

M. A. KOCHU DEVASSY ETC.

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v.

STATE OF KERALA

September 15, 1978

[JASWANT SINGH, P. S. KAILASAM AND A. D. KOSHAL, JJ.]

*Indian Penal Code—Sec. 21—Public Servant—Kerala Criminal Law Amendment Act, 1962—Secs. 2, 3—Prevention of Corruption Act, 1947—Sec. 5—Effect of enlargement of definition of a public servant by Kerala amendment.*

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The appellants in the above appeal were tried and convicted in respect of the offences inter-alia under section 408, 465, 477 and 477A of the Indian Penal Code, 1860 read with s. 5 of the Prevention of Corruption Act, 1947 by a special judge. Both the appellants were members of a registered co-operative society. The conviction of the appellants, was confirmed by the High Court. Sec. 21 of the Indian Penal Code defines a public servant "Members of the Executive Committee or servants of a cooperative society are not embraced by the categories mentioned in sec. 21" Chapter 9 of the Penal Code deals with offences by or relating to public servant. Sec. 2 of the Prevention of Corruption Act, 1947 adopts definition of public servant from Sec. 21 of the Penal Code. By the 1952 amendment of the Criminal Procedure Code the provisions of appointment of a Special Judge to try the offences have been provided. The said 1955 amendment adds certain more offences which are to be tried by a special judge. The Kerala Criminal Law Amendment Act, 1962 amended Sec. 161 of the Penal Code by adding an explanation thereto. It provides that for the purpose of the said section and certain other sections a public servant shall denote, besides those who are public servants within the meaning of that section, members of the Board of Directors or the Executive or Managing Committee and other officer or servant of a Co-operative Society registered or deemed to be registered under the law relating to co-operative societies for the time being in force. Sec. 3 of the Kerala Act provides that for the purpose of the Preventive of Corruption Act, 1947, public servant shall have the meaning assigned to it under the explanation to sec. 161 of the Indian Penal Code as amended by the Kerala Criminal Law Amendment Act, 1962.

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(1) The appellants contended that sec. 2 of the Kerala Act brought members of the executive committee or the servants of a registered co-operative society within the ambit of the expression "public servant" only for the purpose of Sections 161 to 165A. of the Penal Code and for no other purpose. Therefore, the use of the enlarged definition cannot be made for the purpose of 1947 Act.

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(2) If the intention of the legislature was to enlarge the definition for all purposes, whatever, it would have amended section 21 of the Indian Penal Code itself.

Dismissing the appeals the Court,

**HELD:** (1) The terms of sec. 2 of the 1947 Act as substituted by sec. 3 of the Kerala Act are absolutely clear and unambiguous and when they lay down that expression public servant shall have a particular meaning for the

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**A** purpose of the Act, that meaning must be given to the expression wherever it occurs in the Act. "For the purpose of the Act" surely means for the purpose of all and not only some of the provisions of the Act. [803E]

**B** (2) The Kerala Act carried out amendment of the 1947 Act insofar as the State of Kerala was concerned. The 1947 Act deals not only with offences under sec. 161 to 165A of the Penal Code but also and mainly with those falling under various clauses of sub-section 1 to 5 of the 1947 Act. No reasonable line of distinction between the offences under sec. 161 to 165A of the Code on the one hand and those punishable under sec. 5 of the 1947 Act on the other appears feasible for the purpose of conferment of exclusive jurisdiction on special judges to try them. From this point of view also interpretation canvassed on behalf of the appellants is untenable. [804C-E]

**C** (3) The arguments that the legislature would have incorporated the additional definition under sec. 21 if it desired to extend the scope for all purposes is without substance. If the definition had been enlarged by amendment of sec. 21 it would have made the new categories of persons brought by it within the ambit of the expression "public servant" liable to punishment not only for offences under sec. 161 to 165A of the Code but also for numerous other offences specified in the code relating to public servants as also to offences so related and created by other Acts wherein the definition of public servant occurring in sec. 21 of the Code has been adopted. [804F-H]

**D** CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 178 and 248 of 1977.

**E** Appeals by Special Leave from the Judgment and Order dated 25-1-77, 4-3-77 of the Kerala High Court in Criminal Misc. Petition No. 862/76 and Criminal Appeal No. 416/75.

