

(2003) 05 J&K CK 0027
In the Jammu And Kashmir High Court
Case No : Criminal Rev. No. 89 of 2000

State and Others

APPELLANT

Vs

Smt. Suman Mala

RESPONDENT

Date of Decision : 27-05-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 21

Citation : (2003) 3 JKJ 556

Hon'ble Judges : V.K. Jhanji, Acting C.J.; S.K. Gupta, J

Bench : Division Bench

Advocate : B.S. Salathia, AAG, for the Appellant; P.N. Raina, for the Respondent

Judgement

S.K. Gupta, J.—We have heard Mr. B.S. Salathia, learned Addl. Advocate General for the petitioner and Mr. P.N. Raina, Advocate,

learned counsel fro the respondent in extenso.

2. This reference has been made by the learned Single Judge framing the following substantial question of law:

whether an employee of the Kendriya Vidyalaya Sangathan who is not appointed by the Government of India and there is no master-servant

relationship between the two is covered by clause Eleventh of Section 21 RFC?

3. It appears that a revision petition came to be preferred against the order of discharge dated 28.8.2000 passed by the trial court in respect of

accused No. 2 Suman Mala. The prosecution had alleged abetment on the part of accused No. 2 on the construction of the house at Trikuta

Nagar, Jammu and were privy to the offence for possessing assets stated to be disproportionate to the known sources of accused No. 1 Vijay

Kumar because both had agreed to commit offence punishable under the

prevention of Corruption Act. The trial court found that the matter had already been considered by the sanctioning authority, who after due consideration refused the grant of sanction and in the facts and circumstances of the case discharged accused No. 2 Suman Mala. Learned Single Judge after hearing the parties in the revision accorded affirmation to the view expressed by the trial court. While advertng to the question as to whether respondent Suman Mala is a public servant within the meaning of Section 21 of Ranbir Penal Code, referred to the judgement of the coordinate Bench of this Court in Revision No. 60/99, wherein the finding was returned that the Principal was a public servant within the meaning of clause Eleventh of Section 21 of Ranbir Penal Code. As doubt crept in that regard to the correctness of the judgement of the coordinate Bench of this court referred (Supra), which in his opinion required re-consideration and formulated a question seeking determination by a larger Bench, pertaining to the employees of Kendriya Vidyalaya Sangathan whether covered by clause Eleventh of Section 21 RFC. For facility of reference clause Eleventh of Section 21 RPC reads as under:

Eleventh-Every servant under the Government of India, who is posted, and when he is performing his legitimate duties, within the State.

4. Mr. B.S. Salathia, learned Addl. Advocate General submitted at the out-set that Kendriya Vidyalaya Sangathan is a society registered under the Societies Act. Its employees are not covered under clause 11 and as such no sanction is required for their prosecution u/s 6 of the Prevention of Corruption Act. According to Mr. Salathia, accused No. 2 Suman Mala was not a public servant within the meaning Section 21 of Ranbir Penal Code and as such, sanction to prosecution is not necessary.

5. In advertng the contention of the petitioner, learned counsel Mr. P.N. Raina, Advocate appearing for the respondent submitted that Kendriya Vidyalaya Sangathan is creation of Government of India and is wholly financed by the Central Government. It is also contended that the employees of Kendriya Vidyalaya Sangathan are, therefore, public servants within the meaning of Section 21 of Ranbir Penal Code. In support of his submissions Mr. Raina relied upon the judgement of this court in Criminal Revision No. 60/99 regarding which doubt has been expressed by the learned Single Judge as to its correctness and made a reference for

determination of the question by larger Bench.

6. It is well settled proposition of law that where only specific question has been referred to a Division Bench by a Single Bench, the former Bench

has jurisdiction to answer that question only and not to enter into the question of fact.

7. it is pertinent to point out that as per clause 11 of Section 21 RPC applicable to the State, a servant under ""Government of India"" is a public

servant. Kendriya Vidyalaya Sangathan is a creation of the Govt.of India and is wholly financed out of the central Exchequer, Where the financial

assistance of the State is so much as to meet almost entire expenditure of the society, it would afford an indication that the society is a central

agency or instrumentality. It is not disputed that the substantial contribution for running the schools comes from the Central Government out of

which salaries of the employees are paid besides meeting all the expenditures. Service of the employees of the Kendriya Vidyalaya Sangathan is

pensionable service akin to the employees of the Central Government and being the instrumentality of the Government and under its complete

control, the Kendriya Vidyalayas popularly known as Central Schools in common parlance are controlled and wholly funded by the Government

of India. Further a strong and substantial trate of service of the employees of the Kendriya Vidyalaya Sangathan under the Government of India is

that service disputes concerning the employees of the Kendriya Vidyalaya Sangathan are amenable to the jurisdiction of the Central Administrative

Tribunal. The Apex Court in case Kashiben Bhikabai and Others Vs. Special Land Acquisition Officer and Another, has held that since Kendriya

Vidalaya is an autonomous body registered under the Societies Registration Act and controlled by the Government of India are within the

jurisdiction of Central Administrative Tribunal and the fact that the institution is situate in Jammu and Kashmir is immaterial.

8. We are, therefore, not in a position to accept the contention of the petitioner that the employees of the Central Government controlled and

wholly financed Kendriya Vidyalaya Sangathan are not the employees under the Government of India covered by clause 11 of Section 21 RPC

and a public Servant as described therein.

9. In view of the above, it would be wrong to hold that the respondent is not

covered by the definition of public servant under clause 11 of Section 21 RFC.

10. After taking conspectus of the entire facts and circumstances of the case, we hold that the respondent, an employee of the Kendriya Vidyalaya

Sangathan is a public servant within the meaning of clause 11 of Section 21 of RFC. Reference is answered accordingly.

11. Since the order of discharge of the respondent on the ground that there was no valid sanction for prosecution has been affirmed by the learned

Single Judge in the revision before him, there remains nothing to be dealt with so as to refer back the matter to the learned Single Judge, We direct

the record to be remitted back to the trial Court to proceed in the matter in accordance with law. Parties through their counsel are directed to

cause their appearance before the trial court on 12.6.2003.