

CRR 4177 of 2009

In the matter of : Bikash Chandra Maji @ Bikash Majhi

Mr. Sourav Chatterjee
Ms. Namrata Chatterjee ... for the petitioner

Mr. N. P. Agarwala
Mr. P. Bose ... for the State

Affidavit of service is taken on record.

This application under Section 482 of the Code of Criminal Procedure is manifestation of displeasure of the petitioner over the order passed by the learned Judge, Special Court, Howrah in Special Case No. 3 of 2008 on 26.8.2009, while disposing of the application challenging the jurisdiction of learned Special Court to try offence under Section 409 of the Indian Penal Code.

Briefly stated, one Subal Chandra Bar, Secretary of Jhumjhum SKUS set the criminal administration of justice into motion by informing the Officer-in-Charge of Shyampur Police Station about an alleged act of misappropriation or embezzlement of money of the co-operative society made by the petitioner Sri Bikash Chandra Maji along with other person. It was alleged that Sri Bikash Chandra Maji had been the employee of the society until resigned on 09.04.1997 and during the period from 01.4.1994 to 31.3.1995 and 01.4.1995 to 31.3.1996 Sri Bikash Chandra Maji according to the F.I.R. embezzled a sum of Rs.37,876.80/-. On the basis of such information Shyampur P.S. Case No. 71/1998 was registered on 16.8.1998 and police took up investigation which culminated into charge sheet which was filed before the

learned Special Court having jurisdiction to try offence under Section 409 of the Indian Penal Code committed by public servant.

Mr. Chatterjee, learned counsel appearing on behalf of the petitioner fairly submits that the case was registered way back in 1998 nearly twenty five years ago. Before the F.I.R. was registered the petitioner expressed his apprehension of being harassed by way of false allegation before the Registrar, West Bengal Co-Operative Society Limited by writing a letter on 14.5.1998. According to Mr. Chatterjee the petitioner cannot be brought within the ambit of the definition of the public servant and, therefore, the Special Court had no jurisdiction to try allegation levelled against the petitioner. Learned Trial Court failed to appreciate the mandate of law he was pleased to hold that only after considering the evidence he would take the call whether the petitioner is a public servant or not.

Relying upon the judgment of co-ordinate Bench pronounce the case of **Srikanta Patra vs. State of West Bengal**, Mr. Chatterjee submits that the petitioner being admittedly a salesman of the co-operative society by no stretch of imagination can be held to be an officer as defined under Section 2(31) of the West Bengal Co-Operative Societies Act, 1983.

“2(31) “Officer” “includes a Chairman, Vice-Chairman, Secretary, Joint Secretary, Assistant Secretary, Managing Director, Manager, Deputy Manager, Assistant Manager, Treasurer, Director of a Board, auditor elected, if any, from amongst members and any other person empowered under the

Rules or the Bye-laws to give direction relating to the affairs of a co-operative society”.

To bring home his point Mr. Chatterjee further relied upon a decision of the Hon'ble Apex Court pronounce in the case of State of Maharashtra vs. Laljit Rajshi Shah and Others reported in (2000) 2 SCC 699, wherein Hon'ble Apex Court held:-

6. In view of the rival submission at the Bar, the sole question that arises for consideration is, as to what is the effect of the provisions of Section 161 of the Maharashtra Co-operative Societies Act in interpreting the provisions of Section 21 of the Indian Penal Code. It is undoubtedly true that the Co-operative Societies Act has been enacted by the State Legislature and their powers to make such legislation is derived from Entry 32 of List II of the Seventh Schedule to the Constitution. The legislature no-doubt in Section 161 has referred to the provisions of Section 21 of the Indian Penal Code but such reference would not make the officers concerned 'public servants' within the ambit of Section 21. The State Legislature had the powers to amend Section 21 of the Indian Penal Code, the same being referable to a legislation under Entry 1 of List III of the Seventh Schedule, subject to Article 254(2) of the Constitution as, otherwise, inclusion of the persons who are 'public servants' under Section 161 of the Co-operative Societies Act would be repugnant to the definition of 'public servant' under Section 21 of the Indian Penal Code. That not having been done, it is difficult to accept the contention of the learned counsel, appearing for the State that by virtue of deeming definition in Section 161 of the Co-operative Societies Act by reference to Section 21 of the Indian Penal Code, the persons concerned could be prosecuted for the offences under the Indian Penal Code. The Indian Penal Code and the Maharashtra Co-operative Societies Act are not Statutes in pari materia. The Co-operative Societies Act is a completely self-contained Statute with its own provisions and has created specific offences quite different from the offences in the Indian Penal Code. Both Statutes have different objects and created offences with separate ingredients. They cannot thus be taken to be Statutes in pari materia, so as to form one system. This being the position, even though the Legislatures had incorporated the provisions of Section 21 of the Indian Penal Code into the Co-operative Societies Act, in order to define a 'public servant' but those 'public servants' cannot be prosecuted for having committed the offence under the Indian Penal Code. It is a well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by

which it is created. A legal fiction in terms enacted for the purposes of one Act is normally re-stricted to that Act and cannot be extended to cover another Act. When the State Legislatures make the Registrar, a person exercising the power of the Registrar, a person authorised to audit the accounts of a society under Section 81 or a person to hold an inquiry under Section 83 or to make an inspection under Section 84 and a person appointed as an Administrator under Section 78 or as a Liquidator under Section 103 shall be deemed to be 'public servant' within the meaning of Section 21 of the Indian Penal Code. Obviously, they would not otherwise come within the ambit of Section 21, the legislative intent is clear that a specific category of officers while exercising powers under specific sections have by legal fiction become 'public servant' and it is only for the purposes of the Co-operative Societies Act. That by itself does not make those persons 'public servants' under the Indian Penal Code, so as to be prosecuted for having committed the offence under the Penal Code. When a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something, the Act of legislature requires him to be treated as if obviously for the purposes of the said Act and not otherwise. In a somewhat similar situation in *Ramesh Balkrishna Kulkarni v. State of Maharashtra*, 1985(3) SCC 606, the question for consideration was whether a Municipal Councillor can be prosecuted for having committed an offence under the Indian Penal Code, since under Section 302 of the Municipalities Act, a Councillor shall be deemed to be a 'public servant' within the meaning of Section 21 of the Indian Penal Code. Section 302 of the Maharashtra Municipalities Act, 1965 is quoted herein below in extensor:

"302. Every councillor and every officer or servant of a Council, every contractor or agent appointed by it for the collection of any tax and every person employed by such contractor or agent for the collection of such tax, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code."

Considering the status of the petitioner, as the erstwhile employee of the co-operative society who does not come within the purview of the term officer, as well as considering the agony and anxiety of the petitioner, that he has been carrying over his head for about twenty five years, I consider it just to invoke the provision of Section 482 of the Code of Criminal Procedure to quash the proceeding qua the petition pending before the learned Trial Court.

With this observation, the criminal revision is disposed of.

With the disposal of this criminal revision, application, if any,
stands disposed of.

Let a copy of the order be sent to the learned Trial Court for
information and necessary action.

(Siddhartha Roy Chowdhury, J.)