

## **Rama Rao And Anr. vs Narayan And Anr. on 20 December, 1968**

**Equivalent citations: AIR1969SC724, (1969)71BOMLR696, 1969CRILJ1064, (1969)1SCC167, [1969]3SCR185**

**Bench: A.N. Grover, J.C. Shah**

### **JUDGMENT**

Shah, J.

1. The Nagpur District Land Development Bank Ltd. is registered as a society under the Maharashtra Co-operative Societies Act, 1960. One Narayan Tanbaji Murkute applied for membership of the bank as a "non-borrowing member". At a meeting of the bank held on June 30, 1964, the application of Murkute and 94 others were granted and they were enrolled as members. But in the list of members entitled to take part in the General Meeting, dated June 30, 1964, the names of the Murkute and others were not included.

2. Murkute and others then applied to the Registrar Co-operative Societies for an order declaring that they were entitled to participate in the election of office-bearers and for an injunction restraining the President and the Secretary from holding the Annual General Meeting. The registrar referred the dispute for adjudication under Section 93 of the Maharashtra Co-operative Societies Act, 1960 to H. V. Kulkarni, his nominee. The nominee decided the dispute on May 7, 1965, and held that Murkute and other applicant were members of the Bank. In the proceeding before the nominee certain document including the minutes book of the bank were produced. It is claimed by Murkute that those books were fabricated the President and the Secretary with a view to make it appears that Murkute and other persons were never elected members of the bank.

3. On August 7, 1965, Murkute filed a complaint in the Court of the Judicial Magistrate, First Class, Nagpur, charging the President and Secretary of the bank with committing offences under Sections 465 and 477, I.P. Code. It was alleged in the complaint that the two accused had dishonestly and fraudulently introduced a clause in Resolution no. 3 appearing in the minutes book with the intention of causing it to be believed that the clause was part of the original resolution passed by the Board of Directors in the meeting held on June 30, 1964, whereas it was known to them that at that meeting no such clause was passed.

4. The two accused raised an objection that the Magistrate had no jurisdiction to take cognizance of the complaint without the previous sanction of the Registered of Co-operative Societies under Section 148(3) of the Maharashtra Co-operative Societies Act, 1960. The Trial Magistrate rejected the contention. The order was confirmed by the Court of Session and the High Court of Bombay.

5. In this court counsel for the accused raised two contentions -

(1) that the nominee of the Registrar appointed under Section 95 of the Maharashtra Co-operative Societies Act, 1960, was a "court" within the meaning of Section 195, Code of Criminal Procedure and a complaint for offences under Sections 465 and 471, I. P. Code, alleged to have been committed by a party to any proceeding in respect of a document produced or given in evidence in such proceeding, cannot be entertained except on a complaint in writing of such court, or of a court to which it is subordinate; and (2) that offence charged in the complaint fell within the description of the offences under Section 146(p) of the Maharashtra Co-operative Societies Act, 1960 and without the sanction of the Registrar the complaint was not maintainable.

6. Section 195, Code of Criminal Procedure in so far as it is relevant provides :

"(1) No court shall take cognizance -

|     |   |   |   |   |
|-----|---|---|---|---|
| (a) | X | X | X | X |
| (b) | X | X | X | X |

(c) of any offence described in Section 463 or punishable under Section 471 X X X when such offence is alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such court, or of some other some court to which such court it subordinate.

"(2) In clauses (b) and (c) of sub-section (1), the term "Court" includes a Civil, Revenue or Criminal Court, does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877."

Murkute complained that the President and the Secretary of the bank who were parties to the proceeding before the nominee of the Registrar had committed offences under Section 465 and 467, I.P. Code, in respect of documents produced or given in evidence at the trial. If the Registrar's nominee is a court within the meaning of Section 195 Code of Criminal Procedure, the Magistrate could not take cognizance except on the complaint in writing by the Registrar's nominee or of some court to which he was subordinate. To determine whether the Registrar's nominee is a court it is necessary to refer to the relevant provisions of the Maharashtra Co-operative Societies Act, 1960, relating to the functions of the nominee and the power with which he is invested. Counsel for the appellants urges that by the Maharashtra Co-operative Societies Act the power of the Civil Court to entertain disputes with regard to certain matters concerning co-operative societies is expressly excluded from the jurisdiction of the Civil Court and the Registrar or his nominee is alone competent to determine those question thereby the Registrar and his nominee are invested with the

judicial power of the State and they are on that account "courts" within the meaning of Section 195 of the Code of Criminal Procedure.

