

**\* THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**+ CRIMINAL PETITION No.8432 OF 2016**

% Dated 10.10.2018

# Nuthulapati Naga Basweshwer Rao  
s/o late Subba Rao  
Aged 50 years  
Occ Paid Secretary PACS Minarpally Village  
Bodhan Mandal Nizamabad District  
R/o H No 12760 Bheemunigutta  
Rakasipet Bodhan Nizamabad District ..... Petitioner

Vs.

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The State of Telangana  
rep by its Spl. Public Prosecutor for ACB Cases  
1 High Court of Judicature at Hyderabad  
for the State of Telangana and the State of AP Hyderabad  
through SHO Police station Banjara Hills Hyderabad  
..... Respondent

! Counsel for the petitioner :Sri Nandigam Krishna Rao

^ Counsel for the respondent :  
1. R-1 Spl. P.P. for ACB, Telangana State

<GIST:

> HEAD NOTE:

? Cases referred

1. 2005 (5) ALD 682
2. 2013 (2) ALD (CrI.) 469 (AP)
3. (2016) 2 Supreme Court Cases (Cri) 222
4. (2004) 5 SCC 19
5. (2002) 7 Supreme Court Cases 631
6. LAWS (SC) 1981 (5) 12
7. N.H. 4 Wheat. 518 : 4 L. Ed. 629
8. (1975) ILLJ 399 SC
9. (1975) ILLJ 374 SC
10. LAWS (SC) 2009 (4) 65
11. LAWS (SC) 2016 (4) 70
12. LAWS (SC) 2002 (3) 103
13. JT 2000 (2) SC 546
14. LAWS (SC) 2005 (10) 72
15. LAWS (SC) 2015 (11) 14
16. 2013 (3) G.L.H. 490
17. LAWS (SC) 2007 (4) 46
18. AIR 2000 SC 937
19. LAWS (APH) 2005 (6) 15
20. (2016) 4 SCC 417
21. LAWS (P & H) 1987 (1) 2
22. LAWS (APH) 2009 (12) 32
23. AIR 1970 CALCUTTA 557

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION NO.8432 OF 2016**

**ORDER:**

The sole accused in C.C.No.5 of 2016 on the file of Special Judge for SPE & ACB Cases, Karimnagar, filed this criminal petition to quash the proceedings against him, registered for the offences punishable under Sections 13(2) r/w Section 13(1)(e) of Prevention of Corruption Act (for short 'P.C. Act'), 1988 in Crime No.14/RCA-ACB-NZB/2010.

It is the case that, the petitioner initially worked as a clerk at Primary Agriculture Co-Operative Society, Kotagiri Village, Nizamabad District and subsequently worked as Paid Secretary at Minarpally Village, Bodhan Mandal, Nizamabad District from 04.01.1982 to 20.12.2010. On receiving credible information that this petitioner acquired assets by corrupt practices, the Joint Director (Telangana) A.C.B., Hyderabad registered crime and search warrants were obtained from the II Additional Special Judge for SPE & ACB cases Hyderabad. Searches were conducted at various residential premises of the petitioner at H.No.1-2-760, Rakasipet, Bodhan, Nizamabad District, H.No.14-67, Kotagiri Village & Mandal, Bodhan, Nizamabad District and bank locker bearing No.102 in Nizamabad District Co-operative Central Bank Limited, Bodhan Branch on 20.12.2010. During the searches, incriminating material relating to the disproportionate assets was found to the tune of Rs.79,45,007/- in his name and in the name of his family members. Further, during the check period, the total

income derived by the petitioner during check period was ascertained at Rs.37,61,389/-, whereas, the total expenditure of the petitioner during the check period as determined at Rs.37,61,389/-. Further, the petitioner possessed savings of Rs.8,40,464/- and assets worth Rs.79,45,0007, thereby, he could not satisfactorily account for Rs.87,85,471/-, which is disproportionate to his known source of income. Thus, the petitioner allegedly committed offences punishable under Sections 3(2) r/w Section 3(1)(e) of 'P.C. Act'.

The material collected by the Investigating Officer during investigation revealed the assets, income and expenditure of the petitioner which are placed at Annexures-I, II & III respectively and based on the statements recorded, the Investigating Officer came to the conclusion that the petitioner along with his family members possessed disproportionate assets to the tune of Rs.87,85,471/-.

