

(1997) 07 BOM CK 0017

In the Bombay High Court

Case No : Criminal Writ Petition No. 271 of 1996

Moreshwar Date

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Constitution of India, 1950 — Article 20(2), 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3), 167, 190, 197
Maharashtra Co-operative Societies Act, 1960 — Section 162
Penal Code, 1860 (IPC) — Section 109, 120B, 466, 471
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 15, 19

Citation : (1998) BomCR(Cri) 544 : (1998) 1 MhLj 490

Hon'ble Judges : S.B. Mhase, J

Bench : Single Bench

Advocate : Rajendra Daga and J.B. Kasat, for the Appellant; R.R. Paranjape, Additional Public Prosecutor., for the Respondent

Judgement

S.B. Mhase, J.—This criminal writ petition has been filed by the petitioner invoking powers of this Court under Articles 226 and 227 of the Constitution and u/s 482 of the Code of Criminal Procedure requesting this Court to quash and set aside the F.I.R. and the proceedings in Crime No. 247 of 1996 of the Ganeshpeth Police Station, Nagpur, by issuing an appropriate writ, order or direction.

2. The petitioner herein is the District Deputy Registrar, Co-operative Societies, Buldhana, appointed u/s 3 of the Maharashtra Co-operative Societies Act, 1960."The Police Station Officer of the Ganeshpeth Police Station, Nagpur, has registered the crime vide Crime No. 247 of 1996 against the petitioner under sections 120B, 109, 466 and 471 of the Indian Penal Code and u/s 13(i)(d) read with 13(ii) and 15 of the Prevention of Corruption Act, 1988. The petitioner was the District Deputy Registrar, Co-operative Societies (City-1), Nagpur, for a period from 1-4-1993 to 16-1-1995. Supporting to him, was Devilal Dhone, the Co-operative Officer, Grade II, and he was on the said post from 1-4-1993 to 14-6-1995. While they were holding the said posts, the five Labour Societies,

namely, Indira Gandhi Labour Co-operative Society Limited, Rajiv Labour Co-operative Society Limited. Gurunanak Labour Cooperative Society Limited, Mahim Labour Co-operative Society Limited and Ashok Labour Co-operative Society Limited, were registered. One Shri Madan Sathawane, who was the Chief Organiser of the Bhrashtachar Virodhi Janjagaran Sangathana, had preferred an application to the Lokayukta regarding the illegal registration of these Labour Co-operative Societies by using corrupt means and fabricating certain documents. The said application was forwarded by the Lokayukta to the Anti-Corruption Bureau, Bombay. However, as the matter was pertaining to Nagpur, the Anti-Corruption Bureau, Bombay, directed the Deputy Superintendent of Police, Anti-Corruption Bureau, to enquire into the said application. In view of that, the Deputy Superintendent of Police enquired into the application made by the said Bhrashtachar Virodhi Janjagaran Sanghathana to the Lokayukta. As the Deputy Superintendent of Police, Anti-Corruption Bureau, Nagpur, Shri V.T. Hiware, after enquiry found that the offence under sections 120B, 109, 466 and 471 of the Indian Penal Code and also u/s 13(i)(d) read with sections 13(ii) and 15 of the Prevention of Corruption Act, 1988, has been committed by the petitioner along with the six other accused persons, namely, Shri Dhone, Co-operative Officer and five Chief Promoters, he filed F.I.R., as stated above, on 11-10-1996. On the basis of the F.I.R. filed by Shri Hiware, Deputy Superintendent of Police, Anti-Corruption Bureau, the above-referred Crime No. 247 of 1996 was registered and the investigation of the said crime is going on.

