

(1992) 11 BOM CK 0115
In the Bombay High Court
Case No : Criminal Appeal No. 551 of 1985

Hanmant Janardhan Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-11-1992

Acts Referred:

COMPANIES ACT, 1956 — Section 617
Constitution of India, 1950 — Article 21, 246, 254
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 103, 120, 149, 21, 406
Prevention of Corruption Act, 1988 — Section 5, 6

Citation : (1993) 2 BomCR 286 : (1993) CriLJ 3042 : (1993) 1 MhLj 511

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Niteen V. Pradhan, for the Appellant; Y.V. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

1. Faced with a situation wherein the administration of Co-operative Societies was so deeply infected with dishonest and corrupt practices which were being fostered by a set of official who, in law, were otherwise supposed to be in-charge of curbing them, the State Legislature introduced in 1986, Section 161 in the Maharashtra Co-operative Societies Act. This was a drastic provision which was essential if the rot to be curbed. The office-bearers and members of the Managing Committee of a Co-operative Society were deemed to be public servants and the State was empowered to prosecute them for offences of corruption by treating them on par with other public servants.

2. The chronic disease that has permeated into the life-blood of the co-operative system, is the almost universal belief that whatever available funds the society possesses should be misappropriated. At times directly, but invariable through indirect and sometimes subtle means, this activity continues with impunity and, as the investigation invariable discloses, in partnership with the officials who are being paid out to public funds to prevent such officers. Misappropriation of co-

operative funds is being treated as though it is a fundamental right of all persons in-charge of Co-operative Societies. In 1986, the Government introduced Section 161 of the Co-operative Societies Act as measure geared towards competing this malady. u/s 409 of the Indian Penal Code, the law prescribes heavy sentences for acts of criminal breach of trust committed by a public servant and by this amendment it was intended to apply Section 409 of the Indian Penal Code to all cases where co-operative funds are misappropriated and misused. Unfortunately, barring some very stray instances, no steps of any consequences were taken pursuant to that amendment. The problem has now assumed horrifying proportions and it will be essential for the State Government to immediately take some stringent steps in this regard if the intention is to save the entire co-operative sector from total ruination.

3. Under the scheme of the Co-operative societies Act, stringent duties are cast on the supervisory officials, apart from investing them with the requisite powers to ensure clean and proper administration of societies. Experience has unfortunately shown that the officials concerned are not only negligent in some cases but that they protect, side with and cover up for the persons who are guilty of the offences and there is little doubt the fact that where a corrupt practice is sanctioned, permitted and condoned that it can only be for a corrupt motive. In this view, therefore, the solution lies in applying the law with equal vigor not only against the wrongdoers, namely, the office bearers of the society, but also against those who have colluded viz. the officials of the department. The present set of appeals is illustrative of how one of the oldest and most successful co-operative societies in the area was ruined and taken into liquidation through acts of misappropriation of its funds and how long thereafter action was instituted against the office bearers, the Chairman the Vice-Chairman and the Secretary when it was too late.

4. A complex but important issue of law has been canvassed by learned counsel appearing on both sides in this set of appeals which undoubtedly has not arisen for the first time but present certain angles of importance. The issue that I am called upon to decide are summarised below :

(a) Whether the three appellant who admittedly were office bearers of a Co-operative Society during the period relevant to the charges, can be categorised as public servants within the meaning of Section 161 of the Maharashtra Co-operative Societies Act read with Section 21 of the Indian Penal Code ?

(b) Whether it was essential for the prosecuting authorities to have obtained prior sanction to prosecute the accused persons in their capacity as Public Servants for offences under the Preventions of Corruption Act as also u/s 409 of I.P.C. whereby the requirement of prior sanction u/s 6 of the Prevention Of Corruption Act and Section 197 of Cr.P.C. respectively prescribed to a bar to a Court taking cognizance of the offences except with prior sanction of the competent authority ?

(c) If it is held that the accused are Public Servants and that prior sanction was essential for their prosecution, would it inevitable result in the voiding of the charges u/s 5(i)(c) of the Prevention of Corruption Act and Section 409 of the I.P.C. ?