The present petition is filed by the petitioner mainly on the ground that, the allegations made in the charge-sheet do not constitute an offence, even if the allegations made in the charge-sheet are accepted on its face value and that there was no allegation that the property was acquired by corrupt practices and that the petitioner is only an employee in Primary Agriculture Co-Operative Society, Minarpally Village, Bodhan Mandal, Nizamabad. The petitioner contended that no proceedings were initiated against him, inasmuch as, neither there was any allegation with regard to corrupt practices nor making unlawful gain while working as an employee in Primary Agriculture Co-Operative Society, Minarpally

Village, Bodhan Mandal, Nizamabad, no disciplinary proceedings were initiated against this petitioner or no surcharge proceedings were initiated under Section 60(1) of A.P. Cooperative Societies Act till date, therefore, he cannot be prosecuted for the above offences. Further, it is contended that, the petitioner is not an independent authority and that, question of adopting corrupt practices, and acquiring property does not arise. In addition to that, the Primary Agriculture Co-Operative Society is not a society registered under the Telangana Cooperative Societies Act, 1964, and it is a well settled law in terms of the judgment rendered by this Court in **A. Subramanyam Naidu v. Government of Andhra Pradesh**<sup>1</sup>, that, the Primary Agricultural Cooperative Societies have no independent power to appoint and retrench Paid Secretaries without obtaining previous sanction of the Registrar of Cooperative Societies and therefore, contended that, Paid Secretary is not a Public Servant within the definition of public servant under Section 2(c) of P.C. Act and he cannot be prosecuted for the offences punishable under Sections 13(2) r/w Section 13(1)(e) of P.C. Act.

Learned counsel for the petitioner also contended that, the sanction allegedly obtained by the respondent is not legal, even assuming that this petitioner is a Public Servant within the definition of Section 2(c) of P.C Act and on this ground alone, sought to quash the proceedings against this petitioner in C.C.No.5 of 2016 on the file of Special Judge for SPE & ACB Cases,

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<sup>1</sup> 2005 (5) ALD 682

Karimnagar, for the offences punishable under Sections 13(2) r/w Section 13(1)(e) of P.C. Act.

During hearing, Sri Nandigam Krishna Rao, learned counsel for the petitioner would draw attention of this Court to the judgment rendered in **Ravuri Siva Prasad v. State of Andhra Pradesh**<sup>2</sup>, to contend that the prosecution against this petitioner is not maintainable, since the petitioner is not a public servant and in the absence of any sanction from the competent authority, the proceedings against this petitioner are liable to be quashed. In support of his contention, learned counsel for the petitioner placed reliance on the judgment rendered by this Court in **A. Subramanyam Naidu v. Government of Andhra Pradesh** (referred supra) to contend that the petitioner is not a public servant and when he is not a public servant, obtaining sanction in terms of G.O.Ms.No.5 Agriculture & Cooperative (VI) Department dated 24.01.2015, passed by APC & Principal Secretary to Government is illegal and thereby, the proceedings against this petitioner are liable to be quashed.

Per contra, learned Special Standing Counsel for A.C.B, Sri Nayan Kumar contended that though the petitioner is working as a Paid Secretary in Primary Agriculture Co-Operative Society, he falls within the definition of public servant under Section 2(c) of P.C. Act and that the validity of the sanction obtained from the competent authority cannot be looked into while deciding an application under Section 482 Cr.P.C, since such question can be

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<sup>2</sup> 2013 (2) ALD (Crl.) 469 (AP)



decided only during trial. In support of his contentions, learned counsel placed reliance on the judgment of the Apex Court in **Central Bureau of Investigation, Bank Securities and Fraud Cell v. Ramesh Gelli and others**<sup>3</sup> and on the strength of the principles laid down in the above judgment, learned counsel contended that the proceedings against this petitioner cannot be quashed at this stage by exercising power under Section 482 Cr.P.C and requested to dismiss the criminal petition.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

- 1) Whether the petitioner who is working as a Paid Secretary in Primary Agriculture Co-Operative Society, Minarpally Village, Bodhan Mandal, Nizamabad, is a 'Public Servant' as defined under Section 2(c) of P.C. Act?***
- 2) If, the petitioner is a 'Public Servant' as defined under Section 2(c) of P.C. Act, whether the sanction obtained by the respondent to prosecute this petitioner vide G.O.Ms.No.5 dated 24.01.2015 is valid. If not, whether the proceedings against this petitioner on this ground are liable to be quashed?***

### **P O I N T No.1**

Undisputedly, the petitioner is working as a Paid Secretary in Primary Agriculture Co-Operative Society, Minarpally Village, Bodhan Mandal, Nizamabad and he is governed by the provisions of Telangana Cooperative Societies Act (for short 'T.C.S. Act'), 1964

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<sup>3</sup> (2016) 2 Supreme Court Cases (Cri) 222

and the petitioner would fall within the definition of 'Officer' defined under Section 2(k) of T.C.S Act, which reads as follows:

