



2025:AHC-LKO:73862-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

AFR

CRIMINAL MISC. WRIT PETITION No. - 9586 of 2025

Subhash Chandra

.....Petitioner(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Deptt. Of
Vigilance Lko. And Others

.....Respondent(s)

Counsel for Petitioner(s) : Sharad Pathak, Abhijeet Mishra
Counsel for Respondent(s) : G.A., Gaurav Mehrotra

Court No. - 11

**HON'BLE ABDUL MOIN, J.
HON'BLE MRS. BABITA RANI, J.**

1. Heard Sri Sharad Pathak, learned Senior Advocate assisted by Sri Mayank Pandey, learned counsel for the petitioner, learned AGA appearing on behalf of the respondents no. 1 to 3, 5 & 6 and Sri Akbar Ahmad, learned counsel for the respondent no. 4.

2. Instant criminal writ petition has been filed praying for the following main reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned First Information Report dated 19.09.2025 lodged at Case Crime No. 0023 of 2025 at Police Station- Lucknow Sector Vigilance Establishment, Lucknow under Sections 13 (1) (B) & 13 (2) of the Prevention of Corruption Act, 1988, a copy of which is annexed as Annexure No. 1 to this writ petition.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned enquiry report dated 04.07.2025 together with the impugned order dated 28.08.2025 passed by opposite party no. 1, after summoning the original of the same from the said opposite parties.

(iii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 24.08.2022 and 25.08.2022 passed by Opposite Party No. 1, as is contained in Annexure No. 3 and & respectively to this writ petition, and all other consequential action taken pursuant to it may also be set aside."

3. Learned Senior Advocate appearing on behalf of the petitioner argues that a perusal of the impugned First Information Report would indicate that the said First Information Report has been lodged against the petitioner by invoking the provisions of the Prevention of Corruption Act, 1988 (hereinafter referred to as "Act, 1988").

4. Contention of learned counsel for the petitioner is that the petitioner was earlier working as a Manager, Gr-III in the Uttar Pradesh Sahkari Gram Vikas Bank Ltd and presently working as Deputy General Manager in the same bank.

5. The impugned First Information Report has been lodged against the petitioner under the provisions of Section 13 (1) (b) & 31 (2) of the Act, 1988 by alleging that although from a valid legal sources, the amount earned by the petitioner is approximately Rs. 2, 52,45,522.88/- but he has spent an amount of Rs. 6,30,30,925.52/- during the period, and thus has spent of amount of Rs. 3,77,85,372.64/- in excess. He also failed to submit any satisfactory explanation for the same and in view of the inquiry conducted against him, he has been found to be prima facie guilty and his conduct falls within the ambit of the aforesaid sections of the Act, 1988.

6. Raising a challenge to the impugned First Information Report, the instant criminal writ petition has been filed.

7. The grounds for challenging the impugned First Information Report are that (a) earlier for the same charges, a departmental inquiry had been initiated against the petitioner by means of the charge sheet dated 06.09.2018, a copy of which is annexure 34 to the writ petition. The charge no. 2 of the said charge sheet pertained to the charge of disproportionate assets for which the impugned First Information Report has been lodged. The said departmental inquiry resulted in an inquiry

report dated 15.10.2018, a copy of which is annexure 36 to the writ petition whereby the petitioner had been exonerated of all the charges and which has been accepted by the disciplinary authority vide order dated 14.12.2018, a copy of which is annexure 39 to the writ petition. Consequently, keeping in view the judgments of the Apex Court in the cases of **P.S.Rajia Vs. State of Bihar- (1996) 9 SCC 1**, **Radhy Shyam Kejariwal Vs. State of West Bengal- (2011) 11 SCC 581**, **Lokesh Kumar Jain Vs. State of Rajasthan- (2013) 11 SCC 130**, **Ashok Surendra Nath Tiwari Vs. Deputy Superintendent of Police- (2020) 9 SCC 636**, **J. Sekar Vs. Enforcement Directorate and Ors- (2022) 7 SCC 370**, **Kh Kamladini Vs. State of Maharashtra- (2025) SCC Online SC 1176 & Gurubachan Singh Batta Vs. Central Bureau of Investigation- (2025) SCC Online Delhi 7096** once the petitioner has been exonerated in the departmental proceedings as such, the respondents cannot proceed in the criminal proceedings/trial inasmuch as the departmental proceedings proceed on the basis of preponderance of probability while strict proof is required in a criminal trial. Further, once on the basis of preponderance of probability itself, nothing has been found against the petitioner consequently, there cannot be any occasion for any charge being found against the petitioner in a criminal trial (b) the petitioner is not a public servant as defined under Section 2 of the Act, 1988 and consequently, the First Information Report which has been lodged against the petitioner under the provisions of the Act, 1988 is beyond jurisdiction and (c) mala fides.

8. With regard to mala fide, learned Senior Advocate appearing on behalf of the petitioner has placed reliance on the judgment of the Apex Court in the case of **State of Haryana and Ors Vs. Ch. Bhajan Lal and Ors- 1992 AIR 604** to contend that there is malicious prosecution against the petitioner.

9. Elaborating the said ground, the argument of the learned Senior Advocate appearing on behalf of the petitioner is that said First Information Report has been lodged in order to deprive the petitioner from promotion on the post of General Manager.