3. The main bone of contention raised in the present petition is in respect of section 162 of the Maharashtra Co-operative Societies Act, 1960 and section 19 of the Prevention of Corruption Act, 1988. The petitioner was the District Deputy Registrar discharging the functions of Registrar under the Maharashtra Co-operative Societies Act, 1960 and, therefore, in view of the provisions of sections 8 and 9 of the said Act, the petitioner was empowered to register the Co-operative Societies in accordance with the said law and thus, he was discharging the duties and was exercising the powers, which were vested in him by the said Act and, therefore, he was protected by the provision of section 162 of the said Act. The said section 162 of the Maharashtra Co-operative Societies Act, 1960 provides that no suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting on his authority, in respect of anything in good faith done, or purported to be done by him by or under this Act. The learned Counsel Shri Daga, therefore, submits that no prosecution could lie against the Registrar or any person subordinate to him or acting on his authority, in respect of anything in good faith done or purported to be done by him by or under the said Act. The learned Counsel further submits that the word "prosecution" connotes a commencement of the criminal action against a person, who is a Registrar or a person supporting to him or acting on his authority and, therefore, the argument revolves around the interpretation of the word "prosecution". In the present matter, the F.I.R. has been filed on 11-10-1996 and thereafter, the house of the petitioner was searched on the same date. Not only

that, but the petitioner was arrested on 11-10-1996 and was released on 15-10-1996 by the Special Judge at Nagpur. On production of the petitioner before the Special Judge, Nagpur, it appears that the judicial custody was granted for five days in exercise of powers of section 167 of the Criminal Procedure Code and thereafter, the petitioner was released on bail. The learned Counsel submits that thus there was application of mind by the Special Judge to the allegations made against the petitioner and/or the Special Judge had taken the cognizance of the offence and, therefore, the prosecution commenced, which is prohibited by section 162 of the Maharashtra Co-operative Societies Act and section 19 of the Prevention of Corruption Act, 1988. Thus, with the interpretation of the word "prosecution" and the facts stated above, the learned Counsel invokes the bar provided in section 162 of the said Act and equally the provisions of section 19 of the Prevention of Corruption Act, 1988. The learned A.P.P. Shri Paranjape strongly opposed this contention of the petitioner.

4. It is pertinent to note that the word "prosecution" has not been defined either in the Maharashtra Co-operative Societies Act, 1960 and /or in the Criminal Procedure Code and/or in the Prevention of Corruption Act, 1988 and/or in the Indian Penal Code and, therefore, in the absence of any codified definition, it is necessary to consider the scope of the word "prosecution" that appears in section 162 of the Maharashtra Cooperative Societies Act, 1960.

5. The shorter Oxford English Dictionary gives the meaning of the word "prosecute" to institute legal proceedings against a person for some offence, to arraign before a Court of justice for some crime or wrong. The meaning of the word "prosecution" is- "A proceeding by way either of indictment or of information in the Criminal Courts, in order to put an offender on his trial; the exhibition of a criminal charge against a person before a Court of justice."

"6. Halsbury's Laws of England, Fourth Edition, paragraph 1342 is in respect of the "prosecution"---What is a prosecution :-

"A prosecution exists where a criminal charge is made before a judicial officer or tribunal, and any person who makes or is actively instrumental in the making or prosecuting of the charge is deemed to prosecute it, and is called the prosecutor. A person who lays before a Magistrate an information stating that he suspects and has good reason to suspect another, or who prefers a bill of indictment, is engaged in a prosecution; and he may be responsible for the prosecution even though the charge made before the Magistrate, or even without making one. he is bound over to prosecute and does so".

7. The above various sources point out the meaning of the word "prosecution" mainly as criminal charge made before a Judicial Officer or a Tribunal for the purposes of the trial. It is a part of terminology of criminal law describing the means by which the law is to be enforced and it is associated in popular thought with the laws for prevention and punishment of crime as stated in Criminal Law. In the case of Suresh Chandra Vs. Himangshu Kumar Roy and Others, ; while

considering the scope of the word prosecution appearing in Article 20(2) of the Constitution, the Court has observed that the word "prosecution" in Article 20(2) means judicial proceedings before a Court or a legal tribunal. It cannot have reference to departmental or disciplinary proceedings taken for inflicting departmental penalty or punishment on an officer belonging to the department for any misconduct. The Apex Court has considered the scope of the words "prosecution" and "prosecutor" appearing in Article 20 of the Constitution in the light of double jeopardy for the same offence. In *Thomas Dana Vs. The State of Punjab*, , the Apex Court, in paragraph 10, has observed as follows :---

"It is, therefore necessary first to consider whether the petitioners had really been prosecuted before the Collector of Customs, within the meaning of Article 20(2). To "prosecute" in the special sense of law, means according to Webster's Dictionary,

"(a) to seek to obtain, enforce, or the like, by legal process, as, to prosecute a right or a claim in a Court of law.