(d) Whether it can be held that the jurisdiction exercised by the learned Special Judge who was presiding over the Special Court was a valid jurisdiction in respect of the reminder of the charges ?

(e) Would the appellants be justified in their submission that the jurisdiction of the Special Court stands ousted the moment it is demonstrated that the accused are not public servants and cannot therefore be tried by a special forum ?

(f) Whether at the appellant stage the contention of the prosecution that even if the charges under the corruption Act and u/s 409 of I.P.C. fail, that the remaining charges could still be maintained, is justified ?

(g) Whether the concept of jurisdiction is something that is separable and would therefore not affect the remain charges or whether the proceeding itself would stand completely vitiated for want of jurisdiction ?

They are answered in the Judgment.

5. A few would be relevant. The three appellants were the chairman Vice chairman, and the Secretary respectively of the Masuchiwadi Uttarbhadg Vividh Karyakari Sahakari Sanstha during the years 1973-74. It was alleged that the three of them along with one more employee who has been acquitted and with whom we are not concerned, were instrumental in series of frauds that had taken place in relation to the working of the society. The prosecution alleged that in respect of a large number of loans, that cheques were drawn sanctioning these loans and that these cheques numbering almost 200 were made out in the names of various persons ostensibly showing that an amount of Rs. 3,15,818-65 Ps. was disbursed to the loaners between the period 1-11-1973 and 31-12-1975. The prosecution examined as many as 50 of the loaners and several other witness, in all totalling 84 persons and succeeded in establishing that the cheques of the aggregated value of Rs. 2,85,678-16 Ps. were in fact issued and that the amounts in questions did not reach the beneficiaries. All these facts came out at the stage when the affairs of the society were checked and the auditor's went into a scrutiny of the various documents. Since the view was taken that these acts constituted corrupt practices, sanction was obtained from the learned Magistrate for the purpose of investigating into the offences. I need to clarify that this sanction was for the purpose of permitting the investigation to be carried out by an officer lower than the rank of Superintendent of Police, and not for the purpose of Prosecuting the accused. On completion of the investigation a complaint was filed before the learned special Judge, at Sangli alleging in the first instances an offence of conspiracy u/s 120(b) of the I.P.C. Corruption Offences u/s 5(1)(c) read with 5(2) of the prevention of Corruption Act, Criminal Breach of trust by public servant u/s 409 of the I.P.C., cheating u/s

420 of the I.P.C. and offences in relation to documents such as forgery etc. punishable u/s 467, 468, 471 and 474 as also 477-A I.P.C. At the conclusion of the trial, the learned Special Judge convicted the three appellants and awarded them sentences varying from 2 years rigorous imprisonment to 5 years rigorous imprisonment under the different heads of charges and fines varying from Rs. 500/- to Rs. 2500/- in addition. It is against this set of convictions and sentence that the present three appeals have been filed.

6. The trial was a common one and the three appellants raised various issues that will be dealt with in the course of a single judgment. I have heard Mr. Patil, Mr. Nitin Pradhan and Miss. Dandekar, learned counsel appearing on behalf of the three appellants, as also Mr. S. B. Patil, learned A.P.P. who represent the State.

7. Before dealing with the merits of the matter, learned counsel appearing on behalf of the appellants have contended that they seriously challenge the jurisdiction of the trial court in this matter and that under these circumstances, they have requested that the issues relating thereto must be heard and decide in the first instances. In substances, it was contended that none of the appellants can in-law be categorized as Public Servants and consequently the invocation of the charges under the Prevention of Corruption Act was uncalled for. More importantly, they have contended that the Special Court could not have exercised any jurisdiction in this matter, and that consequently, the entire proceeding stands vitiated and is liable to be quashed. The learned A.P.P. has vehemently countered these arguments and has submitted that in the first instances the Court has rightly exercised jurisdiction and that even if it is held that some of the charges are not maintainable in-law, that the learned Special Judge who being a Session Judge is otherwise invested with the legal jurisdiction and competency to try and decide the offences in question cannot be faulted and that at the highest some of the charges may have to be separated.