10. No other ground has been urged.

11. On the other hand, Sri Akbar Ahmad, learned counsel for the respondent no. 4 has described the lodging of the First Information Report to be valid on the basis of the law laid down by the Apex Court in the case of **Govt. of Andhra Pradesh and Ors Vs. P. Venku Reddy- (2022) 7 SCC 631** and the Act, 1988, as well as while placing reliance on Sections 31-A & 124 of the Uttar Pradesh Co-operative Societies Act, 1965.

12. Elaborating the same, the argument of Sri Akbar Ahmad, learned counsel for the respondent no. 4 is that the Apex Court in the case of **P. Venku Reddy (supra)** after considering the provisions of Section 2 of the Act, 1988 wherein a First Information Report had been lodged against the supervisor in the District Co-operative Central Bank Ltd under the provisions of the Act, 1988 has held that once the said person is an employee of the Co-operative bank which is controlled and aided by the Government, he would be covered within the comprehensive definition of "Public Servant" as contained in sub Clause (iii) of Clause (c) of Section 2 of the Act, 1988.

13. Argument is that once the petitioner himself admits that he is in service of Co-operative bank as such, he would be covered by the provisions of the Act, 1988.

14. Reliance has also been placed on the provisions of Sections 31-A & 124 of the Act, 1965 to contend that the officer of a Co-operative society shall be deemed to be a Public Servant within the meaning of the Section 21 of the Indian Penal Code (In Short "I.P.C").

15. So far as the ground of the petitioner having been exonerated in the departmental proceedings, Sri Ahmad, learned counsel for the respondent no. 4 has attracted the attention of the Court towards the charge sheet, the inquiry report & a final order passed by the disciplinary authority to contend that the said charges had been segregated and it was nowhere held that the petitioner is not guilty of the disproportionate assets and thus mere exoneration in the departmental proceedings will not and cannot restrain the respondents from lodging the First Information Report under the provisions of the Act, 1988.

16. So far as the ground of malice is concerned, it is contended that once the petitioner has committed an act which is a criminal act under the provisions of the Act, 1988 consequently, by no stretch of imagination can it be said that lodging of the First Information Report would amount to malice.

17. Heard the learned counsels appearing on behalf of the contesting parties and perused the records.

18. From the arguments as raised by the learned counsels appearing on behalf of the contesting parties and perusal of records it emerges that admittedly the petitioner was earlier working as a Manager, Gr-III in the bank and presently working as Deputy General Manager in the same bank.

19. Earlier, a departmental charge sheet dated 06.09.2018 had been issued to him which resulted in an inquiry report dated 15.10.2018 whereby as per the learned counsel for the petitioner, he was exonerated of all the charges which report has been accepted by the disciplinary authority vide order dated 14.12.2018.

20. As per the learned Senior Advocate appearing on behalf of the petitioner, when the charge sheet pertained to disproportionate assets and the petitioner has been exonerated consequently, no criminal proceedings can be initiated against him for the same charges on the ground that once on the basis of preponderance of probability, which is the principle as applicable in departmental proceedings, no charges were made out against him as such, lodging of the First Information Report and a criminal case against the petitioner is legally not permissible when the trial against the petitioner in a criminal case would proceed on the basis of strict proof.

21. In this regard, reliance has been placed on the judgments of the Apex Court as referred to above.

22. The other ground taken by the learned Senior Advocate appearing on behalf of the petitioner is the ground of malice i.e the said First Information Report has been lodged against him in order to deprive him from promotion to the post of General Manager.

23. However, the sheet anchor of the argument of the learned Senior Advocate appearing on behalf of the petitioner is non applicability of the Act, 1988 against him on the ground that he does not fall within the ambit of being a "Public Servant".

24. The Court now proceeds to consider the three grounds as raised by the learned Senior Advocate appearing on behalf of the petitioner.

25. So far as the ground of the petitioner not being a "Public Servant" is concerned, much reliance has been placed by the learned Senior Advocate appearing on behalf of the petitioner on the definition of a "Public Servant" as given under Section 2 of the Act, 1988 which according to him does not include an employee of the cooperative society/ bank which the petitioner admittedly is.

26. However, this aspect of the matter has already been considered threadbare by the Apex Court in the case of **P. Venku Reddy (supra)** wherein the Apex Court has held as under:-

"4. The High Court by the impugned Order quashed the criminal case pending against the respondent no. 1 under the 1988 Act on the sole ground that the accused is not a 'public servant' as defined in Sub-clause (ix) of Clause (c) of Section 2 of 'the 1988 Act'. In the opinion of the High Court, definition contained in Sub-clause (ix) of Clause (c) of Section 2 of 'the 1988 Act' covers only President, Secretary and other office bearers of a registered co-operative society engaged amongst other businesses in banking. Section 2 of the 1988 Act with relevant Clause (C) and Sub-clauses (iii) and (ix) read as under :

"2. Definition.-In this Act, unless the context otherwise requires,-

(a to b)

(c) 'Public Servant' means-

(i & ii).....

(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);

(iv)-(viii).....

(ix) any person who is the 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)"

8. From the above quoted Sub-clause (ix) of Clause (c) of section 2 of the 1988 Act, it is evident that in the expansive definition of 'public servant', elected office-bearers with President and Secretary of a registered co-operative society which is engaged in trade amongst others in 'banking' and 'receiving or having received any financial aid' from the Central or State Government, are included although such elected office-bearers are not servants in employment of the co-operative societies. But employees or servants of a co-operative society which is controlled or aided by the government, are covered by Sub-clause (iii) of clause (c) of Section 2 of the 1988 Act. Merely because such employees of co-operative societies are not covered by Sub-clause (ix) along with holders of elective offices, High court ought not to have overlooked that the respondent, who is admittedly an employee of a co-operative bank which is controlled and aided by the

government, is covered within the comprehensive definition of 'public servant' as contained in Sub-clause (iii) of clause (c) of Section 2 of the 1988 Act. It is not disputed that the respondent\accused is in service of a co-operative Central Bank which is an 'authority or body' controlled and aided by the government.

