A CENTRAL BUREAU OF INVESTIGATION, BANK SECURITIES & FRAUD CELL

v.

RAMESH GELLI AND OTHERS

(Criminal Appeal Nos.1077-1081 of 2013)

B FEBRUARY 23, 2016

[PRAFULLA C. PANT AND RANJAN GOGOI, JJ.]

Prevention of Corruption Act, 1988 – s. 13(2) read with s. 13(1)(d) – Banking Regulation Act, 1949 – s. 46A – Chairman, Directors and Officers of GTB-private bank, before its amalgamation C *with the Oriental Bank of Commerce – Whether public servants for the purposes of their prosecution in respect of offences punishable under the PC Act – Held: Chairman/Managing Director and Executive Director of GTB bank are public servants for the purposes of PC Act by virtue of s. 46A of the Banking Regulation Act, 1949 –* D *In view of definition of public servant in s. 46A 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public servants, as such they cannot be excluded from definition of 'public servant' – Merely because the PC Act repealed ss. 161 to 165A IPC, it cannot be said, that the legislature had* E *intention to make s. 46A inapplicable for the purposes of PC Act – Law which is not shown ultra vires must be given proper meaning – s. 46A cannot be left meaningless and requires harmonious construction – Interpretation of statutes.*

Allowing the appeal filed by CBI and dismissing the writ F **petition filed by accused, the Court**

PER PRAFULLA C. PANT, J.

HELD: 1.1 The object of enactment of Prevention of Corruption Act, 1988, was to make the anti corruption law more effective and widen its coverage. In view of definition of public G **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'. Over the general** H **definition of 'public servant' given in Section 21 IPC, it is the**

definition of 'public servant' given in the P.C. Act 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is Section 46A of Banking Regulation Act, 1949 and merely for the reason that Sections 161 to 165A IPC have been repealed by the P.C. Act, 1988, relevance of Section 46A of Banking Regulation Act, 1949, is not lost. [Para 24] [779-B-D]

1.2 When P.C. Act, 1988 came into force, Section 46 of Banking Regulation Act, 1949 was already in place, and since the scope of P.C. Act, 1988 was to widen the definition of "public servant", as such, merely for the reason that in 1994, while clarifying the word "chairman", legislature did not substitute words "for the purposes of P.C. Act, 1988" for the expression "for the purposes of Chapter IX of the Penal Code in Section 46A of Banking Regulation Act, 1949, it cannot be said, that the legislature had intention to make Section 46A inapplicable for the purposes of P.C. Act, 1988, by which Sections 161 to 165A IPC were omitted, and the offences stood replaced by Sections 7 to 12 of P.C. Act, 1988. [Para 25] [779-E-F]

1.3 A law which is not shown *ultra vires* must be given proper meaning. Section 46-A of Banking Regulation Act, 1949, cannot be left meaningless and requires harmonious construction. As such, the Special Judge (CBI) erred in not taking cognizance of offence punishable under Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988. However, the accused cannot be said to be public servant within the meaning of Section 21 IPC, as such offence under Section 409 IPC may not get attracted, it is left open for the trial court to take cognizance of other offences punishable under the Penal Code, if the same get attracted. Therefore, the courts below erred in law in holding that accused 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 set aside. [Paras 26, 27] [779-G-H; 780-A-C]

Govt. of Andhra Pradesh and Others vs. P. Venku Reddy **2002 (2) Suppl. SCR 538: (2002) 7 SCC 631;** *Federal Bank Ltd. vs. Sagar Thomas and others* **2003 (4) Suppl.**

A SCR 121: (2003) 10 SCC 733; *State of Maharashtra & ors. vs. Brijlal Sadasukh Modanin* 2015 SCC Online SC 1403; *P.V. Narasimha Rao* vs. *State (CBI/SPE)* 1998 (2) SCR 870: (1998) 4 SCC 626; *Housing Board of Haryana* v. *Haryana Housing Board Employees' Union and others* 1995 (4) Suppl. SCR 533: (1996) 1 SCC B 95; *Manish Trivedi* v. *State of Rajasthan* 2013 (12) SCR 205: (2014) 14 SCC 420 – referred to.

