The State of Madhya Pradesh

Vs

M. V. Narasimhan

Criminal Appeal No. 284 of 1974

(N. L. Untawalia, Syed Fazal Ali JJ)

15.07.1975

JUDGMENT

FAZAL ALI, J. –

1. This is an appeal by State of M.P. by certificate granted by the High Court of Madhya Pradesh under Article (1)(c) of the Constitution against its judgment and order, dated April 12, 1973 by which the respondent who was convicted by the Special Judge, Indore, under Section 420, I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and sentenced to one year's rigorous imprisonment on each count, was acquitted by the High Court. Briefly put, the prosecution case against the respondent was that he was an employee in the Heavy Electricals (India) Ltd., Bhopal, which is a permanent company and was working at the relevant time as Personal Assistant to K. C. Rae, Manager Purchasing and Main Stores of the company. Mr. Rae was allotted a new Fiat car at Bombay on priority basis and the respondent and Mr. Rae had arrived at Bombay to take delivery of the car on March 10, 1965 and they stayed there till March 13, 1965. Mr. Rae, however, left on the morning of March 13, 1965 directing the respondent to obtain delivery of the Fiat car on March 14, 1965 and then proceed to Indore. Ultimately the car was brought to Bhopal on March 16, 1965 at about 2.30 p.m. On March 23, 1965 the respondent submitted his T.A. bill Ext. P-21 showing his departure from Bombay on March 16, 1965 by car at 2.00 p.m. and arrival at Bhopal on March 17, 1965 at 6.30 p.m. and claimed daily allowance at the rate of Rs. 12 per day for halt at Bombay. The respondent accordingly received the full amount of the T.A. bill on April 3, 1965. The allegation against the respondent was that he had prepared a false T. A. bill and had cheated the government company and was guilty of serious criminal misconduct as envisaged by the Prevention of Corruption Act. The learned Special Judge, Indore, accepted the prosecution case and convicted the respondent as indicated above. The respondent then filed an appeal before the High Court of Madhya Pradesh which allowed the appeal, mainly on the ground that as the respondent was not a public servant as contemplated by the provision of the Prevention of Corruption Act, his trial under the said Act was without jurisdiction. The High Court, howsoever, left it open to the Government to prosecute the respondent under the relevant law, if necessary. It is against this order of the High Court that the State of M.P. had filled this appeal before us after obtaining certificate of fitness from the High Court.

2. The short point taken by the respondent before the High Court was that as the word "public servant" has not been expressly defined in the Prevention of Corruption Act, 1947, it has borrowed the definition from Section 21 of the Indian Penal Code, such as definition amount to legislation by incorporation, and therefore any subsequent amendment addition or alteration in the Indian Penal Code would not at all affect the incorporated provision in the Prevention of Corruption Act. The High Court seems to have readily accepted this contention and has accordingly held that as the

various amendments to Section 21 of the Indian Penal Code cannot aptly to the provision of the Prevention of Corruption Act, and therefore the respondent being only an employee of the government company does not fall within the ambit of public servant as defined in Section 21 of the Indian Penal Code prior to the amendment. In order to appreciate this point, it may be necessary to set out the scheme of the Prevention of Corruption Act - hereinafter referred to as 'the Act' - with particular reference to Section 21 of the Indian Penal Code - hereinafter referred to as 'the Penal Code' - which has been incorporated in the Act. To begin with, the preamble to the Act clearly shows that the Act has been passed for more effective prevention of bribery and corruption, bribery being a form of corruption. Section 2 of the Act runs thus :

> For the purposes of this Act, "public servant" means a public servant as defined in Section 21 of the Indian Penal Code.