9. It cannot be lost sight of that the 1988 Act, as its predecessor that is the repealed Act of 1947 on the same subject, was brought into force with avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repeals and replaces the Act of 1947 contains a very wide definition of 'public servant' in Clause, (c) of section 2 of the 1988 Act. The Statement of objects and Reasons contained in the Bill by which the Act was introduced in the Legislature throws light on the intention of the legislature in providing a very comprehensive definition of word 'public servant'. Paragraph 3 of the statement of Objects and reasons reads:.

"3. The bill, inter-alia, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under sections 161 to 165 A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have been included."

13. As a matter of fact, we find that the point arising before us on the definition of 'public servant' that it does include employee of a banking co-operative society which is 'controlled or aided by the government' is clearly covered

against the respondent/accused by the judgment in the case of State of Maharashtra & Anrs. Vs Prabhakar Rao and Anr.,

15, The appeals, therefore, succeed and are allowed. The impugned order of the High Court dated 26.9.2001 is hereby set aside. The trial court is directed to proceed with the trial of the case against the respondent with law."

(emphasis by the Court)

27. From a perusal of the aforesaid judgment it clearly emerges that the Apex Court after considering the provisions of Section 2 (c) (iii) & (ix) of the Act, 1988 has held that the Section 2 (c) (ix) of the Act, 1988 has got an expansive definition of "Public Servant", elected office bearers with the President and Secretary of a registered cooperative society engaged in grade amongst others in "Banking" and "receiving or having received any financial aid from the Central or State Government" and that there cannot be any occasion to over look that the employee of a cooperative bank which is control and aided by the Government is covered within the comprehensive definition of "Public Servant" as contained in the aforesaid clause of the Act, 1988. Interestingly, learned Senior Advocate appearing on behalf of the petitioner has admitted that the petitioner is in service of the cooperative bank.

28. This aspect of the matter can also be understood after considering Sections 31-A & 124 of the Act, 1965. For the sake of convenience, Section 31 (A) of the Act, 1965 is reproduced below:-

"31-A. Appointment of Managing Director instead of Secretary for Apex Societies.--

(1) For every apex society there shall be, instead of a Secretary, a Managing Director who shall be a Government servant not below the rank of a Class I Officer, nominated by the State Government, and his services shall be deemed to be on deputation with the society and his salary and allowances, as determined by the State Government, shall be paid from the funds of the society.

(2) The Managing Director shall be ex officio member of the

Committee of Management.

(3) All references in the Act to Secretary shall in relation to an apex society be construed, wherever practicable, as references to the Managing Director.

(4) The Managing Director shall be the Chief Executive Officer of the apex society and subject to such control of the Committee of Management and the Chairman, as may be provided in the rules and the bye-laws of the society, he shall have the following duties and responsibilities, namely--

(i) to have general control over the administration of the society;

(ii) to convene meetings of the Committee of Management and the general body:

(iii) to receive all moneys and securities on behalf of the society and to make arrangements for the proper maintenance and custody of cash balances and other properties of the society;

(iv) to endorse and transfer promissory notes, Government and other securities and to endorse, sign and negotiate cheques and other negotiable instruments on behalf of the society;

(v) to be responsible for the general conduct, supervision and management of the day-to-day business and affairs of the society;

(vi) to sign all deposit receipts and operate the accounts of the society with banks;

(vii) to sign all bonds and agreements in favour of the society;

(viii) to create, subject to provisions contained in the budget of the society, Class III and class IV posts for a period of 3 months and to make, as appointing authority, recruitment thereto through the Board as provided in the regulations framed by the State Government in exercise of the powers under subsection (2) of Section 122;

(ix) to determine the powers, duties and responsibilities of the employees of the society;

(x) to institute, conduct, defend, compound or abandon any suit or other legal proceeding by or against the society or

otherwise concerning the affairs of the society and also to compound and allow time for payment or satisfaction of any claims or demand by or against the society;

(xi) subject to the regulations, if any, which may be framed by the Committee of Management to enter into negotiations and sanction contracts up to the value of Rs. 5 lakhs each during the construction phase and up to Rs. 2½ lakhs each thereafter and to do all such acts, deeds and things in the name of and on behalf of the society in relation to any of the matters aforesaid for the purposes of the society;

(xii) to delegate all or any of the powers, authorities and discretions vested in him to an employee or employees of any society, subject to the ultimate control and authority being retained by him."