PER RANJAN GOGOI, J. (SUPPLEMENTING):

1.1 The definition of public duty in Section 2(b) of the PC Act, indeed, is wide. Discharge of duties in which the State, the C public or the community at large has an interest has been brought within the ambit of the expression 'public duty'. Performance of such public duty by a person who is holding an office which requires or authorize him to perform such duty is the *sine qua non* of the definition of the public servant contained in Section 2(c)(viii) of D the PC Act. [Para 5] [781-E-F]

1.2 In the objects and reasons stated for enactment of the Prevention of Corruption Act, 1988 it has been made more than clear that the Act, *inter alia,* envisages widening of the scope of the definition of public servant, nevertheless, the mere E performance of public duties by the holder of any office cannot bring the incumbent within the meaning of the expression 'public servant' as contained in Section 2(c) of the PC Act. The broad definition of 'public duty' contained in Section 2(b) would be capable of encompassing any duty attached to any office inasmuch as in the contemporary scenario there is hardly any office whose F duties cannot, in the last resort, be traced to having a bearing on public interest or the interest of the community at large. Such a wide understanding of the definition of public servant may have the effect of obliterating all distinctions between the holder of a private office or a public office ought to be maintained. Therefore, it would be more reasonable to understand the expression "public G servant" by reference to the office and the duties performed in connection therewith to be of a public character. [Para 7] [782-A-D]

1.3 Section 46A, was amended by Act 20 of 1994 to bring within its fold a larger category of functionaries of a banking H company. Earlier, only the chairman, director and auditor had

come within the purview of the Section 46A. By virtue of Section 46A, office bearers/employees of a Banking Company (including a Private Banking Company) were "public servants" for the purposes of Chapter IX I.P.C. with the enactment of the PC Act the offences under Section 161 to 165A included in Chapter IX of Code came to be deleted from the said Chapter IX and engrafted under Sections 7 to 12 of the PC Act. With the deletion of the said provisions from Chapter IX of the I.P.C. and inclusion of the same in the PC Act there ought to have been a corresponding insertion in Section 46A of the BR Act with regard to the deeming provision therein being continued in respect of officials of a Banking Company insofar as the offences under Sections 7 to 12 of the PC Act are concerned. However, the same was not done. The Court need not speculate the reasons therefor, though, perhaps one possible reason could be the wide expanse of the definition of "public servant" as made by Section 2(c) of the PC Act. In a situation where the legislative intent behind the enactment of the PC Act was, *inter alia*, to expand the definition of "public servant", the omission to incorporate the relevant provisions of the PC Act in Section 46A of the BR Act after deletion of Sections 161 to 165A of the I.P.C. from Chapter IX can be construed to be a wholly unintended legislative omission which the Court can fill up by a process of interpretation. Though the rule of *casus omissus* i.e. "what has not been provided for in the statute cannot be supplied by the Courts" is a strict rule of interpretation there are certain well known exceptions thereto. [Paras 8, 10] [782-F-H; 783-A-E]

1.4 The enactment of the PC Act with the clear intent to widen the definition of 'public servant' cannot be allowed to have the opposite effect by expressing judicial helplessness to rectify or fill up what is a clear omission in Section 46A. The omission to continue to extend the deeming provisions in Section 46A to the offences under Sections 7 to 12 of the PC Act must be understood to be clearly unintended and hence capable of admitting a judicial exercise to fill up the same. The unequivocal legislative intent to widen the definition of "public servant" by enacting the PC Act cannot be allowed to be defeated by interpreting and understanding the omission in Section 46A of the BR Act to be incapable of being filled up by the court. [Para 13] [786-C-D]

A *P. V. Narasimha Rao* vs. *State (CBI/SPE)* **1998 (2) SCR 870:(1998) 4 SCC 626;** *Bangalore Water Supply & Sewerage Board Vs. A Rajappa and Others* **1978 (3) SCR 207:(1978) 2 SCC 213;** *Dadi Jagannadham Vs. Jammulu Ramulu and others* **2001 (2) Suppl. SCR 60:(2001) 7 SCC 71 – referred to.**

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McMillan Vs. Guest **(1942) AC 561;** *Seaford Court Estates Ltd. Vs. Asher* **(1949) 2 AllER 155;** *Magor & St. Mellons Rural District Council Vs. Newport Corporation* **(1950) 2 AllER 1226 – referred to.**

C **Case Law Reference**

In the judgment of Prafulla C. Pant, J.

2002 (2) Suppl. SCR 538	**referred to.**	**Para 10**
2003 (4) Suppl. SCR 121	**referred to.**	**Para 10**
D **2015 SCC Online SC 1403**	**referred to.**	**Para 19**
1998 (2) SCR 870	**referred to.**	**Para 20**
1995 (4) Suppl. SCR 533	**referred to.**	**Para 21**
2013 (12) SCR 205	**referred to.**	**Para 22**

E

In the judgment of Ranjan Gogoi, J.