(b) to pursue (a person) by legal proceedings for redress or punishment, to proceed against judicially; esp., to accuse of some crime or breach of law, or to pursue for redress or punishment of a crime or violation of law, in due legal form before a legal tribunal, as, to prosecute a man for trespass, or for a riot."

According to "Wharton's Law Lexicon", 14th edn., p. 810 "prosecution" means a proceeding either by way of indictment or information, in the criminal courts, in order to put an offender upon his trial. In all criminal prosecutions the King is nominally the prosecutor". This very question was discussed by this Court in the case of *Maqbool Hussain Vs. The State of Bombay*, , with reference to the context in which the word "prosecution" occurred in Article 20. In the course of the judgment, the following observations, which apply with full force to the present case, were made:--".....

"..... and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure."

8. Thus viewed, it will be clear that in the present case, only the F.I.R. has been lodged by the Deputy Superintendent of Police, Anti-Corruption Bureau and thereafter, the petitioner was arrested and produced before the Special Judge, therein the judicial custody was granted and thereafter he was released on bail. In view of this background, I am making references to the definitions referred to above and proceed to analyse the present case.

9. The learned Counsel tried to submit that the special Judge has taken a cognizance, that is the Special Judge has applied his mind to the allegations made against the petitioner and thereby, the prosecution has commenced, which, according to the learned Counsel, could not be done in view of section

162 of the Maharashtra Co-operative Societies Act, 1960 and section 19 of the Prevention of Corruption Act, 1988. The submission is without any merit. It is pertinent to note that in a criminal matter, many stages are contemplated from the stage of making report to the police till the end of the trial of the case. The procedure contemplates that the Magistrate can take cognizance of an offence u/s 190 of the Criminal Procedure Code on the basis of (a) upon receiving a complaint of facts, which constituted such offence; (b) upon a police report of such facts; and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Under the Prevention of Corruption Act, 1988, the Special Judge takes the cognizance of the offence u/s 5 of the said Act. The said section provides that a Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by Magistrates. Section 17 of the said Act provides for the persons, who are authorised to investigate into the said offences. However, except the restriction provided in section 17 empowering certain persons to investigate the offence, the rest of the provisions applicable for investigation are from the Criminal Procedure Code. Section 22 of the said Act provides that the Code of Criminal Procedure Code. Section 22 of the said Act provides that the Code of Criminal Procedure, 1973 to apply subject to certain modifications provided in the said section. Therefore, the investigation is to be carried out by the police authorities as provided in section 154 to 176, that is in accordance with Chapter XII of the Criminal Procedure Code subject to the modifications provided in the Prevention of Corruption Act, 1988. And after the report has been presented u/s 173 of the Criminal Procedure Code along with sanction to prosecute the accused, before the Special Judge u/s 5 of the Prevention of Corruption Act, 1988 instead of before the Magistrate as provided in section 190 of the Criminal Procedure Code, the Special Judge may take cognizance of the offence. However, for the facts of the present case, the Special Judge takes the cognizance of the offence when the report along with sanction to prosecute the accused is submitted u/s 173 of the Criminal Procedure Code by the Investigating Officer before the Special Judge, at that point of time, the Special Judge applies his mind to the allegations made against the accused for the purpose of taking cognizance and whenever the cognizance is taken by the Court, the prosecution commences.

