State Of Maharashtra vs Laljit Rajshi Shah & Ors on 28 February, 2000

Equivalent citations: AIR 2000 SUPREME COURT 937, 2000 AIR SCW 698, 2000 (3) SRJ 261, (2000) 2 JT 546 (SC), 2000 (2) SCALE 126, 2000 CRIAPPR(SC) 231, 2000 (2) SCC 699, 2000 CALCRILR 197, 2000 (3) LRI 779, 2000 SCC(CRI) 533, 2000 (2) UJ (SC) 915, 2000 (2) JT 546, 2000 ALLMR(CRI) 2 1370, (2000) MAD LJ(CRI) 343, (2000) 1 RECCRIR 5, (1999) 3 CIVILCOURTC 679, (1999) 2 KER LJ 925, (1999) 3 KER LT 449, (2000) 2 SCJ 92, (2000) 1 CURCRIR 283, (2000) 1 BANKCAS 239, (2000) SC CR R 486, (2000) 2 EASTCRIC 465, (2000) 2 MAH LJ 801, (2000) 2 RECCRIR 71, (2000) 2 SUPREME 244, (2000) 27 ALLCRIR 742, (2000) 2 SCALE 126, (2000) 40 ALLCRIC 803, (2000) 2 CHANDCRIC 148, (2000) 2 ALLCRILR 206, (2000) 2 CRIMES 1, (2000) 1 ANDHLT(CRI) 18, (2000) 3 BOM CR 240, 2000 (2) BOM LR 604, 2000 BOM LR 2 604

Author: N.S.Hegde

Bench: N.S.Hegde

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
LALJIT RAJSHI SHAH & ORS.

DATE OF JUDGMENT: 28/02/2000

BENCH:
N.S.Hegde, G.B.Pattanaik

JUDGMENT:

PATTANAIK, J.

These appeals by grant of leave by the High Court itself under Article 134(1)(c) of the Constitution of India read with Rule 28(2) of the Supreme Court Rules, by the State of Maharashtra, raises the question whether the Chairman of a Co-operative Society under the Maharashtra Co-operative

Societies Act, can be held to be a public servant for the purpose of Section 21 of the Indian Penal Code and as such, can be proceeded against for offences under Section 5(1) read with Section 5(2) of the Prevention of Corruption Act, 1947.

The short facts necessary for disposal of these appeals may be briefly stated as under. On the basis of criminal prosecution under Sections 120-B, 409, 420, 467, 471 and 477-A of the Indian Penal Code, Sections 7 and 9 of the Essential Commodities Act and Sections 5[1][c] and 5[1][d] read with Section 5[2] of the Prevention of Corruption Act, the Special Judge took cognizance of the offences as against the accused respondents. The accused persons are the members of the Managing Committee of the co-operative societies and the Chairman of such co-operative societies. It was agitated before the learned Special Judge by the accused persons that they are not public servants for the purposes of offences under Section 409 of the Indian Penal Code and Section 5[1][c] and 5[1][d] of the Prevention of Corruption Act, 1947 and further, the prosecution is not maintainable for want of previous sanction. The learned Special Judge considered the provisions of Section 161 of the Maharashtra Co-operative Societies Act (hereinafter referred to as the Act) and came to the conclusion that the accused persons cannot be held to be public servants as defined under Section 21 of the Indian Penal Code notwithstanding the incorporation of Section 21 of the Indian Penal Code in Section 161 of the Act and, therefore, no cognizance can be taken of the offences under the Prevention of Corruption Act. On the question of sanction, the Special Judge also agreeing with the accused persons held that no previous sanction having been obtained for prosecution of the accused persons, the cognizance is bad in law. Assailing the order of learned Special Judge, the State moved the High Court. When the matter was placed before a learned Single Judge, he referred the matter to a larger Bench as he did not agree with the views expressed by several other learned Single Judges of the Court. The learned Single Judge formulated two questions for being answered by the larger Bench:

> (1) Whether a person defined as officer under Clause (20) of Section 2 of the Maharashtra Co- operative Societies Act, 1960, is a Public Servant within the meaning of Section 2 of the Prevention of Corruption Act, 1947 (II of 1947), by virtue of the provisions of Section 161 of the Maharashtra Co-operative Societies Act, 1960, read with Section 21 of the Indian Penal Code?