7. Section 2(2) of the Maharashtra Co-operative Societies Act, 1960, defines "arbitrator" as meaning "a person appointed under this Act to decide dispute referred to him by the Registrar and includes the Registrar's nominee or board of nominees". Section 91 and the following section which occur in Chapter IX relate to disputes and arbitration. By Section 91, in so far as it is material it is provided :

"(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, election of the officer-bearer, conduct of general meetings, management or business of a Society shall be referred by any of the parties to the dispute X X X X to the Registrar, if both the parties hereto are one or other of the following :

(a) X X X X

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society.

(c) X X X X

(d) X X X X

(e) X X X X

(2) When any question arises whether for the purpose of the foregoing sub-section, a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

(3) Save as otherwise provided under sub-section (3) of Section 93 the court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1)."

Section 93 provides :

"(1) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within meaning of Section 91, the Registrar shall, subject to the rules, decide the dispute himself, or refer it for disposal to a nominee, or a abroad of nominees, appointed by the Registrar.

(2) Where any dispute is referred under the foregoing sub-section, for decision to the Registrar's nominee or board of nominees, the Registrar may at any time, for reasons to be recorded in writing withdraw such dispute from his nominee or board of nominees, and may decide the dispute himself or refer it again for decision to any other nominee, or board of nominees, appointed by him.

(3) Notwithstanding anything contained in Section 91, the Registrar may, if he thinks, fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties or by the society.

If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as it provided in sub-section (1)."

Section 94 provides for the procedure of settlement of disputes and power of the Registrar, his nominee or the board of nominees. It provides, in so far as it is material :

"(1) the Registrar, or his nominee or board of nominees, hearing a dispute under the last proceeding section shall hear the dispute in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and the compel them to give evidence or oath, affirmation or affidavit, and to compel the production of documents by the same means and as far as possible in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

(2) Except with the permission of the Registrar or his nominee or board of nominees as the case may be no party shall be represented at the hearing of a dispute by a legal practitioner."

Sub-section (3) of Section 94 authorises the Registrar, his nominee or the board of nominees to join or substitute new parties. Section 95 authorises the Registrar or his nominee or board of nominees to pass an order of attachment and other interlocutory orders. Section 96 provides :

"When a dispute is referred to arbitration the Registrar or his nominee or board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and fees and expenses payable to the Registrar or his nominee or as the case may be, board of nominees. Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar and shall, subject to appeal or review or revision, be binding on the parties to the dispute."

Section 97 provides :

"Any party aggrieved by any decision of the Registrar or his nominee or board of nominees under the last preceding section, or an order passed under Section 95 may, X X X appeal to the Tribunal."

Section 98 provides that every order passed by the Registrar or his nominee or board of nominees or in appeal therefrom shall, if not carried out, on a certificate signed by the Registrar, be deemed to be a decree of a Civil Court, and shall be executed in the same manner as a decree of such court or be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. By Section 99 a private transfer or delivery of, or encumbrance of charge on, property made or created after the issue of the certificate of the Registrar under Section 98 shall be null and void as against the society on whose application the certificate was issued.

8. Jurisdiction of the Civil Court by Section 91(3) to entertain a suit in respect of any dispute referred to in sub-section (1) of Section 91 is expressly excluded and the dispute is required by law to be referred to the Registrar or his nominee. Against the decision of the Registrar's nominee an appeal lies under Section 97 and the order made for payment of money is enforceable as a decree of the Civil Court. The Registrar or his nominee called upon to decide the dispute are bound to hear it in the manner prescribed and they have power to summon and enforce attendance of witnesses and to compel them to give evidence on oath, affirmation or affidavit and to compel production of documents. The effect of these provisions, according to counsel for the appellants, is that the judicial power of the State to deal with and dispose of disputes of a civil nature which fall within the description of Section 91(1) is vested in the Registrar's nominee and he is on that account made a "court" within the normal connotation of the term.

