

**SUPREME COURT OF INDIA**

State of Punjab

Vs.

Nirmal Kaur

Crl.A.No.866 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

28.04.2009

**JUDGMENT**

**Dr. ARIJIT PASAYAT, J.**

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge holding that the respondent cannot be proceeded against in terms of Section 13(2) of the Prevention of Corruption Act, 1988 (in short the 'Act').

3. Factual position in a nutshell needs to be noted. Respondent-Nirmal Kaur was running a coaching centre. On the accusation of commission of offences punishable under Sections 420, 465, 467, 468, 471 and 120B of the Indian Penal Code, 1860 (in short the 'IPC') and Section 13(1)(d) read with Section 13(2) of the Act investigation was undertaken, charges were framed by learned Sessions

Judge Ferozepur, under Section 13(1)(d) read with Section 13(2) of the Act as well as the offences punishable under IPC. A petition under Section 401 of the Code of Criminal Procedure, 1973 (in short the 'Code') was filed inter alia taking the stand that since the respondent was not a public servant, there was no question of framing charges in terms of Section 13(1)(d) read with Section 13(2) of the Act. The trial court relied on clauses (viii) (xi) and (xii) of sub-clause 2(c) of the Act to hold that the charges were framed legally. The High Court held that clauses (viii) (xi) and (xii) of sub-section 2(c) of the Act have no application to the facts of the case. It was pointed out that the accused was running a coaching centre and therefore she was not performing any public duty. The framing of charge so far as Section 13 of the Act is concerned was to be quashed while the accused was to face trial for the aforesaid offences punishable under the IPC.

4. Learned counsel for the appellant submitted that since the accused was running a coaching centre, she was carrying on public duty.

5. Section 2(c) reads as follows: (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 the local authority; (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or any 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 anybody of persons, any adjudicatory functions; (v) any person authorized by a Court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court; (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a 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 authorized or required to perform any public duty; (ix) any person who is 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 other 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."

6. Stand of the appellant-State is that in any event by running coaching centre, the respondent was performing public duty. The submission overlooks basic requirement of clause (vii) of Section 2(c) which is applicable only when a public servant holds an office by which he authorized or required to perform any public duty. In the instant case it is nobody's case that the respondent was holding an office by virtue of which she was authorized to perform any public duty. That being so there is no merit in this appeal which is accordingly dismissed.