

Before D. S. Tewatia and M. M. Punchhi, JJ.

B. L. DALMIA AND ANOTHER,—Petitioners.

versus

STATE OF HARYANA,—Respondent.

Criminal Revision No. 1631 of 1984.

April 16, 1986

Indian Penal Code (XLV of 1868)—Section 21, Clause twelfth (b)—Prevention of Corruption Act (II of 1947)—Sections 5(1) and 5(2)—Employee of a nationalised bank—Whether a public servant in terms of clause twelfth (b) of Section 21—Such employee—Whether amenable to the jurisdiction of the Special Judge for trying cases under the Corruption Act.

Held, that liberal construction has to be put on the words 'body corporate' and 'corporation' using them interchangeably in the context of the Acquisition Act (Banking Companies, Acquisition and Transfer of Undertakings) Act, 1970, so that the employees of the corresponding new banks can be treated as public servants in terms of clause twelfth (b) of Section 21 of the Indian Penal Code, 1860, bringing them within the meaning of Section 5 of the Prevention of Corruption Act, 1947, to be tried by a Special Judge for misconduct committed by them. As such it has to be held that the employees of the nationalised banks are to be treated as public servants for the purposes of Section 21 and are thus amenable to the jurisdiction of the Special Judge for being tried under the provisions of Prevention of Corruption Act.

(Para 4)

This case was referred to larger Bench by Hon'ble Mr. Justice K. P. S. Sandhu on 17th July, 1985 for decision of the important question of law involved in this case. The Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice M. M. Punchhi, finally decided the case on 16th April, 1986.

Petition under section 401 Cr. P.C. for revision of the order of Shri V. M. Jain, Special Judge (Haryana) Ambala, dated 25th August, 1984 holding that the said two accused (M. K. Kapila and Ram Nawas) were public servants under Section 21 of the Indian Penal Code and that all the accused could be prosecuted under Section 5(1) (d) read with section 5(2) of the Act, read with Section 120-B I.P.C.

K. K. Aggarwal, Advocate, for the Petitioner.

Arvind Goel, Advocate, for A.G. Haryana, for the respondent.

JUDGMENT

M. M. Punchhi, J.—

(1) These four petitions (Criminal Revision Nos. 1631, 1663, 1769 and 1770 of 1984) can conveniently be disposed of by a single order. These have jointly been referred to the Division Bench by an Hon'ble Single Judge of this Court to settle a common question of law—whether the employees of the nationalised banks are public servants within the meaning of section 21, clause twelfth (b) of the Indian Penal Code.

(2) Balwant Singh (now dead) is the revision-petitioner in Criminal Revision Nos. 1663, 1769 and 1770 of 1984. On his death these revision petitions abate as none of his near relatives has approached this court to be substituted as the petitioner. However, in Criminal Revision No. 1663 of 1984 Bhagat Singh co-accused in that particular case, has sought permission to be impleaded as a party pursuing the revision petition. The ground taken is that since the revision petition was likely to abate, he be allowed to prosecute the petition. The ground is altogether untenable. He cannot be allowed to be made petitioner in substitution of Balwant Singh deceased. In the fourth petition, i.e., Criminal Revision No. 1631 of 1984 the petitioners are two businessmen and not bank employees. The question in their case indirectly arises for the allegation of the prosecution is that Balwant Singh as a Manager of the State Bank of Patiala at Kalka and some other co-accused employees of the banks along with other non-employees co-accused, while conducting financial dealings, had committed offences triable under section 5(1) (d) read with section 5(2) of the Prevention of Corruption Act and section 120-B read with section 420, Indian Penal Code. Despite the death of Balwant Singh, the question still sought to be raised is whether Balwant Singh and other bank employees (co-accused) were public servants within the meaning of section 21, clause twelfth (b) of the Indian Penal Code as such an objection was taken before the trial Judge and on his answering the question against the accused gave rise to these petitions. So the question in any case has to be decided.

(3) The sheet-anchor of the case of the petitioners is a Division Bench judgment of the Delhi High Court in *Oriental Bank of*

Commerce and another v. Delhi Development Authority and others (1). There the question which arose was whether the employees of the nationalised banks were public servants in the context of section 197, Code of Criminal Procedure. The Bench answered that they were not. The ratio of that case authorised by M. L. Jain, J., was applied and carried forward by him in *Raghunath Rai Kumar v. B. J. Khanna and others* (2), in the context of clause ninth of section 21 of the Indian Penal Code. This case has also been pressed into service on behalf of the petitioners. On the other hand, learned counsel for the State relied on *S. C. Aggarwal v. State of U. P.* (3), *Kurian v. State of Kerala* (4), and to contend that such bank employees are public servants attracting S. 21, I.P.C. And above all, reliance has been placed by the respondent's learned counsel on a judgment of this Court in *Kundan Lal Sharma v. The State of Punjab* (5), in which one of us sitting singly, posed the following question of law:—

“What is the legal status or character of a Nationalised Bank and what is the status of persons in its service or pay?;

and answered it by observing as follows:—

“... ..

It is my considered view that liberal construction has to be put on words ‘body corporate’ and ‘corporation’ using them interchangeably in the context of the Acquisition Act (Banking Companies, Acquisition and Transfer of Undertakings Act, 1970), so that the employees of the corresponding new banks can be treated as public servants for the purposes of S. 21, I.P.C., bringing them within the meaning of S. 5 of the Corruption Act (Prevention of Corruption Act) to be tried by a Special Judge for misconduct committed by them. Thus, the twin question afore-posed is answered in this way that the legal status

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- (1) 1982 (2) CrL. L.J. 2230.
 - (2) 1984 (55) Company cases 518.
 - (3) 1979 All. L.J. 922.
 - (4) 1982 CrL. L.J. 780 (Ker.).
 - (5) 1985 Cr. L.J. 1411.

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and character of a nationalised bank is that of a corporation established by or under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and status, of persons in its service or pay is that of a public servant as the expression is known to S. 21 of I.P.C.”

The view of this Court was not brought to the notice of the Hon'ble Single Judge referring the matter.

(4) It has been stated at the Bar that in *Oriental Bank of Commerce's case* (supra), has been taken in appeal to the Supreme Court and that an authoritative pronouncement on the question is anticipated. Yet we are required to examine the ratio of the aforesaid four cases of other High Courts aforementioned and the view expressed by this Court in *Kundan Lal Sharma's case* (supra), which has taken into account practically all those cases in coming to that view. We have had a second look of *Kundan Lal Sharma's case* (supra) and are of the view that it states the correct position of law and we affirm the view holding that the employees of the nationalised banks are to be treated as public servants for the purpose of section 21, Indian Penal Code, and thus amenable to the jurisdiction of the Special Judge for charges under the Prevention of Corruption Act. We do not feel the necessity of expanding the ratio given in *Kundan Lal Sharma's case* (supra), or to repeat its reasoning.

(5) Accordingly we answer the reference positively, holding that the bank employees of the nationalised banks are public servants within the meaning of section 21, Indian Penal Code. Thus, the trial before Special Judge, Kurukshetra, in which the petitioners are arraigned as accused was perfectly in order. These petitions are thus dismissed. Criminal Misc. No. 1270 of 1986 in Criminal Revision No. 1663 of 1984 would also stand disposed of.

D. S. Tewatia, J.—I agree.

H. S. B.