8. The issue of jurisdiction is something that is very basic and fundamental to the maintainability of the entire proceedings, more so, when the accused were put on trail before a Special forum. The Special Court in this case is set up under a notification and is specifically designated to try offences punishable under the Prevention of Corruption Act. It is, therefore, a specialised forum and is segregated from the normal courts being invested with a jurisdiction that is circumscribed in its limits. Mr. Pradhan, has challenged the exercise of jurisdiction by the Special Forum and contended that this Court will have to decide the issue which of substantial importance namely as to whether at all that forum was completed to try the accused Section 161 of the Maharashtra Co-operative Societies Act reads as follows :

"161 : Register and other officers to be Public Servants :

The Registrar, a person exercising the powers of the Registrar, an officer as defined in clause (20) of Section 2, or a person appointed as an Official Assignee under Sub-section (2) of Section 21-A, or as in administrator u/s 77-A or 78, or

a person authorised to seize books, records or funds of a society u/s (3) of Society u/s 80, or to audit the accounts of a society u/s 81 or to hold an inquiry u/s 83, or to make an inspection u/s 84, or 89-A or to make an order u/s 88, or a person appointed as a member constituting a Co-operative court S. 91-A or the Co-operative Appellate Court under S. 149 or a Liquidator under S. 103, shall be deemed to be public servants within the meaning of S. 21 of the Indian Penal Code."

Undoubtedly the section unequivocally states that the accused shall be categorised as Public Servants.

9. A reference to S. 2(20) of the Act will further amplify the position that it was the legislative intent to categorise office bearers and members of the Managing committee of a Co-operative Society as Public Servants. There is no ambiguity with regard to the legislative intent and the learned A.P.P. has pointed out to me and to my mind with much justification, that this provision encompasses Co-operative Societies which have unfortunately become the breeding grounds for corruption; where corrupt practices are not only the order of the day but are rampant and have reached epidemic proportions; and that it was for this reason that the legislature specifically intended to come down heavily on such unhealthy features that have become a sine qua non for the management of these institutions. Mr. Patil was unduly strong in his submission on this point and his vehemence was fully justified because even a scrutiny of the cases that have reached this Court indicates with unerring recurrence, an almost frightened degree of corruption in the management of co-operative societies. The learned counsel was apologetic, and for good reason, when it came to the question of why the disease has reached a stage of malignancy, and was forced to admit that it could not have been so without the wholehearted support and protection of the Department. That those who were expected to act as the watch-dog have merrily joined in the ravage and like the proverbial vulture, fed deeply on the spoils, is indeed a pathetic reflection. Mr. Patil went on to state that even in the present case this very co-operative society which had done excellent work in a rural area for 40 long years was completely ruined and has gone into liquidation thanks to the activities that are the subject-matter of the present set of prosecution.

10. Mr. Patil, defended the judgment of the trial court and maintained that the appeal on the jurisdiction proceeded on mere technicalities and that the same should not be upheld. Mr. Patil, drew my attention to the fact office bearers and members of a co-operative society have been categorised as Public Servants and for this purpose he relied on a decision of this court in Criminal Revision Application No. 24 of 1980 *Rama Nivrutti Shinde v. The State of Maharashtra* decided on 18-12-1980 by Rele, J. and Criminal Revision Application No. 360 of 1987 in the case of *Ramrao Patil v. Vasant Ahirrao* decided on 23-3-1988 by Justice J. In both these cases the learned single Judges of this Court have upheld the aforesaid position. More importantly, Mr. Patil, relied heavily on a reported