9. Section 195(2) of the Code of Criminal Procedure enacts that the term "court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877. The expression "court" is not restricted to courts, Civil, Revenue or Criminal, it includes other tribunals. The expression "court" is not defined in the Code of Criminal Procedure. Under Section 3 of the Indian Evidence Act "court" is defined as including "all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence". But this definition is devised for the purpose of the Evidence Act and will not necessarily apply to the Code of Criminal Procedure. The expression "Court of Justice" is defined in the Indian Penal Code by Section 20 as denoting "a Judge who is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially". That again is not a definition of the expression "court" as used in the Criminal Procedure. The expression "court" in ordinarily parlance is a generic expression and in the context in which it occurs may mean a "body or organizations" invested with power, authority or dignity. In Halsbury's Laws of England, 3rd Edn., Vol. 9, Article 809, at page 342, it is stated :

"Originally the term "court" meant, among other meanings, the sovereign's place; it has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either directly or indirectly from the sovereign. All tribunals, however, are not courts in the sense in which the term is here employed, namely to denote such tribunals as

exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to their jurisdiction. Thus, arbitrators, committees of clubs, and the like, although they may be tribunals exercising judicial functions, are not "courts" in this sense of that term. On the other hand, a tribunal may be a court in the strict sense of the term although the chief part of its duties is not judicial. Parliament is a court. Its duties are mainly deliberative and legislative; the judicial duties are only part of its function."

In Article 810 it is stated :

"In determining whether a tribunal is a judicial body the facts that it has been appointed by a non-judicial authority, that it has no power to administer an oath, that the chairman has a casting vote, and that third parties have power to intervene are immaterial, especially if the statute setting it up prescribes a penalty for making false statement; element to be considered are (1) the requirement for a public hearing, subject to a power to exclude the public in a proper case, and (2) a provision that member of the tribunal shall not take part in any decision in which he is personally interested, or unless he has been present throughout the proceedings.

A tribunal is not necessary a court in the strict sense exercising judicial power because (1) it gives a final decision; (2) hears witnesses on oath; (3) two or more contending parties appear before it between whom it has to decide; (4) it gives decisions which affect the rights of subjects; (5) there is an appeal to a court; and (6) it is body to which a matter is referred by another body. Many bodies are not courts, although they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality, such as the former assessment committees, the former court of referees which was constituted under the Unemployment Insurance Acts, the benchers of the Inns of Court when considering the conduct of one of their members, the Disciplinary Committee of the General Medical Council when considering question affecting the conduct of a medical man, a trade union when exercising disciplinary jurisdiction over its members, or the chief officer of a force exercising discipline over member of the force."

A body required to act judicially in the sense that its proceedings must be conducted with fairness and impartiality may not therefore necessarily be regarded as a court.

10. Counsel for the appellant however invited our attention to a number of decisions in support of his contention that wherever there is a dispute which is required to be resolved by a body invested with power by statute and the body has to act judicially, it must be regarded as a court within the meaning of Section 195 of the Code of Criminal Procedure. Counsel asserted that every quasi-judicial authority is a court within the meaning of Section 195(2) of the Code of Criminal Procedure. The contention is inconsistent with a large body of authority of this court to which we will presently refer.

11. By Section 195 of the Code of Criminal Procedure, it is enacted that certain offences amounting to contempt of lawful authority of public servant i.e., offences falling under Sections 172 to 188, I.P. Code offences against public justice under Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offences are alleged to have been committed in or in relation to, any proceeding in any court, and offences described in Section 463, or punishable under Section 471, 475 or 476 when such offences are alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding, cannot be taken cognizance of by any court, except in the first class of cases on a complaint in writing of the public servant concerned and in the second and third class of cases on the complaint in writing of such court or some other court to which it is subordinate.

12. An offence ordinarily signifies a public wrong : it is an act or omission which is a crime against society : it may therefore be brought to the notice of the court by any person, even if he is not personally aggrieved by the act or omission. To that rule there are certain exception which are specified in Sections 195, 196, 197, 198, 198-A of the Code of Criminal Procedure and other special statutes. Authority of courts to entertain complaints in respect of the offences so specified is barred in view of the special nature of the offence which vitally affect individuals only or public bodies and in the larger interest of society it is deemed expedient to exempt them from the general rule.

