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IN THE HIGH COURT OF MANIPUR AT IMPHAL

AB No.49 of 2022

1. Laishram (O) Athokpam Thoinu, aged about 54 years, W/o L. Ibomcha Singh, a resident of Wangbal Maning Leikai, P.O. & P.S. Thoubal, District Thoubal, Manipur.
2. Nepram Khomdonbi Devi, aged about 46 years, W/o N. Inaobi, a resident of Wangbal Mayai Leikai, P.O. & P.S. Thoubal, District Thoubal, Manipur

..... **Petitioner/s**

– Versus –

The Officer-in-Charge, Vigilance & Anti Corruption Police Station,
Manipur, P.O. & P.S. Lamphel, Imphal West District, Manipur.

.... **Respondent/s**

With AB No.48 of 2022

Ms. Thoudam Kamala Devi, aged about 42 years, d/o., Thoudam Modhu Singh, r/o., Wangbal Mayai Leikai, P.O. & P.S. Thoubal, Thoubal District, Manipur – 795138.

..... **Petitioner/s**

– Versus –

The Officer-in-Charge, Vigilance & Anti Corruption Police Station,
Manipur at Lamphelpat, Imphal West District, P.O. Lamphel,
Manipur, PIN – 795004.

.... *Respondent/s*

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioners in AB No.49 of 2022	:	Mr. S. Jibon, Advocate Ms. S. Pritibala, Advocate
For the Petitioner in AB No.48 of 2022	:	Mr. N. Mahendra, Advocate
For the Respondent	:	Mr. RK Umakanta, PP
Date of Hearing	:	22.02.2023
Date of Judgment & Order	:	03.03.2023

JUDGMENT & ORDER
(CAV)

[1] The petitioner No.1: Smt. Laishram (O) Athokpam Thoinu and the petitioner No.2: Nepram Khomdonbi Devi, in AB No.49 of 2022, are elected Members of Ward No.1 and Ward No.2 of Wangbal Gram Panchayat, Thoubal District, Manipur and the petitioner in AB No.48 of 2022 Thoudam Kamala Devi, is a Business Correspondent (BC) of Punjab National Bank, Thoubal of the Wangbal Village. They are accused Nos.1, 2 & 3 in FIR Case No.

09(09)2022 V & AC P.S. U/S 120-B r/w 420/403 IPC & Section, 13(2) r/w 13(1)(a) of PC Act, 1988. The accused No.4 is unknown officials of BDO Office, Thoubal and accused No.5 is other private persons.

The above FIR was registered on the basis of a complaint dated 15.09.2022 lodged by AK Sadananda Singh, Addl. SP V & AC P.S., Manipur to the officer-in-charge of the same Police Station. The complaint is reproduced below:

“That, the wages of the duplicate job card No MN-05-001-021-001/1296 registered in the name of Kh. Rebati Devi was credited to A/c No. 0353011062469 of PNB, Thoubal which belongs to Khangembam Rebati Devi. However, she is unaware of the existence of the above-mentioned job card. No bank passbook has been issued to her and she is unaware of the actual amount credited and debited from her account. The transaction is carried out by the Business Correspondent of PNB Thoubal of the Wangbal village, namely, Thoudam Kamala Devi by using her (Rebati) thumb impression as directed by the ward Member.

That, wages of the duplicate Job card No. MN-05-001-021-002/19 registered in the name of G. Inaobi Devi were credited to bank A/c No. 0353011007842 of PNB Thoubal which belongs to Gurumayum Inaobi Devi. However, she is unaware of the existence of the above-mentioned job card. She is unaware of the money credited to this account. She withdrew wages for her original job card bearing No. MN-05-001-021-002/1444 by using ATM cards. She handed over some money for each withdrawal to the concerned ward member as directed by the concerned ward member.

That, wages of duplicate Job card Nos. MN-05-001-021-001/1451 registered in the name of Wahengbam Bijiya Devi was credited to bank A/c No. 0353011002412 of PNB. Thoubal which belongs to Wahengbam Bijiya Devi. However, she is unaware of the existence of the above mentioned job card. No bank passbook has been issued to her and she is not aware of the actual amount credited and debited from her account. The transaction is carried out by the Business Correspondent of PNB Thoubal of the Wangbal village, namely, Thoudam Kamala Devi by using her (Rebati) thumb impression as directed by the ward Member.

