

Supreme Court of India

State Of Madhya Pradesh vs M. V. Narasimhan on 15 July, 1975

Equivalent citations: 1975 AIR 1835, 1976 SCR (1) 6

Author: S M Fazalali

Bench: Fazalali, Syed Murtaza

PETITIONER:

STATE OF MADHYA PRADESH

Vs.

RESPONDENT:

M. V. NARASIMHAN

DATE OF JUDGMENT 15/07/1975

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

UNTWALIA, N.L.

CITATION:

1975 AIR 1835 1976 SCR (1) 6

1975 SCC (2) 377

CITATOR INFO :

R 1982 SC 697 (15)

APL 1989 SC 222 (3,8)

APL 1989 SC 516 (50)

ACT:

Prevention of Corruption Act , 1947, Section 2-Incorporation of provisions of s. 21 of Penal Code in the definition of public servant-Amendment to s. 21 including employee of Government company-Definition of public servant in s. 2 of the Act, if unaffected.

HEADNOTE:

Section 2 of the Prevention of Corruption Act, 1947, provides that, for the purposes of this Act, "Public servant" means a public servant as defined in s. 21 of the Indian Penal Code. Before the Criminal Law (Amendment) Act, 1958 (Act No. 11 of 1958) was passed adding clause 12 to this section, s. 21 of the Penal Code consisted only of eleven clauses and an employee under the Corporation or a Government Company did not fall within the purview of any of the clauses of s. 21 of the Penal Code. Clause 12 was further amended by the Anti-Corruption Laws (Amendment) Act, 1964 (Act No. XL of 1964) enlarging the definition of "public servant".

The respondent who was an employee in the Heavy Electricals (India) Ltd. Bhopal, which is a Government Company, was convicted by the Special Judge Indore, under s. 420 I.P.C. and s. 5(2) read with s. 5(1)(d) of the Act and was sentenced to one year rigorous imprisonment on each count. The appeal filed by the respondent before the High Court of Madhya Pradesh was allowed mainly on the ground that as the respondent was not a public servant as contemplated by the provisions of the Act, his trial under the Act was without jurisdiction. The High Court took the view that as the Act had incorporated the definition of the Penal Code prior to its amendment, it became an integral and independent part of the Act and would remain unaffected by any repeal or change in the previous Act, namely, the Penal Code. This appeal has been preferred on the basis of the certificate granted by the High Court. .

Allowing the appeal,

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HELD: (i) It is well-settled that, after the provision of the previous Act is incorporated in the subsequent Act, the off-spring, namely, the incorporated provisions, survives even if the previous Act is repealed, amended, declared a nullity or erased from the statute book. But the Act being a social legislation its provisions must be construed liberally so as to advance the object of the Act. Though the Act and the Penal Code are not statutes in pari materia there can be no doubt that the Evidence Act and the Prevention of Corruption Act form part of one system, because the rules of Evidence Act, with minor exceptions, apply to trials of offences created under the Act. The Act, no doubt, contains a penal flavour but it is in effect a piece of social legislation directed towards eradication of the evil of corruption amongst the services alone. In other words, the public servants alone fall within the mischief of the Act and no one else. [11E; 12A-C]

Clarke v. Bradlaugh, [1881] 8 Q.B.D. 63,69, Ram Sarup v. Munshi and other [1963] 3 S.C.R. 858, 868-869, In re Wood's Estate, Ex parte Her Majesty's Commissioners of Works and Buildings, [1886] 31 Ch. D. 607, 615-616, Secretary of State for India in Council v. Hindustan Co-operative Insurance Society Ltd. L.R. 58 I.A. 259. 266-267. referred to.

State of Madras v. Vaidyanath Aiyar, A.I.R. 1958 S.C. 61, relied on.