1998 (2) SCR 870	**referred to**	**Para 6**
1978 (3) SCR 207	**referred to**	**Para 11**
F **2001 (2) Suppl. SCR 60**	**referred to**	**Para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1077-1081 of 2013

From the Judgment and Order dated 13.07.2009 of the High Court G of Judicature at Mumbai in Criminal Revision Application No. 131 of 2007 with Criminal Writ Petition No. 2400 of 2008 to 2403 of 2008

WITH

W. P. (CRL.) NO. 167 OF 2015

H Tushar Mehta, ASG, Rana Mukherjee, Mohan Parasaran, Siddharth

Luthra, Ranjana Narayan, T. A. Khan, B. V. Balram Das, Arvind Kumar Sharma, G. Umapathy, R. Mekhala, Rakesh K. Sharma, Bina Gupta, Viraj Gandhi, Sameer Chaudhary, Purnima Raj, Abhisaar Bairagi, Pallav Palit, (for M/s. Khaitan & Co.) for the appearing parties.

The Judgments of the Court were delivered by

PRAFULLA C. PANT, J. 1. Appellant Central Bureau of Investigation (C.B.I) has challenged the judgment and order dated 13.07.2009, passed by the High Court of Judicature at Bombay whereby Criminal Revision Application No. 131 of 2007 (filed by CBI) has been dismissed, and Criminal Writ Petition Nos. 2400, 2401, 2402 and 2403 of 2008, filed by the accused/respondent are allowed in part, and upheld the order dated 05.02.2007 passed by the trial court i.e. Special Judge/ Additional Sessions Judge, Mumbai. The courts below have held that cognizance cannot be taken against the accused namely Ramesh Gelli Chairman and Managing Director, and Sridhar Subasri, Executive Director of Global Trust Bank, on the ground that they are not public servants.

2. Writ Petition (Criminal) No. 167 of 2015 has been filed before this Court by accused Ramesh Gelli praying quashing of charge sheet filed by CBI in connection with FIR No. RC BD.1/ 2005/E/0003 dated 31.03.2005 relating to offences punishable under Section 120B read with Sections 420, 467, 468, 471 of Indian Penal Code (IPC) and offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short "the P.C. Act, 1988"), pending before Special Judge, CBI, Patiala House Courts, New Delhi.

3. Briefly stated prosecution case is that the Global Trust Bank (hereinafter referred as "GTB") was incorporated on 29.10.1993 as banking company under Companies Act, 1956. Said Bank was issued licence dated 06.09.1994 under Banking Regulation Act, 1949 by Reserve Bank of India (for short "RBI"). Ramesh Gelli (writ petitioner before this Court) was Chairman and Managing Director, and Sridhar Subasri (writ petitioner before the High Court) was Executive Director of the Bank. The two were also promoters of GTB. For raising their contribution to the capital, the two accused (Ramesh Gelli and Sridhar Subasri) obtained loans from various individuals and companies, including M/s. Beautiful Group of Companies of accused Rajesh Mehta and Vijay Mehta, and M/s. Trinity Technomics Services Pvt. Ltd., of which accused Vijay Mehta and his employees were directors. M/s. Beautiful Group

A of Companies opened their first account in the name of Beautiful Diamonds Ltd. with G.T.B. in the year 1994-95. Investigation revealed that various credit facilities were allowed to said company by Ramesh Gelli and Sridhar Subasri, and they fraudulently instructed the branch heads, without following norms for sanctioning the credit facilities. The
B duo (Ramesh Gelli and Sridhar Subasri), abusing their official positions, sanctioned higher credit limits to M/s. Beautiful Diamonds Ltd. against regulations. According to CBI, the investigation further revealed that in pursuance to the alleged conspiracy of the accused the funds of GTB were diverted, and release of Rs.5.00 crores was made in the name of M/s. Beautiful Realtors Ltd. on the request of Directors of M/s. Beautiful
C Diamonds Ltd. Said amount was further transferred to already overdrawn account of M/s. Beautiful Diamonds Ltd. In April, 2001, Directors of Beautiful Group of Companies in pursuance of conspiracy with other accused submitted another application for sanction of Rs.3.00 crores as diamond loan in the name of M/s. Crystal Gems. Ramesh Gelli, Sridhar
D Subasri and other accused, who were Directors of Beautiful Group of Companies, said to have caused total wrongful loss of about Rs.41.00 crores to GTB. The accounts of Beautiful Diamonds Ltd. and other companies, which availed funds from GTB, should have been declared Non Performing Assets (NPA), but accused Ramesh Gelli and Sridhar Subasri allegedly manipulated and showed the accounts of Beautiful
E Realtors Ltd. and Crystal Gems as higher profit yielding accounts. The scam did not come to the light till 2005.