(2) Whether, assuming that provisions of Section 2 of the Prevention of Corruption Act, 1947 are applicable to such a person, is the sanction to prosecute such a person required under any of the Clauses of sub-section (1) of Section 6 of the Prevention of Corruption Act, 1947 capable of being given under the Maharashtra Co-operative Societies Act, 1960?

The Division Bench by the impugned Judgment analysed the provisions of Section 161 of the Act as well as Section 21 of the Indian Penal Code and Section 2 of the Prevention of Corruption Act, 1947. The Division Bench of the High Court came to the conclusion that Section 161 of the Act incorporating Section 21 of the Indian Penal Code ipso facto does not enlarge the definition of the term public servant in Section 21 of the Indian Penal Code. It further held that the State Legislature which was competent to amend Section 21 of the Indian Penal Code, the subject of criminal law being on the con-current list and yet the said not having been done, the expression public servant

under Section 161 of the Act would mean those officers to be public servants for the purpose of offences under the Co- operative Societies Act and Section 21 of the Indian Penal Code cannot be said to have engrafted into Section 161 of the Act. Accordingly, the High Court held that the accused persons cannot be prosecuted for offences under Section 409 of the Indian Penal Code and Sections 5[1][c] and 5[1][d] read with 5(2) of the Prevention of Corruption Act, though they can be prosecuted for other offences for which cognizance had been taken. Having held so, leave to appeal having been prayed for by the State, the High Court granted leave under Article 134(1)(c) of the Constitution read with Rule 28(2) of the Supreme Court Rules and hence the present appeals.

On behalf of the appellant-State, it is contended that the Registrars and other officers under the Co-operative Societies Act, having been held by the Act itself, deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, those officers could be prosecuted for the offences under Indian Penal Code notwithstanding the fact that they do not become 'public servants' under Section 21 of the Indian Penal Code and the High Court, therefore, was in error in coming to the conclusion that until and unless the provisions of Section 21 of the Indian Penal Code are amended, these officers cannot be prosecuted for offences committed under Indian Penal Code.

Mr. Deshpande, learned counsel appearing for the respondents on the other hand contended that the provisions of Maharashtra Co-operative Societies Act, were enacted by the State Legislature, for which they had the competence under Entry 32 of List II of the Seventh Schedule read with Entry 64 thereof, whereas Indian Penal Code is an pre- existing law, which was there at the commencement of the Constitution and is a legislation under Entry 1 of List III of the Seventh Schedule. The two Statutes operate in different and distinct field and, therefore, the provisions thereof have to be judged with reference to its own source and this being the position in law, an officer who may be a public servant under Section 161 of the Co-operative Societies Act cannot be prosecuted for offences under the Indian Penal Code, so long as Section 21 of the Indian Penal Code, is not amended and the impugned judgment of the High Court, therefore, is unassailable. The learned counsel further submitted that in view of the pronouncement of the Supreme Court in Antulays case, 1984(2) SCC 183, indicating as to who can be a public servant, the elected office bearers of the Co- operative Society cannot come within the purview of the said definition and, therefore, they cannot be prosecuted for offences under the Indian Penal Code, until and unless Section 21 of the Indian Penal Code itself is amended. Lastly, he urged that this question has been decided by this Court in Ramesh Balkrishna Kulkarni vs. State of Maharashtra, 1985(3) SCC 606, wherein an identical provision under Section 302 of the Maharashtra Municipalities Act, 1965 was under consideration and the Court held that the concerned officers cannot be prosecuted for offences under the Indian Penal Code.