*'officer' includes a person elected or appointed by a society to any office of such society according to its bye-laws and a president, vice-president, chairman, vice-chairman, secretary, assistant secretary, treasurer, manager, member of committee, liquidator or any other person elected or appointed under this Act, rules or the bye-laws to give directions in regard to the business of the society.*

When the petitioner being a Paid Secretary is termed as an 'officer' within the definition of Section 2(k) of T.C.S. Act, the Court has to examine whether the petitioner falls within the definition of 'public servant' as defined under Section 2(c) of P.C. Act, since the petitioner's main endeavour is that, he would not fall within the definition of 'public servant', as he is not discharging any public duty. At this stage, it is relevant to advert to the definitions of 'public duty' under Section 2(b) and 'public servant' under Section 2(c) of P.C. Act, and they are as follows:

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

*Explanation.-In this clause "State" includes 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.*

*"**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 (1 of 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 commission appointed by such court;*

*(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by 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 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 (1 of 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 their 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.*

*Explanation 1.—*



*Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.*

*Explanation 2.—*

*Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.*

*1[(d) "undue advantage" means any gratification whatever, other than legal remuneration.*

*Explanation.-- For the purposes of this clause,--*

*(a) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money;*

*(b) the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.]”*

According to Article 12 of the Constitution of India, the society is a State and the persons discharging duties in society are discharging public duty.

**In Gayatri De v. Mousumi Cooperative Housing Society**

**Limited**<sup>4</sup>, the Supreme Court held in paragraph 11 as follows:

55. We have, in paragraphs supra, considered the judgments for and against on the question of maintainability of writ petition. The judgments cited by the learned Senior Counsel appearing for the respondents are distinguishable on facts and on law. Those cases are not cases covered by the appointment of a Special Officer to manage the administration of the Society and its affairs. In the instant case, the Special Officer was appointed by the High Court to discharge the functions of the Society, therefore, he should be regarded as a public authority and hence, the writ petition is maintainable."

In view of the law declared by the Apex Court, Society is State and its officers are discharging public duty.

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<sup>4</sup> (2004) 5 SCC 19

Turning to the concept of public servant, the officers of the society defined under Section 2(k) of the Act is a public authority are deemed to be discharging public duty as defined under Section 2(b) of P.C. Act and thereby the officers are public servants as defined under Section 2(c) of P.C. Act.

In **Govt. of Andhra Pradesh v. P. Venku Reddy**<sup>5</sup>, the Supreme Court held as follows:

8. From the above quoted Sub-clause (ix) of Clause (c) of Section 2 of the 1988 Act, it is evident that in the expansive definition of 'public servant', elected office-bearers with President and Secretary of a registered co-operative society which is engaged in trade amongst others in 'banking' and 'receiving or having received any financial aid' from the Central or State Government, are included although such elected office-bearers are not servants in employment of the co-operative societies. But employees or servants of a co-operative society which is controlled or aided by the government, are covered by Sub-clause (iii) of Clause (c) of Section 2 of the 1988 Act. Merely because such employees of co-operative societies are not covered by Sub-clause (ix) along with holders of elective offices, High Court ought not to have overlooked that the respondent, who is admittedly an employee of a co-operative bank which is controlled and aided by the government, is covered within the comprehensive definition of 'public servant' as contained in Sub-clause (iii) of Clause (c) of Section 2 of the 1988 Act. It is not disputed that the respondent/accused is in service of a co-operative Central Bank which is an 'authority or body' controlled and aided by the government.

9. It cannot be lost sight of that the 1988 Act, as its predecessor that is the repealed Act of 1947 on the same subject, was brought into force with avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repels and replaces the Act of 1947 contains a very wide definition of 'public servant' in Clause (c) of Section 2 of the 1988 Act. The Statement of Objects and Reasons contained in the Bill by which the Act was introduced in the Legislature throws light on the intention of the legislature in providing a very comprehensive definition of word 'public servant'. Paragraph 3 of the Statement of Objects and Reasons reads:-

"3. The bill, inter-alia, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under Sections 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a

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<sup>5</sup> (2002) 7 Supreme Court Cases 631

provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provision with regard to grant to stay and exercise of powers of revision on interlocutory orders have also been included.

10. Clause 2 of the Notes on Clause in Gazette of India Extraordinary, Part-II, Section 2, further clarifies the legislative intent thus:-

"Clause 2. The clause defines the expressions used in the Bill. Clause 2(c) defines "public servant". In the existing definitions the emphasis is on the authority employing and the authority remunerating. In the proposed definition the emphasis is on public duty. The definition of "election" is based on the definition of this expression in the Indian Penal Code".