It would be seen that Section 2 of the Act completely incorporates the provision of Section 21 of the Penal Code in order to define a "public servant". The Legislature in its wisdom did not think it necessary to give a separate definition of "public servant" in the Act, but endear to achieve brevity in legislation it incorporated the provision of Section 21 of the Penal Code into it. Before the Criminal Law (Amendment) Act 1958 (Act No. II of 1958) was passed Section 21 of the Penal Code consisted only of eleven clauses and an employee under the corporation or a government company did not fall within the purview of any of clauses of Section 21 of the Penal Code. Thus when the Legislature incorporated the provisions of Section 21 of the Penal Code in the Act in the year 1947, Clause 12 was not there at all on the statute book of the Penal Code. The High Court took the view that as the Act had incorporated the definition of the Penal Code prior to its amendment therefore, it became as integral and independent part of the Act and would remain unaffected by any repeal or change in previous Act namely the Penal Code. It appears, however, that by virtue of the Criminal Law (Amendment) Act, 1958, twelfth clause was inserted in Section 21 of the Penal Code, which runs as follows :

> Twelfth. - Every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central Provincial or State Act or of a Government company as defined in Section 617 of the Companies Act 1956.
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> This Act also amended certain provision of the Prevention of Corruption Act, 1957 in enlarging the concept of criminal misconduct but it did not at all amend any portion of Section 2 of the Act, perhaps the reason being that in view of the enlargement of the definition of "public servant" in Section 21 of the Penal Code express amendment of Section 2 of the Act was not necessary.

3. By virtue of the Anti Corruption Laws (Amendment) Act, 1964 (Act No. XL of 1964), Clause 12 of Section 21 of the Penal Code was substituted as follows :

> Twelfth - Every person -
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> (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;
>
> (b) 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.

It would thus appear that by virtue of these two amendments the Parliament sought to enlarge the definition of "public servant" so as to include even an employee of a government company or a corporation with the avowed object of stamping out corruption at various levels prevailing in the country.

4. The question that arises for consideration is whether the subsequent amendments to Section 21 of the Penal Code after its incorporation if the Act would have to be read into the Act or not. It is true that if the doctrine of legislation by incorporation is strictly applied in this case, then the definition of Section 21 of the Penal Code prior to its amendment by Act II of 1958 and Act XL of 1965 would alone stand and, if this is so, the respondent would not be a public servant within the meaning of Section 21 of the Penal Code. It is well settled that where the subsequent Act incorporates a provision of the previous Act, the position is that the borrowed provision is bodily lifted from the previous Act and place in the subsequent Act and becomes an integral and independent part of it so as to remain unaffected by any repeal, change or amendment in the previous Act. In Clarke v. Bradlaugh (1881) 8 QBD 63, 69 : 51 LJQB 1 : 46 LT 49), Brett, L.J. observed as follows :

..... but there is a rule of construction that, where as statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second.

These observations where noticed and approved by this Court in Ram Sarup v. Munshi ((1963) 3 SCR 858, 868-869 : AIR 1963 SC 553), where this Court made the following observations :

Where the provisions of an Act are incorporated by reference in latter Act the repeal of the earlier Act had, in general, no effect upon the construction or effect of the Act in which it provision have been incorporated. The effect of incorporation is stated by Brett, L.J. in Clarke v. Bradlaugh :

Where a statute is incorporated, by reference into a second statute the repeal of the first statute by a third does not affect the second.

In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has not effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the later Act has to be read as if the definition if the Alienation of Land Act hand been bodily transposed into it.

5. The doctrine of incorporation by reference to earlier legislation has been very aptly described by Lord Esher, M.R. in In re Wood's Estate, Ex Parte Her Majesty's Commissioners of Works and Buildings ((1866) 31 Ch D 607, 615-616 : 55 LJ Ch 488 : 54 LT 145), where he observed as follows :

If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write these sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to

> refer to the former Act at all. For all practical purposes, therefore, those sections of the Act of 1840 are to be dealt with as it they were actually in the Act of 1855.

6. Craies on Statute Law, (7th Edition), while referring to the observation of Brett, L.J. observed at p. 361 as follows :

> There is a rule of construction that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second, as the incorporated provisions have become part of the second statute.

7. The Privy Council in Secretary of State for India in Council v. Hindusthan Co-operative Insurance Society Ltd. (LR 58 IA 259, 266-267 : AIR 1931 PC 149 : 132 IC 748), while amplifying this doctrine, observed as follows :

> Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provision which it was desired to adopt. The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country.

8. Thus the position is that after the provision of the previous Act is incorporated in the subsequent Act, the offspring, namely the incorporated provision, survived even if the previous Act is repealed, amended declared a nullity or erased from the statute book. The High Court appears to have relied on all these decision in order to come to its conclusions that as the Act has incorporated the provisions of Section 21 of the Penal Code in Section 2 thereof, any amendment in the previous Act, namely the Penal Code, will not affect the subsequent Act, namely the Prevention of Corruption Act.

