

## Brijpal Singh vs State Of U.P. And Another on 8 April, 2024

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:61469

AFR

Reserved On : 20.03.2024

Delivered On: 08.04.2024

Court No. - 92

Case :- APPLICATION U/S 482 No. - 45468 of 2023

Applicant :- Brijpal Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Chandra Bhusan Kushwaha, Jagdev Singh

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Jagdev Singh, Advocate assisted by Sri Sheetla Prasad Singh, learned counsel for the applicant, Sri K.B. Srivastava, learned counsel for opposite party no.2 and Sri Rajeev Kumar Singh, learned A.G.A. for the State.

2. By way of the present application, the applicant has challenged the criminal proceeding of Case No.13001 of 2018 (State Vs. Brijpal Singh & Others), pending in the court of Additional Chief Judicial Magistrate, Court No.18, Etah arising out of Case crime No.125 of 2008, u/s 409, 420, 467, 468, 471 IPC, Police Station-Naya Gaon, District-Etah, and also the charge sheet No. 3, dated 24.05.2011 as well as the cognizance order dated 21.07.2011.

3. Facts giving rise to the present case are that the applicant was working as Secretary Sadhan Sehkhari Samiti Ltd. Navar Block, Aliganj, Etah. On receiving specific complaints against the

applicant, District Assistant Registrar Co-operative Society, Etah, vide order dated 30.11.2007, directed to conduct an enquiry against the applicant. In pursuance of the order dated 30.11.2007 of District Assistant Registrar Cooperative Society, Etah, the enquiry was conducted by a committee consisting of the Additional District Cooperative Officer and Deputy General Manager, District Cooperative Bank Ltd., Etah and on receiving the enquiry report, District Assistant Registrar Cooperative Society by his order dated 02.07.2008 directed to lodge an F.I.R. against the applicant based on the finding of above enquiry report. In pursuance of the order dated 02.07.2008, Deputy General Manager District Cooperative Bank, Etah lodged an F.I.R. dated 13.07.2008 in Case Crime No.125 of 2008 u/s 467, 468, 471, 409, 419 and 420 IPC against the applicant for the allegation of misappropriation of stock of fertilizers, breach of trust as well as forgery in the document of society and causing loss of Rs.5997497.20 to society. Police, after investigation, had submitted chargesheet against the applicant and two other co-accused namely, Malti Devi and Mahendra Singh Chauhan on 24.05.2011, u/s 409, 420, 467, 468, 471 IPC and ACJM-I, Agra had taken cognizance over the chargesheet on 21.07.2011 and registered, the case no.481 of 2011 and subsequently case was transferred in the Court of ACJM-II, Agra and applicant also obtained bail on 18.04.2012, thereafter, case was also transferred on 16.06.2018 from District-Agra to District-Etah in pursuance of circular of Lucknow Bench of this Court. Since the date of transfer of this case from District-Agra to District-Etah, this case has been pending in the Court of Additional Chief Judicial Magistrate, Court No.18, Etah.

4. The initial contention of learned counsel for the applicant was that ACJM-18, Agra has no jurisdiction to try the offences regarding the scam in cooperative society because, as per the Government Notification dated 22.09.2006, ACJM-II was nominated as a Special Court to try such cases. On considering this submission, this Court has called the report from District Judge Etah by order dated 06.02.2024 regarding this issue. In pursuance of the order dated 06.02.2024, District Judge Etah has submitted his report dated 19.02.2024, mentioning therein that A.C.J.M., Court No.18, Etah is the second senior most A.C.J.M. in Etah. Therefore, as per the Government Notification dated 22.09.2006, he is trying all cases regarding scams in cooperative societies. Hence, this Court, after perusal of that report as well as hearing learned counsel for the parties, decided this issue on 18.03.2024, holding that A.C.J.M., Court No-18 being ACJM-II, Etah has been correctly trying the case of impugned proceeding. Thereafter, learned counsel for the applicant proceeded to argue on other points.