11. Under the repealed Act of 1947 as provided in Section 2 of the 1988 Act, the definition of 'public servant' was restricted to 'public servants' as defined in Section 21 of the Indian Penal Code. In order to curb effectively bribery and corruption not only in government establishments and departments but also in other semi-governmental authorities and bodies and their departments where the employees are entrusted with public duty, a comprehensive definition of 'public servant' has been given in Clause (c) of Section 2 of the 1988 Act.

12. In construing definition of 'public servant' Clause (c) of Section 2 of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of legislature. In that view Statement of Objects and Reasons contained in the Bill leading to the passing of the Act can be taken of assistance of. It gives the background in which the legislation was enacted. The present Act, with much wider definition of 'public servant', was brought in force to purify administration. When the legislature has used such comprehensive definition of 'public servant' to achieve the purpose of punishing and curbing growing corruption in government and semi-government departments, it would be appropriate not to limit the contents of definition clause by construction which would be against the spirit of the statute. The definition of 'public servant', therefore, deserves a wide construction. [see : State of Madhya Pradesh v. Shri Ram Singh 2000CriLJ1401 .]

In view of the law declared by the Apex Court in the judgment referred supra, Cooperative Society is a State within Article 12 of Constitution of India and it is covered by explanation to Section 2(b) of P.C. Act, as the duties being discharged by the

employees as defined under Section 2(k) of T.C.S Act are public duties. But, the learned counsel for the petitioner at this stage, contended that the petitioner is not discharging public duties and he is just rendering services to the society. When the cooperative society is engaged in providing credit facilities to the agriculturists with the aid of the government, it shall be treated as discharging public duties, since the society is being aided by the government or government corporations established by the centre or the state. Therefore, the duties being discharged by the employee of the society would fall within the definition of public duty.

The main grievance is that, the petitioner is not a public servant as defined under Section 2(c) of P.C Act. But, Section 9 of T.C.S Act defined society to be a body corporate and according to it, the registration of a society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal. The society is entitled to acquire, hold and dispose of property, to enter into contracts on its behalf, to institute and defend suits and other legal proceedings and to do all other things necessary for the purpose for which it was constituted.

On a bare look at Section 9 of T.C.S Act, registration of a society would be deemed to be a corporate body for the purpose of provisions of this Act, but, that would not acquire the status of a corporation under the Companies Act. In **S.S. Dhanoa v. Municipal Corporation of Delhi**<sup>6</sup>, the Supreme Court had an

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<sup>6</sup> LAWS (SC) 1981 (5) 12



occasion to advert to Section 21(c) I.P.C and Section 23 of Bombay Cooperative Societies Act, 1925, and they read as follows:

**Clause (xii) of Section 21** of the Indian Penal Code protects two classes of public servants, viz., (a) every person in the service or pay of the Government or remunerated by fees or commission for the performance -of any public duty by the Government, and (b) every person in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956.

**Section 23 of the Bombay Cooperative Societies Act, 1925:**

The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

But, the Supreme Court took a different view that, cooperative society would not fall within the definition of 'corporate body' under the Companies Act, since a corporation is an artificial body being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses the capacity as such legal entity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as a natural person may. The following definition of corporation was given by Chief Justice Marshall in **Dartmouth College v. Woodward**<sup>7</sup>, which is as follows:

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<sup>7</sup> N.H. 4 Wheat. 518 : 4 L. Ed. 629

A corporation is an artificial being, invisible , intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only these properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individuals They enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being.

In paragraph 10 of the said judgment, the Apex Court observed that, there is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by the Supreme Court in **Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Ors**<sup>8</sup>, wherein, it was observed as follows:

“A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act.”

Thus, there is a well-marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute. Mere registration under the Act would not render the society as body corporate, on par with company.

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<sup>8</sup> (1975) ILLJ 399 SC

In **Sabhajit Tewary v. Union of India and Ors**<sup>9</sup> the question arose whether the Council of Scientific and Industrial Research which was a society registered under the Societies Registration Act, was a statutory body. It was urged, therein, that because the Council of Scientific and Industrial Research had government nominees as the President of the body and derived guidance and financial aid from the Government, it was a statutory body. Repelling the contention, the Court observed that, the Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting ' particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner. As such, CISR is a society, its employees are public servants.

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<sup>9</sup> (1975) ILLJ 374 SC

Yet, the main grievance of this petitioner is that the petitioner is not a public servant, though discharging public duties, as defined under Section 2(b) of P.C. Act. But, to decide this contention, it is appropriate to advert to the provisions of T.C.S. Act.

