

C.R.R. 4317 of 2022
Nimai Chandra Ghosh & Anr.
Vs.
The State of West Bengal

Mr. Ankit Agarwala
Ms. Alotriya Mukherjee

...For the Petitioners

Mr. Saibal Bapuli
Mr. Bibaswan Bhattacharya

...For the State

A short question involved in the present case is that whether the petitioners, who are posted as the Manager and the Sales and Purchase Officer in Shibnagar O Jahira Samabay Krishi Unnayan Samity Limited (in short said Society) can be categorized as ‘public servants’ to be tried by a Special Court Constituted under the West Bengal Criminal Law Amendment (Special Courts Act) 1949, against whom charge sheet under 420/409 of the Indian Penal Code has been submitted. The allegation in the said case against the petitioner Nos. 1 and 2 is that they have misused and defalcated the funds of the said Society by misusing their posts.

While the investigation was pending learned Magistrate by the impugned order held that since the accused persons are booked under Section 409 of the IPC, the case is triable by the Special Court and as such the case records of the said case was transmitted to the learned Special Court cum Additional Sessions Judge, 1st Court at Hooghly, Chinsurah. After such transmission, the transferee Special Court has framed charge against the petitioners under Section 420/409 of the Indian Penal Code (IPC) vide order dated 1st August, 2022.

It is submitted on behalf of the petitioners that the petitioner filed an application before the learned Judge contending that the Special Court has got no jurisdiction to try the said offence since the petitioners are not 'public servants' within the definition of Section 21 of the IPC. He further stated that Section 21 does not include employees of the Cooperative Societies, inasmuch as the officers or employees of such Society are not discharging any public duty. He further submits that only the jurisdictional Magistrate has the power to try the said case and as such, records of the said case may be ordered to be returned before the learned Magistrate for taking cognizance and trial. In this context he relied upon the decision of the Hon'ble Apex Court in the case of *State of Maharashtra Vs. Laljit Rajshi Shah and Ors.*, reported in (2000) 2 SCC 699 and also a judgment delivered by a Coordinate Bench of this High Court in *Rabindra Nath Bera Vs. State of West Bengal*, reported in 2011 SCC OnLine Cal. 459.

In the case of *State of Maharashtra (Supra)*, the same question arose before the Hon'ble Apex Court as to whether the person defined as officer under Clause (20) of Section 2 of the Maharashtra Cooperative Societies Act, 1960 is a 'public servant' within the meaning under Section 2 of the Prevention of Corruption Act, 1947 (2 of 1947) by virtue of the provisions of Section 161 of the Maharashtra Cooperative Societies Act, 1960 read with Section 21 of the Indian Penal Code.

After going through the said issue involved in the said case, the Hon'ble Apex Court came to a finding that though legislature in Section 161 has referred to the provision of Section 21 of the IPC (as it has also been done in Section 10 of the West Bengal Cooperative Societies Act, 2006) but such reference would not make the Officers concerned 'public servants' within the ambit of Section 21. The Court further held that the State legislature had the powers to amend Section 21 of the Indian Penal Code, which is within the jurisdiction of said legislation under Entry (I) of List (III) of 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 Cooperative Societies Act, would be repugnant to the definition of 'public servant' under Section 21 of the IPC. The Court ultimately came to a finding that since not having 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 Cooperative Societies Act, by reference to Section 21 of the IPC, the persons concerned could be prosecuted for offence under Indian Penal Code. This is because Indian Penal Code and the Maharashtra Cooperative Societies Act are not statutes in pari materia. The Cooperative Societies Act is a completely self-contained statute with its own provisions and has created specific offence 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. Accordingly, the Court held this being the position, even though the legislatures had incorporated the provisions of Section 21 of the Indian Penal Code into the Cooperative Societies Act in order to define ‘public servants’ but those public servants cannot be prosecuted for having committed the offence under the Indian Penal Code.

Supreme Court further held that it is a well-known principle of construction that in interpreting a provisions 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 give 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 restricted to that Act and cannot be extended to cover another Act.

Accordingly, while dealing with a similar situation as to the Officers of Cooperative Societies guided under the West Bengal Cooperative Societies Act is a ‘public servant’ or not, this Court in *Rabindra Bera (Supra)* ultimately came to a finding that the learned Court below erred in coming to a conclusion that the petitioner being a ‘public servant’ within the meaning under Section 21 of the IPC is to be tried by a Special Court constituted under West Bengal Criminal Law

Amendment (Special Courts) Act, 1949 and accordingly the order of the Court below was set aside.

