

Asoke Kumar Mitra Vs. State of West Bengal and anr.

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Court : Kolkata

Decided On : Mar-10-1994

Reported in : 1994CriLJ2682

Judge : Arun Kumar Dutta, J.

Acts : [Prevention of Corruption Act, 1947](#) - Section 5(1) and 5(2); ;[Prevention of Corruption \(Amendment\) Act, 1988](#) - Section 2; ;West Bengal Criminal Law Amendment Act, 1949; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 5 and 482; ;[Companies Act, 1956](#) - Section 617; ;Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; ;Banking Companies (Acquisition and Transfer of Undertakings) (Amendment) Act, 1980 - Sections 3(4), 4, 7(2), 7(3), 7(4), 7(5), 7(6), 9, 11, 14 and 18; ;Commonwealth Bank Act, 1911 - Sections 5 and 6; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 21, 161 to 171, 409, 420, 467 and 471; ;[Income Tax Act, 1961](#); ;[Banking Regulation Act, 1949](#) - Section 46A; ;Tamilnadu Shops Act, 1947; ;Andhra Pradesh Shops Act, 1966; ;Kerala Shops Act, 1960; ;[Constitution of India](#)

Appeal No. : Criminal Revision Nos. 1498 and 1531 of 1991

Appellant : Asoke Kumar Mitra

Respondent : State of West Bengal and anr.

Advocate for Pet/Ap. : B.N. Sanyal, ;Aloke Roy, ;D.K. Singh and ;Maya Banerjee, Advs.;Uma Sanyal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Arun Kumar Dutta, J.

1. An important question of law raised which falls for consideration in these two Revisional Applications is whether the employees of Nationalised Banks could be held to be Public Servants within the meaning of Section 21, Indian Penal Code, who could be tried by Special Courts for offences triable by such Courts. The question arises in the following facts and circumstances.

2. The accused-petitioner (hereinafter referred to as petitioner) was the Branch Manager of the Bank of India, Sarat Bose Road Branch, Calcutta, during the material time. On account of some misunderstanding and grudge of some Senior Officers of the said Bank the relevant case has been instituted against him (petitioner) on the allegation that he had misappropriated a total sum of Rs. 4,000/- only from the Bank in respect of deposits made by the loanees by showing short deposits in the relevant Register and Deposit Slips on 16-3-82, 19-4-82 and 10-6-82, as alleged in the F.I.R., and thereby committed offences punishable under Sections 409, 420, 467 and 471, Indian Penal Code, (hereinafter shortened into I.P.C.); read with Section 5(2), read with Section 5(1)(d) and 5(1)(c) of the [Prevention of Corruption Act, 1947](#). On the aforesaid allegations G.R. Case No. 3016 of 1983 was started, investigated by the C.B.I. After completion of investigation charge-sheet was submitted in the case on 4-12-85. The petitioner is being prosecuted therefor before the First Special Court at Alipore (presumably treating him to be a public Servant). The relevant case has been split up into two cases, pending before the aforesaid Special Court, numbered as S.P. Cases Nos. 10 and 11 of 1985, arising out of the aforesaid G.R. Case No. 3016 of 1983. But no charge has been framed against him (petitioner) as yet even though the relevant proceedings are pending for about 9 years. The petitioner had thus filed applications before the Court below for his discharge on the grounds stated therein, which had been rejected by the learned Judge on due consideration for

the reasons recorded in his impugned orders dated 28-6-91. Hence the instant two Revisional Applications directed against the aforesaid order of the Court below, praying the Court for quashing the relevant proceedings on the grounds set forth therein. The two Revisional Applications, involving common questions of facts and law, had been heard analogously on common consent, to be governed by a common judgment.

