

**IN THE HIGH COURT FOR THE STATE OF TELANGANA**

**AT: HYDERABAD**

**CORAM:**

**\* THE HON'BLE SRI JUSTICE K. LAKSHMAN**

**+ CRIMINAL REVISION CASE No.133 OF 2021**

**% Delivered on: 01-06-2021**

**Between:**

# A. Revanth Reddy

.. Petitioners/  
Accused No.1

Vs.

\$ The State of Telangana through  
ACB, CIU, Hyderabad.

.. Respondents

! For Petitioner

: Mr. Mahmood Ali  
Learned counsel

^ For Respondent

: Mr. V. Ravi Kiran Rao,  
Learned Special Counsel for ACB

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> Head Note

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? Cases Referred

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1. (2006) 7 SCC (1)
2. (2014) 11 SCC 724
3. (2007) 8 SCC 559
4. (2013) 10 SCC 1
5. 1989 JLJ 710
6. MANU/MH/2028/2019
7. (1998) 4 SCC 626
8. CrI.A. No.451 of 2019
9. (1988) 2 SCC 602
10. (1993) 2 SCC 507
11. (2012) 9 SCC 460
12. (2010) 12 SCC 146
13. (2020) 10 SCC 92
14. W.P. (Civil) No.699 of 2016, dated 04.11.2020

**HON'BLE SRI JUSTICE K.LAKSHMAN****CRIMINAL REVISION CASE No.133 OF 2021****ORDER:**

This Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking to set aside the order dated 29.01.2021 passed in Crl.M.P.No.804 of 2020 in C.C.No.15 of 2016 by the Principal Special Judge for trial of SPE and ACB Cases, Hyderabad.

2. The petitioner herein is Accused No.1 in C.C.No.15 of 2016. The offences alleged against him are under Section 12 of the Prevention of Corruption Act, 1988 (for short "P.C. Act"), and under Section 120-B read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC').

3. The allegations against the petitioner, as per the contents of the charge sheet in C.C.No.15 of 2016, are as follows:

i) The petitioner is a member of the Telangana Legislative Assembly. Biennial MLC Elections for Legislative Council were scheduled to be held on 1.6.2015. LW1 was also a nominated MLA. Accused No.4 approached LW1 and offered an amount of Rs.2.00 Crores either to vote in favour of Telugu Desham Party (TDP) Candidate or to boycott or to abstain from voting by leaving the Country at that relevant point of time. Accused No.2 contacted LW1 with the said proposal and offered bribe of Rs.5.00 Crores for the said

purpose. The entire transaction would be dealt with by Accused No.1 personally.

ii) The *de facto* complainant has addressed a letter to the DSP, A.C.B, City Range-1, Hyderabad, complaining the same who in turn, took approval from the Director General, ACB. Thereafter, on receipt of information, DSP, ACB, that on 30.05.2012, accused Nos.1 and 2 were going to the house of the complainant, for talks on the said deal, he has arranged an Apple Phone without a SIM in the sitting room of the house of the complainant for Video and Audio recording of the transactions as part of verification. The ACB Officials have seized the said amount of Rs.50.00 Lakhs paid by Accused No.1 to the *de facto* complainant for the said purpose from the house of the *de facto* complainant. Thereafter, after completion of investigation, they have laid charge sheet against the petitioner and other accused for the aforesaid offences. The same was taken on file *vide* C.C.No.15 of 2016.

iii) The petitioner herein filed a petition under Section 3(1) of the P.C. Act to determine the issue of existence/non-existence of 'jurisdictional fact' and to determine whether the Principal Special Judge for trial of SPE and ACB Cases, lacks jurisdiction to try C.C.No.15 of 2016 on the ground of non-existence of jurisdiction. The petitioner has filed the said petition *vide* Crl.M.P.No.804 of 2020 in C.C.No.15 of 2016 with the following contentions.

(a) Exercise of vote in an ex-officio capacity by a public servant and exercise of vote is an ex-officio right and not an exercise of a public function/duty as a Member of Legislative Assembly. In support of his contention, learned counsel for the petitioner has relied on the principle laid down by the Hon'ble Apex Court in **Kuldip Nayyar v. Union of India**<sup>1</sup>.

