
(2009) 04 SC CK 0202

In the Supreme Court Of India

Case No : Criminal Appeal No. 647 of 2009 (Arising out of S.L.P. (Criminal) No. 5937 of 2007) and Criminal Appeal No. 648 of 2009 (Arising out of S.L.P. (Criminal) No. 6929 of 2007)

State of Madhya Pradesh

APPELLANT

Vs

Rameshwar and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 142, 226
Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 397, 401, 482
Madhya Pradesh Co-operative Societies Act, 1960 — S

Citation : (2009) 2 ACR 1868 : (2009) 3 ALT(Cri) 68 : (2009) CLT 1101 : (2009) CriLJ 2415 : (2009) 5 JT 171 : (2009) 5 SCALE 214 : (2009) 11 SCC 424 : (2009) 6 SCR 510

Hon'ble Judges : Cyriac Joseph, J;Altamas kabir, J

Bench : Division Bench

Advocate : Ravindra Srivastava, C.D. Singh, Sunny Chaudhary, Aditya Singh, K. Krishna Kumar, Chavvi Batra, Upasana Nath, Vairagya and Kunal Verma, for the Appellant; Vivek Tankha Sushil Kumar Jain, Gurleen Chhabra, Anubha Singh and Pratibha Jain, for the Respondent

Final Decision : Partly Allowed

Judgement

Altamas Kabir, J.—Leave granted in both the special leave petitions which are taken up for hearing and final disposal together.

2. The respondents were Directors of the Indore Premier Co-operative Bank Limited and were also members of the Loan Committee for sanctioning loans. One Harish Patil and Kanhaiyalal Yadav lodged a complaint with the Special Establishment of the Lokayukt, Madhya Pradesh at Indore, alleging that the respondents had sanctioned loans amounting to Rs. 56,50,000/- in favour of 35 persons without verifying their eligibility to receive such loans or the end-use of such loans and had intentionally acted in an illegal manner to enable the said

borrowers to avail of the loans. On receiving the complaint, the Special Establishment Lokayukt, Indore, registered Crime No. 133/99 and after investigation filed a charge-sheet against the respondents under Sections 409, 420 and 120B of the Indian Penal Code (`IPC' for short) together with Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the `P.C. Act'). The Trial Court on due consideration of the charge-sheet, found a prima facie case against the respondents and by its order dated 4.11.2006 directed framing of charges as suggested in the charge-sheet.

3. Being aggrieved by the said order dated 4.11.2006, directing framing of charges, the respondents moved in revision before the Indore Bench of the Madhya Pradesh High Court for setting aside the aforesaid order passed by the Special Judge, Indore, in Special Case No. 1 of 2006 and for their discharge from the above-mentioned charges.

4. Considering the case made out by the respective parties, the High Court came to the conclusion that admittedly the respondents were members of the Loan Committee and as such members they are only required to consider the loan cases which are put up to them by the concerned Bank Manager for the grant of loan and it was for the Branch Managers to verify the facts regarding entitlement for grant of loan before submitting the same to the Loan Committee. Furthermore, it is only after the Executive Officer had also verified the applications for loan that the loan cases were put up before the Loan Committee for its sanction. In view of the aforesaid procedure, the High Court held that it could not be said that the Members of the Loan Committee (the respondents herein) had acted illegally and had wrongly sanctioned loans to the concerned borrowers. The High Court also took into consideration the fact that out of the total amount of loan which had been sanctioned by the Loan Committee amounting to Rs. 56,50,000/- a total sum of Rs. 64,69,000/- had already been deposited by the concerned depositors in the Bank and hence it could not be contended that by sanctioning the loans to the concerned borrowers the Bank had suffered any monetary loss since the full amount of loan, together with interest, had already been deposited by the borrowers in the Bank.

5. On the question of status of the respondents as "public servants" for the purpose of prosecution under the provisions of the Prevention of Corruption Act, 1988, the High Court relying on the judgment of this Court in State of Maharashtra Vs. Laljit Rajshi Shah and Others, held that the respondents could not be treated as public servants and could not, therefore, be punishable either under the provisions of the Prevention of Corruption Act, 1988, or u/s 409 IPC.

6. On such finding, the High Court by its order dated 17th March, 2007, allowed the Revision Petition and set aside the order of the Trial Court dated 4.11.2006 framing charges against the respondents and discharged them from the said charges under Sections 409, 418, 420 and 120B IPC and Section 13(1)(d) read with Section 13(2) of the P.C. Act.

