

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

*CRM(M) No. 464/2023*

*CrIM No. 1105/2023*

Reserved on: **14.09.2023**

Pronounced on: **25.09.2023**

1. **Sheikh Abdul Majeed**  
**S/o Late Ghula Ahmad Sheikh Mohammad**  
**R/O Tangpora Bypass Arifeen Colony Srinagar.**

2. **Tajamul Hassan Shah**  
**S/o Late Ghulam Hassan Shah**  
**R/O Dahar Mona Soibugh Budgam.**

...Petitioner(s)

Through: Mr. Syed Faisal Qadri, Sr. Advocate with  
Mr. Salih Pirzada, Advocate.

Vs.

1. **Union Territory of J&K Through**  
**Senior Superintendent of Police,**  
**Police Station Anti Corruption Bureau**  
**Srinagar**

...Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG with  
Mr. Furqan Yaqub Sofi, GA.

**CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**JUDGMENT**

**1.** The instant petition has been filed under the provisions of Section 482 CrPC, seeking quashment of FIR No.16/2023 (for short 'the impugned order') dated 18.08.2023, registered with Police Station Anti Corruption Bureau Srinagar under Section 7 and 7A of the Prevention of Corruption Act 1988 (for short 'the Act'), and accordingly, petitioners are invoking the jurisdiction vested in this Court under Section 482 CrPC primarily on the ground that the impugned FIR has been registered by the respondents without

having jurisdiction and therefore it amounts to an abuse of the process of law.

**FACTS OF THE CASE:**

- 2.** Briefly stated facts of the instant case are that the petitioner No.1 is the sole proprietor of the proprietorship concern under the name and style “Sheikh Suppliers and Contractors” located at Chandpora Budgam, which Firm is registered with the Jammu and Kashmir Works Department. As such, the said petitioner No.1 is a private individual and is not a ‘public servant’ as provided under Section 2(c) of the Prevention of Corruption Act 1988. So far as petitioner No.2 is concerned, he is the employee of petitioner No.1 and works as Office Boy in the said Firm, as such, petitioner No.2 also does not fall within the definition of ‘public servant’ as prescribed under Section 2(c) of the Act mentioned supra.
- 3.** Petitioner No.1, in order to run and operate his business, constructed a Godown over his proprietary land situated at Chandpora Budgam in the year 2012, and as per the petitioner the said Godown was taken over by Food Corporation of India in the year 2013 pursuant to an agreement (lease) entered into by and between the petitioner no.1 and the Food Corporation of India. This agreement of the petitioner No.1 with Food Corporation of India, as according to the petitioner, was in his capacity as a private individual. Consequently, in terms of the said agreement, petitioner No.1 became lessor of the Godown(supra) and the Corporation became the lessee, and accordingly, the Godown became operational.
- 4.** That, on 18.08.2023, the officials of the respondent- Corporation entered into the premises (Godown), mentioned *supra* on the basis of

some complaint made by one person namely Altaf Hamza Mir, who approached the Police Station ACB, Srinagar with a written complaint, wherein, he had stated that he is a driver by profession and on the directions of the owner of the vehicle he reached FCI Godown Chandpora Budgam with a load of rice of FCI from Gurdaspur Punjab, and, accordingly, the vehicle reached the FCI Godown at Chandpora Budgam and the available FCI staff was requested to get the vehicle unloaded, who however, avoided on one or the other pretext. Lastly, he was told to meet the owner of the Godown Abdul Majeed Sheikh and weigher Tajamul Hassan Shah to pay them the bribe of Rs.3500/- for getting the FCI food-grains unloaded from the vehicle.

- 5.** Based on the above mentioned complaint, FIR No. 16/2023 under Section 7 and 7A of Prevention of Corruption Act 1988 came to be registered with Police Station ACB Srinagar. From the perusal of said FIR, it transpires that there were allegations against the petitioner No.1 for demanding bribe and consequently trap proceedings were initiated, and accordingly, the tainted money was recovered on the basis of trap proceedings.
- 6.** Pursuant to the aforementioned proceedings, the petitioners came to be arrested on 18.08.2023, and upon their arrest, the petitioners applied for regular bail before the court of Special Judge Anti Corruption Kashmir Srinagar, and, accordingly, vide order dated 28.08.2023 passed by Special Judge Anti Corruption Kashmir Srinagar, bail was granted in favour of the petitioners upto 04.09.2023, subject to certain conditions.

7. The petitioners are aggrieved of the institution of impugned FIR mainly on the ground that the entire proceedings from lodgement of complaint, initiation of trap proceedings and registration of FIR, are beyond any authority and jurisdiction of the respondent i.e., Anti Corruption Bureau, Srinagar.