(b) Chapter IXA of IPC deals with electoral malpractices and the provisions of the P.C Act are wholly inapplicable as the specific field is covered by the Indian Penal Code on this issue, which results in finding that ACB of Telangana State does not have jurisdiction to register an FIR. Offering of a bribe simpliciter does not attract any offence for punishment under Section 12 of the P.C. Act.

(c) The Court below being a Special Court designated under Section 3 (1) of the P.C. Act for trying the offences under the provisions of the P.C. Act and the jurisdiction of the said Court is governed by Section 4 of the P.C. Act. In view of the same, the Court below while exercising jurisdiction over offences under the P.C Act is not generally empowered to deal with non-P.C. Act offences and its jurisdiction over non-P.C. Act offences is circumscribed by Section 4 (3) of the P.C. Act which requires existence of an offence under the P.C Act. In support of the same, learned counsel relied on the principle laid down by the Hon'ble Apex Court in **State v. Jitender**

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<sup>1</sup>. (2006) 7 SCC 1

**Kumar Singh**<sup>2</sup> wherein it was held that trying any case under Section 3 (1) of the P.C. Act is a *sine qua non* for a Special Judge to exercise jurisdiction over the offences not specified therein. Thus, trying any case under the P.C. Act is a ‘jurisdictional fact’ for a Special Judge to exercise jurisdiction. Learned counsel also placed reliance on the principle laid down by the Apex Court in **Corona Ltd. v. Parvathy Swaminathan and Sons**<sup>3</sup>, wherein it was held that existence of a “jurisdictional fact” i.e., the existence of a condition precedent is for the exercise of jurisdiction by a Court is a preliminary issue.

(d) The right to vote of an MLA in Legislative Council is akin to that of the right to vote of Graduates or Teachers. The offence of bribery in relation to elections is defined in Section 171-B of IPC punishable under Section 171-E of IPC.

(e) Right to vote of an elector is a statutory right and the manner of its exercise is governed by the Representation of People Act, 1951. An MLA in exercise of his right to vote is acting in his capacity as an elector and cannot be conflated with exercise of his public duties in his capacity as a public servant, which offences governed by Chapter IXA of IPC, but not by the provisions of P.C. Act. The ACB has erroneously assumed the jurisdiction to investigate into election related offences and filed charge sheet erroneously.

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<sup>2</sup>. (2014) 11 SCC 724

<sup>3</sup>. (2007) 8 SCC 559

(f) The contents of the charge sheet lacks the ingredients of the offences under sections 7 or 11 of the P.C. Act and the offence of Section 12 of P.C. Act is not made out against the petitioner herein and therefore, the 'jurisdictional fact' under Section 3(1) of the P.C Act is absent. Learned Counsel relied on the principle laid down by the Hon'ble Apex Court in **People's Union of Civil Liberties v. Union of India**<sup>4</sup>, **Durga Singh Tomer v. State of M.P.**<sup>5</sup> and **Kishore Khanchand Wadhwani v. State of Maharashtra**<sup>6</sup>.

iv) With the said contentions, learned counsel for the petitioner would submit that the Court below has not considered the said contentions in a proper perspective and dismissed the application filed by the petitioner *vide* order dated 29.1.2021 erroneously.

4. **Contentions of ACB in Crl.M.P.No.804/2020 in C.C.15/2016:**

(a) The Apex Court directed all criminal cases pending against the former and present legislators shall be disposed of as expeditiously as possible. Even then, the calendar case of the year 2016 is pending. The accused are filing one application or the other only to drag on the proceedings in C.C.No.15 of 2016.

(b) Accused Nos.2, 3 and 5 have already filed discharge applications, which were dismissed by the trial Court and the said

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<sup>4</sup>. (2013) 10 SCC 1

<sup>5</sup>. 1989 JLJ 710

<sup>6</sup>. MANU/MH/2028/2019.

orders were confirmed by this Court in the revision petitions filed by the said accused.