That, wages of duplicate Job card No. MN-05-001-021-002/143 registered in the name of L. Mangi Singh was credited to A/c No. 0353011105694 of PNB, Thoubal which belongs to one Sapam Priya Devi and wages of Job card No. MN-05-001-021-002/1403 was credited to A/c No. 0353010799815 of PNB Thoubal which belongs to one Leimapokpam Ibemcha Devi. However, L. Mangi Singh is an unsound person.

That, wages of duplicate job card No. MN-05-001-021-001/1285 registered in the name of Aheibam Premila Devi was credited to A/c No. 035301 1091717 of PNB, Thoubal which belongs to one Thounaojam Inao Devi. However, she (Aheibam Premila Devi) is unaware of the existence of the above-mentioned job card. She is not aware of the actual amount credited and debited from her account. She only withdrew wages for her original job card No. MN-05-001-021-001/80 credited to bank account of her mother-in-law, The transaction is carried out by the Business Correspondent of PNB Thoubal of the Wangbal village, namely, Thoudam Kamala Devi by using her (Premila) thumb impression as directed by the ward Member.

In view of the above findings, it is ascertained that the ward members of ward No.1 and 2 along with unknown official of BDO Office, Thoubal and other private persons created duplicate job cards in Wangbal Gram Panchayat. The wages of such duplicate job cards were credited to the bank accounts of some job card holders and the same were withdrawn at the residence of BC (Business Correspondent) of PNB, Thoubal of Wangbal village namely Thoudam Kamala Devi in collusion with the ward members of ward No. 1 and 2 of Wangbal G.P. by cheating the genuine job card holders.”

[2] The petitioners in AB No.49 of 2022 earlier approached the Ld. Special Judge (PC), Thoubal, Manipur by way of Cril.Misc.(AB) Case No.80 of 2022 praying for grant of anticipatory bail under Section 438 Cr.P.C. and the same was rejected vide order dated 29.09.2022 on the ground that the petitioners had fraudulently misappropriated huge Govt. money for their wrongful gain. Similarly, the petitioner in AB No.48 of 2022 also approached the Ld. Special Judge (PC), Thoubal, Manipur by way of Cril.Misc.(AB) Case No.79 of 2022 and the same was also rejected vide order dated 29.09.2022 on the ground that the petitioner had fraudulently misappropriated huge Govt. money for wrongful gain.

Consequently, the petitioners approached, this Court by way of the present applications AB Nos.49 of 2022 and 48 of 2022. Interim

protections were not granted by this Court while admitting the bail applications.

[3] In AB No.49 of 2022, it is stated that there is no material against the petitioners who are elected Ward Members. The FIR discloses that unknown officials of BDO Thoubal and private party created duplicate job card holders in Wangbal and they have manipulated the linked bank accounts in the MGNREGS job card details and the same was fraudulently withdrawn through Business Correspondent (BC): Th. Kamala (the petitioner in AB No.48 of 2022). It is stated that the petitioners/Ward Members have no right, power and privilege to do anything regarding encashment of money for the wages of the job card holders and the same is dealt by this Panchayat Officials. It is also stated that the elected Ward Members don't fall within the meaning of Public Servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988 and as such registration of FIR against them is not maintainable.

It is further stated that the FIR is registered by the political opponents of the petitioners who were defeated in the last election. It is prayed that the petitioners be released on anticipatory bail and they will abide by all the conditions imposed by this Court and there is no apprehension of absconding or tampering with the witnesses and the evidences.