**ARGUMENTS ON BEHALF OF PETITIONERS:**

8. Learned Senior Counsel, Faisal Qadri appearing for petitioners has submitted that for invoking any provision of Prevention of Corruption Act, 1988, the essential condition for that is that there has to be “public servant”, against whom the Act would be applied. Since the petitioners are neither the public servants nor would fall under any of the category of discharging any functions as Public authority, accordingly, under no circumstances, the petitioners can be brought within the ambit of the Act of 1988.

9. Further stand of the petitioners is that the respondent has assumed jurisdiction in respect of the allegations made by a private individual against another private individual which at the most could have been brought within the ambit of substantive law other than Prevention of Corruption Act, that too if the allegations were disclosing the commission of any offence. According to the petitioners, the offence as contemplated under the Prevention of Corruption Act, 1988, for all practical purposes would mean an offence that is described and explained in the Act of 1988. Even otherwise invocation of the provisions of Section 7 of the Prevention of Corruption Act was completely beyond the scope of the alleged complaint against the petitioners. Section 7 falls under the Chapter III of the Act and deals with “offence relating to public servant being bribed”.

10. Learned counsel appearing on behalf of the petitioners Mr.S.F.Qadri, Senior Advocate has referred to the statutory provisions of the Prevention of Corruption Act, 1988 with particular reference of Section 7 of the Act. He has submitted that from a bare reading of the aforesaid statutory provisions, it would be clear in unambiguous terms that the said Section deals with the “public servant” alone. He further submits that the respondent by registering the FIR under Section 7 of the Act against the private individuals (petitioners herein) has therefore, not only abused the process of law but has also resulted in depriving the liberty of the petitioners which otherwise could not have been curtailed except in accordance with law.

11. The specific case which has been advanced by learned counsel for the petitioner is that the contents of the impugned FIR would make it clear that no case whatsoever under Section 7 of the Act could have been registered by the respondent against the petitioners and consequently Section 7-A of the Act also could not have been pressed into service against the petitioners for want of *sine quo non* i.e., involvement of public servant in the alleged offence. Accordingly, he submits that FIR deserves quashment.

12. The foundation of the petitioners in the instant petition is that the allegations levelled in the complaint, even if it is taken on the face value, would not justify the registration of the impugned FIR followed by the arrest of the petitioners since both the petitioners does not fall within the realm of “**public servant**’ as defined in the Act.

**13.** Thus, according to learned counsel for the petitioners, the respondent has misused its authority by registering the impugned FIR and consequently, the arrest of the petitioner is sheer abuse of process of law, whereby the liberty of the petitioners have been deprived.

**14.** Furthermore, learned counsel for the petitioners submits that the petitioners do not fall within the ambit of Section 2 of the Act and more particularly Section 2(c) of the defined clause. In absence of Section 2 of the Act being attracted in the instant case, the entire proceedings right from the very inception suffers from illegality and needs to be set at naught. Learned counsel further submits that continuation of proceedings in the light of the peculiar facts and circumstances mentioned *supra* by virtue of impugned FIR would amount to abuse of the process of law and this is a fit case where this Court can exercise inherent powers conferred under Section 482 CrPC to quash the impugned FIR being illegal and beyond jurisdiction of the respondent.

**15.** Learned counsel for the petitioners with a view to substantiate their claim has referred to the lease agreement executed between petitioner No.1 and Food Corporation of India dated 26.03.2014, a perusal whereof reveals that the petitioner No.1 became lessor of the Godown and consequently Food Corporation of India became lessee and the lease agreement would indicate that it was a “private participation Godown” constructed by petitioner No.1, which the FCI took over its use and occupation.

**16.** Learned counsel further submits that pursuant thereto another Model Agreement was executed between the petitioners and the FCI

and perusal of Clause 2.2 of the Model Agreement reveals that the goods will be tendered for storage by an authorized representative of FCI who will fill up and sign the form for deposit and other formalities. He further refers to Clause 2.4 of the 'Receipt & Weighment In Warehouse', whereby the stocks at the warehouse would be received and issued on 100% weighment basis on the lorry weighbridge available in the warehouse. In warehouses, it is the responsibility of Warehouse Service Provider to provide weighment facility at its own cost.

17. Learned counsel further referred to Clause-3 of Model Agreement and submitted that it is apparently clear from the perusal of clause 3.1 that the stocks stored on account of FCI shall be subject to monthly/periodical joint inspection report by Warehouse Service Provider and FCI. Clause-3.2 of the aforementioned agreement further stipulates that loss and gain statement will be submitted by the concerned Warehouse Service Provider or his authorized representative by 7<sup>th</sup> of succeeding month in the prescribed proforma of FCI to the Divisional Manager through concerned Manager (Depot) as per standing instructions of FCI. Accordingly, learned counsel submits that registration of impugned FIR against the petitioners and consequent arrest of the petitioners, is not sustainable under the eyes of law and is liable to be quashed.