(c) Accused Nos2, 3 and 5 have also taken the very same pleadings including the ground of jurisdictional fact in the said applications and this Court held that it is having jurisdiction to try the offences under the provisions of the P.C. Act. Even then, with the very same contentions, the petitioner/A-1 has filed the present application. Therefore, the Special Court cannot review its own finding/order on the very same issue.

(d) Crl.P.No.5520 of 2015 filed by Accused No.5 was dismissed. The discharge petition filed by A-5 was also dismissed by the Court below, and A5 has filed revision vide Crl.R.C.No.541 of 2020 and the same was also dismissed by this Court. In the said order, this Court has held that there is no defect or error in jurisdiction of law. Even then, the petitioner has filed the present application with the very same grounds and with the very same contentions. LW1 is a nominated MLA and therefore, he has to exercise his vote freely and while doing so, he is discharging public function. However, the said issue is a triable issue and the petitioner has to take the said defence during trial in C.C.No.15 of 2016. Instead of doing so, he has filed the present application only to drag on the proceedings and trial in the said C.C.No.15 of 2016.

5. **Finding of the Trial Court in the impugned order dated 29.01.2021 in Crl.M.P.No.804 of 2020 in C.C.No.15 of 2016.**

The Court below has dismissed the said application filed by the petitioner on the following grounds:

(a) The principle laid down by the Apex Court in **P.V. Narasimha Rao v. State (CBI/SPE)**<sup>7</sup> is not overruled and the reference is with regard to wide ramifications of the question that has arisen. The doubts raised and the issue being a matter of substantial public importance, but not with regard to the finding that a Member of Parliament is a public servant. The judgments relied on by the petitioner shows that act of casting of vote by the *de facto* complainant is merely exercise of franchise and not proceedings of legislative. The principle laid down in **P.V. Narasimha Rao**<sup>7</sup>, though referred to a larger bench in **Sita Soren v. Union of India**<sup>8</sup>, it is not overruled, and therefore, it is binding.

(b) The petitioner did not raise objection about the jurisdiction soon after his arrest or at the time of arguments during bail.

(c) Accused Nos.3 and 5 have filed discharge applications with the very same grounds and the same were dismissed by the trial Court and the revisions filed by them were also dismissed by this Court. He has relied on the findings of this Court in Crl.R.C.No.541 of 2020, dated 8.12.2020 filed by Accused No.5 with regard to amendment which came into force on 26.7.2018, the Court below has relied on the

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<sup>7</sup>. (1998) 4 SCC 626

<sup>8</sup>. Crl.A. No.451 of 2019



principle laid down by the Apex Court in **Kuldip Nayyar**<sup>1</sup> and **Kishore Khanchand Wadhwani**<sup>6</sup>. The petitioner did not choose to raise the said objections at the earliest point of time. The Court below dismissed the discharge applications filed by the other accused wherein the same issue of jurisdictional fact was raised and it has dismissed the said applications by holding that it is having jurisdiction.

(d) Therefore, the Court below is not having ample power to review its own order. Though there are several triable issues and the petitioner herein instead of facing trial, filed the present application with a prayer to decide the 'jurisdictional fact' as a preliminary issue.

6. **The Contentions of the petitioner in the present revision:**

i) The Court below having accepted the submissions of the petitioner held that it is true in the light of the judgments relied by the petitioner, the act of casting vote by *de facto* complainant is merely an exercise of franchise and not proceedings of legislature, ignoring his own finding on the ground that the petitioner did not question the jurisdiction earlier and the citations relied on were not brought to its notice earlier while deciding the discharge petitions of other accused and therefore, the Court below erred in dismissing the application filed by the petitioner.

ii) The Court below ignored the finding that the alleged offence against the petitioner was not an offence under Section 12 of the P.C.

