The State of Maharashtra Vs L.D. Kanchan and others etc.

Court: Bombay High Court

Date of Decision: Nov. 3, 1988

Acts Referred: Penal Code, 1860 (IPC) â€" Section 12, 120B, 161, 21, 21(12)
Prevention of Corruption Act, 1988 â€" Section 2, 5(2)

Citation: (1989) 58 FLR 707

Hon'ble Judges: H.H. Kantharia, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. The neat question of law that arises for consideration in this group of criminal revision applications is, whether employees of nationalised banks

are "public servants" within the meaning of Cl. 12(b) of S. 21 of the I.P.C.

2. Brief facts giving rise to these revision applications are as under :-

In special case Nos. 44 and 50 of 1978 accused 1, L. D. Kanchan, who was working as Branch Manager of the Indian Overseas Bank, Byculla

Branch, Bombay, was prosecuted in the Court of the Special Judge, Greater Bombay, Bombay, along with others, by the Central Bureau of

Investigation, on the allegations that in the months of April to July, 1977 he entered into criminal conspiracy with others for committing offences of

cheating the Indian Overseas Bank by allowing the other accused persons to open bank accounts in the names of fictitious firms and in pursuance

of the said conspiracy, forged promissory notes and bogus purchase bills and allowed them to obtain large amounts of loans on the strength of the

said forged documents. He and others, therefore, were charged for offences punishable under Sections 120-B, 465, 467, 468, 471 and 420 of the

I.P.C. and further he being a "public servant" for committing an offence of criminal misconduct, punishable under S. 5(1)(d) read with S. 5(2) of

the Prevention of Corruption Act, 1947. At the hearing, he made an application before the Special Judge that he was not a "public servant" and

hence an offence under S. 5(1)(d) read with S. 5(2) of the Corruption Act was not application to him. The learned Special Judge heard arguments

on this point and by his order dated 14th August, 1987 held that an employee of a nationalised bank cannot be regarded as a "public servant"

within the meaning of clause twelfth (b) of S. 21 of the I.P.C. For coming to such a conclusion, the Special Judge relied upon a judgment of this

Court (S. M. Daud, J.) in N. Vaghul v. State of Maharashtra 1987 Cri LJ 385. He accordingly discharged all the accused persons. It appears that

many identical matters were pending hearing and final disposal in the court of the Special Judge and in accordance with his view, as above, he

discharged all the accused persons in all those cases also.

3. Being aggrieved, the Central Bureau of Investigation, through the State of Maharashtra, filed these revision applications.

4. At the outset, let me dispose of a contention raised on behalf of the respondents that the judgment of this Court in N. Vaghul''s case 1987 Cri

LJ 385 has finally decided the point and I do not have to further go into that question. In other words, the submission of the learned Counsel of the

respondents is that Mr. Justice Daud''s judgment on the point is final and it is not for me to re-open and re-consider the issue. This is the

submission of all the learned Counsel representing the respondents except Mr. Mahesh Jethmanlani who appeared on behalf of respondent 2 in

criminal revision application No. 1 of 1988. He submitted that the observations made by Mr. Justice Daud were in the nature of only obiter and,

therefore, the question whether or not an employee of a nationalised bank is a ''public servant'' within the meaning of S. 21(12)(b) of the I.P.C. is

very much open for a decision by this Court.

5. Now, speaking with respect to Mr. Justice Daud, I am of the same opinion as expressed by Mr. Jethmalani that Mr. Justice Daud has not

decided the crucial point finally. His observations in this respect were merely obiter. Thus, at the end of para 20 of his judgment Mr. Justice Daud

observed :

A very interesting and erudite argument has been advanced by Counsel on both the sides. In view of my finding on the first point, it is not really

necessary to give a considered finding on the tenability or otherwise of the special defence raised on behalf of accused 1 and 2 but it is necessary

that I take note of some of the submissions made by Counsel.

Then dealing with the point further, he observed in para 21 of his judgment as under :

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 Chap. IX, Penal Code"". Act No. 40 of 1980 in S. 14, repeats the deeming being restricted to Chap. IX of the Penal Code. The reply

given on behalf of accused 1 and 2 to the very arresting reply of complainant is that the same was introduced by way of abundant caution. It did

not exclude the operation of Clause 12 of S. 21, Penal Code. Bank employees are ""public servants"" for the purposes of S. 21 Clause 12(b), Penal

Code, is the ratio of the decisions reported in 1979 All LJ 922 . Kurian Vs. State of Kerala, and Kundan Lal Sharma Vs. State of Punjab, . None

of these decisions refers to S. 46A Banking Regulation Act of 1949 or S. 14 of the 1970 or 1980 Acquisition and Transfer of Undertakings Act.

To my mind, where 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 S. 21, I.P.C. If the legislature wanted certain specific bank employees to be considered ""public servants"" for a limited

purpose, the contrary cannot be held by taking recourse to the wide sweep of S. 21 I.P.C.