4. On 14.08.2004 GTB merged/amalgamated with Oriental Bank of Commerce (for brevity "OBC"). An FIR dated 31.03.2005 in respect of offences punishable under Sections 420, 467, 468, 471 IPC and under
F Section 13(2) read with Section 13(1)(d) of the P.C. Act of 1988 was registered by C.B.I on the complaint made by the Chief Vigilance Officer, OBC, wherein the allegations were made that Ramesh Gelli and others, including Directors of M/s. World Tex Limited (for short "WTL") entered into a criminal conspiracy to cheat GTB causing wrongful loss to the
G tune of Rs.17.46 crores, and thereby earned corresponding wrongful gain. After investigation, charge sheet was filed in said matter before the Special Judge, CBI, Patiala House Courts, New Delhi.

5. Another First Information Report No. RC.12(E)/2005 / CBI/ BS & FC/Mumbai was registered by C.B.I. on 09.08.2005 for offences punishable under Section 120B read with Sections 409 and 420 IPC,
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initially against two employees of GTB and two private persons Rajesh Mehta and Prashant Mehta on the complaint dated 26.07.2005 lodged by the Chief Vigilance Officer, OBC. It is relevant to mention here that GTB was a private sector bank, before its amalgamation in August 2004 with OBC, a public sector bank. In the FIR No. RC 12E/2005/CBI/B.S & FC/Mumbai Dt. 09.08.2005, it was alleged that GTB sanctioned and disbursed loans by throwing all prudent banking norms to winds and thus created a large quantum of Non Performing Assets (NPA) jeopardizing the interests of thousands of depositors, but painted a rosy financial picture. These loan transactions came to the light during audit after amalgamation of GTB with OBC, and it was noted that two accounts, namely that of M/s. Beautiful Diamonds Ltd. and M/s. Crystal Gems were used to siphon out funds of the Bank. After investigation, charge sheets were filed in this matter before Special Judge, Mumbai in respect of offences punishable under Section 120B read with Sections 409 and 420 IPC and under Section 13(2) read with Section 13(1)(d) of the P.C. Act, 1988. However, on 05.02.2007 the Special Judge, Mumbai declined to take cognizance of offence punishable under Section 13(2) read with S.3(1)(d) P.C Act, 1988, on the ground that accused No. 1 Ramesh Gelli and accused No. 2 Sridhar Subasri were not public servants on the dates transactions said to have taken place, i.e. before amalgamation, and the Special Judge directed that the charge sheet may be returned for being submitted to appropriate Metropolitan Magistrate for taking cognizance in respect of offences punishable under IPC, i.e. for offence other than punishable under the P.C. Act, 1988.

6. Since the High Court of Judicature at Bombay has upheld the order dated 05.02.2007 by the impugned order, the CBI has approached this Court through Special Leave. Further, since W.P.(Crl.) No. 167/ 2015 filed by accused Ramesh Gelli also involves similar question of law in the case at Delhi, as such both the connected matters are being disposed of by this common order.

7. The common question of law involved in these criminal appeals and connected writ petition, filed before us, is:

> Whether the Chairman, Directors and Officers of Global Trust Bank Ltd. (a private bank before its amalgamation with the Oriental Bank of Commerce), can be said to be public servants for the purposes of their prosecution in respect of offences punishable under Prevention of Corruption Act, 1988 or not ?

A 8. It is admitted fact that GTB was a private sector bank operating under banking licence dated 06.09.1994, issued by RBI under Banking Regulation Act, 1949. It is also not disputed that on 14.08.2004 GTB merged/amalgamated with OBC. The transactions of alleged fraud, cheating, misappropriation and corruption relate to the period between 1994 to 2001, i.e. prior to amalgamation with public sector bank (OBC). B The dispute relates as to whether the then Chairman-cum-Managing Director and Executive Director of GTB come under definition of 'public servant' or not, for the purposes of the P.C. Act, 1988.

9. It is vehemently argued by Shri Mohan Parasaran and Shri Sidharth Luthra, senior advocates appearing for the accused that the C accused are not public servants, and cognizance cannot be taken against the writ petitioner Ramesh Gelli and accused/respondent Sridhar Subasri, who were said to be the Chairman-cum-Managing Director and Executive Director respectively of GTB before its amalgamation. It is further argued that a person cannot be said to have been performing a public duty D unless he holds some public office, and in this connection it is submitted that the accused did not hold any public office during the period offences said to have been committed. It is also contended that since Sections 161 to 165A in Chapter IX of IPC are repealed by Section 31 of P.C. Act, 1988, Section 46A of Banking Regulation Act, 1949 is of little help to the prosecution. Mr. Luthra, learned senior counsel, further submitted E that the relationship between the customer of a bank, and the bank is that of a creditor and debtor, and the transactions between the two are commercial in nature, as such, no public duty is involved.

