation is not a 'Public servant'. That decision, therefore, is of no help to the petitioners.

12. It is lastly submitted that the decision of the Supreme Court in *State of Gujarat v. M.P. Dwivedi*, : 1972 CriLJ1247 supports the contention of Mr. Satyanarayana. There, a Lecturer of a Government College was appointed as Examiner by the University and the Supreme Court was considering whether the Examiner is a 'public servant' or not for being prosecuted under Section 5(1)(d) of the Prevention of Corruption Act. The Supreme Court held that the Examiner of an University is not an Officer within the meaning of Ninth clause to Section 21, I.P.C. and therefore not a public servant. The facts therein are different and therefore the decision therein is of no assistance to Mr. Satyanarana.

13. Before parting with this it needs to be pointed out that the contention of Mr. Satyanarana that a nationalised bank is neither a corporation nor a Government company under Section 617 of the Companies Act and therefore their employees cannot be regarded as public servants within the meaning of clause twelfth of Section 21 of I.P.C. is dealt with and answered in *State of Maharashtra v. Kanchan* 1989 Cri LJ page 697 (supra) by the Bombay High Court by referring to the decision of the Kerala High Court in *Kurian v. State of Kerala*, 1982 Cri LJ 780 above and after disagreeing with the view taken to the contra by the Delhi High Court in *Oriental Bank of Commerce v. D. D. Authority*, 1982 Cri LJ 2230. For reasons similar to those assigned by the Bombay High Court, I am not able to persuade myself to agree with the decision of the Delhi High Court, upon which reliance was sought to be placed.

14. For the foregoing reasons I hold that the petitioner in Crl. Petition No. 916/90(A-1), who was an employee of the Nationalised Bank, viz. Canara Bank, is a public servant within the meaning of Section 2 of the Prevention of Corruption Act for being prosecuted thereunder. In view of this both the petitions merit dismissal and are accordingly dismissed.

15. Petitions dismissed.

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