10. Even if we consider the provisions of the Criminal Procedure Code, the provisions of section 190 of the Code provides for taking the cognizance by the Magistrate as referred to above on three circumstances, namely, (a) complaint being filed; (b) report being presented by the police officer u/s 173 of the Code and (c) information being received by the Magistrate from any other person or within the knowledge of the Magistrate. Earlier to that, the Magistrate is not looking after and applying his mind so as to satisfy himself as to whether the allegations are sufficient enough to put the alleged person to a criminal trial. It

will be evidence that on presentation of a first information report to the police officer, if the offence is a cognizable one, the police officer is bound to register the offence and investigate it and he is supposed to file a report u/s 173 of the Criminal Procedure Code. However, even though the procedure provided in the said Chapter XII makes it incumbent on the Investigating Officer to send a report of the cognizable offences to the Magistrate, the Magistrate is not supposed to interfere in the investigation. However, u/s 156(3) of the Code, the Magistrate may direct the investigation and even though section 157 has provided that the report shall be sent to the Magistrate, the interference by the Magistrate is not warranted. Apart from these sections, u/s 167 of the Code, the accused person is being produced before the Magistrate if the investigation is not completed within a period of twenty-four hours for the purpose of granting police custody or judicial custody. However, section 167 of the Code provides that whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within a period of twenty-four hours fixed by section 57 and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary and shall at the same time forward the accused to such Magistrate. The Magistrate to whom an accused person is forwarded under this section, may, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole etc. Thus, it will appear, reading section 167, that the Magistrate is not applying his mind to the allegations made or accusation or information, but it is the belief of the police officer in charge of the police station concerned investigating the said crime that there are grounds for believing that the accusation or information is well-founded and on his report and production of the accused, the Magistrate grants the custody. However while granting that custody, either judicial or police, the Magistrate is not expected to be satisfied himself, but he acts upon the satisfaction and/or the belief of the Police Station or the police officer investigating the crime. A similar aspect has been considered by the Apex Court in the case of *Jamuna Singh and Others Vs. Bhadai Sah*, and it has been observed that on a petition of complaint being filed before him, a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint. When, however, he applies his mind not for such purpose but for purposes of ordering investigation u/s 156(3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence". The cases of *R.R. Chari Vs. The State of Uttar Pradesh*, and *Gopal Das v. State of Assam*, reported in AIR 1961 S.C. 986, were referred to.

11. It is pertinent to note that in the case of *R.R. Chari Vs. The State of Uttar Pradesh*, the Apex Court has observed that in the case of a cognizable offence, the Magistrate takes cognizance when the police have completed their

investigation and come to the Magistrate for the issue of process. In such a case before proceedings are initiated and while the matter is under investigation by the police, the suspected person is liable to be arrested by the police without any order by the Magistrate. It is further observed in para 5 that for the Prevention of Corruption Act, offences under sections 161 and 165, Penal Code, become cognizable, notwithstanding what is provided in the Criminal Procedure Code. Thereafter, it is observed in para 6 that the proviso to section 3 of the Act expressly covers the case of a Magistrate issuing a warrant for the arrest of a person in the course of investigation only and on the footing that it is a cognizable offence. The only effect of that proviso is that instead of the police officer arresting on his own motion he has got to obtain an order of the Magistrate for the arrest. It is wrong from this feature of section 3 of the Act alone to contend that because the warrant is issued it must be after the Magistrate has taken cognizance of it and the Magistrate's action can be only u/s 190 of the Criminal Procedure Code. It is further observed in para 6 that reading sections 197 and 190 of the Criminal Procedure Code and section 6 of the Prevention of Corruption Act in the light of the wording of the proviso to section 3, it is clear that the stage at which a warrant is asked for under the proviso to section 3 of the Act is not on cognizance of the offence by the Magistrate as contemplated by the other three sections. Further it is observed in para 9 that before it can be said that any Magistrate has taken cognizance of any offence u/s 190 of the Criminal Procedure Code, he must have applied his mind to the offence for the purpose of proceeding in a particular way as indicated in the subsequent provisions of Chapter proceeding u/s 200 of the Code and thereafter sending ii for inquiry and report u/s 202 of the Code. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of the Chapter but for taking action of some other kind, for example, ordering investigation u/s 156(3) of the Code, or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