7. The present appeals have been filed by the State of Madhya Pradesh against the said order of the High Court.

8. Appearing for the appellant State of Madhya Pradesh, Mr. Ravindra Srivastava, learned Senior Counsel submitted that the High Court had erred both as to the role played by the respondents and also on the question of the status of the said respondents as "public servants" for the purpose of prosecution under the provision of the P.C. Act. Mr. Srivastava also submitted that the High Court had travelled beyond its jurisdiction under Sections 397 read with Section 401 Criminal Procedure Code in re- assessing the factual position in order to arrive at the conclusion that the provisions, under which they had been charged, were not supported by the materials in the charge-sheet.

9. Referring to the inquiry report dated 21st January, 1999, submitted by the District Vigilance Committee, Indore, on the complaint of Shri Kanhaiyalal Yadav, Mr. Srivastava submitted that it had come to light during the inquiry that the quotation of Indore Motor and Agro Machinery, having its registered office at 535 Scheme No. 54, Indore, loans were advanced by the Banks to the persons named in the report for purchase of different kinds of vehicles. However, the said firm was not available at the address indicated. It also transpired that the firm was managed by one Shri Himanshu Joshi, son of Shri Hem Joshi, Public Contact Officer working in the Indore Premier Co-operative Bank and the Current Account of the firm was with the Kila Maidan Branch, Indore and the various Demand Drafts were deposited in the said account and the cash was subsequently withdrawn. It was also reported that the loans were sanctioned with the connivance of the Bank administration for the purchase of vehicles, but were not used for the said purpose and the Demand Drafts were encashed with the intention of cheating the Bank. Mr. Srivastava submitted that the tenor of the Inquiry Report was that Shri Hem Joshi had, in his capacity as the Public Contact Officer of the Bank, in connivance with the other respondents, set up a fictitious firm in the name of his son Shri Himanshu Joshi for the purpose of encashing the Bank Drafts which were all deposited in the account of the purported firm in the Kila Maidan Branch, Indore.

10. Mr. Srivastava pointed out that from the statements made by the Managers of the different Branches of the Bank a prima facie case was made out that not only were the rules relating to sanctioning of loans not followed, but the grant of such loans revealed lack of awareness and application on the part of the respondents. He also submitted that the officers of the National Bank for Agricultural and Rural Development (hereinafter referred as 'NABARD') conducted an inspection of the Indore Premier Co-operative Bank in June, 1998 and in their Report they also raised objections with regard to the loans which formed the subject matter of the present appeals.

11. Mr. Srivastava submitted that the finding of the District Vigilance Committee was that while the Branch Managers of the different Branches of the Bank had not complied with the directions given with regard to the policy of sanctioning

loans, the Chairman, and the Chief Executive Officer of the Bank, who are the Respondent Nos. 1 and 3 herein, failed to take any action despite the Inspection Report of NABARD, which gave rise to the conclusion that they had also played a decisive role in defrauding the Bank. Mr. Srivastava submitted that since the said Inquiry Report indicted all the respondents, along with several others, it had recommended that a case be registered u/s 420 read with Section 120B IPC against all the persons named. A further recommendation was made to register a case against the officers of the Bank, including the respondents herein, u/s 406, 409, 419 and 420 read with Section 120B IPC. Departmental action was also recommended against the Members of the Loan Committee of which the Respondent No. 1, Rameshwar, was the President, while the other respondents, who were all Directors of the Bank, were members.

12. Mr. Srivastava urged that the High Court had erred in completely absolving the respondents of any responsibility in connection with the sanctioning of the loans and placing the entire burden of the fraud perpetrated on the Branch Managers and the Executive Officer for inadequate or improper verification of the entitlement of the borrowers for grant of such loans. Learned Counsel also urged that the High Court had erred in observing that the members of the Loan Committee had a limited role to play for the purpose of sanctioning loans, since the ground work had already been prepared upto the level of the Branch Managers who had recommended the grant of such loans.

13. Mr. Srivastava submitted that in going into factual aspects of the matter, the High Court had travelled beyond its revisional powers in coming to findings of fact, which were yet to be established on evidence.

14. To support his submission, Mr. Srivastava firstly referred to a decision of this Court in *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another*, wherein, while considering the question relating to discharge of or framing of charges against an accused, it was held that when the Trial Court, finding a prima facie case prefers to frame charges against the accused, the High Court should not interfere by probing into the sufficiency of grounds for conviction of the accused and ordering his discharge.