**F** *T. C. Raghavan* (In *Crl. A. 178/77*) and *P. K. Pillai* for the Appellant.

**F** *K. T. Narindranath* (In *Crl. A. 178/77*) and *K. R. Nambiar* for the Respondent.

The Judgment of the Court was delivered by

**G** KOSHAL, J.—By this judgment we shall dispose of Criminal Appeals Nos. 178 and 248 of 1977, both of which were admitted to a hearing by special leave and in each one of which the sole point for determination is whether a member of an executive committee or a servant of a registered co-operative society is a public servant for the purpose of clause (c) of sub-section (1) of section 5 of the Prevention of Corruption Act (Central Act No. 2 of 1947, hereinafter referred to as the 1947 Act) and whether, therefore, a Special Judge appointed 1952, hereinafter called the 1952 Act) has jurisdiction to try him for an offence under that clause.

2. The appellant in Criminal Appeal No. 178 of 1977 is M.A. Kochu Devassy who was sent up, alongwith 11 others, for trial in respect of offences under sections 120-B, 408, 465, 467, 477 and 477-A of the Indian Penal Code (hereinafter described as the Code) and clause (c) of sub-section (1) read with sub-section (2) of section 5 of the 1947 Act to the Special Judge, Trichur by the Deputy Superintendent of Police, Vigilance Department, Trichur. The allegations against the accused were that while being members of the Board of Directors or the servants of Cooperative Society No. R-192, Chalakudy (hereinafter called the Society), they, on the 18th of May 1972, entered into a conspiracy to misappropriate the funds of the Society, that in pursuance of that conspiracy they misappropriated a sum of Rs. 1900/- on the same date and that they prepared false records in order to conceal the misappropriation. Before the trial commenced, however, a petition was made on behalf of the accused to the High Court of Kerala praying that the charge be quashed. That petition came up for hearing before Khalid, J., who doubted the correctness of the dictum of a Division Bench of that Court in *Sahadevan v. State of Kerala*(<sup>1</sup>) to the effect that a Special Judge has jurisdiction to try all cases against employees of co-operative societies under all or any of the provisions of section 5 of the 1947 Act. He adverted to various provisions of that Act and the Kerala Criminal Law Amendment Act (Kerala Act 27 of 1962 and hereinafter referred to as the Kerala Act) and thought that an important aspect of the amendment promulgated by the Kerala Act was not brought to the notice of the Division Bench and therefore referred the matter to a larger Bench by an order dated the 7th of December 1976. The petition then came up for final hearing before a Full Bench of the Kerala High Court, which has, by the impugned judgment, held that the dictum of the Division Bench mentioned above was correct, that a member of the executive committee or a servant of a registered co-operative society was a public servant for the purposes of the 1947 Act as a whole in so far as the State of Kerala was concerned and that, therefore, such a member or servant could be tried by a Special Judge. It is by that judgment that the appellant feels aggrieved.

3. The appellant in Criminal Appeal No. 248 of 1977 is one C.A. Thomas, who was convicted by the Special Judge, Trichur, for offences under clause (c) of sub-section (1) read with sub-section (2) of section 5 of the 1947 Act and section 408 of the Code and was sentenced to rigorous imprisonment for a year and a fine of Rs. 5000/- on the first count, the sentence in default of payment of fine being rigorous imprisonment for six months. No sentence was awarded for

(1) (1976) Kerala Law Times 134.

**A** the offence under section 408 of the Code. The allegations on the basis of which he was prosecuted and which were found proved against him were that while being employed as a store-keeper at the firewood depot at Punkunnam owned by the Wholesale Co-operative Stores Ltd. Trichur, he misappropriated profits accruing to his employers by abusing his official position. He filed an appeal to the High Court of Kerala which was dismissed by a learned Single Judge on the 4th of March 1977 through the judgment impugned before us. The pleas raised before the High Court on his behalf included one that the Special Judge had no jurisdiction to try him inasmuch as he was not a public servant for the purposes of the 1947 Act. The plea was rejected by the High Court in view of the dictum of the Full Bench which is challenged before us in Criminal Appeal No. 178 of 1977.

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4. At this stage we may usefully refer to various provisions of the Code, the 1947 Act, the 1952 Act, the Kerala Act and the Criminal Law Amendment Act (Central Act No. 50 of 1955 and hereinafter called the 1955 Act). Section 21 of the Code defines what is a "public servant". In 12 clauses it lists various categories of persons who fall within the definition. Members of the executive committee or servants of a co-operative society are not embraced by any of those categories. Chapter IX of the Code headed "Of Offences by or relating to Public Servants" consists of sections 161 to 171. Section 161 states the conditions on the fulfilment of which a public servant would be guilty of bribery and lays down the punishment therefor.