5. Learned counsel for the applicant has submitted that the U.P. Co-operative Societies Act, 1965 (hereinafter referred to as 'the Act, 1965') is itself a complete code having specific provisions like Sections-103, 104 and 105 of the Act, 1965, providing penalty for the offences committed by Officer of Cooperative Society and being a special act u/s 41 of I.P.C. will prevail over the general act like I.P.C. and for any offence committed under the Act, 1965, the officer or employee of society can be proceeded with only under the Act, 1965 and otherwise same will be barred by Section-103 of the Act, 1965 as well as Section-26 of General Clauses Act being against the principle of double jeopardy. It is further submitted by learned counsel for the applicant that I.P.C. was enacted in the year 1860, and the Constitution of India was enacted and enforced in the year 1950, while the Act 1965 was enacted and enforced in the year 1965; therefore, at the time of enforcement of the Act, 1965, I.P.C. and Constitution of India were in existence and all offences relating to the Act, 1965

were taken care of in the Act, 1965 itself. Section 68 of the Act, 1965 provides a procedure for recovery of any amount as surcharge from any employee of the co-operative society who causes loss to the co-operative society and other offences; their punishments are also provided in Section-103 of the Act, 1965 with further provision of punishment in Section-104 of the Act, 1965 for contravention of Section 8 and Section 106 of the Act, 1965, and provision of compounding is also incorporated u/s 104-A of the Act, 1965 as well as cognizance of offence u/s 105 of the Act, 1965.

6. Learned counsel for the applicant also submitted that any dispute between the society and its employee or officer could be resolved through arbitration u/s 70 of the Act, 1965. The applicant being Secretary of the Society, is an Officer of the Co-operative Society as per Section-2(o) of the Act, 1965. Learned counsel further submits that as per Entry 32 and 65 of State List (List II) of VII Schedule of the Constitution of India, it is the State Government that has the authority to enact any law regarding the cooperative society and Entry 43 of Union List specifically prohibits the Union of India to enact any law regarding co-operative society. It is also submitted by learned counsel for the applicant that Entry 1st of the Concurrent List also provides the authority to make criminal law, including I.P.C., except the law relating to the subject of List-II (State List). Therefore, it is also clear that though the State and Union have the authority to enact a law in the Concurrent List, Entry 1st of the Concurrent List of the Constitution of India explicitly prohibits the Union from enacting criminal law regarding cooperative society. The reason is that the State Government has the authority to enact laws regarding cooperative society as per the State List and to make laws concerning violation of any provision of cooperative society.

7. In support of his contention, learned counsel for the applicant has relied upon the Apex Court's judgement in the case of *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, reported in (2002) 4 SCC 297. Paragraph No.10 of the said judgement is quoted hereinunder:

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation, one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the men or sententia legis of the legislature. Where the words are clear and, there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating (sic altering) the statutory provisions. Wherever the language is clear, the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in *Crawford v. Spooner* [(1846) 6 Moore PC 1 : 4 MIA 179] "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or

paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled, and reference to a few decisions of this Court would suffice. (See : Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests [1990 Supp SCC 785 : A.I.R. 1990 SC 1747] , Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323 : 1992 S.C.C. (L&S) 248 : (1992) 19 ATC 219 : A.I.R. 1992 SC 96] , Institute of Chartered Accountants of India v. Price Waterhouse [(1997) 6 SCC 312] and Harbhajan Singh v. Press Council of India [(2002) 3 SCC 722 : J.T. (2002) 3 SC 21] .)"

8. Applicant also relied upon the judgement of Karnataka State Financial Corporation Vs. N. Narasimahaiah & Others reported in (2008) 5 SCC 176, paragraph Nos. 27, 28 and 29 of the said judgement is quoted hereinunder:

"27. Our attention has been drawn to the following passage of Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., p. 365; 10th Edn., p. 391:

"... The rule of implied prohibition is, however, subservient to the basic principle that the court must, as far as possible, adopt a construction which effectuates the legislative intent and purpose."

We fail to see how the aforementioned statement of law comes to the aid of the contention of the learned counsel. Moreover, Section 29 of the Act does not deal with a case where express and implied conditions have been laid down in the matter of exercise of power conferred upon a statutory authority under a statute. Section 29 does not envisage any prohibition at all, either express or implied.