Section 129-A of T.C.S. Act deals with Officers and employees to be public servant and according to it, the Registrar or any person authorised by him to recover any amount or to execute any orders issued or decisions taken under any of the provisions of this Act and every officer and employee of a society shall be deemed to be a public servant within the meaning of Section 21 of I.P.C.

The petitioner is not an officer, but an employee of the society, would fall within the definition of officer under Section 2(k) of T.C.S Act. When the petitioner is an employee of the society, and deemed to be a public servant within the meaning of Section 21 IPC, it embraces the definition of 'officer' within Section 2(k) of T.C.S. Act and 'public servant' within 2(c)(ix) of P.C. Act.

Under the repealed P.C. Act of 1947 as provided in Section 2 of the 1988 Act, the definition of 'public servant' was restricted to 'public servants' as defined in Section 21 of the Indian Penal Code. In order to curb-effectively bribery and corruption not only in government establishments and departments but also in other semi-governmental authorities and bodies and their departments where the employees are entrusted with public duty, a comprehensive definition of 'public servant' has been given in Clause (c) of Section 2 of the 1988 Act. It cannot be lost sight of



that the 1988 Act, as its predecessor i.e. the repealed Act of 1947 on the same subject, was brought into force with avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repels and replaces the Act of 1947 contains a very wide definition of 'public servant' in Clause (c) of Section 2 of the P.C Act, 1988. The Statement of Objects and Reasons contained in the Bill by which the Act was introduced in the Legislature throws light on the intention of the legislature in providing a very comprehensive definition of word 'public servant' (vide **Govt. of Andhra Pradesh v. P. Venku Reddy** (referred supra)).

Thus, it is clear that, as per the repealed Act, the employee of a cooperative society is not a public servant, but, the definition of Section 2(c) of the new Act, P.C. Act, 1988, includes the employee working in the society, registered under the Cooperative Societies Act.

If, the principle laid down in the above judgment is applied to the present facts of the case, certainly the petitioner would fall within the definition of 'public servant' under Section 2(c) of P.C. Act. Even, ignoring the law laid down by the Apex Court in various judgments referred supra, still, in view of the definition of 'officer' under Section 2(k) and Section 129-A of T.C.S. Act, the petitioner would fall within the definition of 'public servant' under Section 21 of I.P.C and when the petitioner falls within the definition of public servant under Section 21 IPC, he would certainly fall within the definition of public servant under Section 2(c) of P.C. Act, which is wider than Section 21 of I.P.C.

Similar question came up for consideration before the Supreme Court in **State of Madhya Pradesh v. Rameshwar**<sup>10</sup>, where, the Supreme Court considered the scope of Section 87 of M.P. Cooperative Societies Act, 1960 with Section 21 of I.P.C. The issue that arose before the Apex Court was, whether the respondents therein being Directors of the Indore Premier Cooperative Bank Limited would fall within the definition of a public servant for the purpose of P.C. Act,. Reliance was also placed on Section 87 of M.P. Cooperative Societies Act, 1960, which provided 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 I.P.C and on that basis, the Court held that, the respondent who was Chairman and the Executive Officer of the Bank would fall within the definition of a 'public servant' defined under Section 2(c)(ix) of P.C. Act. On perusal of the judgment, the Court opined that the officer of the cooperative bank as 'public servant' and the definition of public servant under P.C. Act. As far as M.P. Cooperative Societies Act, 1960 is concerned, as the M.P. Cooperative Societies Act, 1960 itself declares the authorities as public servants. When the Act itself directly conferred the status of the officers of the bank or the society, registered under the T.C.S. Act under Section 129-A, this petitioner cannot escape from his liability under the provisions of P.C.Act on the ground that he is not a public servant, as defined under Section 2(c) of P.C. Act. The

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<sup>10</sup> LAWS (SC) 2009 (4) 65

principle laid down in **State of Madhya Pradesh v. Rameshwar** (referred supra) is squarely applicable to the present facts of the case, since, the Indore Premier Cooperative Bank Limited is State within Article 12 of the Constitution of India and the petitioner was an officer within the definition of Section 21 I.P.C and conferred status of public servant by Section 129-A of T.C.S. Act, which is restricted to certain categories of employees, but Section 2(C) of P.C. Act is wider, which includes the definition of public servant under Section 21 of I.P.C. Therefore, by any stretch of imagination, the contention of the petitioner cannot be accepted to quash the proceedings against him.