15. Mr. Srivastava then referred to another decision of this Court in *Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others*, wherein also, while considering the provisions of Sections 227, 228 and 401 of the Criminal Procedure Code, 1973, this Court, inter alia, observed that the High Court should not ordinarily interfere with the Trial Court's order for framing of charge unless there is glaring injustice.

16. Reference was lastly made to the decision of this Court in *Munna Devi Vs. State of Rajasthan and anr*, wherein it was held that the revisional powers of the High Court could not be exercised in a routine and casual manner for quashing the charges framed against an accused, except where there was a legal bar or where no offence is made out against an accused in the F.I.R.

17. Mr. Srivastava submitted that apart from the above, the finding of the High Court that the respondents were not public servants was erroneous, as they had been elected as Office Bearers of the Co- operative Bank. He submitted that the High Court had wrongly relied upon the decision of this Court in *State of Maharashtra v. Laljit Rajshi Shah and Ors.* (supra), in which the definition of "public servant" as contained in Section 2 of the Prevention of Corruption Act, 1947 was under consideration. In the said Act, "public servant" has been defined in Section 2 to mean "public servant" as defined in Section 21 of the Indian Penal Code. Mr. Srivastava urged that the definition of "public servant" in the Prevention of Corruption Act, 1988 has been given a much wider connotation and the limited interpretation of the said expression in *Laljit Rajshi Shah and Ors.*'s case (supra) would not, therefore, be applicable to the facts of this case.

18. Mr. Srivastava submitted that on account of being an Office Bearer of a registered Co- operative Society engaged in banking, the respondents came within the definition of "public servant" u/s 2(c)(ix) of the 1988 Act. He also submitted that the High Court had failed to take note of Section 87 of the M.P. Co-operative Societies Act, 1960, which provides that the Registrar and other officers, as well as employees of a Co-operative Bank or a Co-operative Society, would be deemed to be "public servants" within the meaning of Section 21 of the Indian Penal Code.

19. In this regard, Mr. Srivastava referred to the decision of this Court in *Govt. of Andhra Pradesh and Others and The General Manager, District Co-operative Central Bank Ltd. Vs. P. Venku Reddy*, , where reference was made to the decision in *Laljit Rajshi Shah and Ors.*'s case (supra) and it was observed that the same was distinguishable as it was based on an interpretation of the definition of "public servant", as defined in the 1947 Act, which restricted such definition to cover only such "public servants" as were included in Section 21 of the Indian Penal Code. Reference was also made to another decision of this Court in *State of Maharashtra and Another Vs. Prabhakar Rao and Another*, , in which the wider definition of the expression "public servant" u/s 2(c) of the Prevention of Corruption Act, 1988 was held to be applicable and not the narrow definition u/s 21 of the Indian Penal Code.

20. Mr. Srivastava submitted that as far as the State of Madhya Pradesh was concerned, the same submissions would also be relevant in SLP (Crl.) No. 6929/07.

21. Replying to the submissions made on behalf of the appellant, Mr. Vivek Tankha, learned Senior Counsel, firstly, took us to the Charge framed against the respondents u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 409, 418, 420 and 120B of the Indian Penal Code. Mr. Tankha pointed out that the Charge was framed against the Respondent No. 1 in his capacity as Chairman/Manager of the Indore Premier Co- operative Bank and as a Member of the Loan Sanctioning Committee during the period from 4th March, 1997 to 4th May, 1998, when he was a public servant. The charge against

the Respondent No. 1 was that in connivance with the other accused persons and on the basis of forged documents relating to "Indore Motor and Agro Machinery", he had, without verification of the loan applications filed for the purpose of purchasing of vehicles by the other co-accused, without ensuring that the margin money was deposited as per the rules and without obtaining security, sanctioned the loans in contravention of the Bank Rules and issued the cheque/drafts of such loans to the applicants directly who withdrew the amount without purchasing the vehicles, resulting in misappropriation of Rs. 56,50,000/-. Accordingly, the Respondent No. 1 was purported to have committed the offence punishable under the above-mentioned provisions of the Prevention of Corruption Act, 1988 and the Indian Penal code. Similar charges were framed against the other respondents.