28. Let us consider the legal implication of the aforementioned statement of law in the light of a decision of this Court. In Jamal Uddin Ahmad v. Abu Saleh Najmuddin [(2003) 4 SCC 257] this Court stated the law, thus: (S.C.C. pp. 267-68, para 11) "11. Dealing with 'statutes conferring power; implied conditions, judicial review', Justice G.P. Singh states in Principles of Statutory Interpretation (8th Edn., 2001, at pp. 333-34) that a power conferred by a statute often contains express conditions for its exercise and in the absence of or in addition to the express conditions there are also implied conditions for the exercise of the power. An affirmative statute introductive of a new law directing a thing to be done in a certain way mandates, even if there be no negative words, that the thing shall not be done in any other way. This rule of implied prohibition is subservient to the basic principle that the Court must, as far as possible, attach a construction which effectuates the legislative intent and purpose. Further, the rule of implied prohibition does not negate the principle that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. To illustrate, an Act of Parliament conferring jurisdiction over an offence implies a power in that jurisdiction to make out a warrant and secure production of the person charged with the offence; power conferred on the Magistrate to grant maintenance under Section 125 of the Code of Criminal Procedure, 1973 to prevent vagrancy implies a power to allow interim maintenance; power conferred on a local authority to issue licences for holding hats or fairs implies incidental power to fix days therefor; power conferred to compel cane

growers to supply cane to sugar factories implies an incidental power to ensure payment of price."

A statutory authority, thus, may have an implied power to effectuate exercise of substantive power, but the same never means that if a remedy is provided to take action against one in a particular manner, it may not only be exercised against him but also against the other in the same manner.

29. It is trite law that the entire statute must be first read as a whole then section by Section, clause by clause, phrase by phrase and word by word. (See R.B.I. v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] , Deewan Singh v. Rajendra Pd. Ardevi [(2007) 10 SCC 528 : (2007) 1 Scale 32] and Sarabjit Rick Singh v. Union of India [(2008) 2 SCC 417 : (2008) 1 S.C.C. (Cri) 449 : (2007) 14 Scale 263] .)"

9. In the above cases, the Apex Court discussed the law regarding the interpretation of statutes.

10. Learned counsel for the applicant submitted that applicant is not a public servant, hence cannot be prosecuted u/s 409 I.P.C. He has also relied upon the Apex Court's judgement in the State of Maharashtra Vs case. Laljit Rajshi Shah & Others reported in 2000 (2) SCC 699 in which the Hon'ble Court observed that despite a deeming provision of Section 161 of Maharashtra Cooperative Society Act, 1960 for treating its employee as a public servant cannot be equated with the definition of public servant mentioned in Section 21 of I.P.C. for offences under I.P.C.

11. Per contra, learned counsel for the opposite party no.2 has submitted that Section 103 of the Act, 1965 does not provide the offences of fraud, embezzlement, and breach of trust, which are offences under the I.P.C. Therefore, the Act 1965 does not provide for prosecuting an employee of a cooperative society who committed an illegal act that fulfils the ingredients of the offence under the I.P.C.

12. Learned counsel for the opposite party no.2 has also relied upon the Apex Court's judgement in the case of Rama Rao & Another vs. Narayan & Another, reported in A.I.R. 1969 SC 724, in which the Hon'ble Apex Court observed that the prosecution of the Secretary u/s 60 & 61 of Bombay Co-operative Society Act, for some of the items, did not bar a second prosecution under the I.P.C. as the offence under the two acts was different in nature.

13. Learned A.G.A., though adopted the argument of learned counsel for the opposite party no.2, heavily relied upon the judgement of the Apex Court in the case of Dhanraj N. Asawani Vs. Amarjeetsingh Mohindersingh Basi and Others reported in 2022 S.C.C. OnLine SC 2066, in which the Apex Court observed Section 81(5B) of the Maharashtra Co-operative Societies Act, 1960, providing registration of an F.I.R. on the part of auditor or Registrar for the offence relating to co-operative society does not bar the prosecution under the I.P.C.

14. After hearing the parties and on perusal of the record, a question that requires to be determined is whether Sections 68, 103, 105 of the Act, 1965, as well as Section 26 of the General Clauses Act, bar the prosecution of an employee of the cooperative society for the offence under the I.P.C. Before proceeding further the relevant provisions of the Act, 1965 which are involved in a present case like Sections 2(o), 68, 70, 95, 103, 104, 105, 119 of the Act, 1965 are being quoted as under:-

"Section 2(o). "Officer of a co-operative society" means the president, vice-president, chairman, vice-chairman, Secretary, member of committee of management, treasurer, liquidator, administrator or any other person employed by a co-operative society, whether with or without remuneration, to carry on the business of the society or to supervise its affairs;

Section 68. Surcharge (1) If in the course of an audit, inquiry, inspection or the winding up of a cooperative society it is found that any person, who is or was entrusted with the organization or management of such society or who is or has at any time been an officer or an employee of the society, has made or caused to be made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorized by him by an order in writing in this behalf to inquire into the conduct of such person ;

Provided that no such inquiry shall be commenced after the expiry of twelve years from the date of any act or omission referred to in this sub-section.