9 It was argued before the High Court as also before us that the Act and the Penal Code are statutes in pari materia and form part of the system and they should, therefore, be interpreted as enforcing each other. Thus any change in the definition of Section 21 of the Penal Code would have to be implicitly read into Section 2 of the Act. The Additional Solicitor General Nariman appearing for the State, however, conceded later on, and in our opinion rightly, that it may not be possible to hold that the Act and the Penal Code were statutes in pari materia. It would appear that the Act is a completely self contained statute with its own provisions and has created a specific office of criminal misconduct which is quite difference from the offence of bribery or defined in the Penal Code. Both these statutes have different objects and create offences with separate ingredients. No authority has been cited before us in support of the proposition that the Act, namely, the Prevention of Corruption Act, and the Penal Code are statutes in pari materia so as to form one system.

10. In the State of Madras v. Vaidyanath Aiyar (AIR 1958 SC 61 : 1958 SCR 580 : 1958 Cri LJ 232), this Court while construing the meaning of the phrase 'it shall be presumed' appearing in Section 4 of the Act utilised the construction placed on the phrase 'shall presume' in the Evidence Act by holding that the Evidence Act was a statute in pari materia with the Prevention of Corruption Act. There can be no doubt that the Evidence Act and the Prevention of Corruption Act form part of one system, because the rules of the Evidence Act, with minor exceptions, apply to trials of offences

created under the Act. This principle, however, cannot apply to the present case, where, as we have already stated the areas of the two statutes, namely the Act and the Penal Code are entirely different. Secondly, while the Indian Penal Code is essentially a penal statute of a much wider scope than the Act, the Act no doubt contains a penal flavour but it is in effect a piece of social legislation directed towards eradication of the evil of corruption amongst the services alone. In other words, public servants alone fall within the mischief of the Act, i.e. the Prevention of Corruption Act and no one else.

11. Nariman then argued that having regard to the preamble and the object of the Act and the Penal Code there can be no doubt that the Act was undoubtedly a statute supplemental to the Penal Code and that being the position any amendment in the definition of Section 21 of the Penal Code would have to be read into Section 2 of the Act, because once the definition of Section 21 of the Penal Code was incorporated in the Act it had to be imported into the other Act and considered pari passu the Penal Code. In our opinion, this argument is well founded and must prevail. We have indicated that the object of the Act was to eradicate corruption from various levels either in government services of in services under the corporations or government companies. This Penal Code no doubt creates offences like those mentioned in Sections 161 and 165 of the Code but they were not found sufficient to cope with the present situation and the expanding needs of the nation. In these circumstances, it was considered necessary to evolve a quick, expedition and effective machinery to destroy the evil of corruption existing in any form. If, therefore, the Penal Code with the same object enlarged the definition of Section 21 by adding the twelfth clause by virtue of the Criminal Law (Amendment) Act, 1958 and the Anti corruption Law (Amendment) Act, 1964, there is not reason why the extended meaning to the provision of Section 2 of the Act as borrowed from Section 2 of the Penal Code be not given to that section.

12. This Court in S. Gangoli v. State of U. P. ((1960) 1 SCR 290 : AIR 1959 SC 1310 : 1959 Cri LJ 1497) While interpreting Section 2 of the Prevention of Corruption Act, that the accused were public servants within the meaning of the Act, being employees of the East Indian Railway, which was managed and owned by the Government of India, observed as follows :

> The East Indian Railway which has employed the appellants was at the material time owned by the Government of India and managed and run by it and so if the status of the appellants had the material date solely by reference to Section 21 of the Code there would be no difficulty in holding that they are public servants as defined by the said section.

13. Even while discussing the exact ambit and scope of the Prevention of Corruption Act, this Court observed in M. Narayanan Nambiar State of Kerala (1963 Supp 2 SCR 724 : AIR 1963 SC 1116 : (1963) 2 Cri LJ 186) as follows :

> The preamble indicates that the Act was passed as it was expedient to make more effective provision for the prevention of bribery and corruption. The long title as well as the preamble indicate that the Act was passed to put down the said social evil, i.e. bribery and corruption by public servant . . . It also aims to protect honest public servants from harassment by prescribing that investigation against them could be made only by police officials of particular status and by making the sanction of the Government or other appropriate office a pre-condition for their prosecution. As it is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object, i.e. to prevent corruption among public

servants and to prevent harassment of the honest among them.