13. The nominee of the Registrar acting under Section 96 performs the functions substantially of an arbitrator to whom a dispute is referred for adjudication. The Registrar may appoint a single nominee or a board of nominees and may at any time, for reasons to be recorded in writing, withdraw such dispute from the nominee or board of nominees, and may decide the dispute himself, or refer it again for decision to another nominee, or board of nominees, appointed by him. Under sub-section (3) of Section 93, it is open to the Registrar to suspend proceedings in regard to any dispute if the question at issue between a society and a claimant or between different claimant, is one involving complicated question of law of fact. The jurisdiction of the nominee or board of nominees arises by reason not of investment by statute, but by appointment made by the Registrar who exercises control over the proceeding. The nominee therefore derives his authority from his appointment by the Registrar : the registrar entitled to withdraw his authority; and the Registrar may fix the time within which a dispute shall be disposed of : his adjudication is again called an award. The nominee is even entitled to make a provision for the expenses payable to the Registrar or to himself. It is true that the procedure of the nominee is assimilated to the procedure followed in the trial of a Civil Proceeding. The nominee has the power to summon witnesses, to compel them to produce documents and he is required to hear the dispute in the manner prescribed by the Code of Civil Procedure. Thereby he is required to act judicially, i.e., fairly and impartially : but the obligation to act judicially will not necessarily make him a court within the meaning of Section 195 of the code. The position of a nominee of the Registrar is analogous to that of an arbitrator designated under a statutory arbitration to which the provisions of Section 47 of the Arbitration Act, 1940, apply.

14. The authorities to which our attention was invited by counsel for the appellants may now be considered. It may be sufficient here to observe that the test laid down by his court in certain cases to be presently noticed make many of the cases relied upon of doubtful authority. In Thadi Subbi

Reddy v. Emperor (AIR 1930 Mad 369) it was held by a single Judge of the Madras High Court that the Registrar before whom a Co-operative Society files its suit, or its claim for enforcing a bond, is a court within the meaning of Section 195, of the Code of Criminal Procedure, for the Registrar to whom a dispute touching a debt due to a society by a member is referred has power to administer oaths, to require the attendance of all parties concerned and of witnesses, and to require the production of all books and documents relating to the matter in dispute, and the Registrar is required to give a decision in writing, and when it is given the decision may be enforced on application to the Civil Court having jurisdiction as if it were a decree of the court.

15. In Velayude Mudali and another v. Co-operative Rural Credit Society and others (AIR 1934 Mad 40), a single Judge of the Madras High Court, following the judgment in Thadi Subbi Reddi's case, (AIR 1930 Mad 369) observed that a Registrar of Co-operative Societies acting under Section 14 of the rules framed under the Co-operative Societies Act is a Court, and the rule of *lis pendens* applied to the proceeding before the Registrar.

16. In Y. Mahabaleswarappa v. M. Gopalasami Mudaliar (AIR 1935 Mad 673) a Division Bench of the High Court of Madras held that an Election Commissioner appointed to decide a dispute with regard to municipal elections is a court within the meaning of Section 195 of the Code of Criminal Procedure. The Court in that case held that the Election Commissioner is a special tribunal to whom the power to make an inquiry relating to the rights of civil nature was entrusted by statute and he is required to deal with the matter in accordance with the procedure of a court. The procedure followed by the Election Commissioner was held to be similar to the procedure of the court since he was required to give a definitive judgment upon the matter in hand and this power was not conferred merely by extending the provisions of the Code of Civil Procedure. The court in that case observed at page 677 :

" ..... we have to look, not to the source of tribunal's authority, or to any peculiarity in the method adopted of creating it (though it is undoubtedly a consideration that it derives its powers mediately or immediately from the Crown) but to the general character of its powers and activities. If it has power to regulate legal rights by the delivery of definitive judgment and to enforce its orders by legal sanctions, and if its procedure is judicial in character in such matters as the taking of evidence and the administration of the oath then it is a 'Court'.

The assumption made that an election dispute is a dispute relating to civil rights is, however, not correct, nor is it true to say that because there is an obligation to deal with the matters fairly and impartially and the procedure is assimilated to the procedure for the trial of civil dispute it necessarily makes a body invested with the power to decide the dispute, a 'Court'."