(2) Where an inquiry is made under sub-section (1), the Registrar may, after affording the person concerned a reasonable opportunity of being heard, make an order of surcharge requiring him to restore the property or repay the money or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such an extent as the Registrar may consider just and equitable.

(3) Where- an order of surcharge has been passed against any person under sub-section (2) for having caused any deficiency in the assets of the society by breach of trust or willful negligence, or for having misappropriated or fraudulently retained any money or other property belonging to such society, such person shall, subject to the result of appeal, if any, filed against such order, be disqualified from continuing in or being elected or appointed to an office in any co-operative society for a period of five years from the date of the order of surcharge.

Section 70. Disputes which may be referred to arbitration (1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or any person claiming through a member, past member or deceased member, and the society, its committee of management or any officer, agent or employee or the society, including any past officer, agent or employee; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society; or

(d) between a co-operative society and any other co-operative society or societies;

such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute ;

Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the Registrar until after the declaration of the result of such election.

(2) For the purposes of subsection (1), the following shall be deemed to be included in disputes relating to the constitution, management or the business of a co-operative society, namely-

(a) claims for amounts due when a demand for payment is made and is either refused or not complied with, whether such claims are admitted or not by the opposite party;

(b) a claim by a society against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor or whether such debt or demand is admitted or not;

(c) a claim by a society for any loss caused to it by a member, officer, agent, or employee including past or deceased member, officer, agent or employee, whether individually or collectively and whether such loss be admitted or not; and

(d) all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers.

(3) If any question arises whether a dispute referred to the Registrar under this Section is a dispute relating to the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

Section 95. Recovery of sums due to Government (1) All sums due from a co-operative society or from an officer or member or past member of a co-operative society as such to the State

Government or the Central Government, including any costs awarded to any such Government under any provisions of this Act, may, on certificate issued by the Registrar in this behalf, be recovered in the same manner as arrears of land revenue.

(2) Sums due from a society to the State Government or the Central Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society; secondly, in the case of a society the liability of the members of which is limited, from the members, past members or the estates of deceased members, subject to the limit of their liability; and thirdly, in the case of other societies from the members, past members, or the estate of deceased member;

Provided that the liability of past members and the estates of deceased members shall in all cases be subject to the provisions of section 25.

Section 103. Offence and penalties under the Act (1) It shall be an offence under this Act if-

(i) a committee of management of a co-operative society or a member or an officer thereof fails without reasonable cause to submit any return, report or information required under the provisions of this Act by the Registrar or by a person of a rank not below that specified the State Government duly authorized by the Registrar in this behalf, or wilfully makes a false return or furnishes false information or fails to maintain proper accounts ; or

(ii) an officer, employee or a member of a co-operative society fraudulently destroys, mutilates, alters, falsifies or abets the destruction, mutilation alteration, or falsification of any books, papers, or securities, or makes or abets the making of any false entry in any register, book of account or document belonging to the society or

(iii) the committee of management of a co-operative society, or an officer in possession of the books, records or property of the society refuses or fails without reasonable cause to hand over the custody of such books, records and property belonging the society to a person lawfully entitled to receive the same under this Act, the rules or the bye-laws; or

(iv) the committee of management of a co-operative society or an officer fails, without reasonable cause, to establish a Contributory Provident Fund for its employees as required by section 63; or

(v) any officer of a co-operative society fails to maintain such accounts and registers as may be prescribed; or

(vi) an officer or a member of co-operative society who is in possession of information, books and records, fails without reasonable cause to furnish such information or produce books and papers or give assistance to the person appointed by the State Government under subsection (1) of section 64, or any person authorized by him to conduct audit, or to the Registrar or a person authorized or appointed by the Registrar under sections 64, 65, 66, 73 or 123; or



(vii) an employer, without sufficient cause, fails to pay to a cooperative society the amount deducted by him under sub-section (2) of section 40 within a period of 14 days from the date on which such deduction is made; or

(viii) an officer or member of a co-operative society or any person does any act or omission declared by the rules to be an offence.