In AB No.48 of 2022, it is stated that the petitioner: Thoudam Kamala Devi is a Business Correspondent (BC) of Punjab National Bank, Thoubal of the Wangbal Village and her duty is in assisting the job card holder in opening bank account and she has no role in the actual transaction of fund to the accounts of the beneficiaries. Besides this, it is stated that customer will come to open account and she facilitate transaction. She is also doing similar functions by facilitating in opening of accounts for the beneficiaries of MGNREGS of pension fund, self-help group and scholarship for student, etc. It is also further stated that she has no role in actual disbursement of fund except for facilitating in the opening of account and transaction and there is no material against her and prayed that she may be released on anticipatory bail and she will abide by any conditions imposed by this Court.

[4] The State have filed affidavit-in-opposition stating that these 2(two) elected Ward Members in connivance with business correspondent of PNB Bank and other unnamed officials and the BDO official and other private party have hatched criminal conspiracy to cheat the job card holders of their wages and they have succeeded in doing the same . They have created duplicate and fake job cards, opened accounts in the name of non-existent or wrong persons and make withdrawals by not giving full amount to the job card holders and in collusion, they have made conspiracy, cheating and criminal misappropriation of property belonging to the job card holders. It is stated that

their custodial interrogation is required to reveal the role of the other co-accused and to discover the whole gamut of conspiracy. It is stated that the present FIR has been lodged on the direction of this Court by order dated 08.04.2022 passed in a PIL to conduct an enquiry regarding fraudulent transactions in MGNREGS fund.

It is stated that, during the investigation, it was learnt that the accused, Thoudam Kamala Devi who is serving as a Business Correspondent Agent (BCA) of Punjab National Bank, Thoubal Branch, taking advantage of her position and knowledge of the working of the banks and in conspiracy with the other co-accused, namely, Laishram (O) Athokpam Thoinu and Nepram Khomdonbi Devi, has opened bank accounts of many residents of Wangbal G.P. but has not given the account holders their bank passbooks and account numbers. All these account holders of Wangbal G.P. were made to transact the bank accounts through her (Thoudam Kamala) with the help of her compact biometric USB device (a morpho machine was seized from her residence). The account holders of Wangbal G.P. never knew the actual wages amount credited to or debited from their respective bank accounts. They only pressed their fingers in her morpho machine which read their fingerprints and allow the transactions. After that, the accused, Thoudam Kamala would give some cash amount as MGNREGS wages without revealing the actual wages credited into their bank accounts.

It is stated that on examination of some job card holders of Wangbal G.P. of Wards 1 and 2, it is revealed that the accused, Thoudam Kamala had never handed over the job card holders their actual MGNREGS wages on the advice of elected members (co-accused) but always held back a major portion of the MGNREGS wages for their own profit. It is suspected that Thoudam Kamala shared this illegal profit with the co-accused, namely Laishram (O) Athokpam Thoinu and Nepram Khomdonbi Devi, who are the elected ward Members of ward number 1 and 2 respectively.

It is also stated that the job card holders are completely unaware of the MGNREGS wages amount credited to their account or how Thoudam Kamala in conspiracy with Laishram (O) Athokpam Thoinu and Nepram Khomdonbi Devi, had taken out/transferred money from their bank account to another bank account without their knowledge.

[5] Heard Mr. S. Jibon, learned counsel for the petitioners in AB No.49 of 2022, Mr. N. Mahendra, learned counsel for the petitioner in AB No.48 of 2022 and Mr. RK Umakanta, learned PP for the respondent.

[6] Mr. S. Jibon, learned counsel for the petitioner has raised the preliminary objection that the petitioners are not public servants as defined by Section 2(c) of the Prevention of Corruption Act and hence, the FIR lodged under PC Act is not maintainable. He further states that amount of fund

misappropriation or illegal withdrawal is not given in the present case and as such no offences under Section 420 and 403 IPC are made out.

On plain reading of the OE filed by the complainant, the whole illegal transaction, fabrication of job card is done by some unknown BDO officials as well as some private parties and there is no material against the petitioners as such, he prayed that the bail application may be allowed.