12. The above observations of the Apex Court is a complete answer to the submissions made by the learned Counsel. I am not in agreement with the learned Counsel that the prosecution commences and/or that all the stages after the registration of F.I.R. till the end of the trial together make a prosecution. In fact, it will be clear from the above discussion that the prosecution commences only when the Magistrate applies his mind to the allegations made for the purposes of a criminal trial and the said application of mind for the first time takes place when the Magistrate under the Criminal Procedure Code or the Special Judge under the Prevention of Corruption Act applies his mind u/s 190 of the Criminal Procedure Code and u/s 5 of the Prevention of Corruption Act respectively and takes cognizance. Therefore, the stage from the filing of the F.I.R. till the report is presented to the Magistrate for the purposes of taking the cognizance and/or to the Special Judge is a part of investigation and even though at some stage, the Magistrate and/ or the Special Judge is involved and is supposed to pass an order, the role of the Magistrate or the Special Judge at that

stage, is not of applying his mind for trial of the accused and, therefore, that part cannot be said to be a part of the prosecution and, therefore, in the result, I hold that the prosecution commences when the Magistrate take s cognizance u/s 190 of the Criminal Procedure Code and for the purposes of the Prevention of Corruption Act when the Special Judge takes the cognizance u/s 5 of the said Act.

13. This view, as pointed out above, has been held by the Apex Court. It will be also evident from the old case AIR 1945 18 (Privy Council) , wherein it has been observed on page 22---"In the present case the police have under sections 154 and 156, Criminal P.C., a statutory right to investigate a cognizable offence without requiring the sanction of the Court, and to that extent the case resembles 44 Cal. 535 in which as the High Court has pointed out their Lordships Board expressed the view to dismiss an application on the ground that it would be an abuse of the powers of the Court might be to act on treacherous grounds. Of course, in the present case as in the petition brought by Mr. Gauba no prosecution is possible unless the necessary sanction u/s 197, Criminal P.C., has first been obtained. But that stage like the stage at which the Court may legitimately intervene has not, in their Lordships" opinion , yet been reached. The question so far is one of investigation, not prosecution etc." Thus, the Privy Council made a distinction between "investigation" and "prosecution". The above interpretation will also be supported by sections 196, 197 and 198 of the Criminal Procedure Code and section 19 of the Prevention of Corruption Act, 1988. Section 196 of the Code prohibits the Court from taking cognizance of offences punishable under Chapter VI or u/s 153A of the Indian Penal Code, or a criminal conspiracy to commit such offence, or any such abetment, as is described in section 153A of the Indian Penal Code except with the previous sanction of the Central Government or of the State Government. Sub-section (2) of the said section 196 contemplates sanction by the State Government or the District Magistrate to initiate the prosecution before any Court u/s 120B of the Indian Penal Code. Section 197 of the Code provides that the Court shall not take cognizance of the offence against the Judges and the public servants unless the sanction from the Union Government and/or from the State Government respectively, as provided in the said section, is obtained. Section 19 of the Prevention of Corruption Act, 1988 provides that no Court shall take cognizance of the offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the Central Government and/or of the State Government, as provided and prescribed in the said sections. The marginal note of each of the sections referred to above is that the previous sanction is necessary for the prosecution of judges and public servants and for the prosecution of offences against the State. Thus, even though, the word "prosecution" has not been defined anywhere either in the Criminal Procedure Code or in the Prevention of Corruption Act, I find the said word as referred to in the marginal note of those sections and even though, the rules of interpretation normally does not allow the marginal not of sections to be used for the purpose of interpreting the sections, in the present matter, it has

become necessary to look into this marginal note in order to know the scope of the word "prosecution" and as this marginal note points out that unless the proper sanction is obtained for the purposes of the prosecution, the Court shall not take the cognizance; that means the prosecution starts from the stage of taking cognizance by the Court and for taking such cognizance by the Court, earlier sanction to prosecute is necessary. In the result, the prosecution commences from the stage when the Court applies its mind, as discussed above, to the allegations as against the accused person and takes cognizance and it comes to an end when the case is finally disposed of either after the trial and/or by any other way like that of discharge etc. In the result, I hold that in the facts of the present case, the prosecution had not commenced as against the petitioner and, therefore, the bar provided in the provisions of section 162 of the Maharashtra Cooperative Societies Act, 1960 and section 19 of the Prevention of corruption Act, 1988, will not apply.

