

(1998) 08 BOM CK 0017

In the Bombay High Court

Case No : Criminal Writ Petition No. 639 of 1990

Anand Rajaram Kane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 21
Penal Code, 1860 (IPC) — Section 120B, 21, 420, 467, 468
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (1998) CriLJ 4360 : (1998) 3 MhLj 856 : (1999) 1 RCR(Criminal) 328

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : Niteen Pradhan, for the Appellant; Assistant Public Prosecutor
Adsule, for the Respondent

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—The petitioner sought to quash the proceedings initiated against him by the C.B.I. before the learned Special Judge at Sangli in pursuance of the First Information Report produced at Exh. A in this petition. The said F.I.R. discloses that the petitioner is alleged to have committed an offence u/s 120-B read with Sections 420, 467, 468, 471, 477-A of Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. The main contention alleged by the counsel for the petitioner Mr. Pradhan in this writ petition is that, the Magistrate was wrongly rejected the petitioner's contention that, not being a public servant, he should not have been implicated under the provisions of Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947. The learned Special Judge, Sangli therefore cannot proceed with the matter. This contention of the petitioner was rejected by the learned Sessions Judge. This writ petition arises out of that order.

2. Shri Pradhan the learned Counsel for the petitioner reiterated the same contention before me. He submits that the petitioner being Branch Manager of

Bank of India, who is implicated along with the other accused cannot be treated as a public servant to attract the provision of Section 5(2) read with Section 5(1) (d) of Prevention of Corruption Act. He fortified his argument by citing a Supreme Court decision reported in Mohd. Hadi Raja Vs. State of Bihar and Another, . In that case, though the question arises that whether an employee of a public undertaking is entitled for protection u/s 197 of Cr.P.C., the Supreme Court held that only those persons who has come under the purview of the Section 21 of I.P.C. will be treated as a public servant and entitled to protection of Section 197, Cr. P.C. Following this rider laid down by the Supreme Court, Mr. Pradhan submits that the petitioner herein also cannot be treated as a public servant in order to attract the mischief of Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947. It is profitable in this context to reproduce the observations of the Supreme Court made in the above judgment in paragraphs 24, 25, 26 and 27.

24. The importance of the public undertaking should not be minimised. The Government's concern for the smooth functioning of such instrumentality or agency can be well appreciated but on the plain language of Section 197 of the Code of Criminal Procedure, the protection by way of sanction is not available to the officers of the public undertaking because being a juridical person and a distinct legal entity such instrumentality stands on a different footing than the Government departments.

25. It is also to be indicated here that in 1973, the concept of instrumentality or agency of State was quite distinct. The interest of the State in such instrumentality or agency was well known. Even then, the legislature, in its wisdom, did not think it necessary to expressly include the officers of such instrumentality or the Government company for affording protection by way of sanction u/s 197, Cr.P.C.

26. It will be appropriate to notice that whenever there was felt need to include other functionaries within the definition of "public servant", they have been declared to be "public servants" under several special and local acts. If the legislature had intended to include officers of instrumentality or agency for bringing such officers under the protective umbrella of Section 197 Cr.P.C, it would have done so expressly.

27. Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 by liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by Court.

3. In view of this above proposition laid down by the Supreme Court the contention of Mr. Pradhan has to be accepted. Unless there is an express provision in a statute declaring that a particular employee of an undertaking to be a public servant, an employee of such undertaking cannot be treated as public

servant as defined u/s 21 of Cr.P.C., merely on the ground that the said undertaking is an instrumentality of State. The petitioner for the purpose of prosecution u/s 5(2) read with Section 5(1)(d) therefore cannot be treated as a Public Servant. The offence disclosed in the F.I.R. that is 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act has to be excluded for the purpose of trial. In view of this the writ petition is allowed. The proceeding in Special Case No. 2/84 pending before the learned Special Judge, Sangli to the extent it implicates the petitioner u/s 5(2) read with Section 5(1)(d) of Prevention of Corruption Act 1947 stands quashed. Other charges in the F.I.R. will continue. Rule is made absolute in the above terms. Interim stay vacated.

In the circumstances no order as to costs.