decision of this court in the case of Pralhad Shambhurao Newale v. The State of Maharashtra, reported in 1988 Maharashtra Law Journal Page 161, wherein Tated J., after a detailed consideration of the law on the point upheld the validity of the contention that persons such as the accused would come within the legal categorisation of Public Servants. Mr. Patil further submitted in response to Mr. Pradhan's arguments that it is true that a subsequent decision in Criminal Revision Application No. 144 of 1986 and two companion matters, on 11th and 12th December, 1989, Choudhary, J. after an indepth consideration of the law on the point including the aforesaid two decisions has expressed the view that such person cannot be categorised as Public Servants. The principal reason for this conclusion was that they do not come any of the 12 categories as are spelt out by S. 21 other Indian Penal Code which defines the term public servant for the purpose of criminal law. Choudhary, J. has referred the point to the Division Bench and so also Daud, J. by a subsequent order because the accused in the case decided by Tated, J. at the pre-trial stage had pointed out to subordinate Court after the matter was remanded, that another learned Judge of the Bombay High Court (Choudhary, J.) has taken the view that such persons cannot be constructed to be Public Servants and that therefore, it is essential for the Division Bench to finally decide as to which of the two views is the correct one and which is binding on the trial Courts. Apart from this, Choudhary, J. has pointed out that there are several proceedings pending under the Prevention of Corruption Act wherein this issue is germane and since there is a difference of opinion that the matter requires resolution. Mr. Patil, therefore, submitted that this proceeding should wait until the reference is decided by the Division Bench. Normally this Court would have been obliged to follow such a procedure, but I am not doing so as there are cogent grounds therefor.

11. This is a proceeding that pertains to the year 1973-74. The transactions are old ones and undoubtedly the entire available record was produced before the trial court. Even when the trial went on in the years 1984-85 the prosecution produced whichever witnesses were available. Making allowances for human memory etc., delay would considerably prejudice everybody including the accused themselves, who are entitled to a verdict within a reasonable period of time. These appeals are over 7 years old as of now and to my mind there is no justification for delaying the disposal thereof any further. More importantly, it is relevant to point out that issues relating to constitutionality were never canvassed before Rele, J. and Salve, J. There was some discussion but to a very limited extent when the matter was argued before Tated, J. and only submission canvassed was that by virtue of the provisions of Art. 254 of the Constitution, the provisions of S. 161 being repugnant to those of S. 21 of the I.P.C. that the provisions of the State Law would have to be treated as being void. Tated, J. negated this argument on the ground that there was no repugnancy but the substantial issues of law that were canvassed before Choudhary, J. were never pointed out to Tated, J. and that too in detail. Therefore, even though the conclusions in the two judgments are different it needs to be stated that at the

later point of time on a different and more complete consideration of the issue that this Court has arrived at a different decision which would prevail, in the aforesaid circumstances, over the earlier ones.

12. To my mind, the issue narrows down to the question not as to whether the accused can be categorized as Public Servants as per S. 161 of the Maharashtra Co-operative Societies Act but really as to whether they could be put on trial under the provisions of the Prevention of Corruption Act and/or under S. 409 of I.P.C. both of which require a pre-condition that they should answer to the definition of Public Servants within the meaning of those statutes. Mr. Pradhan has not disputed the position that for the purpose of offences categorised under the Co-operative Societies Act, the accused persons can certainly be treated as Public Servants and that they can be prosecuted, in the manner in which Public Servants can be put on trial for those offences. His limited dispute is to the application of S. 21 of the I.P.C. to the case of the present accused. In substance therefore, it would not be correct to state that the accused cannot be categorised as Public Servants but only question is as to whether they can be legally prosecuted under the Prevention of Corruption Act and under the relevant provisions of the I.P.C. in that capacity.

13. The argument proceeds on a pure point of law. Mr. Pradhan contends that S. 161 of the Co-operative Societies Act constitutes a part of an enactment that this is placed on the statute book by virtue of the powers invested in the State Legislature under Item 32 of the State List which is the second list in the 7th Schedule to the Constitution. He concedes that the State Legislature could certainly legislate in respect of all matters relating to co-operative societies. As far as the Prevention of Corruption Act and the I.P.C. are concerned Mr. Pradhan points out to me that by virtue of Art. 246 of the Constitution, these being Central Statutes, if any amendment to those Statutes is required to be made that it will have to be done by the Central Legislature and that a State Act cannot override those provisions. In this context, he relies heavily on S. 21(12) of the Indian Penal Code which reads 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 S. 617 of the Companies Act, 1956 (1 of 1956).