17. In Nand Lal Ganguli v. Khetra Mohan Ghose (ILR 45 Cal 585) it was observed that the word "Court" in Section 195, Code of Criminal Procedure, has a wider meaning than "Court of Justice" under Section 20 of the Penal Code, and includes a tribunal entitled to deal with a particular matter and authorised to receive evidence bearing thereon in order to enable it to arrive at a determination



upon the question. On that account a Tribunal constituted by the Calcutta Improvement Act (Bengal Act V of 1911), as amended by the Calcutta Improvement (Appeals) Act, 18 of 1911 is a "Court" within the meaning of Section 195 of the Code of Criminal Procedure.

18. But the test which appealed to the Madras and the Calcutta High Courts in determining whether a tribunal was a court has not been accepted by this Court in Jagan Nath Prasad v. The State of Uttar Pradesh . It was held in that case that the Sales Tax Officer under the U.P. Sales Tax Act is not a "Court" within the meaning of Section 195 of the Code of Criminal Procedure, and a complaint for the prosecution of persons committing offences under Section 471, I.P. Code, may lie without a complaint by the Sales Tax Officer. In the view of the Court though the Sales Tax Officer was required to perform certain quasi-judicial functions and to act fairly and impartially he was not a part of the judiciary : he was merely an instrumentality of the State for purpose of assessment and collection of tax. The nature of the functions of a Sales Tax Officer and the manner prescribed for the performance showed that he could not be equated with a court.

19. Attention of course must be directed to Lalji Haridas v. State of Maharashtra and another where this Court took the view that an Income-Tax Officer exercising power under Section 37(1), (2) and (3) was exercising power in a judicial proceeding for the purpose of Sections 193, 196 and 228 Indian Penal Code. The Court, however, expressly observed that it was not necessary to decide the general question whether the Income-tax Officer was a "Court", for Section 37(4) of the Income-tax Act makes the proceedings before the Income-tax Officer judicial proceedings for the purpose of Section 193, Indian Penal Code and accordingly the proceeding before him must be treated as a proceeding in a court for the purpose of Section 195(1) of the Code of Criminal Procedure.

20. Two other decisions may be referred to. In Shri Virindar Kumar Satyawadi v. The State of Punjab, this Court held that a Returning Officer action under Sections 33 and 36 of the Representation of the People Act, 1951, and deciding on the validity or otherwise of a nomination paper is not a "Court" within the meaning of Sections 195(1)(b), 476-B of the Code of Criminal Procedure. In Brijandan Sinha v. Jyoti Narain, this Court held that the Commissioner appointed under the Public Servant (Inquiries) Act, 37 of 1850, is not a "Court" within the meaning of Contempt of Courts Act, 1952. This Court has therefore definitely taken the view that a mere duty to act judicially either expressly imposed or arising by necessary implication of the nature of the duties required to be performed does not of itself make a tribunal judicial or quasi-judicial a "Court" within the meaning of Section 195, Code of Criminal Procedure.

21. The judgment of the High Court of Bombay in Hari Pandurang and another v. Secretary of State for India in Council, (ILR 27 Bom 424) in which the Court held that a tribunal created under the City of Bombay Improvement Act, 1898, upon which powers were conferred to determine compensation payable under the Land Acquisition Act, was not a "court" and was therefore free from the control and supervision of the High Court.

22. The decision of this court in Thakur Jugal Kishore Sinha v. Sitamarhi Central Co-operative Bank Ltd. and another, on which strong reliance was placed by counsel does not in our judgment assist him. The appellant in that case in an appeal before the Joint Registrar, Co-operative Societies,

alleged that the Assistant Registrar in deciding a matter had discriminated against him and had adopted "double standards". In proceedings under the Contempt of Courts Act the High Courts of Patna held the appellant guilty. An appeal was brought to this court and it was held that the appellant was rightly convicted. The court observed that the Assistant Registrar was functioning as a court in deciding the dispute in question. His adjudication was not based upon a private reference nor was his decision arrived at in a summary manner, but with all the paraphernalia of a court and the powers of an ordinary Civil Court of the land. But the question in that case was not whether the Registrar is a "court" within the meaning of Section 195(2) of the Code of Criminal Procedure. It is necessary also to observe that the provisions of the Bihar and Orissa Co-operative Societies Act, 1935, were not substantially the same as the provisions of the Maharashtra Co-operative Societies Act, 1960, which fall to be considered in this case. It may be pointed out that Mitter, J., speaking for the court observed :

"It must be borne in mind that we do not propose to lay down that all Registrars of all Co-operative Societies in the different States are "courts" for the purpose of the Contempt of Court Act, 1952. Our decision is expressly limited to the Registrar and the Assistant Registrar like the one before us governed by the Bihar and Orissa Co-operative Societies Act."