14. The second contention raised by the learned Counsel is that the report by the Lokayukta has been sought on the application submitted by the Bhrashtachar Virodhi Janjagaran Sangathana and, therefore, the help of the Anti-Corruption Bureau has been taken by the Lokayukta. Therefore, the Anti-Corruption Bureau was supposed to make a report to the Lokayukta. In the result, the act of filing of F.I.R. by the Anti-Corruption Bureau on their own, was bad. According to the learned Counsel, as the application was received by the Lokayukta, it was the Lokayukta, who was to enquire into the said application and to issue directions. It is submitted that the said Bhrashtachar Virodhi Janjagaran Sangathana had not filed F.I.R. to the Deputy Superintendent of Police, Anti-Corruption Bureau, Nagpur, so as to register the crime and, therefore, there was nothing before the Deputy Superintendent of Police by way of F.I.R. to register the crime. Therefore, ultimately, the learned counsel submitted that the proceedings require to be quashed in the absence of a direction from the Lokayukta and/or in the absence of a direct complaint of which the cognizance could be taken by the Deputy Superintendent of Police. This contention is without merit. It is pertinent to note that the petitioner's this argument is misconceived. The petitioner agrees that the Lokayukta can issue direction for registering the offence after the completion of enquiry by the Lokayukta. The only grievance is that there is no such direction. It may be noted that the said Bhrashtachar Virodhi Janjagaran Sangathana could have approached to Police of Deputy Superintendent of Police directly and in that eventuality, the Deputy Superintendent of Police could have registered the offence, if he would have found cognizable offence. Therefore, the Deputy Superintendent of Police, Anti-Corruption Bureau was/is empowered to register the offence when, prima facie, he is satisfied that cognizable offence has been reported to him. Therefore, as, in the present matter, it was found by the Deputy Superintendent of Police, Anti-Corruption Bureau, while enquiring the matter at the direction of the Lokayukta, that cognizable offence has been committed by the petitioner, the Deputy Superintendent of Police, Anti-Corruption Bureau, has registered the offence. I do not find that the act of

registering the offence on the part of the Deputy Superintendent of Police, Anti-Corruption Bureau, was/is bad in law. The Deputy Superintendent of Police, Anti-Corruption Bureau, was within his powers when he registered the offence, even though without direction of the Lokayukta.

15. The next and the last submission made by the learned Counsel, relying on the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , and especially on paragraph 108, is that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. According to the learned Counsel, while discharging his official duties, the orders in respect of the registration of the concerned Societies have been passed by the petitioner and, therefore, prima facie, there is no material, which can be said to constitute an offence, as alleged. For the said purpose, the complaint is perused. It will be evident from the said complaint that the orders in respect of the registration of the said Labour Co-operative Societies have been passed by the petitioner. No doubt, it is evident that all the documents necessary for the registration of the Societies have been presented by the Promoters of those Societies. Not only that, but the proposals were also placed before the District Committee, which was constituted by the Cooperation Department to guide the Registrars. However, the said Committee has passed a resolution that the controversial labour Co-operative Societies referred to above may be registered by the petitioner after making the necessary enquiries and, therefore, even though the documents of registration may appear to be complete, it was necessary for the present petitioner to enquire into those documents and to hold enquiry, as provided under sections 8 and 9 of the Maharashtra Co-operative Societies Act, 1960, for the purposes of the registration of the Society. It appears that the report was made by the Co-operative Officer Shri Dhone, who is also one of the accused in the present matter, that the concerned Societies satisfy all the norms of the registration. However, if that report is to be taken as a basis for passing the order, then in that circumstances, the enquiry, which is contemplated in accordance with law,.....petitioner being a Registrar, has not taken place and there is a failure on his part to hold an enquiry. The report of the Co-operative Officer may be one of aids provided to the Registrar-petitioner to decide the question of registration of the proposed Societies. Apart from this report, the law has cast the responsibility and duty on him to hold an enquiry by himself and get him satisfied. The complaint points out that these Societies were not satisfying the norms required for the registration of the Labour Contract Societies. For example, it will be evident in respect for the Gurunanak Labour Co-operative Society Limited that the Chief Promoter and the members in the said Society are not labourers, as desired by the norms for registration of the said Society. It is further revealed that the said Society was sponsored indirectly by Dharmpal Bhamra who is a Contractor. It is further revealed that the members of the Society are not residents within the area of operation, but they are from the other State, namely

