IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.1662 of 2016
and
Crl.M.P.No.13783 of 2016

Ramesh Gelli ... Petitioner/Accused No.1

.. Vs ..

The Inspector of Police,
Central Bureau of Investigation,
Bank Securities & Fraud Cell,
Bangalore. .. Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., seeking to set aside the order passed in Crl.M.P.No.4647 of 2016 in C.C.No.3 of 2009 pending on the file of the XI Additional Special Court at Chennai and direct the trial Court to return back the charge sheet filed by the respondent in lieu of the dictums laid down by the Hon'ble Supreme Court in Crl.A.Nos.1077 - 1081 of 2013, dated 23.02.2016.

For Petitioner	:	Mr.Abudu Kumar Rajaratnam for M/s.S.Ashok Kumar
For Respondent	:	Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases.

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ORDER

This Criminal Revision Case is filed by the petitioner under under Section 397 r/w. 401 of Cr.P.C., seeking to set aside the order passed in Crl.M.P.No.4647 of 2016 in C.C.No.3 of 2009 pending on the file of the XI Additional Special Court at Chennai and direct the trial Court to return back the charge sheet filed by the respondent in lieu of the dictums laid down by the Hon'ble Supreme Court in Crl.A.Nos.1077 - 1081 of 2013, dated 23.02.2016.

2. The contention of the learned counsel appearing for the revision petitioner is that the petitioner was former Chairman-cum-Managing Director of Global Trust Bank which later got merged with Oriental Bank of Commerce. Based on the complaint of the year 2004, an F.I.R. was registered on 26.03.2007 by the respondent police which entrusted with specific task of investigation of bank securities and fraud cases. The main contention of the revision petitioner is that he

being a servant of private bank, cannot be considered as public servant to be prosecuted under the Prevention of Corruption Act. However this contention, in a different case, was negatived by the_Hon'ble Supreme Court to the extent that under Section 46-A of the Banking Regulation Act, for offence under Chapter IX of IPC, the employees of the bank covered under the Banking Regulation Act will be treated as public servants. Later, provisions in Chapter IX of IPC namely, Sections 161 to 165-A was omitted in IPC and incorporated in the Prevention of Corruption Act, 1988. The corresponding amendment was not brought into the Banking Regulation Act. However, the Hon'ble Supreme Court has held that it is a causus omissus. As far as substitution of Sections 161 to 165-A under Chapter IX of IPC by Prevention of Corruption Act, it is strenuously contended by the learned counsel for the petitioner that the Sections analogous to old Sections 161 to 165-A of IPC are only Sections 7 to 12 of the Prevention of Corruption Act and not Section 13 of the Prevention of Corruption Act. For that effect, a clarification has also been given by the Hon'ble Supreme Court in the earlier case filed by the present revision petitioner. Therefore, even if a private Bank employee is a public servant as per Section 46-A of the Banking Regulation Act, 1949, the said deeming clause shall apply only to

Sections 7 to 12 of the Prevention of Corruption Act and not for Section 13 of the Prevention of Corruption Act.

3. Learned Special Public Prosecutor appearing for the respondent submitted that the Hon'ble Supreme Court in ***Central Bureau of Investigation Vs. Ramesh Gelli and others*** reported in ***(2016) 3 Supreme Court Cases 788*** has elaborately discussed the provisions of the Banking Regulation Act as well as the provisions of Prevention of Corruption Act. Taking note of the definition of "public servant" as defined under Section 2(c) of the Prevention of Corruption Act, vis-a-vis Section 46-A of the Banking Regulation Act, the Apex Court has concluded that after deleting Sections 161 to 165-A of IPC, and by enacting a Special Act for Prevention of Corruption all offences which includes taking illegal gratification other than legal remuneration as well as misconduct by public servant fall within the scope and ambit of the Act and any public servant, who involved in such Act of crime shall be prosecuted and tried by Special Judge as per Section 4 of Prevention of Corruption Act. A wider definition for public servant under this Act takes into its fold private Bank employees also. The intention of the legislature as well as the interpretation of the

Hon'ble Supreme Court in the above said case does not restrict the meaning of 'public servant' only to Sections 7 to 12 but also to Section 13 of the Prevention of Corruption Act.

