IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24136-2014
Date of Decision: 01.04.2015

Amarjit Gupta
... Appellant (s)

Versus

State of Punjab and others
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment ?. **YES**
2) To be referred to the Reporters or not ?. **YES**
3) Whether the judgment should be reported in the Digest ? **YES**

Present: Mr. Pradeep Virk, Advocate,
for the petitioner.

Mr. S.S.Chandumajra, DAG, Punjab.

Mr. D.V.Sharma, Sr. Advocate with
Ms. Shivani Sharma, Advocate,
for respondent no.3.

Paramjeet Singh, J. (Oral)

Our whole country is in the grip of hydra-headed monster of corruption. The "corruption" has become a household word in the Indian society. It has not only eaten deep into the ethical fabrics of Indian society but has also spoiled the character of its people. The general perception of public about public servants is that opportunity to service in the civil services is an avenue for personal enrichment and not for the service of the people. To tame the tidal waves of corruption,

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sweeping the entire gamut of the country, an integrated approach is required to be undertaken. The corruption fuels maladministration and public fraudulence and imperils the capacity of the country. The petitioner is facing such charges and has moved this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for quashing of FIR No.02 dated 02.05.2012, registered at Police Station Vigilance Bureau, FS-I, Punjab at Mohali, under Sections 420, 466, 467, 471 and 120-B of the Indian Penal Code (in short, 'IPC') and Section 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short, '1988 Act').

Brief facts of the case are to the effect that a complaint dated 21.03.2012 was received by the State Vigilance Bureau against the petitioner and others from the Punjab State Federation of Cooperative House Building Societies Ltd. (in short 'Housefed'). As per the complaint, tenders for construction of 632 flats in two parts in Sector 79, Mohali were invited by Housefed in the year 2010. One tender was for ₹34,18,17,665/- and other was for ₹38,58,72,164/- which were allotted to M/s Manohar Lal Gupta & Co. Pvt. Ltd., M/s E.C.Construction Pvt. Ltd. and M/s Venktesh Infrastructure Pvt. Ltd., Delhi. The Technical Advisor to the Chief Minister, Punjab perused the estimates and agreements with regard to said tenders and pointed out that mistake has been found to be committed in tendering process of said job by the senior engineering staff of the organization. On the basis of said report,

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preliminary investigation of said tenders was conducted and it transpired that rates which were spoken by Rajinder Singh at the time of opening the tenders, were later on changed by the petitioner and others. It is alleged in the complaint that the petitioner happened to be the Superintending Engineer at that point of time has given benefit of ₹8,61,22,007/- to the MLGC in connivance with the contractors. The agency has gained extra benefit of ₹5,09,98,581/- upto October, 2011 by revising the rates. On the basis of the said complaint, FIR No.02 dated 02.05.2012 was registered at Police Station Vigilance Bureau, FS-I, Punjab at Mohali.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that the petitioner is an employee of Housefed which is a Society registered under the Punjab Cooperative Societies Act, 1961 (in short, '1961 Act'), as such is not a "public servant" as defined in Section 2 (c) of the 1988 Act or Section 21 of IPC. Learned counsel further contended that registration of FIR at Police Station Vigilance Bureau Phase-I, Punjab at Mohali is without jurisdiction. The office of the petitioner is situated within the territorial jurisdiction of Chandigarh and everything has happened at Chandigarh, as such the police of Police Station Vigilance Bureau Phase-I, Punjab at Mohali cannot investigate the matter and FIR cannot be registered at Mohali. The office of