Act, on the sole ground that the petitioner did not bring citation to the notice of the Court at the time of disposing the discharge petitions of co-accused. Therefore, the impugned order is illegal.

iii) The Court below erred while making observations of this Court in Crl.R.C.No.541 of 2020. The learned Judge having found that voting in MLC elections is in an ex-officio capacity, held that necessary jurisdictional fact is absent, should have transferred the matter to the Court having competent jurisdiction. Learned Special Judge failed to cure the defect of jurisdiction on the ground that the petitioner has not challenged jurisdiction at an earliest stage. The P.C. Act is a Special Enactment which covers all aspects pertaining to exercise of public duties/official acts of public servants and the learned Judge having found that vote by an MLA in MLC elections is an ex-officio capacity and merely an exercise of franchise, must have transferred the case to Court having competent jurisdiction. The defect of jurisdiction strike at the very authority of the Court and cannot be cured even by consent or waiver of the parties and the said principle was also laid down by the Apex Court in **A.R. Antulay v. R.S. Nayak**<sup>9</sup> and **Chiranjilal Shrilal Goenka v. Jasjit Singh**<sup>10</sup>. The case of the petitioner squarely falls within the ambit of word election /public duty/public servant and offering bribe to a public servant is a clear case of abetment. Therefore, the Court below failed to appreciate the same on the ground that the petitioner herein has not

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<sup>9</sup>. (1988) 2 SCC 602

<sup>10</sup>. (1993) 2 SCC 507

raised the said ground at the earliest point of time. Thus, the Court below failed to appreciate the contention of the petitioner that the criminal proceedings are in *personam* i.e., the Court must adjudicate on the criminal liability of an accused based on the defence advanced by him and he cannot be penalized for the action/inaction of other accused persons. Learned Judge failed to appreciate the contention of the petitioner that Accused No.4 has filed Crl.P.No.5520 of 2015 under Section 482 Cr.P.C seeking to quash the proceedings under the ground of maintainability. The Court below, without appreciating the contention of the petitioner that each case depends on its facts and circumstances and without appreciating the same, dismissed the application filed by the petitioner vide impugned order.

iv) With the said contentions, leaned counsel for the petitioner would submit that the impugned order is contrary to law and the principle laid down by the Apex Court in the above referred judgments.

7. On the other hand, Sri V. Ravi Kiran Rao, learned Senior Counsel appearing for TS ACB would submit that the Court below has considered the contentions raised, the judgments cited by the petitioner in the impugned order. It is a reasoned order and there is no error in it. He has referred to several Articles of the Constitution of India and P.C. Act and would submit that there is no error in the impugned order. The petitioner herein and other accused have been filing petitions one or the other with an intention to drag on the

proceedings in C.C.No.15 of 2016. Several revisions filed by the accused in the said C.C. No.15 of 2016 were dismissed by this Court confirming the orders passed by the Court below. The petitioner herein has already taken the said ground of jurisdictional fact and the Court below negated the same and therefore, the Court below cannot review its own order.

i) Learned Senior counsel has also relied upon the judgment of the Apex Court in **P.V.Nrasimha Rao**<sup>7</sup> and also various other judgments.

ii) With the said submissions, leaned Senior Counsel sought to dismiss the present revision.

8. **FINDINGS AND ANALYSIS OF THE COURT:**

i) Though this Court is dealing with a Criminal Revision Case in revisional jurisdiction under Sections 397 and 401 Cr.P.C, since this case is commonly known as ‘Vote for Note’, various Articles of the Constitution of India, the principle laid down by the Apex Court were referred and relied upon, therefore, this Court thought it relevant to extract relevant debates of the members of the Constituent Assembly and Drafting Committee while drafting Constitution of India. As Chairman of the Drafting Committee, Dr. B.R. Ambedkar contended that “voting was essential to citizenship and equal moral membership of the polity. Voting would serve as a means of political education of those who had been denied any part of political and

social life for all these years and as a tool to remove the evil conditions that existed. It was there two principles that formed the backbone of universal adult franchise becoming part of the Constitution”.

ii) As Chairman of the Drafting Committee, it was Dr.B.R. Ambedkar, who proposed to insert Article 326 into Constitution of India, which provided that elections would be held on the basis of universal adult franchise. Dr. B. R. Ambedkar had voiced that ultimately, democratic Government was inseparable from the right to vote, and it was voting that would prove to be the one of the harbinger (s) of political education.

iii) Sri H.V. Kamath, a Member of Constituent Assembly, expressed the view that in a country with such huge levels of illiteracy, Universal franchise was a dangerous thing and ought to be restricted. Other members supported him.