22. Mr. Tankha submitted that from the Inquiry Report of the District Vigilance Committee it would be quite apparent that it was the Branch Managers of the different Branches of the Bank who had failed to comply with the procedure relating to grant and sanction of loans and that all the lapses which were attempted to be foisted on the respondents by Mr. Srivastava during the course of his submissions, were required to be fulfilled at the Branches before proposals were put up for sanctioning of the loans. Mr. Tankha submitted that the Loan Sanctioning Committee had to deal with innumerable loan applications and it was not possible for the said Committee to scrutinize each application to ensure whether all the conditions for grant of loan had been satisfied. Mr. Tankha, in fact, urged that in the Inquiry Report, the only allegation made against the respondents herein was that they had not taken any action despite the Inspection Report of NABARD and it was only a presumption that as a result thereof a conclusion must be drawn that the Chairman of the Bank and the Chief Executive Officer had also played a main role in the fraud committed upon the Bank.

23. Mr. Tankha submitted that apart from the above, the only other allegation against the respondents in the Inquiry Report was that the members of the Loan Committee had failed to perform their duties efficiently. He submitted that the allegations pointed out by Mr. Srivastava had really been directed at the Branch Managers of the various Branches and the concerned officers of the said Branches.

24. Mr. Tankha submitted that there was no justification whatsoever for framing of charges against the respondents herein, either under the provisions of the Indian Penal Code or under the provisions of the Prevention of Corruption Act, 1988. He urged that if any irregularity had been committed by the Respondents in sanctioning the loans, there was sufficient scope for action to have been taken against them under the M.P. Co-operative Societies Act instead of taking recourse to the criminal process to apply pressure in respect of a dispute, which was basically civil in nature. Referring to the decision of this Court in *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, , Mr. Tankha relied on the

observations made by this Court in holding that it was necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases and at the stage of an application u/s 482 Cr.P.C. all that was required to be seen was whether necessary allegations existed in the complaint to make out an offence as alleged.

25. Further, reference was made to the decision of this Court in *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, , where, while taking recourse to Article 142 of the Constitution, it was observed that the dispute involved in the case had overtones of a civil dispute with certain criminal facets. Mr. Tankha submitted that similar was the position in the present case, where the dispute was mainly of a civil nature, which had been given a criminal twist to bring it within the scope of the Indian Penal code and also the Prevention of Corruption Act, 1988.

26. Mr. Tankha also referred to the decision of this Court in *Manoj Sharma Vs. State and Others*, , where the question which fell for determination was whether the First Information Report for offences which were not compoundable, could be quashed either u/s 482 Cr.P.C. or under Article 226 of the Constitution when the accused and the complainant had compromised and settled the matter between themselves. Mr. Tankha submitted that this Court had set aside the order upon holding that once a dispute of a civil nature between private parties, had been settled, the more pragmatic view would be to exercise powers u/s 482 Cr.P.C. or Article 226 of the Constitution to bring an end to such litigation.

27. As to the question whether the respondents were public servants or not, Mr. Tankha submitted that in a series of decisions this Court had held that certain officers discharging public functions had been held not to be public servants, except for purposes confined to the enactments under which they perform their functions. In this regard, Mr. Tankha also referred to the decision in *Laljit Rajshi Shah and Ors.*, which had been referred to by Mr. Srivastava, wherein it had been held that the Chairman and Members of the Managing Committee were not public servants but were deemed to be public servants under the M.P. Co-operative Societies Act, but not for any other purpose.

28. Mr. Tankha took us through the M.P. Co- operative Societies Act, 1960, in support of his submissions. He submitted that the said Act was a complete self-contained Code by itself and provided for different eventualities relating to the administration of Co-operative Societies. Referring to Section 74 of the Act, Mr. Tankha submitted that Clause (d) thereof is the remedy contemplated in respect of an offence alleged to have been committed of the instant type. Further- more, Section 75 provided for penalties to be inflicted in case of a proven offence and Section 76 also provided that offences under the Act were triable by a Magistrate of the Ist Class.

29. As to the definition of "public servant" in Section 2(c)(ix) of the Prevention of Corruption Act, 1988, it was submitted that the same should be read in two parts

and that the definition of "public servant" in the said provision in respect of a Co-operative Society would be covered by the first part and not by the second part.