(ii) The object of the Act is to eradicate corruption from various levels either in Government services or in service under the Corporation or Government Companies. The Penal Code no doubt creates offences like those mentioned in ss. 161 and 165 of the Code but they were not found sufficient to cope with the present situation and the expending needs of the nation. In these circumstances,

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it was considered necessary to evolve a quick, expeditious

and effective machinery to destroy the evil of corruption existing in any form. If, therefore, the Penal Code with the same object enlarged the definition of s. 21 by adding the twelfth clause by virtue, of the Criminal law (Amendment) Act, 1958 and the Anti-corruption Laws (Amendment) Act, 1964, there is no reason why the extended meaning to the provision of s. 2 of the Act ns borrowed from s. 21 of the Penal Code be not given lo that section. Otherwise the Act would become wholly unworkable. [12D-F]

Secretary of State for India in Council v. Hindustan Co-operative Insurance Society Ltd. L.R. 58 I.A. 259, 266-267. S. Gangoli v. The State of Uttar Pradesh, [1960] 1 S. C. R. 290 and M. Narayanan Nambiar v. State of Kerala, [1963 Supp. 2 S.C.R. 724. referred to.

(iii) Even if s. 2 of the Act had not applied the provisions of the Penal Code and had not defined public servant, then the provisions of the Penal Code would have come into operation by implied reference because the Act was a supplemental Act to the Penal Code. It was only by way of abundant caution that s. 2 of the Act incorporated the definition of "public servant" as mentioned in s. 21 of the Penal Code and in that sense alone the Act can be treated as being pari materia with the Penal Code. [15A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 284 of 1974.

From the judgment and order dated the 12th April, 1973 of the Madhya Pradesh High Court in Criminal Appeal No. 43 of 1971.

F. S. Nariman, Addl. Solicitor General of India, P. P. Rao and R. N. Sachthey, for the appellant.

The respondent appeared in person.

The Judgment of the Court was delivered by FAZAL ALI, J. This is an appeal by State of M.P. by certificate granted by the High Court of Madhya Pradesh under Art. 134(1)(c) of the Constitution against its judgment and order dated April 12, 1973 by which the respondent who was convicted by the Special Judge, Indore, under s. 220 I.P.C. and s.5(2) read with s. 5(1)(d) of the Prevention of Corruption Act, 1947 and sentenced to one year rigorous imprisonment on each count, was acquitted by the High Court. Briefly put, the prosecution case against the respondent was that he was an employee in the Heavy Electricals (India) Ltd, Bhopal which is a Government company and was working at the relevant time as Personal Assistant to Shri C. Rae, Manager, Purchasing & Main Stores of the Company. Mr. Rae was allotted a new Fiat Car at Bombay on priority basis and the respondent and Mr. Rae had arrived at Bombay to take delivery of the car on March 14, 1965 and they stayed there till March 13. 1965. Mr. Rae, however, left on the morning of March 13, 1965 directing the respondent to obtain delivery of the Fiat Car on March 14, 1965 and then proceed to

Indore. Ultimately the car was brought to Bhopal on March 16, 1965 at about 2-30 P.M. On March 23, 1965 the respondent submitted his T.A. bill Ext. P-21 showing his departure from Bombay on March 16, 1965 by car at 2-00 P.M.

and arrival at Bhopal on March 17, 1965 at 6-30 P.M. and claimed daily allowance at the rate of Rs. 12/- per day for halt at Bombay. The respondent accordingly received the full amount of the T.A. Bill on April 3, 1965. The allegation against the respondent was that he had prepared a false T.A. Bill and had cheated the Government Company and was guilty of serious criminal misconduct as envisaged by the Prevention of Corruption Act. The learned Special Judge, Indore, accepted the prosecution case and convicted the respondent as indicated above. The respondent then filed an appeal before the High Court of Madhya Pradesh which allowed appeal, mainly on the ground that as the respondent was not a public servant as contemplated by the provisions of the Prevention of Corruption Act, his trial under the said Act was without jurisdiction. The High Court, however, left it open to the Government to prosecute the respondent under the relevant law, if necessary. It is against this order of the High Court that the State of M.P. has filed this appeal before us after obtaining certificate of fitness from the High Court.

