

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Revision No. 963 of 2007
Date of Decision: 19.8.2015.**

State of Haryana

.....Petitioner

Vs.

Surender Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Rajender Helwa, Advocate for
Mr. Aman Pal, Advocate
for the respondent.

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SABINA, J.

State has filed this petition challenging the order dated 28.11.2006 whereby respondent was ordered to be discharged.

Learned State counsel has submitted that the Trial Court had erred in holding that the petitioner was not a public servant and could not be charge sheeted qua commission of offence punishable under Section 7 read with Section 13 of Prevention of Corruption Act, 1988 ('Act' for short). In support of her case, learned State counsel has placed reliance on '**State of Maharashtra and another versus Prabhakar Rao and another 2002(3) R.C.R. (Criminal) 615**', wherein it was held as under:-

“Unfortunately, the High Court in its order has not considered this question at all. It has proceeded on the assumption that Section 21 of the Indian Penal Code is the relevant provision for determination of the question whether the accused in the case is a public servant. As

noted earlier, Section 21 IPC is of no relevance to consider the question which has to be, on interpretation of provision of Section 2(c) of the Prevention of Corruption Act, 1988, read with the relevant provisions of Maharashtra Co-operative Societies Act, 1960.”

In the present case, FIR No. 171 dated 6.6.2006 was registered against the respondent under Section 7 of the Act at Police Station Rania, District Sirsa. As per the prosecution case, respondent was caught red handed while accepting bribe in a trap laid by the Vigilance Department. After completion of investigation and necessary formalities, challan was presented against the respondent. Trial Court vide the impugned order held that the respondent who was working as Land Valuation Officer could not be described as a public servant and could not be charge sheeted qua commission of offence punishable under Section 7 Read with Section 13 of the Act. The Apex Court in State of Maharashtra and another's case (supra) while considering the decision of the Apex Court in **State of Maharashtra versus Laljit Rajshi Shah and others, 2000(2) RCR (Criminal) 71 (SC)**, has held that the said decision was given by the Apex Court in a case covered by the Prevention of Corruption Act, 1947 and not under the Prevention of Corruption Act, 1988. The learned Apex Court further held that Section 21 of the Indian Penal Code, 1860 ('IPC' for short) had no relevance while considering the question as to whether the accused could be described as a public servant under the Act. Rather reference was to be made to Section 2(c) of the Act.

In the present case, the Trial Court had based reliance on Section 21 IPC while coming to the conclusion that the respondent could not be described as a public servant whereas the

Trial Court has failed to consider the provisions of Section 2(c) of the Act. This case is fully covered by the decision of the Apex Court in '***State of Maharashtra and another versus Prabhakar Rao and another 2002(3) R.C.R. (Criminal) 615***'.

Accordingly, this petition is allowed. Impugned order dated 28.11.2006 is set aside. Trial Court is directed to pass a fresh order, in accordance with law.

**(SABINA)
JUDGE**

August 19, 2015
Gurpreet