30. Mr. Tankha submitted that the charges against the respondents were without any foundation, as would be clear from the Inquiry Report of the District Vigilance Committee which laid the responsibility for grant of the loans to the 35 persons at the door of the Branch offices and had only included the respondents within the scope of the charge for their alleged failure of not having taken action on the report of NABARD and also in not having discharged their duties efficiently. Mr. Tankha submitted that the same were not sufficient to maintain the charges against the respondents under Sections 409, 418, 420 and 120B IPC read with Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and the High Court had quite rightly quashed the charges against the respondents.

31. As to SLP(Crl.)No.6929/07, Mr. Tankha submitted that the same was in regard to a hospital loan of Rs. 2 lacs, which had been advanced and had also been repaid with interest on 10th July, 2008. Mr. Tankha submitted that in both the cases, the principal amount of the several loans together with interest had been repaid and consequently, the very foundation of the charges were nonest and the prosecution was liable to be quashed.

32. In addition to Mr. Tankha's submissions, Mr. Sushil Kumar Jain, who appeared for some of the respondents, submitted that unless there was a criminal intent disclosed in the charge-sheet, no charge either u/s 406 or Section 409 would lie. He also urged that in order to invoke the provisions of the Prevention of Corruption Act the accused would have to be a public servant and the property alleged to have been misappropriated, must have been entrusted to him while he was a public servant. He urged that the charge-sheet did not contain any allegation that the loan advanced by the Society was out of any fund or contribution received from the State. Accordingly, the question of misappropriation of any amount received by the public servant in his capacity as a public servant did not arise.

33. Mr. Jain reiterated the other submissions made by Mr. Tankha that the respondents had no conscious knowledge of the ineligibility of the borrowers to apply for and receive the loans and that the loans had been sanctioned on the basis of the recommendations and proposals put up by the Branch office.

34. Mr. Jain also submitted that the allegations against the respondents were misconceived and the remedy in respect of the lapses, if any, lay not under the general criminal process, but under the provisions of the M.P. Co-Operative Societies Act, 1960, itself.

35. Having considered the submissions made on behalf of the respective parties and the various decisions cited in support thereof, we are unable to agree with the views expressed by the High Court in the order impugned in these appeals.

36. While it is no doubt true that in the Inquiry Report of the District Vigilance Committee the role attributed to the respondents in sanctioning loans was shown to be purely managerial where the groundwork had been completed by the Branch offices and that as members of the Loan Sanctioning Committee, they had acted inefficiently, it has also been suggested that the Chairman and the Executive Officer of the Bank had connived with the other accused in defrauding the Bank. In the Inquiry Report it was stated that the respondents had in conspiracy with Shri Hem Joshi, the Public Contact Officer of the Bank, whose son, Himanshu Joshi, maintained a current account of a fictitious firm - Indore Motor and Agro Machinery in the Kila Maidan Branch of the Bank at Indore encashed the various Demand Drafts issued on account of the loans, by using the said account without purchase of any vehicle for which the loans had been sanctioned.

37. The High Court also did not, while considering the definition of the expression "public servant", take into account the fact that the decision in Laljit Rajshi Shah and Ors.'s case (*supra*) was no longer applicable in view of the amended provisions of Section 2(c) of the Prevention of Corruption Act, 1988, defining the said expression. Prima facie, it appears to us that the Respondent Nos. 1 and 3, in their capacity as the Chairman and Executive Officer of the Bank, come within the definition of "public servant" u/s 2(c)(ix) of the 1988 Act, which reads as follows:

public servant" means - any person who is the President, Secretary or other office-bearer of a registered co- operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government Company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

38. Mr. Tankha's submissions, which were echoed by Mr. Jain, that the M.P. Co-operative Societies Act, 1960 was a complete Code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted, in view of the fact that there is no bar under the M.P. Co-operative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved.

39. The judgments referred to by Mr. Tankha regarding the tendency to convert civil disputes into criminal cases to pressurize the accused, are unimpeachable, but the same will not apply to the facts of this case where a conspiracy to cheat the Bank is alleged.

40. We are, therefore, inclined to accept Mr. Srivastava's submissions that the High Court had in revision erroneously quashed the charges framed against the respondents. Consequently, the orders dated 17th March, 2007, passed by the

High Court in Crl. Revision No. 1303 of 2006 and Crl. Revision No. 36 of 2007, impugned in these two appeals are set aside and the charges framed by the Trial Court against the respondents are restored. The appeals are, accordingly, disposed of with a direction to the Trial Court to proceed with the trial. We make it clear that the views expressed in this judgment are prima facie in nature for the disposal of these appeals only and should not influence the trial in any way.