The short point taken by the respondent before the High Court was that as the word "public servant" has not been expressively defined in the Prevention of Corruption Act, 1947, it has borrowed the definition from s. 21 of the Indian Penal Code, such a definition amounts to legislation by incorporation, and therefore any subsequent amendment, addition or alteration in the Indian Penal Code would not at all affect the incorporated provision in the Prevention of Corruption Act. The High Court seems to have readily accepted this contention and has accordingly held that as the various amendments to s. 21 of the Indian Penal Code cannot apply to the provisions of the Prevention of Corruption Act, and therefore the respondent being only an employee of the Government Company does not fall within the ambit of public servant as defined in s. 21 of the Indian Penal Code prior to the amendment. In order to appreciate this point, it may be necessary to set out the scheme of the Prevention of Corruption Act-hereinafter referred to as 'the Act'-with particular reference to s. 21 of the Indian Penal Code-hereinafter referred to as 'the Penal Code'-which has been incorporated in the Act. To begin with, the preamble to the Act clearly shows that the Act has been passed for more effective prevention of bribery and corruption, bribery being a form of corruption. Section 2 of the Act runs thus:

"For the purpose of this Act, "Public servant" means a public servant as defined in section 21 of the Indian Penal Code."

It would be seen that s. 2 of the Act completely incorporates the provision of s. 21 of the Penal Code in order to define a "public servant". The Legislature in its wisdom did not think it necessary to give a separate definition of "public servant" in the Act, but in order to achieve brevity in legislation incorporated the provision of s. 21 of the Penal Code into it. before the Criminal Law (Amendment) Act, 1958 (Act No. 11 of 1958) was passed s. 21 of the Penal Code consisted only of eleven clauses and an employee under the Corporation or a Government Company did not fall within the purview of any of the clauses of s. 21 of the Penal Code. Thus when the Legislature incorporated the provisions of s. 21 of the Penal Code in the Act in the year 1947, cl. 12 was not there at all on the statute book of

the Penal Code. The High Court took the view that as the Act had incorporated the definition of the Penal Code prior to its amendment, therefore, it became an integral and independent part of the Act and would remain unaffected by any repeal or change in the previous Act, namely the Penal Code. It appears, however, that by virtue of the Criminal Law (Amendment) Act, 1958, twelfth clause was inserted in s. 21 of the Penal Code, which runs as follows:

"Twelfth.-Every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government company as define in section 617 of the Companies Act, 1956."

This Act also amended certain provisions of the Prevention of Corruption Act, 1947 in enlarging the concept of criminal misconduct but it did not at all amend any portion of s. 2 of the Act, perhaps the reason being that in view of the enlargement of the definition of "public servant" in s. 21 of the Penal Code express amendment of s. 2 of the Act was not necessary.

By virtue of the Anti-Corruption Laws (Amendment) Act, 1964 (Act No. XL of 1964), clause 12 of s 21 of the Penal Code was substituted as follows:

"Twelfth.-Every person-

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956,"

It would thus appear that by virtue of these two amendments the Parliament sought to enlarge the definition of "public servant" so as to include even an employee of a Government company or a corporation with the avowed object of stamping out corruption at various levels prevailing in the country.

The question that arises for consideration is whether the sub sequent amendments to s. 21 of the Penal Code after its incorporation in the Act would have to be read into the Act or not. It is true that if the doctrine of legislation by incorporation is strictly applied in this case, then the definition of s. 21 of the Penal Code prior to its amendment by Act 11 of 1958 and Act XL of 1964 would alone stand and, if this is so, the respondent would not be a public servant within the meaning of s. 21 of the Penal Code. It is well settled that where the subsequent Act incorporates a provision of the previous Act, the position is that the borrowed provision is bodily lifted from the previous Act and placed in the subsequent Act and becomes an integral and independent part of it so as to remain unaffected by any repeal, change or amendment in the previous Act. In *Clarke v. Bradlaugh*,⁽¹⁾ Brett, L.J., observed as follows:

"..... but there is a rule of construction that, where a statute is incorporated by reference into a second statute the repeal of the first statute by a third does not affect the second."

These observations were noticed and approved by this Court in *Ram Sarup v. Munshi and others*(1), where this Court made the following observations:

"Where the provision of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated. The effect of incorporation is stated by Brett, L.J., in *Clarke v. Bradiaugh*:

"Where a statute is incorporated, by reference into a Second statute the repeal of the first statute by a third does not affect the second."

In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it." F The doctrine of incorporation by reference to earlier legislation has been very aptly described by Lord Esher, M. R., in *In re Wood's Estate, Ex parte Her Majesty's Commissioners of Works and Building*(3) where he observed as follows:

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all For all practical purposes, therefore, those sections of the Act of 1840 are to be dealt with as if they were actually in the Act of 1855."