(2) (a) Whoever commits an offence under clauses (i), (iv), (v), (vii) or (viii) of sub-section (1) shall on conviction be liable to be punished with fine which may extend to two thousand rupees.

provided that, any person who does an act in relation to elections which has been made an offence under the rules, shall be punishable with imprisonment for such term not exceeding two years, or with fine not exceeding rupees five thousand as may be provided in the rules, or with both.

(b) Whoever commits an offence under clause (ii), clause (iii), or clause (vi) of sub-section (1) shall on conviction be liable to be punished with imprisonment of either description which may extend to two years and shall also be liable to fine which may extend to three thousand rupees;

(c) Every offence referred to in clause (b) shall be cognizable and bailable.

Section 104. Penalty for contravention of section 8 or section 106 Any person contravening the provisions of sub-section (2) of section 8 or of section 106 shall be punishable with fine which may extend to two thousand five hundred rupees and in the case of continuing offence with further fine of fifty rupees for each day on which the offence is continued after conviction therefor.

Section 105. Cognizance of offence (1) No court, inferior to that of a stipendiary magistrate of the first class shall try any offence under this Act.

(2) No prosecution shall be instituted under this Act without the previous sanction of the Registrar and such sanction shall not be given without affording to the person sought to be prosecuted an opportunity to represent his case.

Section 119. Indemnity.-

No suit, prosecution, or other legal proceeding shall lie against the trustee appointed under the U.P. Co-operative Land Development Banks Act, 1964, the Registrar or any person subordinate to him or acting on his authority, a liquidator, an arbitrator, the Board of Arbitrators, the Tribunal or any member thereof in respect of anything in good faith done or purporting to have been done under this Act."

15. From a perusal of the above sections of the Act, 1965, it is clear that machinery for recovery of any loss caused to society by its employee has been given in Sections 68, 95 of the Act, 1965 without making the same as a panel. Certain offences are also mentioned in Sections 103 and 104 of the Act, 1965. The offence mentioned in Section 103 mainly relates to non submission of returns or the

reports required by this Act to the concerned officers and also destroying, mutilation, alteration or falsification of any book, paper or security belonging to society or refusal of any officer of society without reasonable cause to hand over books, records or property belonging to the society or failure of an officer to establish contributory provident fund regarding employees of the society, negligence in maintaining the accounts and register of the cooperative society non furnishing information, books and records to the concerned officers as per the requirement of the Act including during conduct of audit of the record of the society, non returning the deduction made by an employee of the society u/s 40(2) of the Act, 1965 as well as any act on the part of the officer of the society which is declared by the rules as offence but the offence regarding breach of trust was not mentioned in Section 103 or in any other provision of Act, 1965.

16. However, Section 103(ii) provides that fraudulent alteration or falsification of any document of the cooperative society will be punishable by imprisonment, which may extend to two years with a fine. Therefore, the offence of forgery regarding any document, including security, is mentioned in Section 103(ii) of the Act, 1965; hence, there is a specific provision of punishment for forgery regarding document and security, which is the same as the offence mentioned in Chapter 18 of I.P.C. Though all forms of forgery under Section 103(ii) of the Act, 1965 is punishable for a term up to two years. Still, a similar offence is punishable under Chapter 18 of I.P.C. with more than two years and even up to life imprisonment.

17. Section 105 of the Act, 1965 provides no prosecution instituted under this Act without the previous sanction of the Registrar. As the F.I.R. was itself registered based on enquiry conducted in pursuance of the direction of the Registrar himself, therefore, at this stage, it cannot be said that the Registrar granted no sanction for the prosecution of the applicant. However, whether any opportunity for a hearing was given to the applicant before granting sanction for the prosecution of the applicant cannot be decided in the absence of record availability. That issue can be decided during trial.

18. Now a question arises whether Section 26 of the General Clauses Act, Section 300 Cr.P.C., and Section 71 of I.P.C. permit the prosecution of the applicant under the provision of I.P.C. for the offences punishable under the Act, 1965. For that purpose, Section 26 of the General Clauses Act, as well as 300(1) Cr.P.C. and also Section 71 of I.P.C., are required to be considered; hence, they are quoted as under:-

"Section 26 of General Clauses Act. Provision as to offences punishable under two or more enactments Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Section 300(1) of Cr.P.C.