Let me first reproduce Section 10 of the West Bengal Cooperative Societies Act, 2006, which reads as follows :-

“10. Officers of Co-operative societies to be public servants.

Every officer of a Co-operative society shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).”

Now Section 161 of the Maharashtra Cooperative Societies Act, 1960 also reads as follows :-

“161. [Registrar and other officers to be public servants. [Section 161 was substituted for the original by Maharashtra 20 of 1986, Section 67.]

The Registrar, a person exercising the powers of the Registrar, an officer as defined in clause (20) of section 2, or a person appointed as an Official Assignee under subsection (2) of section 21A, [State Co-operative Election Commissioner and officers, employees and staff employed under sub-sections (7) and (8) of section 73CB] or as an administrator under section 77A or 78 [78A or clause (iii) of sub-section (1) of section 110A] [These words, brackets, figures and letter were inserted by Maharashtra Act No. 16 of 2013 dated 13-8-2013, Section 80(b), (w.e.f. 14-2-2013).], or a person authorised to seize books, records or funds of a society under sub-section (3) of section 80, or to audit the accounts of a society under section 81 or to hold an inquiry under section 83, or to make an inspection under section 84, or 89A or to make an order under section 88 or a person appointed as a member constituting a Co-operative Court under section 91A or the Co-operative Appellate Court under section 149 [or any officer empowered under section 156] [These words and figures were inserted by Maharashtra Act No. 16 of 2013 dated 13-8-2013, Section 80(c), (w.e.f. 14-2-2013).] or a Liquidator under section 103, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.]”

When in the similar set of facts and circumstances of the case the ratio has already been laid down by the Apex Court on the same issue and since the West Bengal legislature has not made any

amendment in Section 21 of the IPC to incorporate the Officers under the West Bengal Cooperative Societies Act, 2006 to be a 'public servant', merely because Section 10 provides that "every officer of a Cooperative Society shall be deemed to be a 'public servant' within the meaning of Section 21 of IPC" does not include the 'public servant' within the meaning of that Section. Now Section 4 of the West Bengal Criminal Law Amendment (Special Courts') Act, 1949 states that notwithstanding anything contained in the Cr.P.C. or any other law in force, the offences specified in the Schedule shall be tried by Special Courts only. The Schedule of said Act states that an offence punishable under Section 409 of the IPC, if committed by a public servant or by a person dealing with property belonging to Government as an agent of Government in respect of property with which he is entrusted or over which he has dominion in his capacity of a public servant, shall be tried by Special Court under the said criminal court Amendment Act of 1949. Since it has already been seen that the petitioners, being the officers of Cooperative Society is not a public servant under Section 21 of the IPC, so even if charge sheet submitted or charge is to be framed under Section 409 of the IPC against the petitioners but since they are not public servant, the special Court constituted under Amendment Act of 1949 has got no jurisdiction to try the instant case. In such view of the matter, the order of the learned Magistrate in transmitting the record to the Court of Special Judge constituted under the West Bengal Criminal

Law Amendment (Special) Act, 1949 suffers from perversity and also the order of the Special Court in taking cognizance and framing charge and the order passed thereafter are not sustainable in the eye of law. In such view of the matter, the order passed by the Chief Judicial Magistrate, Hooghly dated 23rd April, 2022 in G.R. Case No. 1757 of 2021, corresponding to Pandua Police Station Case No. 337 of 2021 dated 11.8.2021 and the orders passed by the learned Special Court-cum Additional Sessions Judge, 1st Court, Hooghly at Chinsurah vide order dated 1.8.2022 and all subsequent orders, are hereby set aside.

The learned Chief Judicial Magistrate is directed to consider the State's prayer for taking cognizance on the basis of the materials available during investigation afresh and if the jurisdictional Magistrate court chooses to take cognizance on the basis of the materials available in the case diary then, the jurisdictional Magistrate court will go for trial in accordance with the provisions of law.

The special court is accordingly directed to transmit the case records to the learned Chief Judicial Magistrate, Hooghly at the earliest.

CRR 4317 of 2022 thus stands disposed of .

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)