23. Counsel for the appellants contended that this Court has dissented from the decisions in Malabar Hills Co-operative Housing Society Ltd., Bombay v. K. L. Gauba and others , on which the judgment under appeal in this case is founded. In K.L. Gauba's case, the High Court of Bombay has held that a nominee of a Registrar to whom a dispute is sent for decision under Section 54(1) of the Bombay Co-operative Societies Act, 1925, is not a court within the meaning of Section 3(1) of the Contempt of Courts Act, 1952. It is claimed that this decision has been expressly overruled by this Court in Thakur Jugal Kishore Sinha's case. The assumption made by counsel for the appeals that the decision of the Bombay High Court in Malabar Hills Co-operative Housing Society Ltd's. case was overruled is, however, not correct. This court set out the facts in some details and observed that the decision of the Bombay High Court that the proceedings before the nominee of the Registrar under Bombay Act were merely in the nature of arbitration proceedings did not compel them to hold that the Assistant Registrar of Co-operative Societies under the Bihar and Orissa Co-operative Societies Act, 1935, was not a "court". It was expressly pointed out that in the Bombay case the matter was referred to the Assistant Registrar as nominee of the Registrar who had to act as an arbitrator and to make an award.

24. After carefully considering the powers conferred and the source of authority of the nominee, we have no doubt that the nominee exercising power to make an award under Section 96 of the Maharashtra Co-operative Societies Act, 1960, derives his authority not from the statute but from investment by the Registrar in his individual discretion. The power so invested is liable to be suspended and may be withdrawn. He is therefore not entrusted the judicial power of the State : he is merely an arbitration authorised within the limits of the power conferred to adjudicate upon the dispute referred to him.

25. The plea that the complaint was not maintainable without the sanction of the Registrar has no substance. By Section 146 of the Maharashtra Co-operative Societies Act, in so far as it is material it is provided :

"It shall be an offence under this Act if -

X X X X

(p) any officer or member of a society destroy, mutilates, tampers with, or otherwise alters, falsifies or secretes or is privy to the destruction, mutilation, alternation falsification or secreting of any books papers or securities or makes, or is privy to the making of any false or fraudulent entry in any register book of account or document belonging to the society."

By the Explanation it is enacted that "for the purpose of this section, an officer or a member referred to in this section shall include past officer and past member as the case may be". By Section 148(3) it is provided :

"No prosecution under this Act shall be lodged except with the previous sanction of the State Government in the case of an offence under clause (b) of Section 146 and of the Registrar in the case of any other offence under this Act. Such sanction shall not be given, except after hearing the party concerned by an officer authorised in this behalf by the State Government by a general or special order."

It was urged that the ingredient of the offences of forgery punishable under Section 465, I.P. Code and of offence under Section 146(p) are in substance the same, and the general provision is on that account pro tanto repealed, and in any event in view of the provision of Section 148(3) no prosecution may be initiated in respect of those offences otherwise than with the previous sanction of the Registrar. Section 147 which prescribes punishment for offences under Section 146, by clause (p) provides :

"Every society, officer or past officer, member or past member, employee or past employee of a society or any other person who commits an offences under Section 146 shall on conviction, be punished, -

(p) if it is an offence under clause (p) of that Section with imprisonment for a term which may extend to two years or which fine, or with both,"

Under Section 146(p) an offence may be committed by (1) an Officer or member or by a past officer or past member; (2) such officer or member or past officer or past member must have destroyed, mutilated, tampered with or otherwise altered, falsified or secreted; (3) or must have been privy to the destruction, mutilation, alternation, falsification or secreting; (4) or must have made or he makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the society. The clause does not make intention an ingredient of the offence.