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Housefed is situated in SCO No.150-152, Sector-34-A, Chandigarh. Since the allotted tenders were opened at the said office and tampering is also allegedly done in the same office, therefore, registration of FIR at Mohali is without jurisdiction. Learned counsel further contended that the State of Punjab has issued circular dated 06.03.2000 through Vigilance Department of Government of Punjab and there is non-compliance of the said circular. Resultantly, the investigation is against the rules and instructions issued by the Punjab Govt., itself. Learned counsel further contended that there is no sanction order on record to prosecute the petitioner. To buttress his arguments, learned counsel relied upon the decision dated 15.05.2006, rendered by a Division Bench of this Court in CWP-9256-2002, titled ***'Ashok Choudary, Advocate vs. State of Punjab and others***', decision dated 17.10.2011, rendered by a Coordinate Bench of this Court in CWP-18317-2009, titled ***'Dr. Sukhdev Singh Dhillion and others vs. State of Punjab and others***', ***State of Punjab vs. Nirmal Kaur*** 2009 (13) SCC 418, ***N.K.Sharma vs. Abhimanyu*** 2005 (4) R.C.R.(Criminal) 469, decision dated 07.05.2013 rendered by this Court in CRM-M-31235-2012, titled '***Surinder Kumar Kaushal vs. State of Haryana and another***' and ***Dhirendra Krishan vs. Bharat Heavy Electrical Ltd. and others*** 1999 Crl. L.J 3405.

Per contra, learned senior counsel for respondent no.3 has vehemently opposed the contentions of learned counsel for the petitioner

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and contended that the petitioner is a "public servant" as defined in 1988 Act. The Housefed is performing public duties and has been formed to tackle the problem of housing in the Punjab State by providing financial assistance to the individuals for construction of houses in rural and urban areas. The main object of Housefed is to acquire and develop land for the benefit of housing programme in the State. As such, Housefed is performing public duty for providing facilities relating to housing to the public. Learned senior counsel further contended that in view of Section 2 (h) of the 1961 Act, the petitioner falls in the definition of officer and is a "public servant". Learned senior counsel further contended that the Vigilance Bureau, Phase-I, Punjab at Mohali has jurisdiction to try the offence as the head office of Housefed is at Mohali and the petitioner is an employee of the Housefed which is controlled by the State Government as per the provisions of the 1961 Act. Learned senior counsel further contended that the Court can try offences committed beyond its territorial jurisdiction when these are committed in pursuance of the conspiracy being tried by the Court. Learned senior counsel further contended that so far as sanction for prosecution is concerned, the same has not been challenged in the present petition. Otherwise also, it is settled law that inference can be drawn from the facts of the case with regard to sanction and it cannot be appreciated, at this stage. Learned senior counsel further contended that there is no dispute with regard to the circular dated 06.03.2000, but where the issue of corruption

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is involved, the provisions of law will always prevail over the instructions/circulars issued from time to time. Learned senior counsel further contended that FIR can always be registered, when a *prima facie* case is made out. In the present case, the Technical Advisor to the Chief Minister, Punjab pointed out the irregularities allegedly committed by the petitioner in connivance with others and thereafter the FIR has been registered. In support of his contentions, learned senior counsel relied upon ***Banwarilal Jhunjhunwala and others vs. Union of India and another*** AIR 1963 SC 1620, ***State of Punjab vs. Karnail Singh*** 2008 (4) R.C.R.(Criminal) 488, ***State of Madhya Pradesh vs. Rameshwar and others*** (2009) 11 SCC 424, ***Surinder Pal Singh Chhina vs. State of Punjab*** 2009 (3) R.C.R.(Criminal) 801, ***Balbir Singh vs. State of Punjab and others*** 2013 (1) R.C.R.(Criminal) 66 and ***Purshottam Das vs. State of Haryana*** 2002 (4) AICLR 712.

Learned State counsel has echoed on the same lines as argued by learned senior counsel for respondent no.3.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties.