iv) Sri Alladi Kuppu Swamy Ayyar, another Member of Drafting Committee, contended that “in spite of the ignorance and illiteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic Government on the basis of adult suffrage will bring enlightenment and promote the well being, the standard of life, the comfort and the decent living of the common man. This assembly deserves to be congratulated on

adopting the principle of adult suffrage and it may be stated that never before in the history of the world has such an experiment been so boldly undertaken.”

v) The Apex Court had an occasion to deal with ‘Right to Vote’ and ‘Right not to Vote’ in **People’s Union of Civil Liberties**<sup>4</sup>.

vi) Secret Ballot System was also introduced to maintain the secrecy of the Vote.

vii) It is also relevant to note that the Apex Court in one of the judgments held that ‘secrecy of ballot is sacrosanct’.

viii) It is also relevant to note that “while expecting his leader to be honest, voter should be honest”. “A corrupt voter cannot expect his leader to be honest”.

ix) It is a case where voter approached the ACB Officials complaining about the bribe offered to him.

x) The allegations in the present case against the petitioner herein are that he has offered an amount of Rs.5.00 Crores to LW1 to cast his vote in favour of TDP Candidate or to abstain from voting by leaving Country. The ACB Officials have also seized an amount of Rs.50.00 Lakhs in the house of LW1 paid by accused.

xi) The ACB officials after conducting investigation laid down charge sheet against the petitioner and other accused for the aforesaid offences and the same was taken on file *vide* C.C.No.15 of 2016.

xii) Now, the petitioner has filed the present petition to determine the jurisdictional fact as a preliminary issue.

9. In view of the same, it is trite to refer the 'jurisdictional fact'.

i) A 'jurisdictional fact' is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a Court, it is explained as a fact which must exist before a Court can properly assume jurisdiction in respect of subject matter which the Statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the Court or Tribunal exercises the jurisdiction then the order is violated. Thus, it is clear that existence of jurisdictional fact is *sine qua non* for exercise of power.

ii) A Constitution Bench of the Hon'ble Apex Court in **P.V. Nrasimha Rao**<sup>7</sup> referring to the law laid down by it in various other judgments, categorically held that a Member of Parliament, or of a Legislative Assembly, is a Public Servant for the purposes of the said Act. Paragraph No.165 of the said judgment is relevant which is extracted below:

“165. We think that the view of the Orissa High Court that a member of a Legislative Assembly is a public servant is correct. Judged by the test enunciated by Lord Atkin in *Mc Millan v. Guest* and adopted by Sikri J, in *Kanta Kathwia's* case, the position of a member of Parliament, or of a Legislative Assembly, is subsisting, permanent and substantive; it has an existence independent of the person who fills it and it is filled in succession

by successive holders. The seat of each constituency is permanent and substantive. It is filled, ordinarily for the duration of the legislative term, by the successful candidate in the election for the constituency. When the legislative term is over, the seat is filled by the successful candidate at the next election. There is, therefore, no doubt in our minds that a Member of Parliament, or of a Legislative Assembly, holds an office and that he is required and authorised thereby to carry out a public duty. In a word, a member of Parliament, or of a Legislative Assembly, is a public servant for the purposes of the said Act.”

iii) In **P.V. Nrasimha Rao**<sup>7</sup> the powers, privileges etc. of the Houses of Parliament and of the Members of the Legislatures and Committees thereof extended under Article 105 (2) and 194 (2) of the Constitution of India and while dealing with immunity to be granted to a case where bribery for making a speech or vote in a particular manner in the house, it was held that the immunity cannot be extended to the said cases when bribery for making a speech or vote in a particular manner in the House. In **Sita Soren**<sup>8</sup> he has accepted bribe to vote in favour of a particular candidate in the Rajya Sabha election. Therefore, considering the substantial public importance, the Apex Court in **Sita Soren**<sup>8</sup> referred to the matter to a Larger Bench with the following observation:

“Para No.5: Having considered the matter we are of the view that having regard to the wide ramifications of the question that has arisen, the



doubts raised and the issue being a matter of substantial public importance we should be requesting for a reference of the matter to a larger Bench, as may be considered appropriate, to hear and decide the issue arising. We order accordingly and direct the Registry to place the record (s) before the Hon'ble the Chief Justice of India on the administrative side for appropriate orders.”