A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal

remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

Section 71 of I.P.C. - Limit of punishment of offence made up of several offences.-

Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such of his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

19. From a perusal of the above sections, it is clear that if there is an offence under two Acts, then the person can be prosecuted and punished only in one Act. The above provisions are based on the principle of double jeopardy, i.e. a person shall not be liable to be punished twice for the same offence. Therefore, the abovementioned provision's primary emphasis is a prohibition against the punishment for the same offence. Though the offence of forgery in the record of a cooperative society is punishable under Section 103(ii) of the Act, 1965, as well as Chapter 18 of I.P.C., a person can be prosecuted and punished in either of the two enactments, not in both Acts. There is no prohibition in the Act 1965, for prosecution under I.P.C. instead of Act, 1965 even though the offence is punishable under the Act, 1965 as well as under I.P.C.

20. However, the offence of breach of trust is not punishable under the Act of 1965 but is punishable under the I.P.C. Therefore, prosecution of breach of trust against an employee or officer of a cooperative society will be conducted under the provision of the I.P.C. Even otherwise, other offences regarding forgery of records or the security of society can be prosecuted under the provision of the I.P.C. without invoking the provision of the Act of 1965.

21. Though it is correct that in view of the law laid down by the Apex Court in the case of State of Maharashtra vs. Laljit Rajshi Shah (supra) that an employee of the cooperative society is not a public servant under Section 21 of I.P.C. for offence u/s 409 I.P.C., he cannot be prosecuted under Section 409 I.P.C. as he is not a public servant. However, this question can be raised at the time of framing of charge because employees of cooperative society can be prosecuted for breach of trust.

22. The division bench of this Court in the case of Devendra Singh Parihar vs. State of U.P.; 2020 SCC Online All 1128 observed that even if an employee of the cooperative society is not a public servant for the purpose of Section 409 I.P.C., but he can be prosecuted under Section 406 I.P.C. This question can be raised at the time of framing of charges. In the above judgement, the Court observed

that there is no bar for prosecution for breach of trust under I.P.C. because Section 103 of the Act, 1965 does not provide the ingredients of breach of trust. Therefore, the offence of breach of trust does not fall under Section 103 of the Act, 1965. Thus, an employee of the cooperative society can be prosecuted for the breach of trust under I.P.C. Paragraphs No. 20, 21 and 22 of judgement in the case of Devendra Singh Parihar (supra) are being quoted as under:-

"20. Having gone through the provisions of the Act, 1965, we find that there is nothing in the Act, 1965 which may either expressly or impliedly bar prosecution of an employee or member or office bearer of a co-operative society in the State of Uttar Pradesh for an offence punishable under the Penal Code, if otherwise the ingredients of that offence are made out. Further, the offence of criminal breach of trust as defined under section 405 IPC is qualitatively different from any of the offences specified in section 103 or any of the provisions of the Act, 1965. None of the offences specified therein specifically deal with dishonest misappropriation or conversion or disposal of the property entrusted as is contemplated by section 405 IPC. The decision of the Apex Court in State of Maharashtra v. Laljit Rajshi Shah (supra) relied by the learned counsel for the petitioner is not to be read so as to infer that there could be no prosecution for any offence under the Penal Code. Rather, it has to be understood in the context of the facts of that case which were in respect of prosecution of a chairman and member of the management committee of a cooperative society in Maharashtra, who were not public servant, and therefore their prosecution, by treating them as such, under section 409 IPC and under the Prevention of Corruption Act, was found bad in law. Moreover, in that case, the Apex Court had no occasion to examine whether they could be prosecuted under section 406 IPC. Thus, in the light of the discussion made above, keeping in mind the provisions of section 26 of the G.C. Act and the decisions noticed above, we are of the firm view that a co-operative society employee/servant or member or an office-bearer, notwithstanding the provisions of the Act, 1965, can be prosecuted for an offence punishable under the Penal Code, provided the necessary ingredients of that offence are made out.