Mr. Pradhan, points out to me with the assistance of considerable case law that the accused persons who are office bearers/members of the Managing Committee of a co-operative society cannot come under any of the classification as set out in the aforesaid section. He therefore points out that even if the accused are to be treated as Public Servants for the purpose of offences listed in the Co-operative Societies Act under S. 146 that they cannot be prosecuted in

their capacity as public servants for other offences unless they come within the ambit and scope of S. 21 of the I.P.C. In this context Mr. Pradhan has placed very strong reliance on a Full Bench decision of the Kerala High Court in the case of M.A. Kochudevassy and Others Vs. The State of Kerala, wherein the Kerala High Court while considering an identical situation upheld the prosecution of similarly situated persons under the Prevention of Corruption Act. The Kerala Government by virtue of the Criminal Law Amendment Act of that State had amended the relevant provisions through two State amendments in the years 1958 and 1964 bringing such persons within the ambit of the Indian Penal Code and the Prevention of Corruption Act. Since Criminal Law is a subject in the concurrent list it is perfectly competent for a State Amendments and in the present case also, the State of Kerala had taken necessary steps for this purpose and the Full Bench therefore held that the prosecutions were competent. Drawing a parallel from the Kerala case Mr. Pradhan contended that in the absence of requisite amendments to the Central Acts, as far as Maharashtra is concerned that the present accused could not have been charged with any offence under the Prevention of Corruption Act or under S. 409 of I.P.C. on the ground that they were public servants.

14. Dealing with the law as it stands Mr. Pradhan, referred to a Division Bench decision of this Court reported in AIR 1935 Bom 36 : 1935 Cri LJ 532 in the case of Shridhar Mahadeo Pathak v. Emperor, wherein a Division Bench of this Court after considering S. 21, I.P.C. held that the Chairman of a Co-operative Credit Society is not a Public Servant. Mr. Pradhan relied on a Division Bench decision of the Calcutta High Court reported in Shanti Ranjan Bhattacharya Vs. The State, in the case of Shanti Ranjan Bhattacharya v. The State, wherein the Calcutta High Court while considering the case of Secretary of a Co-operative Society examined clauses 10, 11, and 12 of 21, I.P.C. and held that he cannot be categorised as a Public Servant under any of them. The same was the position in the case of State of Bihar Vs. Amulya Ratan Pathak, and in the case of Sombari Behera v. Emperor reported in 1935 Mad WN 1337 . The Mysore High Court in the case of Karnam Siddappa Vs. State of Mysore, has also reiterated this position. The Allahabad High Court in the case of State of U.P. Vs. Vishwanath Kapoor and Others, , has analysed the question with regard to whether a Co-operative Society can be treated as a Corporation established by or under any of the laws within the meaning of clause 12 of S. 21 of I.P.C. The Court had occasion to consider these aspects in the matter which is of some importance in considerable depth and therefore, had occasion to refer to the following decisions :

Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, and (1984) 76 ER 637 , Haydon's case.

This issue is one of some important because Mr. Patil did advance the submission that a Co-operative Society, would come within the defection of a body corporate which is created "by or under State Law". In the aforesaid decision, the point has been discussed and the law has been crystallised wherein the correct position

has been set out namely that unlike the LIC and other Corporations which are creatures of Statute that a Co-operative Society is one that comes to be registered by virtue of a number of persons getting together and asking for registration. Merely because such a body is governed by the State Law, it cannot be treated as being on par with corporations set up by or under State Law. The character of a Co-operative Society is essentially different to the aforesaid and to this extent therefore the office bearers or members of a managing committee cannot come within the ambit of clause 12 of S. 21 of the I.P.C.

15. A full Bench of the Punjab & Haryana High Court in the case of the State of Punjab v. Kesarichand reported in 1987 Cri LJ 549 : AIR 1897 P&H 216 had occasion to consider the question from a different angle while dealing with the cases of the President and Secretary of a co-operative Society who stood charged with an offence under S. 409 of I.P.C. The court was required to consider the status of these persons and decide as to whether they could be treated as Public Servant and they could with an offence under S. 409 of the I.P.C. and after considering the entire case law on the point, the Full Bench held that it was not permissible to do so.