3. Though a number of grounds have been taken in the Revisional Applications for quashing of the relevant two proceedings, it was mainly urged during the hearing that the petitioner, not being a Public Servant, cannot be tried by the Special Court. It was also urged that even though the charge-sheet in the relevant case had been filed in 1985, no charge has been framed in the relevant cases as yet despite lapse of more than 9 years, in the meanwhile, infringing his right to speedy trial, as guaranteed by Article 21 of the [Constitution of India](#). The other grounds taken in the applications had not been urged during the hearing; nor could be; ill-made, as they are.

4. To the second ground of delay first. The relevant case, being G.R. Case No. 3016 of 1985, appears to have been started as far back as 1983. The C.B.I. is stated to have investigated the case and had submitted charge-sheet therein on 4-12-85. The relevant case could not be disposed of as yet despite lapse of about 9 years, in the meantime. There has indeed been quite some delay in the disposal of the relevant case. Let us now consider whether the delay in the trial of the petitioner could be deemed to have amounted to infringement of his right to speedy trial, as urged on his behalf.

5. It was in 1979 that the Supreme Court had declared in Hussainara Khatoon's case, : 1979 CriLJ1036 that the right to speedy trial is implicit in the broad sweep and content of Article 21 of the [Constitution of India](#). A series of decisions had since thereafter reaffirmed the said principle and there seems to have never been a dissenting note therefrom. A Division Bench of this Court in Ranjit Kumar Pal. v. State, 1990 Cri LJ 643 had held about eleven years thereafter that the broad interpretation of the fundamental rights guaranteed under Article 21 of the Constitution includes the right of an accused to have speedy trial, further

observing therein that the prosecution cannot have the luxury of dragging a case in a Court of law for years together. It had further been held therein that long delay in the disposal of criminal proceeding prejudicially affects the defence of an accused. Administration of justice requires that the accused is entitled to have as much protection as the prosecution is entitled to. A single Bench of the Bombay High Court in *Shyam Lachmandas Ajwani v. State of Maharashtra*, 1991 Cri LJ 970, had as well held that inordinate delay and laches in the prosecution without any progress of a criminal proceedings amounts to harassment of the accused warranting interference under inherent powers of the Court. In another single Bench decision of the Bombay High Court in *R. Mahadevan Iyer v. State of Maharashtra*, 1992 Cri LJ 1388, it had been held that criminal proceedings not completed even after lapse of 12 years heavily prejudiced the accused in his defence in respect of the incidents extremely old in point of time. It had been held therein that the High Court is justified in quashing prosecution exercising its powers under Section 482 of the Code if the right to speedy trial is violated. The Orissa High Court in the decision in *Rabindranath Rout v. State of Orissa*, 1992 Cri LJ 2309, had also quashed a criminal proceeding on the ground of delayed trial holding that the same constitutes denial of justice. In a Writ Petition, being No. 268 of 1987, and a few other Criminal Appeals, before a Division Bench of the Supreme Court, it was further urged on behalf of the accused that a time limit should be fixed for concluding all criminal proceedings as without such a time limit, the guarantee of right to speedy trial would remain a mere platitude. The Division Bench was of the opinion that the said contention raised a very important constitutional question which is likely to arise more often in many cases and that the decision on the question would have far-reaching consequences in a large number of criminal cases pending in Courts all over the country. The Bench had, accordingly, directed the cases to be placed before a Constitution Bench.

6. The Constitution Bench of the Supreme Court in *Abdul Rehman Antulay etc. etc. v. R.S. Nayak and another etc. etc.*, 1992 Cri LJ 2717 has held 'Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of

all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.'The Court had further observed that 'the provisions of the Code of Criminal Procedure provide for an early investigation and for a speedy and fair trial. If only the provisions of the code are followed in their letter and spirit, there would be little room for any grievance. The fact, however, remains, unpleasant, as it is, that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the Constitutional Guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code.' Their Lordships in the aforesaid decision had issued certain guidelines in regard to speedy trial in terms thereof, some of which are set out below :

(1) One cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, 'delay is a known defence tactic'. Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is who is responsible for the delay?

(2) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution, again depends upon the facts of a given case.