These observations regarding the object of the Act obviously were based on the footing that the Act must be read as supplemental to the Penal Code, and therefore the definition borrowed from the Penal Code must be read into Section 2 of the Act not only at the time when it was borrowed but even at the material date when the offence is committed. This being the position it is manifest that by virtue of the amendment referred to above in the Penal Code which inserted twelfth clause to Section 21 of the Penal Code the respondent clearly comes within the meaning of "public servant" and the High Court was in error in taking in view to the contrary. Further the Prevention of Corruption Act being a social legislation its provisions must be liberally construed so as to advance the object of the Act. This can only be done if we give an attended meaning to the term "public servant" as referred to in Section 2 of the Act by applying the enlarged definition contained in Clause 12 inserted in the Penal Code by the two amendments referred to above.

14. There is yet another aspect of the matter which is spelt out from the decision of the Privy Council in the Hindusthan Co-operative Insurance Society's case (supra) which has been relied upon by the High Court itself. While reiterating the principle that after certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act can be made, their Lordships of the Privy Council made it clear that this principle would not apply where the subsequent Act is rendered unworkable or is not able to function effectually. In this connection their Lordships observed as follows :

> It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it at all events if its possible for the subsequent Act to function effectually without the addition.

15. On a consideration of these authorities, therefore, it seems that the following proposition emerges :

> Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases :
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> (a) where the subsequent Act and the previous Act are supplemental to each other;
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> (b) where the two Acts are in pari materia;
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> (c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and
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> (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act.

16. The Additional Solicitor General vehemently contended that if the enlarged definition by the insertion of Clause 12 in Section 21 of the Penal Code is not imported into Section 2 of the Act, then the Act would become wholly unworkable. For instance, if two persons are serving under a government company and have committed an offence of accepting illegal gratification, and if one is

prosecuted under Section 161 of the Penal Code and the other under the Act, it is obvious that the prosecution against the employee of the same company who is prosecuted under the Act will fail because such an employee will not be a public servant, according to the extended meaning given by the amendments to Section 21 of the Penal Code. This will, therefore, defeat and frustrate not only the object of the Act but will render it absolutely unworkable. In view of these circumstances, therefore, we are inclined to hold that in the facts and circumstances of the present case and having regard to the nature and scope of the Prevention of Corruption Act, the extended definition of Section 21 of the Penal Code would have to be imported into Section 2 of the Act. That being the position there can be no doubt that the respondent was a public servant within the meaning of Section 2 of the Act and his conviction by the learned Special Judge, Indore, do not suffer from any legal infirmity.

17. There is yet another aspect of the matter. It seems to us that even if Section 2 of the Act had not applied the provision of the Penal Code and had not defined public servant, then the provisions of the Penal Code would have come into operation by implied reference because the Act was a supplemental Act to the Penal Code. It was only by way of abundant caution that Section 2 of the Act incorporated the definition of "public servant" as mentioned in Section 21 of the Penal Code and in that sense along the Act can be treated as being pari materia with the Penal Code. For these reasons, therefore, we are clearly of the opinion that the judgment of the High Court holding that the respondent was not a public servant is legally erroneous and cannot be allowed to stand.

18 The other point is regarding the question of sentence. The High Court has itself pointed out that the respondent had been forced under duress exercised by his superior officer in drawing the inflated traveling allowance. The High Court has also expressed the view that having regard to the fact that as the accused had to face a trial for a number of years, the Government will consider the desirability of not prosecuting him again. In view of these circumstances, therefore, we feel that the respondent has committed only a technical offence and a token sentence is called for.

19. We, therefore, allow the appeal, set aside the judgment of the High Court, dated April 12, 1973, acquitting the respondent. We convince the respondent under Section 420 I.P.C. and Section 5(2) read with Section 5(1) (d) of the Prevention of Corruption Act but reduce his sentence to the imprisonment already served.

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