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**E** Section 2 of the 1947 Act as originally enacted was to the following effect :

**F** '2. For the purposes of this Act, "public servant" means a public servant as defined in section 21 of the Indian Penal Code.'

Sub-section (1) of section 5 of the 1947 Act states when a public servant can be said to commit the offence of criminal misconduct. It has five clauses of which the first three run as follows :

**G** "(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or

**H** "(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or

for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

“(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or”

Sub-section (2) of section 5 of the 1947 Act provides for punishment in respect of an offence under sub-section (1) thereof, while section 6 creates a bar against any court taking cognizance of an offence under sections 161, 164 and 165 of the Code or sub-section (2) of section 5 of the 1947 Act unless previous sanction of certain authorities has been obtained in that behalf.

Now we come to the provisions of the 1952 Act. Section 3 thereof added to the Code section 165-A which created and laid down the punishment for the offence of abetment of the offences covered by sections 161 and 165 of the Code. Section 6 of the 1952 Act dealt with the appointment of Special Judges to try offences under sections 161, 165 or 165-A of the Code or sub-section (2) of section 5 of the 1947 Act, or conspiracy to commit any of those offences. Sub-section (1) of section 7 of the 1952 Act barred the jurisdiction of Courts other than those of Special Judges to try the offences mentioned in section 6, while sub-section (3) of section 7 provided that a Special Judge trying any of the offences mentioned in section 6 could also try offences with which the accused might be charged at the same trial in accordance with the provisions of the Code of Criminal Procedure.

The 1955 Act added offences under sections 162, 163 and 164 of the Code to the range of offences to try which the Special Judge had exclusive jurisdiction, so that such jurisdiction thenceforth extended to the trial of offences under sections 161 to 165-A of the Code and sub-section (2) of section 5 of the 1947 Act.

Seven years later was promulgated the Kerala Act, section 2 whereof amended section 161 of the Code by adding thereto an Explanation, the relevant part of which is extracted below :

**A** "Public Servant"—For purposes of this section and sections 162, 163, 164, 165 and 165-A, the words "public servant" shall denote, besides those who are "public servants" within the meaning of that section under any law for the time being in force, persons falling under any of the descriptions hereinafter following, namely :

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- (i) .....
  - (ii) .....
  - (iii) .....

**C** (iv) Every member of the Board of Directors or the executive or managing committee and every officer or servant of a co-operative society registered or deemed to be registered under the law relating to co-operative societies for the time being in force;

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- (v) .....
  - (vi) .....
  - (vii) .....
  - (viii) .....

Section 3 of the Kerala Act may be reproduced *in extenso* :

**E** "In the Prevention of Corruption Act, 1947 (Central Act 2 of 1947)—

- (i) for section 2, the following section shall be substituted, namely :—

**F** "2. Interpretation—For the purposes of this Act, "public servant" shall have the meaning assigned to it under the Explanation to section 161 of the Indian Penal Code as amended by the Kerala Criminal Law Amendment Act, 1962";

(ii) in section 5A, for the words, figures and letter, "under section 161, section 165 or section 165A," the words, figures and letter "under sections 161, 162, 163, 164, 165 or 165A" shall be substituted;

**G** (iii) in sub-section (1) of section 6, after clause (b), the following clause shall be inserted, namely :—

**H** "(bb) in the case of a person falling under any of the descriptions mentioned in items (i) to (viii) in the Explanation relating to "Public Servant" in section 161 of the Indian Penal Code as amended by the Kerala Criminal Law Amendment Act, 1962, save by or with the sanction of the State Government;"

4. The contentions raised on behalf of the appellants may be summarised thus. Section 2 of the Kerala Act brought members of the executive committee or the servants of a registered co-operative society within the ambit of the expression "public servant" *only* for the purposes of sections 161 to 165A of the Code and for no other purpose and therefore the use of the enlarged definition could not be made for the purposes of the 1947 Act. It is true that section 2 of the 1947 Act as substituted by the Kerala Act states that the expression "public servant" shall have the same meaning for the purposes of the 1947 Act as have been assigned to it under the enlarged definition of that expression in the Explanation added to section 161 of the Code, but then the phrase "for the purposes of this Act" occurring in the said section 2 must be deemed to have a limited meaning and should be read down as if they are restricted to only those purposes of the Act which concern sections 161 to 165A of the Code. Had the intention of the framers of the substituted section been not to give such a limited meaning to the said phrase but to use it in its literal sense, there was no point in enlarging the definition of the expression "public servant" by adding an Explanation to section 161 of the Code; for, in that case, the proper and direct method of carrying out the intention would have been to amend section 21 of the Code itself, so as to make the definition therein embrace all the eight categories of persons mentioned in the added Explanation.