3. It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before

pronouncing upon the complaint. The Supreme Court of U. S. A. too has repeatedly refused to fix any such outer time limit in spite of the Sixth Amendment. Nor, it can be said that non-fixing any such outer limit ineffectuates the guarantee of Right to speedy trial.

(4) Ordinarily speaking, where the Court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice.

7. Bearing the aforesaid principles of law laid down by the Supreme Court in mind, and having regard to the facts and circumstances of the case, the fact that investigation in the relevant case has long been concluded and charge-sheet has also long been submitted on 4-12-1985, the nature of gravity of the alleged offence, the manner in which the alleged offence had allegedly been committed by a responsible officer of the Bank, and the fact that the accused-petitioner is also none-the-less responsible for handsomely contributing to whatever delay has so far been occasioned, it seems to me that quashing of the relevant proceedings would not be in the interest of justice. The plea on this score stands overruled as such.

8. To the first and the main ground next. As already indicated above, the Petitioner, a Branch Manager of a Nationalised bank, is being prosecuted for having allegedly committed offences in 1982, amongst others, offence punishable under Section 5(2), read with Section 5(1)(d) and 5(1)(c) of the [Prevention of Corruption Act, 1947](#) (hereinafter referred to as the Act of 1947), which case had been instituted in 1983, registered as G. R. Case No. 3016 of 1983, governed by the aforesaid Act of 1947, then in force, and not by the Prevention of Corruption Act, 1988 which had received the assent of the President on 9th September, 1988. It had been vehemently urged on behalf of the Petitioner that not being a 'Public Servant', he cannot be tried by the Special Court, before which he is facing the trial. It appears from the record that the Petitioner is being tried by the Special Court concerned, established under the Special Court Act, 1949 (West Bengal

Criminal Law Amendment Act, 1949), being the specific forum for trial of a Public Servant in terms of the provisions thereof. It would be pertinent in this context to refer to Section 5 of the Code of Criminal Procedure 1973 which provides that the Special Act overrides the general law, which runs as follows :

Nothing contained in this Code shall in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

The Special Court could try an accused who is a Public Servant. The moment it transpires that the accused is not a Public Servant the jurisdiction of the Special Court to try the accused thereunder ceases. The question which would thus at once emerge for consideration is whether the petitioner, who was, undisputedly, the Branch Manager of Bank of India, the corresponding New Bank (namely Nationalised Bank), could be held to be a 'Public Servant' to be tried by the Special Court by which he is being tried.

9. 'Public Servant' has not been defined in the Act of 1947, though defined in Section 2(c) of the Prevention of Corruption Act, 1988. We have thus to fall back upon the definition of 'Public Servant', as defined in Section 21, I. P. C. Under Section 21 the words 'Public Servant' denote a person falling under any of the descriptions mentioned therein in twelve clauses. The petitioner, who was, undeniably, the Branch Manager of a Nationalised Bank, does not, undisputedly, come under any of the Clauses 1 to 11 or Clause 12(a) of Section 21. He is neither, admittedly, a person in the service or pay of 'a Local Authority' or of a 'Government Company', as defined in Section 617 of the [Companies Act, 1956](#), under Clause 12(b) of the aforesaid Section. The learned Counsel for the Opposite Party-C. B. I. had sought to contend that the Petitioner should be deemed to be a person in the service or pay of a 'Corporation' established by or under a Central, Provincial or State Act, and must, therefore, be held to be a Public Servant within the meaning of Clause 12(b) of Section 21, I.P.C.

10. The question which would then at once crop up for consideration is whether the Bank of India, a corresponding New Bank (namely a Nationalised Bank), could

be held to be a 'Corporation' within the meaning of Clause 12(b) of Section 21, I. P. C, so as to make its employees Public Servants within the meaning thereof.