Before proceeding further, it would be apposite to reproduce relevant provisions. Section 2 of the 1988 Act reads as under:

> ***"2. Definitions***
> *In this Act, unless the context otherwise requires,-*
> *(a) "'election" means any election, by whatever means held under any law for the purpose of selecting members*

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of Parliament or of any Legislature, local authority or other public authority;

(b) "public duty" means a duty in the discharge of which the State, the public or the community at large has an interest;

(c) "'public servant" means-

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority ;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

(iv) any Judge, including any person empowered by law to discharge, whether by

himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which

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he is authorised or required to perform any public duty;
(ix) 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;
(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority."

Section 2 (h) of the 1961 Act reads as under:

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(h) "officer" means the president, vice-president, chairman, vice-chairman, managing director, secretary, manager, member of committee, treasurer, liquidator, administrator and includes any other person empowered under the rules or the bye-laws to give directions in regard to the business of a cooperative society."

From the arguments of learned counsel for the parties, following points arise for consideration in the present petition:

(i) Whether "Housefed" is a corporation and the petitioner is a "public servant" for the purpose of proceeding under the provisions of the 1988 Act?

(ii) Whether the Vigilance Bureau, Phase-I, Punjab at Mohali has territorial jurisdiction to register and investigate the FIR against the petitioner and others?

Point No.(i)

It is not in dispute that the petitioner was appointed as section officer in the Housefed and got promotions from time to time and at the relevant time was holding the post of Superintending Engineer, in the office of Housefed at Chandigarh. The Technical Advisor to the Chief Minister, Punjab, perused the estimates and agreement with respect to the tenders and pointed out certain irregularities committed by the petitioner in connivance with others in tender process on the basis of which present FIR has been registered.

Perusal of Section 2 (c) (iii) of the 1988 Act reveals that the

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petitioner is an employee of the Housefed which is established under the State Act of the 1961 Act. The State of Punjab has deep and persuasive control over the Housefed. The Housefed is performing public duty. Section 4 of the 1961 Act reads as under:

> *"4. **Societies which may be registered:-** (1) Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interest of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability.*
>
> *Provided that, unless Government by general or special order otherwise directs, the liability of the society of which a member is a co-operative society shall be limited.*
>
> *(2) The word "limited" or its equivalent in any Indian language shall be the last word in the name of every society registered under this Act with limited liability."*

The Housefed is performing the duties of constructing the houses and its main objectives are to grant loan to the members of cooperative house building societies in the State of Punjab both in urban as well as rural areas for construction of their new houses against the security of immovable property; to acquire and develop land for the benefit of housing programme in the State; to grant loans and advances for making repairs, additions, alterations or improvement to existing house/flats/apartments of the members of cooperative house building

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societies both in urban and rural areas. The Housefed is performing the duty to tackle the problem of housing in the State of Punjab, by providing financial assistance to the individuals for construction of houses in rural and urban areas. Since the Housefed is performing the public duties, therefore, it is covered under the term as defined in Section 4 of the 1961 Act.

In '***Daman Singh and others vs. State of Punjab***', AIR 1985 SC 973, the Hon'ble Supreme Court of India has held as under:

> *"6. We have already extracted section 30 of the Punjab Act which confers on every registered co-operative society the status of a body corporate having perpetual succession and a common seal, with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. There cannot, therefore, be the slightest doubt that a cooperative society is a corporation as commonly understood. Does the scheme of the Constitution make any difference? We apprehend not."*

In ***State of Karnataka v. M.N.Ramdas***, (2002) 7 SCC 639, the Hon'ble Supreme Court has distinguished the definition given to "public servant" under IPC and in Prevention of Corruption Act, 1988. In paragraph 5 of the Judgment it is held that the High Court proceeded on the assumption that Section 21 of the IPC is a relevant provision to determine whether the accused in the case is a "public servant". It is categorically held that Section 21 of IPC is of no relevance to consider

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the question, which has to be on interpretation of provision of section 2 (c) of Prevention of Corruption Act, 1988 read with relevant provisions of the Maharashtra Co-operative Societies Act. The Hon'ble Supreme Court set aside the order of Bombay High Court.