iv) The principle laid down by the Apex Court in **P.V.Nrasimha Rao**<sup>7</sup> was referred to larger Bench in **Sita Soren**<sup>8</sup>. But, the larger bench was not constituted and the law laid down in **P.V.Nrasimha Rao**<sup>7</sup> was not overruled so far. Therefore, the same is binding. Referring to the same, the Court below rightly rejected the contention of the petitioner.

v) By referring to the principle laid down by the Apex Court in **P.V.Narsimha Rao**<sup>7</sup>, learned counsel would contend that Member of Parliament is a public servant under the P.C. Act.

vi) In **P.V.Narsimha Rao**<sup>7</sup>, there is a clear distinction between a public servant and a non-public servant. In fact, the respondent-ACB has also relied on the very same principle laid down by the Apex Court in **P.V.Narsimha Rao**<sup>7</sup>. By referring to the said principle, learned counsel for ACB would contend that LW1, Member of Legislative Assembly, has discharged his public duty and is a public servant while exercising his franchise in Biennial elections of MLC. Thus, LW1 being nominated MLA while exercising his franchise in

Biennial elections of Legislative Council scheduled on 01.6.2015 was discharging public duty and is a public servant.

10. The petitioner would further submit that the High Court is having power to correct error jurisdiction by invoking its power under Section 397 of Cr.P.C. and he has placed reliance on the principle laid down by the Apex Court in **Amit Kapoor v. Ramesh Chander**<sup>11</sup>. It is relevant to note that there is no dispute with regard to the said power of this Court under Section 397 of Cr.P.C. to correct error in jurisdiction.

11. Learned counsel for the petitioner by referring to the principle laid down by the Apex Court in **A.R. Antulay**<sup>9</sup> and **Chiranjilal Shrilal Goenka**<sup>10</sup> would contend that defect of jurisdiction strikes the very authority of the Court and cannot be cured even by consent or waiver of the parties. There is no dispute with regard to the said settled principle. The question is whether the trial Court committed an error in dismissing the petition filed by the petitioner herein or not?

12. Learned counsel for the petitioner would further submit that the criminal proceedings are in *personam* i.e., the criminal liability of an accused must be adjudicated based on the defence advanced by him and he cannot be penalized for the action / inaction of other accused person. In support of his contention, he has also relied upon the principle laid down by the Apex Court in **PJ Agro Tech Limited v.**

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<sup>11</sup>. (2012) 9 SCC 460

**Water Base Limited**<sup>12</sup>. It is relevant to note that in the said case, Apex court, while dealing with an issue of maintainability of a complaint under Section 138 of N.I. Act, held that the appellant company therein and its Directors cannot be made liable under Section 138 of N.I. Act for a default committed by respondent No.11 therein. Thus, the facts in the said case are totally different to the facts of the case on hand.

13. It is relevant to note that Section 12 of the P.C. Act prescribes punishment for abetment of offences defined in Sections 7 or 11 of the P.C. Act. Thus, the P.C. Act was intended to make the existing anti-corruption Law more effective by widening the coverage and strengthening the provisions of the Act. The facts in **Kishore Khanchand Wadhwani**<sup>6</sup> are different to the facts of the present case.

14. As stated above, a person offering bribe can be prosecuted only under Section 12 of the P.C. Act. Thus, by virtue of Section 12 of P.C. Act, the offering of bribe is made a substantive offence. Hence, a person offering bribe can only be prosecuted as per the said Section. It is the *mens rea* of the bribe giver that has to be considered in a case and it should be sufficient to render him liable if his object in bribing or attempting to bribe the public servant was to induce the public servant to do an official act in exercise of his official function.

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<sup>12</sup>. (2010) 12 SCC 146

15. It was further held by the Court below that it has already decided the said issue of jurisdictional fact while deciding the discharge applications filed by the other accused under Section 239 of Cr.P.C. and the said orders were confirmed by this Court in revision petitions filed by the other accused. Therefore, the Court below cannot review its own decision while dealing with the miscellaneous applications filed by other accused. According to it, there is, *prima facie*, material to frame charge under Section 12 of the P.C. Act and other Sections of IPC.