29. Likewise, Section 124 of the Act, 1965 reads as under:-

"Section 124 - Registrar and others Officers to be public servants- *The Registrar, or any person appointed or authorised to conduct audit under Section 64 or to hold enquiry under Section, 65 or to make inspection, under Section 66, are authorised under Section 123 to conduct inspection, an arbitrator or a member of the board of arbitrators to whom any dispute is referred under Section 71, or a member of the Tribunal or a liquidator, or any person authorised by the Registrar under Section 93 to make attachment and sale 1[or any officer of a co-operative Society] shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code (Act XLV of 1860)."*

30. From a perusal of the Section 31 (A) of the Act, 1965 it emerges that in every Apex Society, the Managing Director shall be a Government servant not below the rank of a Class I officer to be nominated by the State Government and that he would be on deputation with the society and his salary and allowances shall be paid from the funds of the society. Section 31 (4) would indicate that the Managing Director would be having a general control over the administration of the society with the

duties and responsibilities of the said Managing Director also including the duty to receive all money's and securities on behalf of the society and to be responsible for the general conduct, supervision and management of the society etc. The Managing Director being nominee of the State Government thus indicates the control of the State Government over the society.

31. A perusal of Section 124 of the Act, 1965, however clinches the issue. Section 124 of the Act, 1965 clearly indicates that every officer of a cooperative society shall be deemed to be a Public Servant within the meaning of Section 21 of the Indian Penal Code. The words "or any officer of a cooperative society" as finds placed in Section 124 of the Act, 1965 have been inserted by the U.P.Act No. 12 of 1990.

32. The Court has gone through the statement and objects of the Amendment Act, 1990 which on reproduction reads as under:-

"[U.P.Act No. 12 of 1990 ; 1990 LLT-IV-119]

***THE UTTAR PRADESH CO-OPERATIVE SOCIETIES
(SECOND AMENDMENT) ACT, 1990***

Prefatory Note-Statement of Objects and Reasons- The terms of the Administrators appointed by the Registrar of the management of the affairs of the co-operative societies under sub-section (4) of Section 29 of the Uttar Pradesh Co-operative Societies Act, 1965 and of the committee or administrators, appointed under sub-section (3) of Section 35 of the said Act is going to expire on June 30, 1990. The elections of the primary co-operative societies and district level co-operative societies have been held, but due to some unavoidable reasons it is not possible to hold elections of the Apex co-operative Societies and to complete the reconstitution of the Committee of Management by June 30, 1990. It has, therefore, been decided to extend the term of the existing arrangement up to December 31, 1990.

2. Section 34 of the said Act empowers the State Government to

nominate two persons on the Committee of Management of those co-operative societies, where the State Government has subscribed in the share capital. Since it is very difficult for the Government to make nominations at State level in the primary co-operative societies which are very large in number, it has also been decided to enable the State Government to delegate its power of nomination to any authority specified by it in that behalf.

3. It has further been decided to amend Section 124 of the said Act to declare the officers of the co-operative societies as Public Servants.

4. The Uttar Pradesh Co-operative Societies (Second Amendment) Bill, 1990 is introduced accordingly."

(emphasis by the Court)

33. From a perusal of Clause 3 of the statement of objects and reasons of the Second Amendment Act, 1990 it emerges that a decision has been taken to amend Section 124 of the Act, 1965 **to declare the officers of the co-operative societies as Public Servants** meaning thereby that vide the said amendment made in the year 1990, the officers of the co-operative society are deemed to be a Public Servant within the meaning of Section 21 of the Indian Penal Code and consequently, the petitioner being admittedly an officer of the co-operative society would thus also fall within the ambit of Public Servant as defined under the Act, 1988.

34. In the instant case, the First Information Report has been lodged against the petitioner under the provisions of the Act, 1988. Accordingly, keeping in view the law laid down by the Apex Court in the case of **Central Bureau of Investigation Bank Securities and Fraud Cell Vs. Ramesh Gelli and Ors- (2016) 3 SCC 788** wherein the Apex Court has held after considering the statement of objects and reasons of the Prevention of Corruption Act Bill that it has been introduced to widen the scope of the definition of 'public servant' and after placing reliance on its earlier judgment in the case of **Venku Reddy (supra)** the Apex Court after considering Section 2 (b) of the Act, 1988 and after interpreting the

word 'public duty' held that definition of 'public duty' is wide and discharge of duties in which the State, the public or the community at large has an interest, has been brought within the ambit of an expression 'public duty'. Thus it is apparent that clearly, provisions of Act, 1988 would be applicable on the petitioner also.

35. For the sake of convenience, the relevant observations of the Apex Court in the case of **Ramesh Gelli (supra)** are reproduced below:-

"15. From the Statement of Objects and Reasons of the P.C. Bill it is clear that the Act was intended to make the anti corruption law more effective by widening its coverage. It is also clear that the Bill was introduced to widen the scope of the definition of 'public servant'. Before P.C.Act, 1988 it was the Prevention of Corruption Act, 1947 and Sections 161 to 165A in Chapter IX of IPC which were governing the field of law relating to prevention of corruption. The Parliament repealed the Prevention of Corruption Act, 1947 and also omitted Section 161 to 165A of I.P.C as provided under Sections 30 & 31 of P.C. Act, 1988. Since a new definition of 'public servant' is given under P.C.Act, 1988 it is not necessary here to reproduce the definition of 'public servant' given in Section 21 of IPC.

16. Section 2 (c) of P.C. Act, 1988, which holds the field, defines 'public servant' as under: -

"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;

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised 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 authorised or required to perform any public duty;

(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;

(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.

17. Above definition shows that under Clause (viii) contained in Section 2 (c) of P.C. Act, 1988 a person who holds an office by virtue of which he is authorized or required to perform any public duty, is a public servant. Now, for the purposes of the present case this court is required to examine as to whether the chairman/managing director or executive director of a private bank operating under licence issued by RBI under Banking Regulation Act, 1949 held/holds an office and performed /performs public duty so as to attract the definition of 'public servant' quoted above.

