

**C.R.NO.51**

**1**

**M.A.Ex.139**

**IN THE COURT OF SPECIAL JUDGE(C.B.I.) FOR GREATER  
BOMBAY**

**MISC. APPLICATION EX.139**  
**IN**  
**SPECIAL CASE NO.83 OF 2003**  
**IN**  
**(RC4(E)/2002/CBI/BS&FC/Mumbai)**

**Chandulal Thadani**

...Applicant/Accd.No.4

V/s.

**The State of Maharashtra**

(at the instance of CBI,  
BS & FC, Mumbai

...Complainant

Shri.Jahangir Khajotia, Adv. for Applicant/Accused No.4  
Shri. S.D.Gonsalves, Spl.P.P. for C.B.I.

**Coram: His Honour the Special Judge(C.B.I.)  
Shri.M.V. Kulkarni.**

**Dated : 2<sup>nd</sup> July, 2012.  
(Court Room No.51)**

**ORDER**

1 This is an application filed by accused No.4 for discharge  
U/s.227 of Cr.P.C.

2 The applicant has alleged that he was Sr. Assistant with  
Seamen's Provident Fund. It is alleged that he was responsible for  
accounting securities and sale proceeds. Allegedly he in connivance with  
accused No.3 manipulated the books of accounts of Seamen's Provident

Fund giving credit to the security amount merely on the basis of contract notes without actually receiving any security and for these illegal acts, he had received illegal gratifications. He is therefore, chargesheeted for committing offence U/s.120-B , 409, 420, 465, 467, 468 and 477-A of IPC and Sec.13(2) r/w. 13(1)(d) of P.C. Act. The applicant/accused No.4 is falsely implicated and he is innocent.

3 It is alleged that the accused No.4 is an individual and not a public servant and does not fall under the provision of Section 2(c) of P.C. Act. Essential ingredients of the alleged offence are not made out. He cannot be charged of the offence under P.C. Act. He was Class -III servant of Seamen's Provident Fund Staff under Condition of Service Regulation 1972. He does not fall in the category of public servant. This is clearly established from Section 7(7) of Seamen's Provident Fund(SPF) Act, 1966. Accordingly all persons appointed under this Section shall be employees of the Board. Salary is paid to the applicant not from Government but from the cost of administration fund. The applicant was not the inspector as defined U/s.15 of Seamen's Provident Fund Act, 1966. The applicant therefore, deserves to be discharged of the offence U/s.13(2) r/w 13(1) of P.C. Act.

4 Respondent/CBI resisted the application vide say Ex.156. It is alleged that allegation that the applicant/accused No.4 is not public servant is totally misplaced and wrong. Seamen's Provident Fund Act, 1966 was passed by the Parliament. Seamen's Provident Fund is constituted under the provisions of the said Act. Applicant was working as Senior Assistant in the Seamen's Provident Fund Organization. Provisions of Section 2(c) of

P.C. Act, 1988 are very clear that any person in service of a Corporation established by or under an Act is a public servant. The applicant was appointed by Government of India. He could not have been removed from service by any other authority. Therefore, applicant was very much public servant as defined under the provisions of P.C. Act. Grounds raised in the application are false and frivolous. The offence U/s.120-B of IPC is separate and distinct offence. Without prejudice, it is alleged that at the stage of framing charges, minute scrutiny of the material available in the chargesheet is not required. It is sufficient if the prosecution can show that there is material to believe that accused was involved in the crime to frame the charges. The application, therefore, deserves to be rejected.

5 Heard Shri.Khajotia, the Ld. Counsel for the applicant/ accused No.4 and Shri.Gonsalves, learned Spl.P.P. for C.B.I. Both made submissions on expected lines.

6 On the basis of rival contentions of parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:-

**POINTS****REASONS**

1 Was the applicant not a public servant and consequently entitled for discharge in respect of offences under PC Act?

Yes.

2 What order?

As per final order

**REASONS****AS TO POINT NO.1:-**

7 It is the submission of Shri.Gonsalves that Seamen's Provident Fund Organization is established by Central Act i.e. Seamen's Provident Fund Act, 1966. Section 7 of the Act provides for the general control and superintendence of the Board. Shri.Gonsalves has drawn my attention towards the provisions U/s.15(1), 15(3) and 15(4) of Seamen's Provident Fund Act, 1966.

8 Shri.Khajotia has submitted on the other hand that the applicant was only Sr. Assistant with Seamen's Provident Fund. Section 7(7) of the Seamen's Provident Fund Act, 1966 clearly provides that all persons appointed under this section shall be the employees of the Board. Thus, the applicant was not a Government Servant and not a public servant within meaning of Section 2(c) of PC Act. There is no contribution of the Government to the Seamen's Provident Fund. Section 15(4) provides that every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. Consequently, other employees of the Seamen's Provident Fund are not public servants and not prosecutable under PC Act.