In ***Balbir Singh v. State of Punjab*** 2013 (2) Crimes 666, this Court has considered similar issue and held that the society has its duties towards public and hence public interest is involved in the activities of the Society. Receiving illegal gratification while performing public duty will attract penal provisions of Prevention of Corruption Act, against the Co-operative Society employees, which was created and registered under the Punjab Co-Operative Societies Act, 1961.

The issue how the corruption cases are to be dealt with by the Courts, came up for consideration before the Constitution Bench of the Hon'ble Supreme Court in the decision reported in (2014) 8 SCC 682 ***(Subramanian Swamy v. CBI)*** wherein challenge was to Section 6A of the Delhi Special Police Establishment Act, 1946, which requires getting permission from the Central Government to initiate criminal proceedings against the bureaucrats of Joint Secretary level and above. The Hon'ble Supreme Court struck down the said statutory provision as it was held violative of Article 14 of the Constitution of India and in paragraphs 72, 74 to 76 held as under:

> *"72. Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant*

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does not qualify such public servant for exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigation.

73. ....

74. The PC Act, 1988 is a special statute and its Preamble shows that it has been enacted to consolidate and amend the law relating to the prevention of corruption and for the matters connected therewith. It is intended to make the corruption laws more effective by widening their coverage and by strengthening the provisions. It came to be enacted because the Prevention of Corruption Act, 1947 as amended from time to time was inadequate to deal with the offences of corruption effectively. The new Act now seeks to provide for speedy trial of offences punishable under the Act in public interest as the legislature had become aware of corruption amongst the public servants.

75. Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country.

76. The PC Act, 1988 has also widened the scope of the definition of the expression public servant and incorporated offences under Sections 161 to 165-A of the Indian Penal Code (IPC). By the Lokpal and Lokayuktas Act, 2013 (1 of 2014), further amendments have been

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made therein......"

Perusal of above decisions reveals that corrupt practice indulged in by "public servant" is alarming and this Court is bound to widen the scope of interpretation of the words "public servant". The Housefed is performing public duty by tackling the problem of housing in the State of Punjab. In ***Daman Singh's case(supra)***, the Hon'ble Supreme Court has held that a 'cooperative society' is a 'corporation' as commonly understood. Needless to mention here that Section 2(h) of the 1961 Act specifically provides that the president, vice-president, chairman, vice-chairman, managing director, secretary, manager, member of committee, treasurer, liquidator, administrator and any other person empowered under the rules or the bye-laws to give directions in regard to the business of a cooperative society, fall within the definition of 'officer'. Thus, it is held that the Housefed is a Corporation, performing public duty and the petitioner while working as Superintending Engineer of the Housefed which was created and registered under the 1961 Act, is a "public servant" within the meaning of Section 2(c) (ii), (iii) (viii) of the 1988 Act. Point No.(i) is answered accordingly.

Point No.(ii)

Admittedly, the petitioner is an employee of Housefed and its Head Office is situated at Mohali. Besides the allegations under the provisions of the 1988 Act, FIR has also been registered under the

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various sections of IPC including Section 120-B IPC. In ***Banwarilal Jhunjhunwala (supra),*** the Hon'ble Supreme Court has held that when there is an offence of conspiracy, the FIR can be registered and investigated at other place beyond the territorial jurisdiction. Otherwise also, the petitioner is an employee of the Housefed which is under the deep control of the State of Punjab and the State authorities have power to register the FIR and investigate the matter. The provisions of the 1988 Act apply throughout India. The State of Punjab has the control over the employees of Housefed. In such circumstances, investigation can be carried out by the officers of the State authorized under the provisions of the 1988 Act. In view of this, point No.(ii) is answered in affirmative.

In view of above discussion, the instant petition is dismissed being devoid of merits.

The issue of sanction for prosecution is left open to be decided at appropriate stage.

01.04.2015 **(Paramjeet Singh)**
parveen kumar **Judge**

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