11. The Banking Companies (Acquisition and Transfer of Undertakings) Act (5 of 1970) and the Banking Companies (Acquisition and Transfer of Undertakings) Act (40 of 1980) had been enacted 'to provide for the acquisition and transfer of the undertakings of certain banking companies, having regard to their size, resources, coverage and organisation, in order further to control the heights of the economy, to meet progressively, and serve better, the needs of the development of the economy and to promote the welfare of the people, in conformity with the policy of the State towards securing the principles laid down in clauses (b) and (c) of Article 39 of the Constitution and for matters concerned therewith or incidental thereto.' Section 4 of the aforesaid Act 40 of 1980 provides that 'on the commencement of this Act, the undertaking of every existing bank shall be transferred to, and shall vest in, the corresponding New Bank.' Sub-section (4) of Section 3 of the Act as well clearly provides that 'every corresponding New Bank shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, and to contract, and may sue and be sued in its name', as distinct from a 'Corporation'.

12. The question as to what a Corporation established by or under an Act is, came to be examined by the Supreme Court in *S. S. Dhanoe v. Municipal Corporation of Delhi*, : 1981 CriLJ871 . Quoting the following passage from the Judgment of Chief Justice Marshall in *Dartmouth College v. N. H. Woodward*, (1816-19) 4 Wheat 518, 636 : 4 L Ed 629:

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality and, in the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own

affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with those qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object like one immortal being',

the Supreme Court in the aforesaid case has laid down that:-

(1) Corporation in its widest sense, may mean any association of individuals entitled to act as an individual (para 9). But in the context of clause twelfth, Section 21, I.P.C. the expression 'corporation' must be given a narrow legal connotation';

(2) Clause twelfth does not use the words 'body corporate', but uses the word 'corporation'. And a corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession notwithstanding changes in its membership.

13. A crucial question arose before a Division Bench of the Delhi High Court in *Oriental Bank, of Commerce v. Delhi Development Authority*, 1982 Cri LJ 2230, whether a corresponding New Bank (Nationalised), could be held to be a Corporation within the narrow meaning of the clause 12(b) of Section 21, I.P.C. Reversing to the law laid down by the Supreme Court in the aforesaid case of *S. S. Dhano v. Municipal Corporation of Delhi*, their Lordships of the Delhi High Court felt it necessary to see that in order that the Corporation is covered by the aforesaid clause 12(b), it must be proved to be a legal entity entirely separate and distinct from the individuals who compose it. A question was posed therein: 'the New Bank is an entity separate from whom? The Banks Act does not provide for the individuals who would compose or constitute the New Bank, in contradistinction to the Acts which have established the Corporations, such as STC, LIC, etc. and have specified the individuals (indicated by name or by designation) which would constitute or compose these Corporations or of which the Corporation shall consist. After scanning several Statutes of the United Kingdom the Court found that in all of them the legislature has taken care to

provide the human substratum for creating a separate artificial and fictional entity. The Banks Act makes no such provision except saying in Sub-section (2) of its Section 7 that the general superintendence, direction and management of the affairs and business of a New Bank shall vest in a Board of Directors which shall be entitled to exercise all such powers and do all such acts and things as the corresponding New Bank is authorised to exercise and do. It cannot, therefore, be said that the Board of Directors are the individuals who compose the Corporation. The human components or constituents are thus missing there in the New Banks. Strictly speaking, therefore, one has to say that the New Banks are not Corporations within the meaning of clause 12.

14. Asking the question as to how 'a body corporate' is to be described. Their Lordships had referred to Salmond's following passage in the Foot-note (k) in para 67 in Chapter X relating to Corporations in his celebrated treatise 'Jurisprudence', Edition 1966, page 66:

Occasionally in the statute book we find the so-called Corporations which are in truth not corporations at all having no incorporated members, but are merely personified institutions. The Commonwealth Bank of Australia constituted by an Act of the Federal Parliament of Australia is an example. See the Commonwealth Bank Act, 1911, Section 5. 'A Commonwealth Bank to be called the Commonwealth Bank of Australia is hereby established.' Section 6. "The Bank shall be a body corporate with perpetual succession and a common seal, and may hold land and may sue and be sued in its corporate name.