18. Section 2 (b) of P.C. Act, 1988 defines 'public duty' as under:

"public duty" means a duty in the discharge of which the State, the public or the community at large has an interest".

25. In Manish Trivedi Vs. State of Rajasthan which pertains to a case registered against a councillor under Prevention of Corruption Act, 1988, this Court, while interpreting the word "public servant", made following observations: -

"14. Section 87 of the Rajasthan Municipalities Act, 1959 makes every Member to be public servant within the meaning of Section 21 of the Penal Code, 1860 and the same reads as follows:

"87. Members, etc. to be deemed 12 (2014) 14 SCC 420 public servants.—(1) Every member, officer or servant, and every lessee of the levy of any municipal tax, and every servant or other employee of any such lessee shall be deemed to be a public servant within the meaning of Section 21 of the Penal Code, 1860 (Central Act 45 of 1860).

(2) The word 'Government' in the definition of 'legal remuneration' in Section 161 of that Code shall, for the purposes of sub-section (1) of this section, be deemed to include a Municipal Board." From a plain reading of the aforesaid provision it is evident that by the aforesaid section the legislature has created a fiction that every Member shall be deemed to be a public servant within the meaning of Section 21 of the Penal Code. It is well settled that the legislature is competent to create a legal fiction. A deeming provision is enacted for the purpose of assuming the existence of a fact which does not really exist. When the legislature creates a legal fiction, the court has to ascertain for what purpose the fiction is created and after ascertaining this, to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction. In our opinion, the legislature, while enacting Section 87 has, thus, created a legal fiction for the purpose of assuming that the Members, otherwise, may not be public servants within the meaning of Section 21 of the Penal Code but shall be assumed to be so in view of the legal fiction so created. In view of the aforesaid, there is no escape from the conclusion that the appellant is a public servant within the meaning of Section 21 of the Penal Code.

xxx xxx xxx

16. Under the scheme of the Rajasthan Municipalities Act it is evident that the appellant happens to be a Councillor and a Member of the Board. Further in view of language of Section 87 of the Rajasthan Municipalities Act, he is a public servant

within the meaning of Section 21 of the Penal Code. Had this been a case of prosecution under the Prevention of Corruption Act, 1947 then this would have been the end of the matter. Section 2 of this Act defines "public servant" to mean public servant as defined under Section 21 of the Penal Code. However, under the Prevention of Corruption Act, 1988, with which we are concerned in the present appeal, the term "public servant" has been defined under Section 2 (c) thereof. In our opinion, prosecution under this Act can take place only of such persons, who come within the definition of public servant therein. The definition of "public servant" under the Prevention of Corruption Act, 1947 and Section 21 of the Penal Code is of no consequence. The appellant is sought to be prosecuted under the the Prevention of Corruption Act, 1988 and, hence, to determine his status it would be necessary to look into its interpretation under Section 2 (c) thereof, read with the provisions of the Rajasthan Municipalities Act.

xxx xxx xxx

19. The present Act (the 1988 Act) envisages widening of the scope of the definition of the expression "public servant". It was brought in force to purify public administration. The legislature has used a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing corruption among public servants. Hence, it would be inappropriate to limit the contents of the definition clause by a construction which would be against the spirit of the statute. Bearing in mind this principle, when we consider the case of the appellant, we have no doubt that he is a public servant within the meaning of Section 2 (c) of the Act. Clause (viii) of Section 2 (c) of the present Act makes any person, who holds an office by virtue of which he is authorised or required to perform any public duty, to be a public servant. The word "office" is of indefinite connotation and, in the present context, it would mean a position or place to which certain duties are attached and has an existence which is independent of the

persons who fill it. Councillors and Members of the Board are positions which exist under the Rajasthan Municipalities Act. It is independent of the person who fills it. They perform various duties which are in the field of public duty. From the conspectus of what we have observed above, it is evident that appellant is a public servant within Section 2 (c) (viii) of the Prevention of Corruption Act, 1988."

26. At the end it is relevant to mention that in the case of Govt. of A.P and Ors Vs. Venku Reddy (supra), in which while interpreting word 'public servant' this court has made following observations:

"12. In construing the definition of "public servant" in clause (c) of Section 2 of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of the legislature. In that view the Statement of Objects and Reasons contained in the Bill leading to the passing of the Act can be taken assistance of. It gives the background in which the legislation was enacted. The present Act, with a much wider definition of "public servant", was brought in force to purify public administration. When the legislature has used such a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing growing corruption in government and semi-government departments, it would be appropriate not to limit the contents of the definition clause by construction which would be against the spirit of the statute. The definition of "public servant", therefore, deserves a wide construction. (See State of M.P Vs. Shri Ram Singh

27. 24. In the light of law laid down by this court as above, it is clear that object of enactment of P.C.Act, 1988 was to make the anti corruption law more effective and widen its coverage. In view of definition of public servant in Section 46A of Banking Regulation Act, 1949 as amended the Managing Director and Executive Director of a Banking Company operating under licence issued by Reserve Bank Of India, were already public

servants, as such they cannot be excluded from definition of 'public servant'. We are of the view that over the general definition of 'public servant' given in Section 21 of IPC, it is the definition of 'public servant' given in the P.C.Act, 1988 read with Section 46-A of Banking Regulation Act, which holds the field for the purposes of offences under the said Act. For banking business what cannot be forgotten is Section 46A of Banking Regulation Act, 1949 and merely for the reason that Sections 161 to 165A of IPC have been repealed by the P.C.Act, 1988, relevance of Section 46A of Banking Regulation Act, 1949, is not lost.