21. Reverting to the facts of the instant case, as the petitioner had been Secretary of a Primary Agricultural Credit Society who, as per Section 31 (2) of the Act, 1965, is the Chief Executive Officer of the Society and as such is responsible for the management of the business of the society and has to carry on the business of the society and, subject to the provisions of the bye-laws of the society, operate its accounts and, except where the society has a cashier or treasurer, handle and keep in his custody its cash balances, etc, it can be said that, prima facie, he holds position of trust qua the society and as such could be held liable for criminal breach of trust if the necessary ingredients thereof, as mentioned in section 405 IPC, are found. Since it is alleged in the impugned F.I.R. that the petitioner as a Secretary of the society had defalcated the fertiliser stock, prima facie, cognizable offence of criminal breach of trust is made out and therefore the impugned F.I.R. cannot be quashed.

22. As to whether the petitioner is liable to be charged for an offence punishable under section 406 or section 408, section 409 IPC would have to be determined on the strength of the material collected during the investigation and, therefore, the charge can be altered even by the investigating agency, if required. The Court dealing with the bail prayer of the petitioner, for the purposes of examining whether a case for grant of bail is made out, can also take into consideration as to, prima facie, what offence is made out from the facts of the case regardless of the charging section put by the investigating agency. Further, if, after submission of the police report, the petitioner is aggrieved by the charging section imposed, he can always raise his grievance before the appropriate Court at the stage of framing charge."

23. However, from a perusal of the judgement of Devendra Singh Parihar (supra) it is clear that the question of offence regarding the forgery of a document was not before the Court; therefore, no law was laid down regarding prosecution of forgery with respect to documents of cooperative society which is punishable under chapter 18 of I.P.C. as well as under Section 103 of the Act, 1965. This Court, in an earlier paragraph, already observed that the provision of Section 103(ii) of the Act, 1965 specifically provides punishment for the offence of forgery regarding documents and security belonging to a cooperative society. Therefore, a question arises whether an employee of society can be prosecuted for the offence of forgery under Chapter 18 of I.P.C. despite the fact that there is specific provision for the punishment of the same under Section 103(ii) of the Act, 1965.

24. In the judgement relied upon by learned counsel for the applicant, though the Court laid down the detailed guidelines for interpretation of statute, specifically, in paragraph No.10 of the judgement in Grasim Industries Ltd. (supra) as well as in paragraphs No. 27, 28, 29 of the judgement in Karnataka State Financial Corporation (supra) but from the perusal of the above judgements, it is clear that the Apex Court observed that the rule of implied prohibition is, however, subservient to the basic principle that the Court must, as far as possible, adopt a construction which effectuates the legislative intent and purpose. However, there is no provision under the Act, 1965 which prohibits the prosecution of a person for an offence under I.P.C. even if same is also offence under the Act, 1965 without invoking the penalty provision of the Act, 1965. But the Hon'ble Apex Court in the case of Ramnath vs. State of U.P.; 2024 SCC Online (SC) 177 observed that in view of Section 89 of Food Safety and Standards Act, 2006 having overriding effect over all other laws, prosecution under I.P.C. is barred because same is also punishable under the Food Safety and Standards Act, 2006. Paragraphs No. 26 and 27 of the judgement in Ramnath vs. State of U.P. (Supra) are quoted as under:

"26. The title of the Section indeed indicates that the intention is to give an overriding effect to the F.S.S.A. over all 'food-related laws'. However, in the main Section, there is no such restriction confined to 'food-related laws', and it is provided that provisions of the F.S.S.A. shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. So, the Section indicates that an overriding effect is given to the provisions of the F.S.S.A. over any other law. The settled law is that if the main Section is unambiguous, the aid of the title of the Section or its marginal note cannot be taken to interpret the same. Only if

it is ambiguous, the title of the Section or the marginal note can be looked into to understand the intention of the legislature. Therefore, the main Section clearly gives overriding effect to the provisions of the F.S.S.A. over any other law in so far as the law applies to the aspects of food in the field covered by the F.S.S.A. In this case, we are concerned only with Sections 272 and 273 of the I.P.C. When the offences under Section 272 and 273 of the I.P.C. are made out, even the offence under Section 59 of the F.S.S.A. will be attracted. In fact, the offence under Section 59 of the F.S.S.A. is more stringent.

27. The decision of this Court in the case of Swami Achyutanand Tirth does not deal with this contingency at all. In the case of the State of Maharashtra, the question of the effect of Section 97 of the F.S.S.A. did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in section 26 of the G.C. Act. We have no manner of doubt that by virtue of Section 89 of the F.S.S.A., Section 59 will override the provisions of Sections 272 and 273 of the I.P.C. Therefore, there will not be any question of simultaneous prosecution under both the statutes."