Craies on Statute Law, (7th Edition), while referring to the observations of Brett, L.J., observed at p. 361 as follows "There is a rule of construction that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second, as the incorporated provisions have become part of the second statute." The Privy Council in *Secretary of State for India in Council v. Hindustan Co-operative Insurance Society Ltd.* (1), while amplifying this doctrine, observed as follows:

"Their Lordship regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt.. The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country."

Thus, the position is that after the provision of the previous Act is incorporated in the subsequent Act, the off- spring, namely the incorporated provisions, survives even if the previous Act is repealed, amended, declared a nullity or erased from the statute book. The High Court appears to have relied on all these decisions in order to come to its conclusion that as the Act has incorporated the provisions of s. 21 of the Penal Code in s. 2 thereof, any amendment in the previous Act, namely the Penal Code, will not affect the subsequent Act, namely the Prevention of Corruption Act.

It was argued before the High Court as also before us that the Act and the Penal Code are statutes in *pari materia* and form part of one system and they should, therefore, be interpreted as enforcing each other. Thus any change in the definition of s. 21 of the Penal Code would have to be implicitly read into s.2 of the Act. The Additional Solicitor General Mr. Nariman appearing for the State, however, conceded later on, and in our opinion rightly. that it may not be possible to hold that the Act and the Penal Code were statutes in *pari materia*. It would appear that the Act is a completely self contained statute with its own provisions and has created a specific offence of criminal misconduct which is quite different from the offence of bribery as defined in the Penal Code.

Both these statutes have different objects and create offences with separate ingredients. No authority has been cited before us in support of the proposition that the Act, namely, the Prevention of Corruption Act, and the Penal Code are statutes in *pari materia* so as to form one system.

In the State of Madras v. Vaidyanath Aiyar, (1) this Court while construing the meaning of the phrase 'it shall be presumed' appearing in s. 4 of the Act utilised the construction placed on the phrase 'shall presume' in the Evidence Act by holding that the Evidence Act was a statute in *pari materia* with the Prevention of Corruption Act. There can be no doubt that the Evidence Act and the Prevention of Corruption Act form part of one system, because the rules of the Evidence Act, with minor exceptions, apply to trials of offences created under the Act. This principle, however, cannot apply to the present case, where, as we have already stated the areas of the two statutes, namely the Act and the Penal Code are entirely different. Secondly, while the Indian Penal Code is essentially a penal statute of a much wider scope than the Act, the Act no doubt contains a penal flavour but it is in effect a piece of social legislation directed towards eradication of the evil of corruption amongst the services alone In other words, public servants alone fall within the mischief of the Act i.e.. the Prevention of Corruption Act, and no one else.

Mr. Nariman then argued that having regard to the preamble and the object of the Act and the Penal Code there can be no doubt that the Act was undoubtedly a statute supplemental to the Penal Code and that being the position any amendment in the definition of s. 21 of the Penal Code would have to be read into s. 2 of the Act, because once the definition of s.21 of the Penal Code was incorporated in the Act it had to be imported into the other Act and considered *pari passu* the Penal Code. In our opinion, this argument is well founded and must prevail. We have already indicated that the object of the Act was to eradicate corruption from various levels either in Government services or in services under the Corporations or Government companies. The Penal Code no doubt creates offences like those mentioned in ss. 161 and 165 of the Code but they were not found sufficient to cope with the present situation and the expanding needs of the nation. In these circumstances, it was considered necessary to evolve a quick, expeditious and effective machinery to destroy the evil

of corruption existing in any form. If, therefore, the Penal Code with the same object enlarged the definition of s.21 by adding the twelfth clause by virtue of the Criminal Law (Amendment) Act, 1958 and the Anti-corruption Laws (Amendment) Act, 1964, there is no reason why the extended meaning to the provision of s.2 of the Act as borrowed from s. 21 of the Penal Code be not given to that section.

This Court in *S. Gangoli v. The State of Uttar Pradesh*(2) while interpreting s. 2 of the Prevention of Corruption Act, that the accused were public servants within the meaning of the Act, being employees of the East Indian Railway, which was managed and owned by the Government of India, observed as follows:

"The East Indian Railway which has employed the appellants was at the material time owned by the Government of India and managed and run by it, and so if the status of the appellants had to be judged at the material date solely by reference to s.21 of the Code there would be no difficulty in holding that they are public servants as defined by the said section."