30. Therefore, having considered the submissions made before us, and after going through the papers on record, and further keeping in mind the Statement of Objects and Reasons of the Bill relating to Prevention of Corruption Act, 1988 read with Section 46A of Banking Regulation Act, 1949, we are of the opinion that the courts below have erred in law in holding that accused Ramesh Gelli and Sridhar Subasri, who were Chairman/Managing Director and Executive Director of GTB respectively, were not public servants for the purposes of Prevention of Corruption Act, 1988. As such, the orders impugned are liable to be set aside. Accordingly, without expressing any opinion on final merits of the cases before the trial courts in Mumbai and Delhi, Criminal Appeal Nos. 1077-1081 of 2013 filed by CBI, are allowed, and Writ Petition (Crl.) No. 167 of 2015 stands dismissed."

36. Likewise, the Apex Court in the case of **State of Gujarat Vs. Manusukhbhai Kanjibhai Shah- (2020) 20 SCC 360** has held as under:-

"44. As discussed earlier, the object of the PC Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the PC Act was to shift focus from those who are traditionally called public officials, to those individuals who

perform public duties. Keeping the same in mind, as rightly submitted by the learned senior counsel for the appellant State, it cannot be stated that a "Deemed University" and the officials therein, perform any less or any different a public duty, than those performed by a University simpliciter, and the officials therein.

45. Therefore, for all the above reasons, we are of the opinion that the High Court was incorrect in holding that a "Deemed University" is excluded from the ambit of the term "University" under Section 2 (c) (xi) of the PC Act.

46. Having come to the above conclusion, in the present case, the pivotal question is whether the appellant trustee in the Board of 'Deemed to be University' is a 'public servant' covered under Section 2 (c) of the PC Act. Recently, this Court in the case of CBI Vs. Ramesh Gelli (2016) 3 SCC 788, dealt with the question as to whether Chairman, Directors and officers of a private bank before its amalgamation with a public sector bank, can be classified as public servants for prosecution under the PC Act While dealing with the aforesaid proposition of law, the Court analysed the purpose and scope of the PC Act and made the following observations:

"15. From the Statement of Objects and Reasons of the PC Bill it is clear that the Act was intended to make the anticorruption law more effective by widening its coverage. It is also clear that the Bill was introduced to widen the scope of the definition of "public servant". Before the PC Act, 1988 it was the Prevention of Corruption Act, 1947 and Sections 161 to 165A in Chapter IX IPC which were governing the field of law relating to prevention of corruption. Parliament repealed the Prevention of Corruption Act, 1947 and also omitted Sections 161 to 165A IPC as provided under Sections 30 and 31 of the PC Act, 1988. Since a new definition of "public servant" is given under the PC Act, 1988 it is not necessary here to reproduce the definition of "public servant" given in Section 21

IPC.

...

17. The above definition shows that under sub clause (viii) contained in Section 2 (c) of the PC Act, 1988, a person who holds an office by virtue of which he is authorised or required to perform any public duty, is a public servant. Now, for the purposes of the present case this Court is required to examine as to whether the Chairman/Managing Director or Executive Director of a private bank operating under licence issued by RBI under the Banking Regulation Act, 1949 held/holds an office and performed/performs public duty so as to attract the definition of "public servant" quoted above." (emphasis supplied)

47. This Court in the case of P.V. Narasimha Rao Vs. State (CBI/SPE) (1998) 4 SCC 626, has clarified the word "office" in the following manner:

"61. ... The word 'office' is normally understood to mean 'a position to which certain duties are attached, especially a place of trust, authority or service under constituted authority'. (See Oxford Shorter English Dictionary, 3rd Edn., p. 1362.) In McMillan v. Guest, (1942) 1 All ER 606 (HL), Lord Wright has said:

'...The word "office" is of indefinite content. Its various meanings cover four columns of the New English Dictionary, but I take as the most relevant for purposes of this case the following:

"A position or place to which certain duties are attached, especially one of a more or less public character." In the same case Lord Atkin gave the following meaning:

'... "an office or employment which was subsisting, permanent, substantive position, which had an existence independent of the

person who filled it, which went on and was filled in succession by successive holders." In *Statesman (P) Ltd V. H.R.Deb*, AIR 1968 SC 1495 and *Mahadeo v. Shantibhai*, (1969) 2 SCR 422 this Court has adopted the meaning given by Lord Wright when it said:

'An office means no more than a position to which certain duties are attached.'

48. This Court in the case of *Manish Trivedi Vs. State of Rajasthan* (2014) 14 SCC 420 further elucidated upon the ambit of the phrase "public servant" by stressing upon the relevance of "office", wherein the emphasis was upon the duties performed. The Court noted therein:

"19. The present Act (the 1988 Act) envisages widening of the scope of the definition of the expression "public servant". It was brought in force to purify public administration. The legislature has used a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing corruption among public servants. Hence, it would be inappropriate to limit the contents of the definition clause by a construction which would be against the spirit of the statute. Bearing in mind this principle, when we consider the case of the appellant, we have no doubt that he is a public servant within the meaning of Section 2 (c) of the Act. Clause (viii) of Section 2 (c) of the present Act makes any person, who holds an office by virtue of which he is authorised or required to perform any public duty, to be a public servant. The word "office" is of indefinite connotation and, in the present context, it would mean a position or place to which certain duties are attached and has an existence which is independent of the persons who fill it." (emphasis supplied)

49. In order to appreciate the amplitude of the word "public servant", the relevance of the term "public duty" cannot be disregarded. "Public duty" is defined under Section 2 (b) of the

PC Act, which is reproduced below:

2(b) 'public duty' means a duty in the discharge of which the State, the public or the community at large has an interest.