10. On the other hand, Shri Tushar Mehta, learned senior counsel for CBI argued that accused Ramesh Gelli and Sridhar Subasri were F public servants in view of definition contained in Section 2(c) of P.C. Act, 1988. Our attention is also drawn to Section 46A of Banking Regulation Act, 1949, which provides that a whole time Chairman, Managing Director, or Director of a banking company shall be deemed to be a public servant. It is also contended that a banking company as G defined under Section 5(b) read with Section 35(A) of Banking Regulation Act, 1949 is nothing but extended arm of Reserve Bank of India. In support of arguments advanced on behalf of CBI, reliance is placed on the principle of law laid down by this Court in **Govt. of Andhra Pradesh and Others** vs. **P.Venku Reddy**[1]. Lastly, it is submitted that a private body discharging public duty or positive obligation of public nature actually

H [1] (2002) 7 SCC 631)

performs public function. In this connection, reference was made to the observations made by this court in paragraph 18, in **Federal Bank Ltd.** vs. **Sagar Thomas and others**[2]. A

11. We have considered the arguments and the counter arguments and also gone through the relevant case laws on the issue.

12. Before further discussion it is just and proper to examine the object for which the Prevention of Corruption Act, 1988 was enacted by the Parliament. The Statement of Objects and Reasons of the Bill is reproduced below: - B

> "1. The bill is intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions. C
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> 2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanan Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants. D E
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> 3. The bill, *inter alia*, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under sections 161 to 165A 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 or interlocutory orders have also been included. F G
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> 4. Since the provisions of section 161A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the Indian Penal Code. Consequently, it is proposed to delete those sections with the necessary saving provision.

[2] (2003) 10 SCC 733 H

A 5. The notes on clauses explain in detail the provisions of the Bill."

(Emphasis supplied)

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 B 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 C Prevention of Corruption Act, 1947 and also omitted Section 161 to 165A of I.P.C as provided under Sections 30 and 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.

D 13. 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;

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(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

F 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

G 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

H 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; A

(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; B C

(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; D

(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; E

(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. F

Explanation 1.-Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not. G

Explanation 2.-Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

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A 14. 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 B Banking Regulation Act, 1949, held/holds an office and performed / performs public duty so as to attract the definition of 'public servant' quoted above.

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

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

16. But, what is most relevant for the purpose of this case is Section 46A of Banking Regulation Act, 1949, which reads as under: -

D **"46A. Chairman, director etc., to be public servants for the purposes of Chapter IX of the Indian Penal Code.** – Every chairman who is appointed on a whole-time basis, managing director, director, auditor, liquidator, manager and any other employee of a banking company shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code E (45 of 1860)."

(Emphasis supplied)

17. Section 46A was inserted in Banking Regulation Act, 1949 by Act No. 95/56 with effect from 14.01.1957. The expression "every chairman who is appointed on a whole time basis, managing director, F director, auditor" was substituted by Act No. 20/94 with effect from 31.01.1994 in place of "every chairman, director, auditor". As such managing director of a banking company is also deemed to be a public servant. In the present case transactions in question relate to the period subsequent to 31.01.1994.

G 18. In ***Federal Bank Ltd.*** **v.** ***Sagar Thomas and others*** (supra) this Court has held that a private company carrying banking business as a scheduled bank cannot be termed as a company carrying any statutory or public duty. However, in said case the Court was examining as to whether writ can be issued under Article 226 of the Constitution of India against a scheduled bank or not. There was no issue before the Court H

relating to deeming fiction contained in Section 46A of Banking Regulation Act, 1949 in respect of a chairman/managing director or director of a banking company against whom a crime relating to anti-corruption was registered. A

19. In a recent case of ***State of Maharashtra & ors.*** **v.** ***Brijlal Sadasukh Modani***[3], this Court has observed as under: - B

> "**21.** As we notice, the High Court has really been swayed by the concept of Article 12 of the Constitution, the provisions contained in the 1949 Act and in a mercurial manner taking note of the fact that the multi-state society is not controlled or aided by the Government has arrived at the conclusion. In our considered opinion, even any grant or any aid at the time of establishment of the society or in any construction or in any structural concept or any aspect would be an aid. We are inclined to think so as the term 'aid' has not been defined. A sprinkle of aid to the society will also bring an employee within the definition of 'public servant'. The concept in entirety has to be observed in the backdrop of corruption....." C D

20. In ***P.V. Narasimha Rao*** **vs.** ***State (CBI/SPE)***[4], this Court has explained the word "office" in 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 AC 561) Lord Wright has said: E
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> > "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: F
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> > > 'A position or place to which certain duties are attached, especially one of a more or less public character.' "
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> In the same case Lord Atkin gave the following meaning:
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> > "... 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." G

[3] 2015 SCC Online SC 1403
[4] (1998) 4 SCC 626 H

A 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."