18. Learned counsel for the petitioners has based his claim in the instant petition on the following grounds:-

- i) **That the petitioners are neither public servants nor perform public duty;**

- ii) **That Section 7 and 7A are interdependent and the petitioners being private persons cannot be prosecuted for the same;**
- iii) **Ingredients of Section 7 and 7A, more particularly inducement of a public servant are not made out.**

19. Learned counsel for the petitioners further submits that the petitioners do not satisfy the prerequisites of being a ‘**public servant**’ and are expressly excluded from the ingredients of Section 2(c). He further submits that apart from the generality of Section 2(c), a person is also said to be a public servant, if he holds an office by virtue of which he performs a public duty, as such public duty can only be performed by an individual holding an office and not otherwise.

20. Learned counsel with a view to clarify and distinguish between Section 7 and 7A of the Act, submits that if the public servant obtains an undue advantage from any person directly then in that case the offence as provided under Section 7 is complete, but in case the public servant obtains the undue advantage through a ‘proxy’, in such a situation the offence under Section 7 is not complete and thus falls upon Section 7A for dealing with the action of the ‘proxy’.

21. In the instant case, learned counsel submits that the allegations contained in the impugned FIR presumes the petitioners to be such proxies and admittedly by laying trap proceedings are against the petitioners and not against the public servant as mandated under Section 7 of the Act.

22. The specific case, which has been advanced by learned counsel for the petitioners is that Section 7A of the Act employs the term

‘whoever’ and includes even a private person who acts as a proxy and accepts any undue advantage to induce a public servant. In the instant case, since the impugned FIR does not contain any allegations with regard to inducement of any public servant and in absence of which the offence under Section 7A is incomplete and is not made out. Learned counsel further submits that mere obtaining undue advantage by a private person under Section 7A is not sufficient without fulfilling the requirement of inducement of public servant to make out such offence.

**ARGUMENTS ON BEHALF OF RESPONDENTS:**

**23.** *Per contra*, Mr. Mohsin Qadri, Sr. AAG while appearing on behalf of the respondent and accepting notice on his behalf, submits that the case of the petitioners with particular reference of petitioner No.1 falls within the ambit of ‘Public Duty’ as defined in Section 2(b) of the PC Act, “*as a duty in the discharge of which the State, the public or the community at large has an interest*”. Further, Section 2 (c) (viii) of the PC Act envisages a public servant to include, “*any person who holds an office by virtue of which he is authorized or required to perform any public duty*”. In view thereof, it can be inferred that to designate a person as a Public Servant and to thereby hold such person liable under the PC Act, the emphasis lies upon the nature of duty i.e. public duty carried out by such person and not the position held by him or her.

**24.** To reiterate, Section 2(c) of the Act in order to define the term ‘Public Servant’ now lists down the categories of individuals under sub-clauses (i) to (xii) who shall be classified as a ‘Public Servant’.

25. Mr. Mohsin Qadri, learned counsel for the respondents has laid much emphasis on the definition clause 2(c)(viii) of the PC Act, which envisages a public servant to include, “*any person who holds an office by virtue of which he is authorized or required to perform any public duty*”.

26. Learned counsel appearing for the respondents further submits that since the petitioner No.1 has been performing the duty as a lessor on the strength of lease agreement and the Model Agreement executed with the FCI with a view to carry out the terms and conditions as envisaged under the lease agreement and thus, falls within the ambit of ‘public servant’ as defined under Section 2(c) of the Act, who is performing the ‘public duty’ on behalf of the FCI. Consequently, the action taken by the respondent in registering the impugned FIR and subsequent arrest of the petitioners is strictly in conformity with the Scheme of the Act and no fault can be found with regard to the action taken by the respondent in this regard. He submits that the writ petition is utterly misconceived and deserves dismissal at its threshold stage. He further submits that it is not the case where this Court can exercise powers under Section 482 CrPC, which power has to be exercised only in exceptional circumstances and in the rarest of rare case in conformity with the principles enunciated by the Apex Court in *Bhajan Lal’s* case followed by subsequent judgments rendered from time to time.

27. The instant writ petition has already been admitted to hearing vide order dated 14.09.2023 and with the consent of learned counsel for the parties, the instant petition is taken up for final disposal at this

stage. The arguments were heard at length and the record was also perused.