In **C.B.I v. P.G. Jain**<sup>11</sup>, the Supreme Court by relying on the judgment in **Govt. of Andhra Pradesh v. P. Venku Reddy** (referred supra), concluded that an employee of a cooperative society may not come within ambit of definition of public servant under Section 2(c)(ix) of P.C. Act, 1988, yet such person may be a public servant within meaning of Section 2(c)(iii) of P.C. Act, provided cooperative society is owned, controlled or aided by government. Further, the Supreme Court held in the said case that National Cooperative Consumers Federation of India Limited (NCCF) is a body aided by Central Government as required under Section 2(c)(iii) of P.C. Act and the employees working thereunder would fall under the definition of public servant. But, the facts of the above judgment need no detailed consideration.

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<sup>11</sup> LAWS (SC) 2016 (4) 70

Similarly, in **State of Maharashtra v. Prabhakara Rao**<sup>12</sup>, the Supreme Court by adverting to principle in **State of Maharashtra v. Laljit Rajshi Shah and others**<sup>13</sup>, held that, an employee of a cooperative society would not fall within the definition of public servant under Section 21 IPC or Section 2(c) of P.C. Act. Since, the case was under P.C. Act, 1947, the Court did not agree with the view in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra), as P.C. Act was amended in 1988 and finally, concluded that the employee of a cooperative society would fall within the definition of public servant under Section 2(c) of P.C. Act.

Similarly, in **N.K. Sharma v. Abhimanyu**<sup>14</sup>, the question that fell for consideration in the appeal was whether a member of Indian Administrative Service, whose services are placed at the disposal of an organization which is neither a local authority, nor a corporation established by or under a Central, Provincial or State Act, nor a Government Company, by the Central Government or the Government of a State, can be treated to be a public servant within the meaning of Section 21 I.P.C for purposes of Section 197 Cr.P.C, the Supreme Court held that, when the employee is discharging his public duties, though he is an IAS officer, he would fall within the definition of public servant and such officers are declared as public servants under several special and local Acts. If the legislature had intended to include officers of

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<sup>12</sup> LAWS (SC) 2002 (3) 103

<sup>13</sup> JT 2000 (2) SC 546

<sup>14</sup> LAWS (SC) 2005 (10) 72



an instrumentality or agency for bringing such officers under the protective umbrella of Section 197 Cr.P.C, it would be done so expressly, thereby concluded that, he is a public servant. In **N.K. Ganguly v. CBI, New Delhi**<sup>15</sup>, the Supreme Court dealt with identical question as to whether an officer discharging his duties in The Indian Council of Medical Research (ICMR), which is a registered society under the Societies Registration Act, 1860, is a public servant and when the petitioner was facing charges under the provisions of P.C. Act and offences under I.P.C. But, the Court concluded that he is a public servant for the purpose of Section 197(1) Cr.P.C and set-aside the orders passed by the High court, while quashing the proceedings, as no sanction was obtained under Section 197 Cr.P.C to prosecute the officer of the society registered under the Societies Act.

Similarly, in **Manish Trivedi v. State of Rajasthan**<sup>16</sup>, the councillors and members of the Board are public servants within the definition of Section 2(c)(viii) of P.C. Act, came up for consideration, the Court held that, municipal councillor would come within the definition of public servant and the basis for such conclusion is Section 87 of Rajasthan Municipalities Act and in the present case also, Section 129-A of T.C.S. Act is identical to Section 87 of Rajasthan Municipalities Act and consequently, the petitioner would fall within the definition of public servant under Section 2(c)(ix) of T.C.S. Act. In **Naresh Kumar Madan v. State of**

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<sup>15</sup> LAWS (SC) 2015 (11) 14

<sup>16</sup> 2013 (3) G.L.H. 490

**Madhya Pradesh**<sup>17</sup>, the Apex Court again considered the scope of Section 2(c)(i) of P.C. Act and held that, electricity board established under Central Act is a corporation within the meaning of Section 2(c)(i) of P.C. Act and all its employees are public servant within the meaning of said section. The Court further held that, The Prevention of Corruption Act, 1947 was repealed and enacted in the year 1988 and the definition of 'public servant', as contained in Section 2(c) thereof, is a broad based one, though reliance was placed in the judgment of **State of Maharashtra v. Laljit Rajshi Shah and Others**<sup>18</sup>, observed that the Court therein was dealing with a case of member of a cooperative society, but not dealing with the case of an employee of a statutory corporation. Moreover, the restricted definition of 'public servant' under repealed Act 1944 cannot be applied in view of definition under section 2(c) of 1988 Act.

Curiously, in **Vanam Anjaiah v. State of Andhra Pradesh**<sup>19</sup>, this Court considered that, Secretary of A.P. Cooperative Society is a public servant, for the purpose of sanction and with reference of Section 2(k) of Cooperative Societies Act. The learned single Judge of this Court concluded that, the secretary is a "*public servant*".