B 21. Attention of this court is drawn on behalf of the accused to the case of ***Housing Board of Haryana* v. *Haryana Housing Board Employees' Union and others***[5], wherein this Court has held that when particular words pertaining to a class of genus are followed by general words, the latter, namely, the general words are construed as limited to the things of the same kind as those specified, and this is known as the C rule of ejusdem generis reflecting an attempt to reconcile incompatibility between the specified and general words. This case is of little help to the accused in the present case as managing director and director are specifically mentioned in Section 46A of Banking Regulation Act, 1949.

D 22. In ***Manish Trivedi* v. *State of Rajasthan***[6], 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 E 21 of the Penal Code, 1860 and the same reads as follows:
>
> "**87.** ***Members, etc. to be deemed 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 F 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 G 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

[5] (1996) 1 SCC 95

H [6] (2014) 14 SCC 420

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 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

A 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 B 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" C 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 D 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."

(Emphasis supplied)

E 23. At the end it is relevant to mention that in the case of **Govt. of A.P. and others** v. **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 F 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 G 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 H

servant", therefore, deserves a wide construction. (See *State of M.P.* v. *Shri Ram Singh* (2000) 5 SCC 88)" A

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 B 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 C 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 D lost.

25. Be it noted that when Prevention of Corruption Act, 1988 came into force, Section 46 of Banking Regulation Act, 1949 was already in place, and since the scope of P.C. Act, 1988 was to widen the definition of "public servant". As such, merely for the reason that in 1994, while E clarifying the word "chairman", legislature did not substitute words "for the purposes of Prevention of Corruption Act, 1988" for the expression "for the purposes of Chapter IX of the Indian Penal Code (45 of 1860)" in Section 46A of Banking Regulation Act, 1949, it cannot be said, that the legislature had intention to make Section 46A inapplicable for the purposes of P.C. Act, 1988, by which Sections 161 to 165A of IPC were F omitted, and the offences stood replaced by Sections 7 to 13 of P.C. Act, 1988.

26. A law which is not shown ultravires must be given proper meaning. Section 46-A of Banking Regulation Act, 1949, cannot be left meaningless and requires harmonious construction. As such in our opinion, G the Special Judge (CBI) has erred in not taking cognizance of offence punishable under Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988. However, we may make it clear that in the present case the accused cannot be said to be public servant within the meaning of Section 21 IPC, as such offence under Section 409 IPC may not get H

A attracted, we leave it open for the trial court to take cognizance of other offences punishable under Indian Penal Code, if the same get attracted.

27. 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
B 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
C 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.

D **PER RANJAN GOGOI, J.** 1. I have had the privilege of going through the judgment of my learned brother Prafulla C. Pant, J. Though I am in full agreement with the conclusions reached by my learned brother, I would like to give my own reasons for the same.

2. The question arising has to be answered firstly within the four
E corners of the definition of "public servant" as contained in Section 2(c) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act'), particularly, those contained in Section 2(c)(viii), which is extracted below.

2. *"Definitions.-In this Act, unless the context otherwise*
F *requires,-*

*(c) "**Public Servant**" means,-*

(i) xxxx xxxxx

(ii) xxxx xxxxx

(iii) xxxx xxxxx

G *(iv) xxxx xxxxx*

(v) xxxx xxxxx

(vi) xxxx xxxxx

(vii) xxxxxxxxx

(viii) any person who holds an office by virtue of which he is
H *authorized or required to perform any public duty;"*

(ix) xxxx xxxxx

(x) xxxx xxxxx

(xi) xxxx xxxxx

(xii) xxxxxxxxx"

3. While understanding the true purport and effect of the aforesaid provision of the PC Act, the meaning of the expression "office" appearing therein as well as "public duty" which is defined by Section 2(b) has also to be understood.

4. A reference to Section 2(b) of the PC Act which defines "public duty" may at this stage be appropriate to be made.

> *"2.(b) "**public duty**" means a duty in 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);"*

5. The definition of public duty in Section 2(b) of the PC Act, indeed, is wide. Discharge of duties in which the State, the public or the community at large has an interest has been brought within the ambit of the expression 'public duty'. Performance of such public duty by a person who is holding an office which requires or authorize him to perform such duty is the *sine qua non* of the definition of the public servant contained in Section 2(c)(viii) of the PC Act. The expressions 'office' and 'public duty' appearing in the relevant part of the PC Act would therefore require a close understanding.