[7] Mr. N. Mahendra, learned counsel for the petitioner in AB No.48 of 2022 submits that the petitioner is only a Business Correspondent Agent of Punjab National Bank whose primary duty is to facilitate opening of account of the beneficiaries of MGNREGS of pension fund, self-help group and scholarship student, etc. and in facilitating withdrawal. It is also stated that the petitioner has no role in the actual transaction and funds are transferred to the respective accounts of the beneficiaries. She enables the transaction by using the thumb impression of the beneficiary with the help of her compact biometric USB device. She being only a private, the charge under PC Act will not be attracted to her and there is no sufficient material to link her to the conspiracy with the co-accused. Accordingly, Mr. N. Mahendra, learned counsel for the petitioner in AB No.48 of 2022 prays that the bail application may be allowed and the petitioner will abide by any conditions as imposed by this Court.

[8] Mr. RK Umakanta, learned PP for the State states that during the investigation, many instances are given/mentioned where funds of job card holders were transferred to the accounts of other persons, even a person of unsound mind was given job card and his account was linked to some other person's account and most of the job card holders examined by the police during the course of investigation, said that they were not given full payment of the wages and a major portion was withheld by the accused persons and the conspiracy between the Ward Members and the Bank Correspondent was revealed during the investigation. Regarding the plea of Mr. S. Jibon, learned counsel for the petitioners in AB No.49 of 2022 that the elected Ward Members are not public servant within the meaning of Section 2(c) of the PC Act, Mr. RK Umakanta, learned PP draws the attention of this Court to the provisions of Section 2(c)(viii) of Prevention of Corruption Act where public servant is defined as:

“(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty.”

Sub Section (b) to Section 2 of the Act defines ‘public duty’ as a duty in which the State, the public or the community at large has an interest.

So, he submits that on perusal of the Manipur Panchayati Raj Act, 1994, the elected members of Panchayati Raj are entrusted to perform public duty with respect to the administration of the local self-Government in rural areas of Manipur and for any matter connected therewith and incidental

thereto. He draws the attention of this Court to the object of the Manipur Panchayati Raj Act, 1994 which provides for administration of local self-government in the rural areas of Manipur. He submits that the elected members of local body are public servants within the inclusive definition of Section 2(c)(viii) read with Section 2(b) of PC Act.

The members of the local body being a public servant will be clear from Section 2(k) of the Manipur Rural Local Bodies Ombudsman Act, 2013 where members of District Council/Panchayat including its Pradhan or Adhyaksa are defined as public servant.

[9] Mr. R K Umankanta, learned PP concludes that on co-joint reading of Sections 2(b), 2(c)(viii) of PC Act, the Manipur Panchayati Raj Act and Section 2(k) of the Manipur Rural Local Bodies Ombudsman Act, 2013, it is clear that the elected public members of the Panchayati bodies are public servants within the meaning of Section 2(c)(viii) of the PC Act. He refers to the judgment of Hon'ble Supreme Court in the case of **Manish Trivedi Vs. State of Rajasthan (2014) 14 SCC 420** where, it was held that every member of the Panchayat is deemed to be a public servant within the meaning of Section 21 of the IPC. Hence, Mr. RK Umakanta, learned PP submits that as the elected Ward Members of the Wangbal Gram Panchayat are public servant within the meaning of Section 2(c)(viii) of PC Act and hence, the charge under PC Act against the accused Nos.3 Business Correspondent (BC) PNB, Thoubal for hatching conspiracy with the elected members, is maintainable.

Mr. RK Umakanta, learned PP also refers to the case of ***P. Chidambaram Vs. Directorate of Enforcement reported in (2019) 9 SCC 24*** where it was held that power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly, more so in case of economic offences which affect the economic fabric of the society. He has pointed out that since the petitioners are not co-operating with the investigation and did not appear before the Investigating Officer during the course of investigation for the last 5(five) months and the investigation is at the initial stage and the whole gamut of conspiracy and the transaction are to be discovered, the custodial interrogation of the accused persons is required. Accordingly, he prays for rejecting the bail application.

Whether the Elected Members of Panchayat are Public Servants?

[10] This Court has considered the rival submissions of the parties and perused the materials on record and the case law cited at bar. It will be fruitful to consider the decisions of the Apex Court in this regard.

