

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Prabhakarrao

(D Mohapatra and B Kumar JJ.)

06.03.2002

ORDER

1. Leave granted.

2. The State of Maharashtra and the police inspector, Anti Corruption Bureau, Jalna, have filed this appeal assailing the judgment passed by the Bombay High Court quashing the first information report FIR No. 3001 of 2000 dated 9.2.2000, registered at the police station, Ashti, Taluk Partur, Jalna, alleging commission of offences punishable under sections 7, 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 by the respondents herein. Considering the application filed by the respondent no. 1 under section 482 Criminal Procedure Code seeking quashing of the FIR, the High Court by the order under challenge quashed the FIR holding, inter alia, that the accused was not a 'public servant' as defined under the *Prevention of Corruption Act, 1988*. The High Court placed reliance on the decision of this Court in the case of *State of Maharashtra v. Laljit Rajshi Shah and Ors.* . It is relevant to note here that the aforementioned decision was rendered in a case covered by the *Prevention of Corruption Act, 1947* and not under the statute which is applicable in the present case. Considering the definition of the expression 'public servant' defined in section 21 Indian Penal Code which was adopted in the *Prevention of Corruption Act, 1947*, this Court took the view that members of the managing committee and chairman of the co-operative societies under the Maharashtra Co-operative Societies Act are not public servants. In the *Prevention of Corruption Act, 1988* which is relevant for the purpose of the case in hand, the definition of the expression 'public servant' is different.

Section 2(c) enumerates the persons who are public servants. The provision so far as material for the present case is quoted below:

"2(c): "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);

x x x x X

(ix) any person who is the president, secretary or other office-bearer of a registered cooperative 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 x x x x

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."

3. Under Clause (iii) of section 2(c) any person in the service or pay of a corporation established by or under Central, Provincial or State Act or an authority or a body owned or controlled or aided by the government and under Clause (ix) the president, secretary and other office-bearers of a registered co-operative society engaged in agriculture, industry, have been included in the definition of 'public servant'.

4. The question for consideration is whether the accused in the present case comes within the purview of the aforementioned clauses or any other clause of section 2(c) of the Prevention of Corruption Act, 1988. For determination of the question, enquiry into facts, relating to the management, control and funding of the society, is necessary to be ascertained.

5. Unfortunately, the High Court in its order has not considered this question at all. It has proceeded on the assumption that section 21 of the Indian Penal Code is the relevant provision for determination of the question whether the accused in the case is a public servant. As noted earlier, section 21 IPC is of no relevance to consider the question which has to be, on interpretation of provision of section 2(c) of the Prevention of Corruption Act, 1988, read with the relevant provisions of *Maharashtra Cooperative Societies Act, 1960*.

6. Shri S.V. Deshpande, learned counsel appearing for the petitioners and Mr. L. Nageswara Rao, learned senior counsel appearing for the respondents fairly accepted the position that

the question noted above was not raised and therefore, not considered by the High Court while passing the order under challenge.

7. In the context of the facts and circumstances of the case, we are of the view that it will be appropriate that the trial court should consider the question if it is raised by any party. The judgment under challenge being unsustainable is set aside. Parties are given liberty to raise the question of maintainability of the proceeding under the provision of the Prevention of Corruption Act, 1988, before the trial court. If such a question is raised, the court will decide the same on the basis of the material and in accordance with law.

8. The appeal is allowed on the above terms.