16. It is also apt to extract Section - 2 (a), (b) and (c) of the P.C. Act, which are as follows:

**“Section-2(a)** “election” means any election, by whatever means held under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority”

**“Section-2 (b)** “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest.

**Explanation.**—In this clause “State” includes 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)”

**“Section - 2(c)** “public servant” means,—

- (i) xxxxx;
- (ii) xxxxx;
- (iii) xxxxx;
- (iv) xxxxx;

(v) xxxxxx;  
 (vi) xxxxxx;  
 (vii) xxxxxx;  
 (viii) xxxxxx;

(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);

(x) xxxxx;  
 (xi) xxxxx;”

i) There is specific mention about composition of Legislative Council and voting pattern in Constitution of India.

17. In view of the above contentions, it is relevant to mention that a Three-Judge Bench of the Apex Court in **Kaushik Chatterjee v. State of Haryana**<sup>13</sup> had an occasion to deal with the jurisdiction issue including territorial jurisdiction of Criminal Courts in inquiries and trials and determination of principles and factors that need to be kept in mind, and held that the issue of jurisdiction of a Court to try an “offence” or “offender” as well as the issue of territorial jurisdiction, depend upon facts established through evidence. That if the issue is one of territorial jurisdiction, the same has to be decided with respect

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<sup>13</sup>. (2020) 10 SCC 92

to the various rules enunciated in Sections 177 to 184 of Cr.P.C. These questions may have to be raised before the Court trying the offence and such Court is bound to consider the same.

18. The Hon'ble Supreme Court considered the category of criminal cases and civil cases and also discussed the jurisdiction issue and held in paragraphs 38.1 to 38.3, which are relevant to extract hereunder.

38.1. That the issue of jurisdiction of a Court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence.

38.2. That if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in Sections 177 to 184 of the Code.

38.3 That these questions may have to be raised before the Court trying the offence and such court is bound to consider the same.

19. In view of the above said Law laid down by the Apex Court, the jurisdictional issue has to be taken by the accused during trial in a calendar case itself. The Trial Court has to decide the same with respect to various rules enunciated in Sections 177 to 184 of the Code. The trial Court is bound to consider the same.

20. In view of the authoritative law laid down by the Three-Judge Bench of the Apex Court in **Kaushik Chatterjee**<sup>13</sup>, coming to the

facts of the case on hand, as discussed above, the jurisdictional issue has to be decided by the trial Court during trial, the accused has to take the said contention/defence during the trial in C.C and the trial Court is bound to consider the same. The petitioner instead of taking the said plea of defence during trial, filed the present application to decide the said jurisdictional fact as a preliminary issue.

21. It is relevant to note that the Court below after referring to several judgments and contentions, dismissed the said application filed by the petitioner- Accused No.1 *vide* impugned order. It is a reasoned order and there is no error in it. It is relevant to note that charge sheet was filed on 07.07.2015, it was taken on file vide C.C. No.15 of 2016. The discharge petitions filed by other accused were dismissed and the said orders were confirmed by this Court in revisions filed by them. The petitioner herein filed Crl.M.P. No.804 of 2020 in December, 2020 and the same was dismissed on 29.01.2021. It is relevant to note that the Apex Court had issued directions with regard to expeditious disposal of criminal cases relate to present and former Legislators in **Ashwini Kumar Upadhyay v. Union of India**<sup>14</sup>.

22. Therefore, in view of the above said discussion, according to this Court, the petitioner herein failed to make out any case to interfere with the impugned order by this Court in exercise of its revisional jurisdiction under Sections 397 and 401 of Cr.P.C.

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<sup>14</sup>. W.P. (Civil) No.699 of 2016, dated 04.11.2020

Therefore, the present Criminal Revision Case is liable to be dismissed.

23. Accordingly, the Criminal Revision Case is dismissed.

As a sequel, miscellaneous petitions, if any, pending in the revision shall stand closed.

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**JUSTICE K. LAKSHMAN**

**Date:01.06.2021.**

**Note:** L.R. Copy to be marked  
(B/O.) Rkk