50. Evidently, the language of Section 2 (b) of the PC Act indicates that any duty discharged wherein State, the public or community at large has any interest is called a public duty. The first explanation to Section 2 further clarifies that any person who falls in any of the categories stated under Section 2 is a public servant whether or not appointed by the government. The second explanation further expands the ambit to include every person who de facto discharges the functions of a public servant, and that he should not be prevented from being brought under the ambit of public servant due to any legal infirmities or technicalities."

(emphasis by the Court)

37. Interestingly, the Apex Court in the case of **Manusukhbhai Kanjibhai Shah (supra)** has categorically held in paragraph 50 of its judgment that the first explanation of Section 2 of the Act, 1988 expands the ambit to include every person who de facto discharges the functions of a public servant and that he should not be prevented from being brought under the ambit of public servant due to any legal infirmities or technicalities.

38. Even otherwise the matter pertains to corruption. The Apex Court in the case of **State of Maharashtra and Ors Vs. Brijlal Sadasukh Modani- (2016) 4 SCC 417** has held that under Section 2 (c) of the Act, 1988, the definition of "Public Servant" has to be given purposive construction and the concept in entirety has to be understood in the backdrop of corruption. After placing reliance on its earlier judgment in the case of **State of Madhya Pradesh Vs. Ram Singh- (2000) 5 SCC 88**, the Apex Court has held as under:-

"25. In Shri Ram Singh (supra), this Court had to say this:-

"Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to malignise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence — shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society."

39. Accordingly, keeping in view the aforesaid discussion, it is apparent that the petitioner clearly falls within the ambit of being a "Public Servant" as defined under Section 2 (c) of the Act, 1988. Thus, the said ground is rejected.

40. So far as the ground taken by the learned Senior Advocate of the petitioner having been exonerated in the departmental proceedings with the result that the criminal proceedings cannot be lodged against him, the said ground is also found to be patently misconceived and rejected.

41. The reasons are not far to seek.

42. The charge sheet dated 06.09.2018 had been issued to the petitioner on four charges. The charge no. 2 has been relied on by the learned Senior Advocate appearing on behalf of the petitioner, to indicate that the said charge pertains to the same charge for which the impugned First Information Report has been lodged.

43. For the sake of convenience, the charge no. 2 of the charge sheet

dated 06.09.2018 reads as under:-

"आरोप संख्या- 2

सहकारी संस्थाओं के कर्मियों की नैतिक व आर्थिक सत्यनिष्ठा को सुनिश्चित किये जाने के उद्देश्य से उ०प्र० सहकारी समिति नियमावली 1968 के नियम-79 एवं उ.प्र. सहकारी ग्राम विकास बैंक कर्मचारी सेवा नियमावली 2013 के नियम संख्या- 73(1) के अनुसार सम्पत्तियों का वार्षिक विवरण प्रत्येक कर्मचारी द्वारा बैंक के प्रबंध निदेशक को प्रस्तुत किये जाने का प्रावधान है। आपके विरुद्ध यह शिकायत है कि आपने उ०प्र० सहकारी ग्राम विकास बैंक में सेवा नियमों के विपरीत आचरण कर भ्रष्टाचार व कर्मचारियों का उत्पीड़न करके अनैतिक व अनियमित रूप से अकूत सम्पत्ति अर्जित की है। सेवा में रहते हुये आप द्वारा अन्य व्यवसाय जैसे- कानपुर व लखनऊ में आई०टी०आई० का संचालन किया जा रहा है।

आपने अपनी चल-अचल सम्पत्तियों का वार्षिक विवरण सक्षम अधिकारी को प्रस्तुत नहीं किया है। इस प्रकार से आप भ्रष्ट आचरण, कनिष्ठ कर्मचारियों के शोषण और उ०प्र० सहकारी समिति कर्मचारी सेवा नियमावली 1975 के विनियम- 79 एवं बैंक कर्मचारी सेवानियमावली 2013 के नियम संख्या- 73(1) के प्रावधानों का उल्लंघन करने के दोषी हैं।"

44. A perusal of the said charge would indicate that the petitioner has been charged of having indulged in corruption and having exploited the employees to accumulate disproportionate assets and of having indulged in other profession like running ITI in Kanpur and Lucknow and for not having given the details of his movable and immovable property to the competent authority.