Even while discussing the exact ambit and scope of the Prevention of Corruption Act, this Court observed in *M. Narayanan Nambiar v. State of Kerala*(1) as follows:

"The preamble indicates that the Act was passed as it was expedient to make more effective provision for the prevention of bribery and corruption. The long title as well as the preamble indicate that the Act was passed to put down the said social evil i.e. bribery and corruption by public servant..... It also aims to protect honest public servants from harassment by prescribing that the investigation against them could be made only by police officials of particular status and by making the sanction of the Government or other appropriate officer a pre-condition for their prosecution. As it is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object, i.e. to prevent corruption among public servants and to prevent harassment of the honest among them."

These observations regarding the object of the Act obviously were based on the footing that the Act must be read as supplemental to the Penal Code, and therefore the definition borrowed from the Penal Code must be read into s. 2 of the Act not only at the time when it was borrowed but even at the material date when the offence is committed. This being the position it is manifest that by virtue of the amendments referred to above in the Penal Code which inserted twelfth clause to s.21 of the Penal Code the respondent clearly comes within the meaning of "public servant" and the High Court was in error in taking a view to the contrary. Further the Prevention of Corruption Act being a social legislation its provisions must be liberally construed so as to advance the object of the Act. This can only be done if we give extended meaning 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 above.

There is yet another aspect of the matter which is spelt out from the decision of the Privy Council in the Hindustan Co-operative Insurance Society's case (supra) which has been relied upon by the High Court itself. While reiterating the principle that after certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act can be made, their Lordships of the Privy Council made it clear that this principle would not apply where the subsequent Act is rendered unworkable or is not able to function effectually. In this connection their Lordships observed. as follows:

"It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition "

On a consideration of these authorities, therefore, it seems that the following proposition emerges:

Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are to tally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:

- (a) where the subsequent Act and the previous Act are supplemental to each other;
- (b) where the two Acts are in pari materia;
- (c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and
- (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act.

The Additional Solicitor General vehemently contended that if the enlarged definition by the insertion of clause 12 in s. 21 of the Penal Code is not imported into s. 21 of the Act, then the Act would become wholly unworkable. For instance, if two persons are serving under a Government company and have committed an offence of accepting illegal gratification, and if one is prosecuted under s. 161 of the Penal Code and the other under the Act, it is obvious that the prosecution against the employee under the Penal Code would succeed on proof of facts, whereas the employee of the same company who is prosecuted under the Act will fail because such an employee will not be a public servant, according to the extended meaning given by the amendments to s. 21 of the Penal Code. This will, therefore, defeat and frustrate not only the object of the Act but will render it absolutely unworkable. In view of these circumstances, therefore, we are inclined to hold that in the facts and circumstances of the present case and having regard to the nature and scope of the Prevention of Corruption Act, the extended definition of s.21 of the Penal Code would have to be imported into s. 2 of the Act. That being the position there can be no doubt that the respondent was

a public servant within the meaning of s. 2 of the Act and his conviction by the learned Special Judge, Indore, did not suffer from any legal infirmity.

There is yet another aspect of the matter. It seems to us that even if s. 2 of the Act had not applied the provisions of the Penal Code and had not defined public servant, then the provisions of the Penal Code would have come into operation by implied reference because the Act was a supplemental Act to the Penal Code. It was only by way of abundant caution that s. 2 of the Act incorporated the definition of public servant" as mentioned in s. 21 of the Penal Code and in that sense alone the Act can be treated as being *pari materia* with the Penal Code. For these reasons therefore we are clearly of the opinion that the judgment of the High Court holding that the respondent was not a public servant is legally erroneous and cannot be allowed to stand.

The other point is regarding the question of sentence. The High Court has itself pointed out that the respondent had been forced under duress exercised by his superior officer in drawing the inflated travelling allowance. The High Court has also expressed the view that having regard to the fact that as the accused had to face a trial for a number of years, the Government will consider the desirability of not prosecuting him again. In view of these circumstances, therefore, we feel the respondent has committed only a technical offence and a token sentence is called for. We, therefore, allow the appeal, set aside the judgment of the High Court dated April 12, 1973, acquitting the respondent. We convict the respondent under s. 420 I.P.C. and s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act but reduce his sentence to the imprisonment already served.

V.M.K.

Appeal allowed.