6. Mr. Bobde, learned Advocate General, appearing on behalf of the State of Maharashtra, submits that reading the definition of ''public servant''

as provided in S. 2 of the Prevention of Corruption Act together with the one in Clause 12(b) of S. 21 of the I.P.C. along with other provisions of

the various enactments concerning the banking business, it is crystal clear that an employee of a nationalised bank is a ''public servant'' within the

meaning of S. 21(12)(b) of the I.P.C. His submission is controverted by all the learned Counsel appearing on behalf of the respondents and it is

their case that an employee of a nationalised bank cannot be said to be in the service of a ''Corporation'' established by or under a Central Act or a

Government Company as defined in S. 617 of the Companies Act, 1956 and as such he cannot be termed as a ''public servant'' as defined by S.

21(12)(b) of the I.P.C. although he can be well said to be a ''public servant'' for the purpose of Chap. IX of the I.P.C.

7. Now, in The State of Madhya Pradesh Vs. M.V. Narasimhan, it was observed by the Supreme Court that the Prevention of Corruption Act,

being a social legislation, its provision must be liberally construed so as to advance the object of the Act and that can only be done if an extended

meaning is given to the term ''public servant'' as referred to in S. 2 of the Act by applying the enlarged definition contained in Clause 12 inserted in

the Penal Code by the two amendments referred to in Criminal Amendment Acts of 1958 and 1964. In the light of these observations of the

Supreme Court, let us proceed to analyse the various provisions of law in order to find out whether an employee of a nationalised bank is a ''public

servant'' or not within the meaning of S. 21(12)(b) of the I.P.C.

8. Section 2 of the Prevention of Corruption Act, 1947 provides that for the purposes of the said Act, "public servant" means a public servant as

defined in S. 12 of the I.P.C. Chapter IX of the I.P.C. deals with the offences by or relating to public servants. Section 161 therein is a penal

provision for punishing a public servant who indulges in taking gratification other than legal remuneration in respect of an official act. Therefore, if a

"public servant" is intended to be prosecuted and punished under S. 161 of the I.P.C. for indulging in an act of corruption, one has to resort to the

provisions of S. 21 of the I.P.C. in order to ascertain whether or not the said person is a "public servant", for, S. 21 of the I.P.C. defines a public

servant. Therefore, we are here concerned with the definition of "public servant" as provided in clause twelfth (b) of S. 21 of the I.P.C. which

reads as under :

Every person -

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company

as defined in S. 617 of the Companies Act, 1956.

9. Section 46A of the Banking Regulation Act, 1949, provides that :

Every chairman, director, auditor, liquidator, manager and any other employee of a baking company shall be deemed to be a public servant for

the purposes of Chap. IX of the I.P.C.

This provision was inserted in the statute book by the Banking Companies (Amendment) Act, 1956, on 14-1-1957. Thereafter, S. 51 of the

Banking Regulation Act, 1949 was amended with effect from 19-7-1969 as under :

Without prejudice to the provisions of the State bank of India Act, 1955, or any other enactment, the provisions of Sections 10, 13 to 15, 17, 19

to 21, 23 to 28 (excluding sub-section (3)). 31, 34, 35, 35-A, 36 (excluding Clause (d) of sub-section (1), 46 to 48, 50, 52 and 53 shall also

apply, so far as may be, to and in relation to the State Bank of India or any corresponding new Bank constituted under S. 3 of the Banking

Companies (Acquisition and Transfer of Undertakings) Act, 1970 or a Regional Rural Bank established under S. 3 of the Regional Rural Banks

Act, 1976, or any other Banking institution notified by the Central Government in this behalf as they apply to and in relation to banking companies.

In other words, the provisions of S. 46A of the Banking Regulation Act are to be read in S. 3 of the Banking Companies (Acquisition and Transfer

of Undertakings) Act, 1970 in so far as they relate to a corresponding new Bank scheduled therein. Section 14 of the Banking Companies

(Acquisition and Transfer of Undertakings) Act, 1970 provides that every custodian of a corresponding new bank shall be deemed to be a public

servant for a purposes of Chap. IX of the I.P.C. A similar provision is to be found in Section 14 of the Banking Companies (Acquisition and

Transfer of Undertakings) Act, 1980 by which some more banks were nationalised as per Schedule-1 therein. Therefore, a harmonious reading of

S. 46A and 51 of the Banking Regulation Act together with Section 14 of the Banking Companies (Acquisition and Transfer of Undertakings) Act

of 1970 and 1980 clearly shows that an employee of a nationalised bank is a "public servant" within the meaning of Chap. IX of the I.P.C. for

whose definition, as stated above, one has to resort to S. 21(12)(b) of the I.P.C. Section 2 of the Prevention of Corruption Act provides that