Again a person who is privy to the destruction, mutilation, alternation, falsification or secreting of books or making any false or fraudulent entry in any register, book of account or document belonging to the society is make punishable. Even destruction of books of account is penalised under Section 146. Section 465, I.P. Code penalises the offence of forgery. Sections 466, 467, 468 and 469 are more serious offences of forgery when committed in respect of record of court or of public registers, valuable securities, wills or for cheating or harming reputation of persons. Section 477, I.P. Code, penalties dishonest cancellation, destruction, defacement, or attempts to cancel, destroy or deface or secret or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or mischief in respect of such document. Section 477-A penalises falsification of accounts by a clerk, officer or servant or by a person employed in the capacity of a clerk, officer or servant. The offence of forgery and its allied offence may be committed if a false document is made with intent to cause damage or injury to public or any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, (Section 463). In Order to attract Section 463 I.P. Code, there must, therefore, be making of a false document with the intention mentioned in that section. By Section 464 it is provided :

"A person is said to make a false document -

Firstly. - Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made signed sealed or executed, or at a time at which he knows that was not made signed, sealed or executed; or Secondly. - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly. - who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration".

Making of a false document by a person in all the three clauses must be done dishonestly or fraudulently and with the necessary intention or knowledge contemplated by the three clauses.

26. Section 146 of the Maharashtra Co-operative Societies Act, 1960, does not make any such intention as is referred to in Sections 463 and 464, I.P. Code in ingredient of the offence it also renders a person who is merely privy to the destruction, mutilation, alternation, falsification or secreting or to the making of any false or fraudulent entry in any register, book of account or document belonging to the society liable to be punished under Section 146(p). The offence may be committed under Section 146 only by an officer or member-past or present-of the society. even destruction or secreting of a document or security is penalised under Section 146 of the Act.

27. We are unable to accept a contention that these two Section 146(p) of the Maharashtra Co-operative Societies Act and Section 465, I.P. Code - are intended to deal with same offence. It is true that certain acts may fall within both the sections. For instance, tampering with or falsifying any register, book of account or security, or making any false or fraudulent entry in the register, book of account or document belonging to the society, may when done with the requisite intention mentioned in Section 464 read with Section 463, I.P. Code, be also an offence under Section 146(p) of the Maharashtra Co-operative Societies Act. But that, in our judgment, is not a ground for holding that Section 465, I.P. code and the related offences, were intended to be pro tanto repealed by the enactment of Section 146(p) of the Maharashtra Co-operative Societies Act. When the Indian Penal Code seeks to impose in respect of offences under Section 477, imprisonment which may extend to imprisonment for life or with imprisonment up to a period of seven years for an offence under Section 477-A it would be difficult to hold that when committed by an officer or member of a society the maximum punishment which can be imposed by virtue of Section 146(p) would be three years rigorous imprisonment only.

28. This court in *Om Prakash Gupta v. State of Uttar Pradesh* ((1957) SCR 423), held that the offences under Section 409, I.P. Code and Section 5(1)(c) of the Prevention of Corruption Act, are distinct and separate offences and Section 409, I.P. Code, is not repealed by Section 5(1)(c) of the Prevention of Corruption Act.

29. In a recent judgment of this court in *T. C. Ballish v. T. S. Rangachari* (Cr. Ap. Nos. 130-132 of 1968, decided on December 12, 1968), we had occasion to consider whether Section 177, I.P. Code, was repealed by Section 52 of the Indian Income-tax Act. It was pointed out that in considering the problem the court must consider the true meaning and effect of the two Acts, and unless there is repugnancy or inconsistency between the two enactments or that the two enactments cannot stand together they must be treated as cumulative.

30. It is clear from a perusal of Section 146(p) of the Maharashtra Co-operative Societies Act, 1960 and Sections 463 and 464, I.P. Code, that they are two distinct offence which are capable of being committed with different intentions by different sets of persons and it could not be contemplated that the Legislature of the State of Maharashtra intended to repeal pro tanto the provisions of Section 465, I.P. Code, by enactment of Section 146 of the Maharashtra Co-operative Societies Act.

31. It is unnecessary in the circumstances to consider the question whether the Maharashtra State Legislature was competent to repeal the provisions of Section 465, I.P. Code. The law relating to Co-operative Societies may be enacted in exercise of the power under List II, Entry 32 of the Seventh Schedule to the Constitution, but if Section 146 is directly intended to trench upon a provision of the Indian Penal Code-falling within List II, Entry 1, sanction of the President under Article 254(2) would apparently be necessary.

32. Both the contentions raised by counsel for the appellants fail. The appeal is dismissed.