4. To buttress his submission, learned Special Public Prosecutor appearing for the respondent has drawn the attention of this Court to paragraph No.45 of the Gelli case cited supra which clarifies and makes the legal position clear as below:-

> "45. Turning to the case in hand there can be no dispute that before the enactment of the PC Act, Section 46-A of the BR Act had the effect of treating the employees/office-bearers concerned of a banking company as public servants for the purposes of Chapter IX IPC by virtue of the deeming provision contained therein. The enactment of the PC Act with the clear intent to widen the definition of 'public servant' cannot be allowed to have the opposite effect by expressing judicial helplessness to rectify or fill up what is a clear omission in Section 46-A of the BR Act. The omission to continue to extend the deeming provisions in Section 46-A of the BR Act to the offences under Sections 7 to 12 of the PC Act must be understood to be clearly unintended and hence capable of admitting a judicial exercise to fill up the same. The unequivocal legislative intent to widen the definition of "public servant" by enacting the PC Act cannot be allowed to be defeated by interpreting and understanding the omission in Section 46-A of the BR Act to be incapable of being filled up by the court."

5. It could be seen that the petitioner herein has sought for

clarification regarding certain observations made in paragraph No.25 of the above said judgment and the Hon'ble Supreme Court has clarified by passing the following order in para 25 of the judgment dated 23.02.2016.

> "**25.** Be it noted that when Prevention of Corruption Act, 1988 came into force, Section 46 of Banking Regulation Act, 1949 was already in place, and since the scope of P.C. Act, 1988 was to widen the definition of "public servant". As such, merely for the reason that in 1994, while clarifying the word "chairman", legislature did not substitute words "for the purposes of Prevention of Corruption Act, 1988" for the expression "for the purposes of Chapter IX of the Indian Penal Code (45 of 1860)" in Section 46-A of Banking Regulation Act, 1949, it cannot be said, that the legislature had intention to make Section 46-A inapplicable for the purposes of P.C. Act, 1988, by which Sections 161 to 165-A of IPC were omitted, and the offences stood replaced by Sections 7 to 13 of P.C. Act, 1988"

6. This clarification is restricted only to the observation made in paragraph No.25 and it does not carry further to the conclusion arrived at by the Hon'ble Supreme Court which is vividly laid down in paragraph No.45 extracted above. The Court cannot set off definition for public servant in the Act and it is not the intention of the Hon'ble Supreme Court to restrict the definition of public servant to Sections 7 to 12 and not to Section 13 of the Prevention of Corruption Act

because, the Hon'ble Supreme Court has not only pointed out the causus omissus in Banking Regulation Act Section 46-A but has also relied upon the definition clause under the Prevention of Corruption Act, 1988, wherein, wider meaning is given to the expression public servant under Section 2(C).

7. Considering the nature of the employment of the revision petitioner in the bank and the definition of public servant as per Section 2(C) of the Prevention of Corruption Act, read with Section 46-A of the Banking Regulation Act and the purposive interpretation of that Section given by the Supreme Court in Gelli case, leaves no doubt that the petitioner herein is a 'public servant' for all purpose under the Prevention of Corruption Act, 1988.

In the result, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is also dismissed.

28.08.2017

Index : Yes
Internet : Yes
Jrl

Dr.G.JAYACHANDRAN.J.,

Jrl

To

1. XI Additional Special Court,
   Chennai.

2. The Inspector of Police,
   Central Bureau of Investigation,
   Bank Securities & Fraud Cell,
   Bangalore.

3. The Special Public Prosecutor for CBI Cases,
   High Court, Madras.

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