15.f The Division Bench of the Delhi High Court thus held that a corresponding New Bank can, therefore, be described as personified institution, an artificial legal person no doubt but not because they are corporations. The New Banks are not 'Corporations', though they are 'bodies corporate' - personified institutions. Their Lordships went on to add that there is no doubt that the Chairman of a Nationalised Bank is employed in the affairs of the 'body corporate', the Bank, but not of the Union. That being so, the employees of the Banks cannot be held to be employees of the Union and that leads to the inevitable inference that the Chairman and Directors of the Banks are not employed in the affairs of the Union.

To make their appointments and to exercise control over them is an Economic Affair of the Union. The 'STC, LIC, ONGC, IFC, etc. are examples of the Corporations which are covered by the said clause twelfth.

16. I am in complete agreement with the aforesaid decision of the Division Bench of the Delhi High Court and find nothing to differ from the view taken therein, for much the same reasons discussed. The said view, in my opinion, would all the more be re-enforced by the fact that the legislature, in its wisdom, has as well consciously provided by Section 18 of the Act 40 of 1980 that 'no provision of the law relating to winding up of corporations shall apply to a corresponding New Bank and no corresponding New Bank shall be placed in liquidation save by order of the Central Government and in such manner as it may direct', giving the clearest and conclusive indication that it (Legislature) had not intended to treat a corresponding New Bank to be 'Corporation'. It would also seem significant and observable to note that the Legislature did neither intend to treat a corresponding New Bank to be a 'Company' under Section 617 of the Companies Act, within the meaning of Clause 12(b) of Section 21, I. P. C., to make the employees thereof 'Public Servants' in terms thereof by clearly prescribing in Section 11 of the aforesaid Act 40 of 1980 that every corresponding New Bank shall be deemed to be an Indian Company and a company in which the public are substantially interested for the purposes of the Income-tax Act, 1961. The aforesaid provision makes clear that every corresponding New Bank shall be deemed to be an Indian Company only for the purposes of the Income-tax Act, 1961, and for no other purpose. Since a corresponding New Bank (Nationalised Bank) cannot be deemed to be a 'Corporation' or a 'Company' under Section 617 of the [Companies Act, 1956](#), its employees cannot be deemed to be 'Public Servants' within the meaning of Clause 12(b) of Section 21, I.P.C. The said conclusion would be all the more confirmed by the provisions of Section 14 of the Act 40 of 1980, as I shall presently discuss.

17. Chapter IV of the aforesaid Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (Act No. 40 of 1980) provides for management of corresponding New Banks. Sub-section (3)(a) of Section 7 of the Act provides as follows:-

As soon as may be after the commencement of this Act, the Central Government shall, in consultation with the Reserve Bank, constitute the first Board of Directors of a corresponding New Bank, consisting of not more than seven persons, to be appointed by the Central Government, and every director so appointed shall hold office until the Board of Directors of such corresponding new bank is constituted in accordance with the scheme made under Section 9.

And, in terms of Sub-section (4) of Section 7 thereof:

Until the first Board of Directors is appointed by the Central Government under Sub-section (3), the general superintendence, direction and management of the affairs and business of a corresponding new bank shall vest in a Custodian, who shall be the chief executive officer of that bank and may exercise all powers and do all acts and things as may be exercised or done by that bank.

The Custodian of a corresponding New Bank could clearly, therefore, function till the appointment of the first Board of Directors in terms of the aforesaid provision. And, in terms of Sub-section (6) of Section 7, the Custodian shall hold office during the pleasure of the Central Government. Sub-section (5) provides that the Chairman of an existing Bank shall be the Custodian of the corresponding New Bank. And, Section 14 of the Act clearly provides:

Every Custodian of a corresponding New Bank shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.