In view of the rival submission at the Bar, the sole question that arises for consideration is, as to what is the effect of the provisions of Section 161 of the Maharashtra Co-operative Societies Act in interpreting the provisions of Section 21 of the Indian Penal Code. It is undoubtedly true that the Co-operative Societies Act has been enacted by the State Legislature and their powers to make such legislation is derived from Entry 32 of List II of the Seventh Schedule to the Constitution. The legislature no-doubt in Section 161 has referred to the provisions of Section 21 of the Indian Penal Code but such reference would not make the officers concerned public servants within the ambit of

Section 21. The State Legislature had the powers to amend Section 21 of the Indian Penal Code, the same being referable to a legislation under Entry 1 of List III of the Seventh Schedule, subject to Article 254(2) of the Constitution as, otherwise, inclusion of the persons who are public servants under Section 161 of the Co-operative Societies Act would be repugnant to the definition of public servant under Section 21 of the Indian Penal Code. That not having been done, it is difficult to accept the contention of the leaned counsel, appearing for the State that by virtue of deeming definition in Section 161 of the Co-operative Societies Act by reference to Section 21 of the Indian Penal Code, the persons concerned could be prosecuted for the offences under the Indian Penal Code. The Indian Penal Code and the Maharashtra Co- operative Societies Act are not Statutes in pari materia. The Co-operative Societies Act is a completely self-contained Statute with its own provisions and has created specific offences quite different from the offences in the Indian Penal Code. Both Statutes have different objects and created offences with separate ingredients. They cannot thus be taken to be Statutes in pari materia, so as to form one system. This being the position, even though the Legislatures had incorporated the provisions of Section 21 of the Indian Penal Code into the Co-operative Societies Act, in order to define a public servant but those public servants cannot be prosecuted for having committed the offence under the Indian Penal Code. It is a well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by which it is created. A legal fiction in terms enacted for the purposes of one Act is normally restricted to that Act and cannot be extended to cover another Act. When the State Legislatures make the Registrar, a person exercising the power of the Registrar, a person authorised to audit the accounts of a society under Section 81or a person to hold an inquiry under Section 83 or to make an inspection under Section 84 and a person appointed as an Administrator under Section 78 or as a Liquidator under Section 103 shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code. Obviously, they would not otherwise come within the ambit of Section 21, the legislative intent is clear that a specific category of officers while exercising powers under specific sections have by legal fiction become public servant and it is only for the purposes of the co-operative Societies Act. That by itself does not make those persons public servants under the Indian Penal Code, so as to be prosecuted for having committed the offence under the Penal Code. When a person is deemed to be something, the only meaning possible is that whereas he is not in reality that something, the Act of legislature requires him to be treated as if obviously for the purposes of the said Act and not otherwise. In a somewhat similar situation in Ramesh Balkrishna Kulkarni vs. State of Maharashtra, 1985(3) SCC 606, the question for consideration was whether a Municipal Councillor can be prosecuted for having committed an offence under the Indian Penal Code, since under Section 302 of the Municipalities Act, a Councillor shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. Section 302 of the Maharashtra Municipalities Act, 1965 is quoted herein below in extenso:

> 302. Every councillor and every officer or servant of a Council, every contractor or agent appointed by it for the collection of any tax and every person employed by such contractor or agent for the collection of such tax, shall be deemed to be a public

servant within the meaning of Section 21 of the Indian Penal Code.

A Municipal Councillor was prosecuted for having committed an offence under the Prevention of Corruption Act and the said conviction and sentence was upheld in appeal by the High Court, but this Court in the aforementioned decision, 1985(3) SCC 606, set aside the conviction and sentence on a finding that Municipal Councillor cannot be held to be a public servant within the meaning of Section 21 of the Indian Penal Code. In the aforesaid premises, we see no infirmity with the impugned judgment of the High Court to be interfered with by this Court. The appeals fail and are dismissed.