16. The Supreme Court in the case of S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, was dealing with a situation whereby a Member of the I.A.S. who was on deputation with a Co-operative society was sought to be prosecuted in that capacity. The Court held that the term public servant does not include a civil servant working on deputation with a Co-operative society and that consequently sanction under S. 197 of the Cr.P.C. was not necessary for his prosecution. The court had occasion to examine the term "corporation" as occurring in S. 21, clause 12 of the I.P.C. and after examining the position in law concluded that it does not include a co-operative society.

17. I have referred in considerable detail to the position in law as also to the decision of the various High Court including this court, as also the decision of the Supreme court and the position is unambiguous in law that an office bearer or a member of the managing committee, director, etc., of a co-operative society cannot be treated as a public Servant within the meaning of S. 21 of the I.P.C. in the State of Maharashtra as the law exists as at present. As indicated by me earlier, having regard to the considerable development of law and the reference to the Division Bench which is pending was necessary to the limited extent that the position in law had to be clarified in so far as which decision was binding on the subordinate courts. To a Court of concurrent jurisdiction however no such difficulty would arise and having regard to this situation therefore, to my mind the present appeals do not require to be kept pending until the disposal of that reference. Mr. S. B. Patil, the learned A.P.P. who did try very hard to support the opposite view thereafter advanced the submission that it is very essential that this court ought to issue necessary direction to the State Government to carry out requisite amendments as it is very much in the public interest that persons indulging in corrupt practices in such offices on such a scale, should be

prosecuted and brought to book and that they should not be allowed to get away merely because such an amendment has not been carried out. This request is made with a full sense of responsibility and I consider it eminently in the public interest the steps be taken forthwith to rectify the anomalies that exist. Criminal Law being in anomalies that exist. Criminal Law being in the concurrent list, the state Government is only required to carry out the requisite state amendments as has been done in Kerala. This presupposes that the State Government is serious about curbing the widespread corruption. Simultaneously a through overhaul and purification of the co-operative department will be necessary else the culprits will never be booked. As of today the errant office bearers and managing committee members who are the custodians of the funds can be straightway prosecuted under S. 406, I.P.C. which is not happening. The charge that invariably the Register's office is working in partnership with the offenders does not seem to be far-fetched. The desirability apart, it is a legal necessity that the State Government attend to this matter immediately and to take appropriate steps to bring the law in consonance with the legislative intent of S. 161 of the Maharashtra Co-operative Societies Act.

18. In view of the aforesaid position, Mr. Pradhan has proceeded to advance the second limb of his arguments, namely, that the learned Special Judge had no jurisdiction to entertain the present prosecution in so far as the invocation of the prosecutions of the Prevention of Corruption Act were completely misconceived. Since all the three accused cannot be categorised as Public servants, for the purposes of the Prevention of Corruption Act and the Indian Penal Code, it logically follows that they ought not to have been and in law could not have been placed on trial before the learned special Judge. Mr. Pradhan is right in his submission that the jurisdiction of the special Court is circumscribed to the trail of offences punishable under the Prevention of Corruption Act and the jurisdiction gets extended only if there are other offences which can be tried along with the corruption charges. If the prosecution under the corruption charges is misconceived then the question of want of jurisdiction would become paramount. To this extent, Mr. Pradhan submits that the conviction under sections 5(1)(c) read with 5(2) of the prevention of Corruption Act and under S. 409, I.P.C. would have to be set aside. He also contends that the conviction under the remaining charges of the I.P.C. cannot be sustained because the learned Special Judge could not have exercised jurisdiction in respect of these offences independently and separately from the corruption charges.