18. The said provision, such as it is, plainly read, would at once make clear that the Legislature has clearly intended that every such Custodian of a corresponding New Bank (who is to function till the appointment of the first Board of Directors) shall be deemed to be a 'Public Servant' only for the aforesaid limited purpose, i.e., for the purposes of Chapter IX of the Indian Penal Code, (in connection with offences by or relating to 'Public Servants' as contained in Sections 161 to 171 thereof); and for no other purpose whatsoever. The aforesaid provisions, as it is, further makes clear that every such Custodian alone, and none else of a corresponding New Bank, could be deemed to be a 'Public Servant' for the aforesaid limited purpose; and that he could neither be deemed to be a Public

Servant for any other purpose (other than for the purposes of Chapter IX, I.P.C.). If the Custodian cannot be deemed to be a 'Public Servant' for purposes other than Chapter IX, I.P.C., I wonder how the other employees of a corresponding New Bank could be deemed to be 'Public Servants' for all practical purposes within the meaning of Section 21 I.P.C.

19. It would be pertinent to refer to a single Bench decision of the Bombay High Court in *N. Vaghul v. State of Maharashtra*, 1987 Cri LJ 385, which held as follows :--

Section 46A, [Banking Regulation Act, 1949](#) lays down that a Chairman, Director, Manager and other employees of a banking company 'shall be deemed to be a public servant for the purposes of Chapter IX, Penal Code'. In the Acquisition and Transfer of Undertakings Act of 1970, Section 14 prescribes that every custodian of a corresponding new bank, viz., a nationalised bank, shall be deemed to be a public servant, again, 'for the purposes of Chapter IX, Penal Code'. Act No. 40 of 1980 in Section 14, repeats the deeming being restricted to Chapter IX, Penal Code. Since the banking statutes show a limitation, it will not be permissible to overcome these limits, by recourse to the general words used in clause 12(b) of Section 21, I.P.C. If the legislature wanted certain specific bank employees to be considered 'public servants' for a limited purposes, the contrary cannot be held by taking recourse to the wide sweep of Section 21, I.P.C'.

20. The learned counsel for the Opposite Party - C.B.I., on the other hand, had referred to a decision of the Supreme Court in *C. V. Raman v. Management of Bank of India*, : (1988)ILLJ423a SC , in support of his contention the employees of a Nationalised Bank could be deemed to be 'Public Servants', who could be tried by Special Court for offence/s punishable under the relevant provision of the [Prevention of Corruption Act, 1947](#). The Supreme Court in the aforesaid decision has held that the State Bank of India and the Nationalised Banks are establishments under the Central Government within the meaning of the T.N. Shops Act 36 of 1947, A.P. Shops Act 15 of 1966 and Kerala Shops Act 34 of 1960. While dealing with the matter their Lordships had referred to a decision of the Constitution Bench of the (Supreme) Court in *Ajay Hasia v. Khalid Mujib*

Sehravardi, : (1981)ILLJ103SC , wherein it had been held that 'it is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government.' Applying the above criteria, the Court held in the aforesaid C. V. Raman's case that it is obvious that even though the State Bank of India and the Nationalised Banks may not be owned as such by the Central Government and its employees may not be the employees of Central Government they certainly will fall within the purview of the expression 'under the Central Government', in view of the existence of deep and pervasive control of the Central Government over these banks.

21. Relying upon the above decision, the learned counsel for the Opposite Party - C.B.I, had sought to urge that the employees of Nationalised Banks should be held to be 'Public Servants'. But to that I would at once note with a minute of dissent that the Supreme Court in the aforesaid decision has not expressly declared the employees of Nationalised Banks to be 'Public Servants', but has merely held that they will fall within the purview of the expression 'under the Central Government'. It would be pertinent to note that the Supreme Court has made clear therein that the employees of Nationalised Banks cannot be held to be employees of the Central Government, but they could be deemed to be employees under the Central Government. The said conclusion seems to be based on the premise that the State Bank of India and Nationalised Banks are establishments under the Central Government within the meaning of the T. N. Shops Act 36 of 1947, A.P. Shops Act 15 of 1966 and Kerala Shops Act 34 of 1960. If the Nationalised Banks are held to be establishments under the Central Government within the meaning of the aforesaid Shops Acts, the employees thereof, as a natural corollary, could be held to be employees under the Central Government. And, since the Nationalised Banks cannot be said to be Owned by the Central Government, their employees