5. We find ourselves wholly unable to accept any of the contentions. The terms of section 2 of the 1947 Act as substituted by section 3 of the Kerala Act are absolutely clear and unambiguous and when they lay down that the expression "public servant" shall have a particular meaning for the purposes of the Act, that meaning must be given to the expression wherever it occurs in the Act. "For the purposes of the Act" surely means for the purposes of all and not only some of the provisions of the Act. If the intention was to limit the applicability of the definition of the expression "public servant" as contended, the language used would not have been "for the purposes of the Act" but something like "for the purposes of the Act insofar as they relate to the offences under sections 161 to 165A of the Indian Penal Code."

It may be noted here that section 2 of the 1947 Act as substituted by the Kerala Act does not reproduce the definition of the expression "public servant" as contained in section 161 of the Code, but states in so many words that the expression shall have the meaning assigned to it in the Explanation to the said section 161. It follows that what is brought into section 2 of the 1947 Act is the meaning of the expression as contained in the Explanation and not the entire Ex-

**A** planation itself, so that the words "for the purposes of this section and sections 162, 163, 164, 165 and 165A" occurring in the Explanation are not transplanted into section 2 of the 1947 Act as substituted. If the contrary were true and the Explanation had to be read word for word into the said section 2, the result would entail an absurdity; for then the section last mentioned would read thus :

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'For purposes of this Act, for purposes of the section and sections 162, 163, 164, 165 and 165A, the words "public servant" shall denote .....'. So read, the section makes no sense and the method of incorporation of the Explanation into the substituted section 2 cannot be accepted as a correct method of interpretation of the section.

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Nor do we see any cogent reason why the legislature should have intended to limit the applicability of the enlarged definition as contended. The Kerala Act carried out amendments to the 1947 Act insofar as the State of Kerala was concerned and the 1947 Act deals not only with offences under sections 161 to 165A of the Code but also, and mainly, with those falling under various clauses of sub-section (1) of section 5 of the 1947 Act. No reasonable line of distinction between the offences under sections 161 to 165A of the Code on the one hand and those punishable under sub-section (2) of section 5 of the 1947 Act on the other appears feasible for the purpose of conferment of exclusive jurisdiction on Special Judges to try them. From this point of view also, the interpretation canvassed on behalf of the appellants is untenable.

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And the argument that the enlarged definition of the expression "public servant" would not have been adopted in the form of the Explanation to section 161 of the Code but would have been incorporated in section 21 thereof if it was to apply to the 1947 Act as a whole, though attractive at first sight, is really without substance. In our view, the method adopted is not without purpose. Had the definition been enlarged by an amendment of section 21 of the Code, it would have made the eight new categories of persons brought by it within the ambit of the expression "public servant" liable to punishment not only for offences under sections 161 to 165A of the Code but also for numerous other offences specified in the Code relating to public servants, as also to offences so related and created by other Acts wherein the definition of "public servant" occurring in section 21 of the Code has been adopted as such. It was presumably to avoid such a result and to limit the scope of the applicability of the

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definition to bribery, criminal misconduct and allied offences committed by public servants, that the legislature in its wisdom adopted the device of amending section 161 of the Code by adding the Explanation to it and by providing also that the enlarged definition shall govern all the provisions of the 1947 Act. **A**

6. Not finding any merit in the contentions raised on behalf of the appellants, we hold that the enlarged definition of the expression "public servant" as contained in the Explanation added to section 161 of the Code by section 2 of the Kerala Act governs all the provisions of the 1947 Act, that the appellants are public servants within the meaning of that enlarged definition by reason of the language employed in clause (iv) of the Explanation and that, therefore, the offences under clause (c) of sub-section (1) of section 5 of the 1947 Act said to have been committed by them are triable exclusively by Special Judges appointed under the 1952 Act. **B** **C**

7. Both the appeals are accordingly dismissed.

P.H.P.

*Appeals dismissed.*