19. As regard this last argument, the matter is highly debatable. Mr. Patil, the learned A.P.P. submitted that had been at the pre-trial stage if the corruption charges under S. 409 of I.P.C. were to be treated as not being special Court would naturally have been ousted and the trail would have been transferred to the sessions Court, This position in law is settled in the case of Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat, and in the case of Niranjani Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, , where it was held the charges under TADA were not justified the court directed

the trial to revert to the ordinary court from the special Court and the trial was to proceed under the ordinary law. He however contends the ordinary law. He however contends that if in a given case an accused person at the appellate stage comes to be acquitted of an offence under the corruption Act or for that matter under S. 409, I.P.C. the conviction under the remaining sections of the I.P.C. by a Special court could still be upheld independently, if the record justified it. Mr. Patil, further contend that in the present case, the corruption charges and the one under S. 409 I.P.C. will have to be set aside and that the evidence is good enough to sustain the remaining convictions. In answer to this Mr. Pradhan had advanced the proposition that the court cannot cure a defect of jurisdiction and his context had relied on the decision in *Legard v. Bull* 13 IP 134 and in the case of *Meenakshi Naidu v. Subramaniam Shastri*, 14 IA 160 . Both these decision were relied on by the Supreme Court in the case of *A.R. Antulay Vs. R.S. Nayak and Another*, . A full Bench of the Supreme Court while considering the situation that had arisen by virtue of the transfer of the Antuley trial from the court of Session to the High Court under held that the entire proceeding will have to be treated as void ab initio in so far as the High Court did not have jurisdiction to try the offences in the first instance. The Supreme Court has enunciated several reasons in this judgment including the prejudice caused to the accused in that case and has in no uncertain terms held that a de novo trial, would be necessary since the entire proceeding before the High Court was without jurisdiction. Attempts were made to save that trial by pointing out that considerable amount of judicial time has been spent on the recording of the evidence and that at the highest that it could still be sent back to the proper forum namely the Special Judge at the session court but the supreme court refused to sanction such a course of action. The prejudice caused to an accused is only one of the aspects of the case, but the more important aspect is the fact that under Art. 21 of the Constitution, an accused cannot be deprived of his liberty except by procedure prescribed by law. The law has prescribed that a Special Forum shall try only special offence assigned to it and may extend its jurisdiction to other offences which can be tried along with that charge. It is now well crystallised law that by an analogy even in offences under the Terrorist and Disruptive Activities Act, where it is demonstrated that the provision of that Act have wrongly been invoked or do not apply, the Special Court is required to forthwith transfer the proceeding to the ordinary forum. This being the unambiguous position in law, it would not be permissible to hold that the jurisdiction is something that is separable or that the charges are divisible or that they can be delinked from the main charge and that the jurisdiction can be upheld in respect of the remaining offences. The want of jurisdiction as far as the Special court is concerned, is something that is indivisible and consequently the entire proceeding before the learned special Judge will have to be treated as vitiated. The inevitable consequences is that the appeal is allowed. The convictions and sentence awarded by the trial court to the appellants are set aside. The fine, if paid is directed to be refunded and the bail bonds of the appellants to stand cancelled.

20. Mr. Patil, however, pointed out that even in the various decisions relied upon in this case that the court had remanded the matter either for fresh trial or for de novo hearings. He points out to me that in the present case there is overwhelming evidence against the accused persons. I have refrained from examining this position because if the proceeding is vitiated then it would not be correct for this court to examine any part of that express any opinion whatever. Mr. Patil, however, submitted that even accepting the position in law as held by this Court in this case that at the highest it could be said that the accused were put on trial before a wrong court and on a wrong set of charges and that therefore, it is open to the prosecution to proceed against them afresh, by dropping only the charges wherein they were categorised as Public Servants and by proceeding before the competent forum namely the learned Judicial Magistrate, First class or the Session Judge as the case may be. To this extent the learned A.P.P. is right in so far as if the law permits the authorities to proceed against the accused in the light of the observations of this judgment they are certainly entitled to do so. The accused convictions the jurisdiction issue only when the appeals case up for hearing by an amendment and therefore they cannot be heard to complain about delay or prejudice. The convictions have been quashed on a technicality and not on merits. It is never the object of criminal law that accused be all allowed to get away on such grounds and therefore, a de novo trial, on a time bound basis would be desirable.

21. Appeal allowed accordingly.