could not similarly be deemed to be employees of the Central Government. If the employees of the Nationalised Banks cannot be held to be employees of the Central Government, they could neither be held to be Public Servants. However that may be, the aforesaid decision of the Supreme Court is clearly distinguishable from the relevant case before us. The question in the aforesaid decision before the Supreme Court was whether in view of the existence of deep and pervasive control of the Central Government over these Banks, these are establishments under the Central Government for the purpose of the Acts aforesaid dealing with Shops and Commercial Establishments. But the question in the instant proceedings before us is whether the Branch Manager of a Nationalised Bank could be held to be a Public Servant within the meaning of Section 21, I.P.C., who could be tried by a Special Court for alleged offences, amongst others, offences punishable under Section 5(2), read with Section 5(1)(d) and 5(l)(c) of the [Prevention of Corruption Act, 1947](#). The said decision is not clearly applicable to the facts and circumstances of the present proceedings before us; and would, therefore, be of little assistance to the Opposite Party. Needless to mention that a decision is an authority on the point on which the Court is called upon to decide.

22. That apart, in order to answer the aforesaid question before us, the relevant provisions of the Act 40 of 1980, viz., Sections 11 and 14, in particular, had to be referred to and considered. But the said provisions of law do not appear to have been referred to and considered by the Supreme Court in the aforesaid decision. In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.*, (1941) 1 KB 675 : (1941) 2 All ER II, the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. Following the said decision the Supreme Court in *Municipal Corporation of Delhi v. Gurnam Kaur*, : AIR 1989 SC38 had held that 'precedents sub silentio and without argument are of no moment'. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law. declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which excedes in the judgment, without any occasion is not ratio decidendi. A conclusion without reference to relevant provision of law is weaker than even casual observation. It would be pertinent to refer to Salmond's

observation in his treatise on Jurisprudence, 12th Edn., p. 153 that a decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Supreme Court in *B. Shama Rao v. Union Territory of Pondicherry*, : [1967]2SCR650 , had observed that it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles laid down therein. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law. It may also be noted in this context that English Courts have developed the principle of per incuriam in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered 'in ignorallium of a statute or other binding authority', vide *Young v. Bristol Aeroplane Co. Ltd.*, (1944) 1 KB 718 : (1944) 2 All ER 293, In view of the aforesaid decisions and the discussions above, the decision in *C.V. Raman's case* sought to be top-heavily relied upon by the Opposite Party-C.B.I. would be of no moment and avail to it.

23. In the premises above, I am clearly of the view that the employees of the Nationalised Banks are not Public Servants within the meaning of Section 21, I.P.C. The petitioner-accused, who was, undisputedly, a Branch Manager of a Nationalised Bank, could neither be held to be a 'Public Servant' as such. Not being a 'Public Servant' he could not clearly be tried by the Special Court where he is facing the trial. The relevant two proceedings before the Special Court below are, accordingly, liable to be quashed.

24. In the result, the Revisional Applications should clearly succeed, as they should. The relevant two proceedings before the Court below be accordingly hereby quashed. This

JUDGMENT / ORDER

shall not, however, debar the prosecution for proceeding against the petitioner-accused before any competent forum according to law, if not otherwise barred. If

so proceeded against, the prosecution and the accused shall all ensure that the proceedings are not any further delayed to the prejudice of all concerned and to the detriment of the administration of criminal justice. The Court concerned shall also rise up to the occasion to thwart any endeavour by any of the parties to delay the proceedings; and shall also seek to dispose of the case with utmost expedition, preferably within a period of six months from the commencement of the proceedings before it.

25. This Judgment/ Order governs both the Criminal Revision Cases Nos. 1498 of 1991 and 1531 of 1991.

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