Madhya Pradesh, and further that the members of Serial Nos. 35, 36, 37, 38 and 42 are from the same family and are not from different family. It may be noted that these Societies are Labour Contract Societies and the Government has allowed the registration of such a Society for the purpose that the labourers, who work with the contractor and thereby are exploited, shall be provided with work and for the said purpose, those labourers should come forward to form their own society so as to accept the Government work or the work from the Public Departments or other focal authorities so that the benefit shall directly go to the labourers and they should not be exploited at the hands of the Contractor. With this object, these societies are expected to be formed and further to encourage such societies, Government has issued the direction to the Government Departments and the local authorities that if the Labour Contract Societies are coming forward for execution of the Government work, etc., they should be given the said work on priority basis. Not only that, but the other monetary benefits also have been extended by the Government. Thus, if the Labour Contract Societies and the Private Contractors come forward, the Government gives a preference to the Labour Contract Societies and thus the encouragement of the private contractors for the Government work is avoided as a result of the formation of these societies. Now, therefore, once the society is registered, the said society becomes entitled for certain Government work by way of preference and also for economic help and, therefore, while registering these societies, the norms for the purposes of the registration are required to be followed very stringently, because, ultimately, as I referred to above that the societies in question are sponsored by the Private Contractors in the field, the whole object of giving protection to these societies is frustrated and the benefit instead of giving to the labourers indirectly goes to the private contractors. I am not scrutinising each and every society, which is referred to in the complaint, but in respect of each and every society, the drawbacks have been found by the complainant and thereafter it has been found that had the proper enquiry been made by the petitioner, the societies in question would not have been registered.

16. However, as there is a failure on the part of the petitioner to make any proper enquiry so as to ascertain whether the Chief Promoters of these societies satisfy the test of the registration of the Labour Contract societies these societies have received the monetary benefits, as stated in the complaint. Otherwise, the Government work and the other financial assistance, which these societies have availed of, would not have been possible to them. Thus, this will point out that the case u/s 13(i)(d) of the Prevention of Corruption Act, 1988 has been made out. Even though there is no material in the complaint that the petitioner himself has received the monetary benefits however, the material in the complaint definitely points out that he abused his position for the purposes of registration of those societies in order that the wrongful gain should be obtained by the persons, who registered those labour societies and who are equally named as accused in the said complaint and, therefore, section 13(i)(d) of the said Act contemplates a benefit or pecuniary advantage to the person himself and/or to

other person and with that object, the act or omission has been performed and that constitutes an offence. I have, prima facie, considered the complaint. I am refraining myself from minutely scrutinizing the complaint, as the matter is under investigation, which, ultimately, should not prejudice the investigation, which is pending against the petitioner. But, however, prima facie, the complaint points out that the offence has been constituted, as alleged in the complaint. Yet the investigation is to go on and, therefore, it is not a case, as submitted by the learned Counsel, that on the face value of the allegations, the offence is not constituted and, therefore, I reject the said submission made by the learned Counsel.

17. In the result, the criminal writ petition fails and it is dismissed. Rule stands discharged.

18. Petition dismissed.