Undoubtedly, there are several judgments of different High Courts, including the judgment Apex Court in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra), which are in favour of this petitioner to conclude that he is not a

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<sup>17</sup> LAWS (SC) 2007 (4) 46

<sup>18</sup> AIR 2000 SC 937

<sup>19</sup> LAWS (APH) 2005 (6) 15

public servant. But, the judgment in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra) was not accepted by the Apex Court in various judgments referred supra, in view of Amended Act, 1988, since the case was under 1944 Act, including the judgment in **State of Maharashtra v. Brijlal Sadasukh Modani**<sup>20</sup>. Therefore, the judgment in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra) is not applicable.

In **Yash Kumar Sharma v. State of Punjab**<sup>21</sup>, the petitioner therein was an employee of the Punjab Cooperative Land Mortgage Bank, Muktsar, which was registered under the Punjab Cooperative Societies Act, 1961. The Punjab and Haryana Court held that the employee of a cooperative society is not a public servant within the meaning of Section 5 of P.C. Act or Section 21 IPC, because a cooperative society is not a corporation established by a statute, Punjab Cooperative Societies Act, conferred no status of a public servant unlike Section 129-A of T.C.S. Act.

Similarly, this Court in **Pinjari Pandalapuram Pedda Hussain Saheb v. Government of Andhra Pradesh**<sup>22</sup>, held that, the President and Secretary of a cooperative society are not public servants within the meaning of Clause 12(b) of Section 21 IPC and to them the provisions of Section 409 IPC are not attracted. But, this view is contrary to Section 129-A of T.C.S. Act and in the said case; the Court did not advert to Section 129-A and Section 2(k) of T.C.S Act. Therefore, the law declared by the learned single Judge

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<sup>20</sup> (2016) 4 SCC 417

<sup>21</sup> LAWS (P & H) 1987 (1) 2

<sup>22</sup> LAWS (APH) 2009 (12) 32

of this Court is no more good law, in view of the long line of perspective pronouncements of the Apex Court referred supra.

In **Shanti Ranjan Bhattacharya v. The State**<sup>23</sup>, the Calcutta High Court took a contrary view, but, that is based on the State enactment of West Bengal.

The judgments of various High Courts of other states, including the judgment in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra) have no application, in view of the law declared by the Apex Court in the judgments referred supra. Moreover, in **State of Maharashtra v. Brijlal Sadasukh Modani** (referred supra) the Apex Court dealt with an identical question with reference to provisions of Maharashtra Cooperative Society Act, 1960, and held that, employees of cooperative society falls within the definition of public servant under Section 2(c) of P.C. Act.

Thus, by applying the principles laid down in **State of Maharashtra v. Brijlal Sadasukh Modani** (referred supra) and other judgments of Apex Court referred supra, it is difficult to uphold the contention of this petitioner that he is not a public servant. Though learned counsel for the petitioner placed reliance on the judgment of this Court in **Ravuri Siva Prasad v. State of Andhra Pradesh** (referred supra), the same cannot be applied to the present facts of the case, though the learned Single Judge of this Court referred the judgments of Apex Court, but it was not properly considered. The Single Judge also did not advert to

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<sup>23</sup> AIR 1970 CALCUTTA 557



definition of officer under Section 2(k) and Section 129-A of T.C.S Act Therefore, the principle laid down by the learned single Judge of this Court cannot be applied in view of the judgments of the Supreme Court referred supra.

The principle laid down in other judgment relied on by the learned counsel for the petitioner in **A. Subramanyam Naidu v. Government of Andhra Pradesh** (referred supra), cannot be applied to the present case, since, the provisions were considered with reference to the Industrial Disputes Act to find out whether the employees of Cooperative Society would fall within the definition of workman. But, whether the society is receiving financial aid from State, Centre or Corporations established by state, or Central Government is to be decided only during trial, in view of the judgment of the Supreme Court rendered in **State of Maharashtra v. Brijlal Sadasukh Modani** (referred supra).

Whereas, learned counsel for the respondent placed reliance on the judgments in **Govt. of Andhra Pradesh v. P. Venku Reddy** (referred supra) and **Central Bureau of Investigation, Bank Securities and Fraud Cell v. Ramesh Gelli and others** (referred supra), where the Apex Court highlighted the definition of 'public servant' under Section 2(c) of P.C Act and concluded that the Chairman and the Executive Officer of the Bank would fall within the definition of a 'public servant' defined under Section 2(c)(ix) of P.C. Act and liable for prosecution.