''public servant'' in the said Act means a ''public servant'' as defined in S. 21 of the I.P.C. Therefore, it is obvious that one who is a ''public servant''

for the purpose of Chap. IX of the I.P.C. is also a ''public servant'' within the meaning of S. 21(12)(b) of the I.P.C. in so far as it relates to the

definition of a ''public servant'' under the Prevention of Corruption Act. Any other interpretation of the word ''public servant'', giving two different

meanings, one under the I.P.C. and the other under the Prevention of Corruption Act, would lead to absurdity. It is difficult to accept a proposition

that one who indulges in a misconduct of taking bribe can be punished under S. 161 of the I.P.C. if he is an employee of a nationalised bank and at

the same time cannot be dealt with under S. 5(1)(d) of the Prevention of Corruption Act which provides that if a ''public servant'', by corrupt or

illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary

advantage shall be punished under S. 5(2) of the said Act. If the argument of the learned Counsel appearing for the Respondents that an employee

of a nationalised bank is a ''public servant'' within the meaning of Chap. IX of the I.P.C. but not within the meaning of S. 5(1)(d) of the Prevention

of Corruption Act is to be accepted, it would lead to ridiculous results in the sense that in that case a bank employee who indulges in an act of

corruption can be well punished under S. 161 of the I.P.C. but not under S. 5(1)(d) of the Corruption Act. That could never be an intention of the

legislature while enacting the special Act viz. the Prevention of Corruption Act, 1947.

10. It is also urged on behalf of the respondents that a nationalised bank is neither a ''corporation'' nor a ''government company'' under S. 617 of

the Companies Act, and therefore, their employees cannot be regarded as ''public servants'' within the meaning of clause twelfth (b) of S. 21 of the

I.P.C. In support of this contention, they relied on a judgment of a Division Bench of Delhi High Court in Oriental Bank of Commerce v. Delhi

Development Authority, 1982 Cri LJ 2230. I am unable to persuade myself to agree with this contention raised on behalf of the respondents.

Now, as per S. 5(d) of the Banking Regulating Act, 1949 ""company"" means any company as defined in S. 3 of the Companies Act, 1956 which

means a company formed and registered under the Companies Act. It is no doubt true that none of the nationalised banks is registered under the

Companies Act, 1956 but the definition of "government company" under S. 617 provides that;

for the purposes of this Act Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held

by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State

Governments and includes a company which is a subsidiary of a Government company as thus defined.

Sub-ss. (1), (3) and (4) of S. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and 1980 provide that :

(1) On the Commencement of this Act, there shall be constituted such corresponding new banks as are specified in the First Schedule.

(2) The entire capital of each corresponding new bank shall stand vested in, and allotted to, the Central Government.

(4) 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.

A harmonious reading of these provisions of law makes it clear that a nationalised bank is not only a "body corporate" (which word is

interchangeable with the word "corporation") established under a Central Act but also a "government company" within the meaning of S. 617 of

the Companies Act and the employees of such a bank are "public servants" within the meaning of clause twelfth (b) S. 21 of the Indian Penal

Code. This question had come up for consideration before a Division Bench of the Kerala High Court in Kurian Vs. State of Kerala, wherein it

was ruled :

After the passing of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, Central Bank of India became a bank of which

entire share capital is vested in Central Government and thus it satisfies definition of "Government Company" in S. 617 of Companies Act. It is

also a body corporate established under a Central Act. Moreover, a Nationalised Bank comes under ""other authorities"" in the definition of ""State

in Art. 12 of the Constitution. This also indicates that an employee of a Nationalised Bank is a public servant.

I am in respectful agreement with the view taken by the Kerala High Court. It may be noted here that this judgment was considered by a Division

Bench of the Delhi High Court in Oriental Bank of Commerce Vs. Delhi Development Authority and Another, and the learned Judges of the Delhi

High Court did not agree with the view taken by the Kerala High Court and held that a nationalised bank is neither a "corporation" nor a

''government company'' under S. 617 of the Companies Act and their employees could not be said to be public servants within the meaning of

clause twelfth (b) of S. 21 of the I.P.C. with which view, speaking with respect, I am unable to agree. Apart from the Kerala High Court, the

Allahabad High Court (Lucknow Bench) in S. C. Agrawal v. State of U.P. 1979 All LJ 922 and the Punjab and Haryana High Court in Kundan

Lal Sharma Vs. State of Punjab, also held that an employee of a nationalised bank is a ''public servant'' within the meaning of clause twelfth (b) of

S. 21 of the I.P.C. which view, in my opinion, speaking with respect, is the correct view of the matter.

11. In the result, I hold that employees of nationalised banks are ''public servants'' within the meaning of clause twelfth (b) of S. 21 of the I.P.C. All

the criminal revision applications, therefore, succeed and the same are allowed. The impugned orders passed by the learned Special Judge,

Greater Bombay, Bombay, discharging the accused persons on the ground that an employee of a nationalised bank is not a ''public servant'' with

the meaning of clause twelfth (b) of S. 21 of the I.P.C., 1947, are quashed and set aside. Rule in each of the criminal revision application is

accordingly made absolute.

12. Revision allowed.