6. In ***P. V. Narasimha Rao*** Vs. ***State (CBI/SPE)***[1] the meaning of the expression 'office' appearing in the relevant provision of the PC Act has been understood as "a position or place to which certain duties are attached specially one of a more or less public character." Following the views expressed by Lord Atkin in ***McMillan*** Vs. ***Guest***[2], this Court had approved the meaning of the expression 'office' to be referable to a position which has existence independent of the person who fills up the same and which is required to be filled up in succession by successive holders.

[1] (1998) 4 SCC 626
[2] (1942) AC 561

A 7. While there can be no manner of doubt that in the Objects and Reasons stated for enactment of the Prevention of Corruption Act, 1988 it has been made more than clear that the Act, *inter alia,* envisages widening of the scope of the definition of public servant, nevertheless, the mere performance of public duties by the holder of any office cannot bring the incumbent within the meaning of the expression 'public servant' as contained in Section 2(c) of the PC Act. The broad definition of 'public duty' contained in Section 2(b) would be capable of encompassing any duty attached to any office inasmuch as in the contemporary scenario there is hardly any office whose duties cannot, in the last resort, be traced to having a bearing on public interest or the interest of the community at large. Such a wide understanding of the definition of public servant may have the effect of obliterating all distinctions between the holder of a private office or a public office which, in my considered view, ought to be maintained. Therefore, according to me, it would be more reasonable to understand the expression "public servant" by reference to the office and the duties performed in connection therewith to be of a public character.

8. Coming to the next limb of the case, namely, the applicability of the provisions of Section 46A of the Banking Regulation Act, 1949 (hereinafter referred to as the 'BR Act') what is to be found is that a chairman appointed on a whole time basis, managing director, director, auditor, liquidator, manager and any other employee of a banking company is deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code. Section 46A, was amended by Act 20 of 1994 to bring within its fold a larger category of functionaries of a banking company. Earlier, only the chairman, director and auditor had come within the purview of the aforesaid Section 46A.

9. Sections 161 to 165A contained in Chapter IX of the Indian Penal Code have been repealed by Section 31 of the Prevention of Corruption Act, 1947 and the said offences have been engrafted in Sections 7, 8, 9, 10, 11 and 12 of the Prevention of Corruption Act, 1988. Section 166(as originally enacted), Section 167 (with amendment), Sections 168, 169, 170 and 171 (as originally enacted) continue to remain in Chapter IX of the Indian Penal Code even after enactment of the Prevention of Corruption Act, 1988.

10. By virtue of Section 46A of the BR Act office bearers/ employees of a Banking Company (including a Private Banking

Company) were "public servants" for the purposes of Chapter IX of the I.P.C. with the enactment of the PC Act the offences under Section 161 to 165A included in Chapter IX of Code came to be deleted from the said Chapter IX and engrafted under Sections 7 to 12 of the PC Act. With the deletion of the aforesaid provisions from Chapter IX of the I.P.C. and inclusion of the same in the PC Act there ought to have been a corresponding insertion in Section 46A of the BR Act with regard to the deeming provision therein being continued in respect of officials of a Banking Company insofar as the offences under Sections 7 to 12 of the PC Act are concerned. However, the same was not done. The Court need not speculate the reasons therefor, though, perhaps one possible reason could be the wide expanse of the definition of "public servant" as made by Section 2(c) of the PC Act. Be that as it may, in a situation where the legislative intent behind the enactment of the PC Act was, *inter alia*, to expand the definition of "public servant", the omission to incorporate the relevant provisions of the PC Act in Section 46A of the BR Act after deletion of Sections 161 to 165A of the I.P.C. from Chapter IX can be construed to be a wholly unintended legislative omission which the Court can fill up by a process of interpretation. Though the rule of *casus omissus* i.e. "what has not been provided for in the statute cannot be supplied by the Courts" is a strict rule of interpretation there are certain well known exceptions thereto. The following opinion of Lord Denning in ***Seaford Court Estates Ltd. Vs. Asher***[3] noticed and approved by this Court may be taken note of.

> *"The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were ....He (The Judge) must set to work in the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature.....A judge should ask himself the question, how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."*

[3] (1949) 2AllER 155 at page 164

A In ***Magor & St. Mellons Rural District Council Vs. Newport Corporation***[4] the learned judge restated the above principles in a somewhat different form to the following effect :

> *"We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in*
> B *the gaps and making sense of the enactment than by opening it up to destructive analysis."*

11. Though the above observations of Lord Denning had invited sharp criticism in his own country we find reference to the same and implicit approval thereof in the judicial quest to define the expression
C "industry" in ***Bangalore Water Supply & Sewerage Board Vs. A Rajappa and Others***[5]. Paragraphs 147 and 148 of the opinion of Chief Justice M.H. Beg in ***Bangalore Water Supply & Sewerage Board*** (supra), which are quoted below, would clearly indicate the acceptance of this Court referred to earlier.