9 Shri.Gonsalves has placed reliance on following judgments in support of his submissions.

1 **Naresh Kumar Madan V/s. State of M.P. AIR 2008 Supreme Court 385.** As per para 14, the officers

of the State Electricity Board are required to carry out public functions. They are public authorities. Their action in one way or the other way entail civil or evil consequences to the consumers of electrical energy. They may prosecute a person. They are empowered to enter into house of the Board's consumers. It is only for proper and effective exercise of those powers, the statute provides that they would be public servants, wherefor a legal fiction has been created in favour of those employees, when acting or purporting to act in pursuance of any of the provisions of the Act within the meaning of Section 21 of the Indian Penal Code. Indian Penal Code denotes various persons to be public servants. It is, however, not exhaustive. A person may be a public servant in terms of another statute. However, we may note that a person who, inter alia, is in the service or pay of the Government established by or under a Central, Provincial or State Act, would also come within the purview thereof. Section 2(1)(c) of the 1988 Act also brings within its embrace a person in the service or pay of a corporation established by or under a Central Act. As per para 15, we, therefore, fail to see any reason as to why the appellant would not answer the description of public servant within the provisions of the said Act.

**2 G.A. Monterio V/s. State of Ajmer 1956-LAWS(SC)-9-1.** As per para 13, The true test, therefore, in order to determine whether a person is an officer of the

Government is: (1) whether he is in the service or pay of the Government, and (2) whether he is entrusted with the performance of any public duty. If both these requirements are satisfied it matters the least what is the nature of his office, whether the duties he is performing are of an exalted character or very humble indeed. As has been stated in Bacon's Abridgment at Vol.6, page 2, in the article headed "Of the nature of an officer and several kinds of officers.". "The words "officium' principally implies a duty and in the next place, the charge of such duty; and that it is a rule that where one man hath to do with another's affairs against his will, and without his leave, that this is an office, and he who is in it is an officer." The next paragraph thereafter may also be referred to in this context: "There is a difference between an office and an employment, every office being an employment; but there are employments which do not come under the denomination of offices; such as an agreement to make hay, herd a flock, and c.; which differ widely from that of steward of a manor" and c.

10           It is the submission of Shri.Gonsalves that Section 2(c)(viii) of PC Act will have to be considered which brings in its sweep any person who holds office by virtue of which he is authorised or required to perform any public duty making him public servant. It is the submission of Shri.Gonsalves that on the other hand **S.S. Dhanoa**'s case relates to Section 197 of Cr.P.C.

11 In the case of **Dalco Engineering Private Limited V/.s. Satish Prabhakar Padhye & ors. (2010) 4 SCC 378**, as per para 32, it is observed that “We should not lose sight of the fact that the words “corporation established by or under a Central, Provincial or State Act: is a term used in several enactments, intended to convey a standard meaning. It is not a term which has any special significance or meaning in the context of the Disabilities Act or any other socio-economic legislations. It is a term used in various enactments, to refer to statutory corporations as contrasted from non-statutory companies. Any interpretation of the said term, to include private sector, will not only amount to overruling the clear enunciation in Dhanoa which has held the field for nearly three decades, but more importantly lead to the erasure of the distinction maintained in the Constitution between statutory corporations which are “State” and non-statutory bodies and corporations for the purposes of enforcement of fundamental rights. The interpretation put forth by the employee would make employees of all companies, public serving, amenable to punishment under the provisions of the Penal Code and the Prevention of Corruption Act; and would also result in all non-statutory companies and private sector companies being included in the definition or “State” thereby requiring them to comply with the requirements of non-discrimination, equality in employment, reservations, etc.”. In the case of **Mohd. Hadi Raja V/s. State of Bihar (1998) 5 SCC 91**. As per para 20, it is observed that “Although the instrumentality or agency with a corporate veil, for all intents and purposes may be held to be a third arm of the Government and such instrumentality discharges the duties and functions which the State intends to do as indicated in *Ajay Hasia Case* (1981) 1 SCC 712 such instrumentality or agency is none the less a juridical person having a separate legal entity.

Therefore, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes. Therefore, even if an officer of such instrumentality or agency takes or receives, keeps or expends any property or executes any contract, such acts even though in ultimate analysis may be held to have been done in the interest of the State, such action cannot be construed as a rule, an action of the Government by its employees or by an authority empowered by the Government. It may be indicated here that it is not necessary that persons falling under any of the descriptions given in various clauses under Section 21 of IPC need to be appointed by the Government. If such person falls under any of the descriptions as contained in various clauses of Section 21 of the Indian Penal Code, such person must be held to be a public servant.” “As per para 21, it is to be noted that though through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has an independent status and the action taken by them, however important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the Government as such within the meaning of Section 197 CrPC.”

12           In the case at hand also Seamen's Provident Fund Act provides that only Inspectors are public servants. If the legislature wanted, it could have included all the employees and the officers of Seamen' Provident Fund in the ambit of public servants. Moreover, Seamen's Provident Fund Organization cannot be called a State instrumentality discharging functions of the State. As rightly submitted by Shri.Khajotia, Seamen's Provident

Fund is one among the many private provident funds. Though it has come into existence under the Central Legislation Act, it is not funded by the Central Government nor Central Government is having direct control over the Seamen's Provident Fund. Consequently, the applicant who was Sr. Assistant with Seamen's Provident Fund is not covered by clause(iii) of Section 2(c) of PC Act to come into the ambit of Public Servant. I, therefore, pass following order:-

**ORDER**

1 Applicant/accused stands discharged of offence u/s.13(2) r/w.13(1)(c)(d) of P.C.Act,1988 u/s. 227 of Cr.P.C.

**(M.V. KULKARNI)**  
**Special Judge (C.B.I.)**  
**Greater Bombay.**

**Date :2/7/2012.**

Dictated on :**2/7/2012.**

Transcribed on :**3 & 4/7/2012.**

Signed on :