45. The inquiry officer vide report dated 15.10.2018, so far as it pertains to the petitioner having indulged in corruption and having accumulated disproportionate assets, has indicated that in the preliminary inquiry that had been conducted, the inquiry officer had specifically indicated that he is not competent to hold an inquiry in this regard rather it is either the income tax department or some agency which is competent. For the sake of convenience, the relevant findings of the inquiry officer are reproduced below:-

"आख्या- श्री सुभाष चंद्र, सहायक महाप्रबंधक (निलंबित) पर शिकायतकर्ताओं का आरोप "भ्रष्टाचार से अर्जित अकूत संपत्ति / आय से अधिक संपत्ति" का था जिसपर प्राथमिक जांच कर्ता अधिकारी ने पूर्व में ही स्पष्ट कर दिया था कि इस विषय की जांच हेतु वह सक्षम नहीं हैं। अर्थात् यह जांच करने हेतु आयकर विभाग अथवा अन्य एजेंसी ही सक्षम है। शिकायतकर्ताओं ने श्री चंद्र के विरुद्ध भ्रष्टाचार एवं कनिष्ठ कर्मचारियों के उत्पीड़न संबंधी अपने आरोप के साथ किसी प्रकार का साक्ष्य प्रस्तुत नहीं

किया है। इसके विपरीत श्री चंद्र ने अपने प्रत्युत्तर की "पृष्ठभूमि" के रूप में कतिपय तथ्य (यथोपरि) प्रस्तुत किये हैं। अतएव भ्रष्टाचार एवं कनिष्ठ कर्मचारियों के उत्पीड़न के आरोप की पुष्टि नहीं की जा सकती।

श्री चंद्र ने प्रत्युत्तर में कहा कि उनके द्वारा जन सूचना अधिकारी ***** चाही गयी थी कि बैंक की स्थापना से अब तक बैंक के कितने कर्मचारियों / अधिकारियों द्वारा अर्जित संपत्ति की तथाकथित वार्षिक विवरणी नियुक्ति प्राधिकारी को उपलब्ध करायी गयी है? इसके उत्तर में बैंक द्वारा उपलब्ध करायी गयी सूचना में लिखा गया है कि "अनुभाग में ऐसी कोई सूचना वर्तमान में उपलब्ध नहीं है।" इससे स्पष्ट होता है कि बैंक कर्मियों से ऐसी सूचना लिये जाने की व्यवस्था बैंक प्रबंधन द्वारा नहीं की गयी है। स्पष्ट है कि इसी कारण से श्री चंद्र द्वारा भी संपत्ति संबंधी कोई सूचना प्रबंधन को उपलब्ध नहीं करायी गयी। प्रत्युत्तर में यह भी कहा है कि "उनके द्वारा इस बैंक में अपनी नियुक्ति से लेकर अद्यावधि लगातार प्रत्येक वर्ष अपनी आय से सम्बन्धित वार्षिक आयकर रिटर्न नियमित रूप से भरा जा रहा है जो प्रबन्ध निदेशक महोदय के नियन्त्राधीन लेखा अनुभाग में प्रत्येक वर्ष जमा होती है तथा उनके द्वारा प्रत्येक वर्ष आय की घोषणा, आयकर रिटर्न के माध्यम से की जाती है।" ज्ञातव्य है कि बैंक का लेखा अनुभाग किसी भी बैंक कर्मियों की आयकर विवरणी न तो मांगता है न ही उसे अपने पास जमा करता है। इस प्रकार से यह भी स्पष्ट हुआ कि बैंक प्रबंधन द्वारा ऐसी ***** निर्धारित नहीं की गयी है जिसके अनुसार बैंक के कर्मचारियों / अधिकारियों द्वारा अर्जित सम्पत्ति का आवधिक विवरणी नियुक्ति प्राधिकारी को उपलब्ध कराया जाना हो। इनकी वर्ष 2012-13 से वर्ष 2017-18 तक की चरित्र पंजिका की प्रष्टियों की छायाप्रतियां तथा कर्मचारियों / कर्मचारी संगठन द्वारा इनके संबंध में शिकायतें अथवा प्रबंध द्वारा स्वतः संज्ञान में लेते हुये इनके विरुद्ध की गयी किसी कार्यवाही आदि की स्थिति को देखा गया जिससे उनपर किसी कदाचार आदि की पुष्टि नहीं हुई स्थापना अनुभाग से अतएव श्री चंद्र पर उक्त आरोप सिद्ध नहीं पाया गया।"

(emphasis by the Court)

46. From a perusal of the report on the inquiry officer, it emerge that so far as the complaints pertaining to having exploited the employees, no proof was found. Thus, it is apparent that no finding has been given by the inquiry officer pertaining to the disproportionate assets for which the petitioner had been charged in the charge sheet. The said inquiry report has been accepted by the disciplinary authority vide order dated 14.12.2018. Thus, it is apparent that no inquiry was in fact conducted for the charge of disproportionate assets which was a charge in the charge sheet and thus there is no restraint or bar now in the respondents in lodging the First Information Report under the provisions of the Act, 1988. Accordingly, none of the judgments over which reliance has been placed by the learned Senior Advocate appearing on behalf of the petitioner would have any applicability in the facts of the instant case. Thus, the said ground is also rejected.

47. So far as ground of malice is concerned, suffice it to say that once no

inquiry has been conducted with regard to disproportionate assets despite the said charge having been indicated in the charge sheet that had been issued to the petitioner and no findings were specifically given by the inquiry officer for the reasons recorded in the inquiry report while conducting the said inquiry consequently, it cannot be said that any malice has been occasioned on the part of the respondents in lodging the said First Information Report and thus the ground that the said First Information Report has only been lodged in order to deprive the petitioner from being promoted to the post of General Manager is patently misconceived and accordingly rejected.

48. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is **dismissed**.

49. The Court keeps record the assistance rendered by Mr. Azam Siddiqui, Research Associate of this Court.

(Mrs. Babita Rani,J.) (Abdul Moin,J.)

November 17, 2025

Pachhere/-