D "*147. My learned Brother has relied on what was considered in England a somewhat unorthodox method of construction in Seaford Court Estates Ltd. v. Asher [(1949 2 ALL ER 155, 164], where Lord Denning, L.J., said :*

> *When a defect appears a Judge cannot simply fold his hands*
> E *and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament — and then he must supplement the written words so as to give 'force and life' to the intention of legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of*
> F *it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.*

> *When this case went up to the House of Lords it appears that*
> G *the Law Lords disapproved of the bold effort of Lord Denning to make ambiguous legislation more comprehensible.* ***Lord Simonds*** *found it to be "a naked usurpation of the legislative function under the thin disguise of interpretation".* ***Lord***

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[4] (1950) 2 AllER 1226

H [5] (1978) 2 SCC 213

> ***Morton*** *(with whom* ***Lord Goddard*** *entirely agreed) observed: "These heroics are out of place" and* ***Lord Tucker*** *said "Your Lordships would be acting in a legislative rather than a judicial capacity if the view put forward by Denning, L.J., were to prevail."*
>
> *148. Perhaps, with the passage of time, what may be described as the extension of a method resembling the "arm-chair rule" in the construction of wills. Judges can more frankly step into the shoes of the legislature where an enactment leaves its own intentions in much too nebulous or uncertain a state. In M. Pentiah v. Muddala Veeramallappa [(1961) 2 SCR 295], Sarkar, J., approved of the reasoning, set out above, adopted by Lord Denning. And, I must say that, in a case where the definition of "industry" is left in the state in which we find it, the situation perhaps calls for some judicial heroics to cope with the difficulties raised.* (Underlining is mine)

12. There are other judicial precedents for the view that I have preferred to take and reach the same eventual conclusion that my learned brother Prafulla C. Pant, J. has reached. I would like to refer to only one of them specifically, namely, the decision of a Constitution Bench of this Court in ***Dadi Jagannadham Vs. Jammulu Ramulu and others***[6].

Order XXI Rule 89 read with Rule 92(2) of the CPC provided for filing of an application to set aside a sale. Such an application was required to be made after deposit of the amounts specified within 30 days from the date of the sale. While the said provision did not undergo any amendment, Article 127 of the Limitation Act, 1963 providing a time limit of 30 days for filing of the application to set aside the sale was amended and the time was extended from 30 days to 60 days. Taking note of the objects and reasons for the amendment of the Limitation Act, namely, that the period needed to be enlarged from 30 to 60 days as the period of 30 days was considered to be too short, a Constitution Bench of this Court in ***Dadi Jagannadham*** (supra) harmonised the situation by understanding Order XXI rule 89 to be casting an obligation on the Court to set aside the sale if the application for setting aside along with deposit is made within 30 days. However, if such an application along with the deposit is made after 30 days but before the period of 60 days as contemplated by Article 127 of the Limitation Act, 1963, (as

[6] (2001) 7 SCC 71

A amended) the Court would still have the discretion to set aside the same. The period of 30 days in Order 21 Rule 89/92(2) CPC referred to hereinabove was subsequently (by Act 22 of 2002) amended to 60 days also.

13. Turing to the case in hand there can be no dispute that before
B enactment of the PC Act, Section 46A of the BR Act had the effect of treating the concerned employees/office bearers of a Banking Company as public servants for the purposes of Chapter IX of the IPC by virtue of the deeming provision contained therein. The enactment of the PC Act with the clear intent to widen the definition of 'public servant' cannot be allowed to have the opposite effect by expressing judicial helplessness
C to rectify or fill up what is a clear omission in Section 46A of the BR Act. The omission to continue to extend the deeming provisions in Section 46A of the BR Act to the offences under Sections 7 to 12 of the PC Act must be understood to be clearly unintended and hence capable of admitting a judicial exercise to fill up the same. The unequivocal
D legislative intent to widen the definition of "public servant" by enacting the PC Act cannot be allowed to be defeated by interpreting and understanding the omission in Section 46A of the BR Act to be incapable of being filled up by the court.

14. In the above view of the matter, I also arrive at the same
E conclusion as my learned Brother Prafulla C. Pant, J. has reached, namely, that the accused respondents are public servants for the purpose of the PC Act by virtue of the provisions of Section 46A of the Banking Regulation Act, 1949 and the prosecutions launched against the accused respondents are maintainable in law. Consequently, the criminal appeals filed by the C.B.I. are allowed and Writ Petition (Criminal) No. 167 of
F 2015 is dismissed.

Nidhi Jain Appeal partly allowed.