[11] A 5 Judge Bench of the Hon'ble Supreme Court held in the case of **M. Karunanidhi v. Union of India: (1979) 3 SCC 431** that a Chief Minister is a public servant within the meaning of Section 21(12) of IPC as he is getting salary from state exchequer for performing public function. Relevant para are reproduced below:

“57. Three facts, therefore, have been proved beyond doubt:

1. That a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional functions.

2. That a Chief Minister or a Minister gets salary for the public work done or the public duty performed by him.

3. That the said salary is paid to the Chief Minister or the Minister from the Government funds.

It is thus incontrovertible, that the holder of a public office such as the Chief Minister is a public servant in respect of whom the Constitution provides that he will get his salary from the Government Treasury so long he holds his office on account of the public service that he discharges. The salary given to the Chief Minister is co-terminus with his office and is not paid like other constitutional functionaries such as the President and the Speaker. These facts, therefore, point to one and only one conclusion and that is that the Chief Minister is in the pay of the Government and is, therefore, a public servant within the meaning of Section 21(12) of the Penal Code.”

[12] Another 5 Judge Bench of Hon’ble Supreme Court held in the case of **P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626** that Members of Parliament and State Legislatures are public servants within the meaning of Section 2(c)(viii) of the Prevention of Corruption Act, 1988. Para 82 and 85 are reproduced below for clarity.

“82. Having regard to the object of the 1988 Act as indicated in the Statement of Objects and Reasons, namely, to widen the scope of the definition of the expression “public servant”, which is sought to be achieved by introducing the definition of “public duty” in Section 2(b) and the definition of “public servant” in Section 2(c) which enlarges the scope of the existing definition of public servant contained in Section 21 IPC, we do not find any justification for restricting the scope of the wide words used in sub-clause (viii) of Section 2(c) in the 1988 Act on the basis of the statement of the Minister so as to exclude Members of Parliament and Members of the State Legislatures. In our opinion the words used in sub-clause (viii) of Section 2(c) are clear and unambiguous and they cannot be cut down on the basis of the statement made by the Minister while piloting the Bill in Parliament.

.....

85. Having considered the submissions of the learned counsel on the meaning of the expression “public servant” contained in Section 2(c) of the 1988 Act, we are of the view that a Member of Parliament is a public servant for the purpose of the 1988 Act.”

[13] The above cited judgments held that elected members are all public servants. It is clear from the preamble of the Manipur Panchayati Raj Act, 1994 that the Panchayat Body is mandated to perform the function of local self-Government in the rural areas of Manipur and for matter connected therewith and incidental thereto. Further, Section 2(k) of the Manipur Rural Local Bodies Ombudsman Act, 2013 defines members of District Council/Panchayat including its Pradhan or Adhyaksa are defined as public servants. No doubt administration of local self-Government is a public duty within the meaning of Section 2(b) of the PC Act. **Hence, the elected members will be “public servants” within the meaning of Section 2(c)(viii) of PC Act** and the objections of Mr. S. Jibon, learned counsel for the petitioners regarding the non-maintainability of the offence under PC Act is rejected and the present FIR has no inherent defect and since the accused No.3, Bank Business Correspondent has also participated in conspiracy with accused Nos.1 and 2, elected Ward Members, there is no inherent defect in the FIR qua the accused persons.

[14] As revealed from the affidavit filed by the State, it is seen that linking of the job card holders was made to other persons’ accounts and hence

there is cheating and misappropriation on the part of the petitioners and other co-accused. It is also seen that the job card account was prepared even in the name of unsound person and the same was linked to other person's account. Such instances which are mentioned in the counter affidavit filed by the State were revealed during the course of investigation. It may also be noted that the petitioners herein have never appeared before the IO and participated in the investigation and without properly examining them and conducting interrogation, the whole picture of the conspiracy and the fraudulent activities cannot be discovered. Many of the job card holders were not provided with full payment and a large part of the wages were retained by the petitioners in collusion clearing indicating materials for the offence of criminal conspiracy, cheating and misappropriation of money.

[15] Accordingly, this Court does not find any merit in the matters and the bail applications are rejected. No costs.

[16] Send copy of this order to the Officer-in-Charge, Vigilance and Anti-Corruption Police Station.

JUDGE

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