25. In the Act of 1965, no such provision can be said to be *pari materia* to Section 89 of the Food Safety and Standards Act, 2006. In the Act, 1965 there are only two provisions; one is Section 90, which is with regard to overriding effect of Chapter 11 of the the Act, 1965 and also Section 111, which also provides bar of jurisdiction regarding certain cases including the dispute and award under Section 70 of the Act, 1965 but there is no provision providing overriding effect of the offence and penalty in Chapter 14 of the Act, 1965 which includes offence of forgery over all other laws including I.P.C.

26. Prohibition under Section 26 is only with regard to punishment for the same offence under two different acts but there is no prohibition for prosecution under any one of the Acts which act is punishable in two different enactments. The Apex Court in the case of State of Maharashtra and others vs. Syyed Hassan Syyed Subhan; (2019) 18 SCC 145 observed that where an act or omission constitutes offence under two enactments, the offender may be prosecuted and punished under either of two enactments and not under both enactments but he is not liable to be punished twice for the same offence. Paragraph No.7 of the above judgment is quoted as under:-

"7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. [T.S. Baliah v. T.S. Rangachari, (1969) 3 S.C.R. 65 : A.I.R. 1969 SC 701] The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under I.P.C. and at the same time, an offence under any other law. [State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655 :

1989 S.C.C. (Cri) 27] The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:

"26. Provision as to offences punishable under two or more enactments.--Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

27. From the perusal of the above analysis, it is clear that even if the offence of forgery is punishable under Section 103(ii) of the Act, 1965 as well as under Chapter 18 of I.P.C., there is no provision prohibiting the prosecution under Chapter 18 of I.P.C. instead of Section 103 of the Act, 1965.

28. So far as the contention of learned counsel for the applicant that the Union of India has no authority to make any law regarding the Act, 1965 is concerned, for that purpose, entry 32, 64 of State list and entry-1 of concurrent List are relevant, therefore, entry-32 and 64 of State list as well as entry-1 of concurrent List mentioned in Schedule VII of the Constitution of India are being quoted as under:-

#### "State List

32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

64. Offences against laws with respect to any of the matters in this List.

#### Concurrent List

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power"

29. From the perusal of the above entry, it is clear that State has exclusive power to enact law under entry-32, regarding incorporation, regulation and winding up of co-operative society, therefore, as per entry-64 of State list, State will have exclusive power to enact law regarding offence relating to incorporation, regulation and winding up of cooperative societies but not relating to other offences against cooperative societies and same can be enacted by State as well as Union under entry-1 of concurrent List. Therefore, offence of forgery against cooperative society is punishable under Section 103(i) of the Act, 1965 as well as under chapter XVIII of I.P.C. but prosecution and punishment can be made under either of the two. Therefore, above argument of learned counsel for the applicant is misconceived Conclusion

30. Though forgery is punishable under Section 103 (ii) of the Act 1965 as also in Chapter 18 of I.P.C. but in the absence of any provision under Act, 1965 which overrides the offence and penalty of Section 103(ii) of the Act, 1965 over all other laws, prosecution for the forgery committed by an officer or employee of the cooperative society can be conducted either under the Act, 1965 or I.P.C.

31. The Act, 1965, does not provide a punishment for breach of trust; therefore, the same can be prosecuted under Section 406 I.P.C., and the bar of Section 26 of the General Clauses Act as well as Section 300(1) Cr.P.C. will not be applicable.

32. The employee and officer of the cooperative society are not public servants as per Section 21 of I.P.C. for the purpose of offences mentioned in I.P.C. Therefore, they cannot be prosecuted under Section 409 I.P.C. but definitely can be prosecuted for the breach of trust under Section 406 I.P.C. However, appropriate Section can be added or removed at the time of framing of charges.

#### Decision

33. In view of the foregoing conclusions, no case is made out for interference. Therefore, the present application is dismissed.

34. Considering the fact that the impugned proceeding has been pending since 2011, the A.C.J.M., Court No. 18, Etah is directed to conclude the proceeding of Criminal Case No. 13001 of 2018 (State Vs. Brijpal Singh & Others), arising out of Case Crime No.125 of 2008, u/s 409, 420, 467, 468, 471 IPC, Police Station-Naya Gaon, District-Etah, expeditiously preferably within one year.

Order Date :-8.4.2024 S.Chaurasia/Vandana