Even in **State of Maharashtra v. Brijlal Sadasukh Modani** (referred supra), the Apex Court held that, it is left to be dealt with,

in the course of trial whether the society concerned has ever been granted any kind of aid or not and directed that the issue whether the respondent is a public servant or not, shall be gone into during the trial based on such aid from government or its corporation or public financial institutions. Therefore, at this stage, it is difficult to accept the contention that the sanction to prosecute this petitioner is not legal and it is left open to raise this issue during trial.

The law laid down by the Apex Court in the judgments referred supra is sufficient to conclude that this petitioner is a public servant within the meaning of Section 2(c) of P.C. Act and also under Section 21 of IPC, subject to establishing that the Agricultural Cooperative Society is receiving financial aid as State. Accordingly, I find this point in favour of the respondent and against the petitioner.

#### **P O I N T NO.2**

The other contention raised by the learned counsel for the petitioner is that, sanction of prosecution against this petitioner is not accorded by a competent officer, since APC & Principal Secretary to Government is incompetent to grant any such sanction as required under Section 19 of P.C. Act.

It is an undisputed fact that sanction of prosecution was granted by APC & Principal Secretary to Government. But, whether the said APC & Principal Secretary to Government is competent to grant such a sanction is to be decided at appropriate stage of the trial, as the petitioner is an employee of cooperative department

and not appointed by registered cooperative societies. The appointment of petitioner as Paid Secretary by registered cooperative society will not confer power on the District Registrar of Cooperative Societies to accord sanction, since, he is an employee of cooperative department. But, this Court cannot decide the validity or legality of the sanction, at this stage.

The main contention before this Court is that, the petitioner is not an employee appointed by the Government and he was appointed by the society itself. But, as seen from the allegations made in the charge-sheet, he was appointed initially as a clerk by the Government and subsequently worked as Paid Secretary at Minarpally Village, Bodhan Mandal, Nizamabad District. If, really, the petitioner was appointed by the Executive Committee of the society, he is not liable for the offences punishable under Sections 13(2) r/w Section 13(1)(e) of P.C. Act. If, for any reason, the petitioner was appointed by the Registrar of Cooperative Societies, as contended by the learned counsel for the petitioner, certainly, the District Registrar Cooperative Societies is the competent authority. But, no material is placed before this Court to ascertain whether the petitioner is appointed by the government or by the District Registrar of Cooperative Societies. When there is a doubt as to the competent authority as to whether the previous sanction is required should be given by Central or State Government or any other authority, such sanction shall be given by the Government or authority which would have been competent to remove the public

servant from his office at the time when the offence was alleged to have been committed.

Here, the APC & Principal Secretary to Government issued sanction orders under Section 19(1) of P.C. Act and when there is any such doubt to the authority as to who has appointed the petitioner, it is left open to the petitioner to raise such contention before the Special Judge for SPE & ACB Cases, Karimnagar and on raising such objection, the Special Judge for SPE & ACB Cases, Karimnagar is bound to consider the same and decide the same in accordance with law.

In view of my foregoing discussion, I do not find any merit in the contention of the learned counsel for the petitioner and the present criminal petition is liable to be dismissed. However, the petitioner is at liberty to raise the issue of validity and legality of the sanction during trial and also about receipt of any financial aid from State or Central Government or from any corporation, established by State or Centre and any public financial institutions or Banks to decide whether the petitioner is a public servant.

One of the contentions raised by the learned counsel for the petitioner is that, when the society is not registered under A.P. Cooperative Societies Act, thereby, the provisions of A.P. Cooperative Societies Act has no application to the present facts of the case. irrespective of registration of the societies either under A.P. Cooperative Societies Act or A.P. Mutually Aided Cooperative Societies Act or any other Act, the petitioner is an employee in a cooperative department, who was initially appointed as clerk and



later promoted as Paid Secretary and now working as such. Therefore, the petitioner is under the indirect control of the sanctioning authority i.e APC & Principal Secretary to Government. On this ground also, the proceedings against the petitioner in C.C.No.5 of 2016 on the file of Special Judge for SPE & ACB Cases, Karimnagar, cannot be quashed.

In the result, the criminal petition is dismissed, while permitting to raise the issue of validity and legality of the sanction, and also about receipt of financial aid during trial. On raising on such contention, the Trial Court shall decide the validity of the sanction during trial and also about receipt of any financial aid from State or Central Government or from any corporation, established by State or Centre and any public financial institutions or Banks to decide whether the petitioner is a public servant, in accordance with law.

Consequently, miscellaneous petitions pending if any, shall stand closed. No costs.

**JUSTICE M. SATYANARAYANA MURTHY**

Date:10.10.2018

Note: LR copy to be marked

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