**QUESTIONS OF LAW:**

**28.** The moot question which arises for consideration in the instant petition are as under:-

- a) *Whether the petitioners fall within the ambit of 'public servant' as defined under Section 2(c) of the Act and whether the petitioners are performing 'public duty' as defined under Section 2(b) of the definition clause of the Act;*
- b) *If the allegations are taken at face value, whether the ingredients of Section 7 and 7A have been made out in the instant case with a view to proceed against the petitioners under Prevention of Corruption Act.*

**29.** With a view to answer the aforesaid questions, it would be apt to refer the relevant statutory provisions of Prevention of Corruption Act and also the definition clause of 'public duty' and '**public servant**' under the aforesaid Act.

**STATUTORY PROVISIONS:**

**30.** For the facility of reference, Section 7 and 7-A of the Prevention of Corruption Act 1988 is reproduced hereunder:-

***"7. Offence relating to public servant being bribed.—***

*Any public servant who,—*

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*

*(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*

*(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,*

*shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

**Explanation 1.**—*For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.*

*Illustration.*—*A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.*

**Explanation 2.**—*For the purpose of this section,—*

- (i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;*
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.*

**7-A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.**—*Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.”*

**31.** Section 2(b) and 2(c) of the Prevention of Corruption Act, 1988 are

reproduced as under:-

**“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);

**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 (1 of 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 authorized 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 authorized or required to perform any public duty;
- (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) 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.*

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

*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”.*

### **LEGAL ANALYSIS**

**32.** From the bare perusal of the aforesaid definition clause of the Act, it can be inferred that to designate a person as a ‘Public Servant’ and to thereby hold such person liable under the PC Act, the thrust lies upon the nature of duty i.e. *public duty* carried out by such person and not the position held by him or her.

**33.** To reiterate, Section 2(c) of the PC Act in order to define the term ‘Public Servant’, lists down the categories of individuals under sub-clauses (i) to (xii) who shall be classified as a ‘Public Servant’. The first explanation to the said provision also clarifies that persons falling under the said sub-clauses shall be deemed to be public servants irrespective of their appointing authority. The second explanation further expands the ambit to include every person who *de facto* discharges the functions of a public servant, and that he/she should not be prevented from being brought under the ambit of ‘Public Servant’ due to any legal infirmities or technicalities.

- 34.** It has been effectively settled by the Hon'ble Apex Court that once the *nature of the performance* of duties gets crystallized in terms of Section 2(c), no doubt remains as to who could and couldn't come within the ambit of the PC Act.
- 35.** A person who has entered into the lease agreement with the FCI, to perform a '*public duty*', could very well be a 'public servant'. The duties of the lessor which have been defined under the lease agreement brings the petitioner no.1 within the ambit of Section 2(c) of the definition clause of the aforesaid Act as being a 'public servant' means any person who holds an office by virtue of which he is authorized or required to perform any *public duty* and that duty means a duty in the discharge of which the State, the public or the community at large has an interest.
- 36.** The Prevention of Corruption Act, 1988, is an offspring of the Prevention of Corruption Act, 1947 (*repealed*). The shortcomings and limitations of the repealed Act led to the genesis of the present Prevention of Corruption Act, 1988. Amongst several important provisions that were absent in the repealed Act, certain important terms and provisions were introduced and augmented under the PC Act by including the definition of 'Public Duty' and 'Public Servant'.
- 37.** The repealed Act with its limited scope defined a 'Public Servant' as someone who falls in the description list of Section 21 of the Indian Penal Code, 1860. However, with the enactment of the PC Act, the scope and applicability of the law relating to prevention of corruption in India was intended to be extended to all such acts which were in the nature of 'Public Duty'. Pursuant to the same, a

comprehensive list of persons who shall be classified as 'Public Servant' was introduced under Section 2(c) of the PC Act.

**38.** Thus, this Court has to consider the purposive interpretation of the definition of 'public servant' having regard to the changes brought to the Prevention of Corruption Act 1988 in contradistinction to the definition of 'public servant' under the provisions of Prevention of Corruption Act, 1947.

**39.** Prevention of Corruption Act, 1988 is intended to make the anti corruption law more effective by widening its coverage and scope of the definition of 'public servant'. Accordingly, a person who holds the office by virtue of which he/she is authorized or required to perform any public duty, is a public servant for the purposes of 1988 Act. The definition of 'public duty' is capable of encompassing any duty attached to any office. Thus, performance of such *public duty* by a person who is holding the office which requires or authorizes him to perform such duty is *sine quo non* for the application of definition of 'public servant' for the purposes of P C Act 1988. Under Section 2(c) viii of PC Act, 1988, a person who holds the office by virtue of which he is authorized or required to perform any public duty is a 'public servant'. While understanding the true purport and effect of Section 2(C)viii of PC Act, the meaning of the expression 'office' appearing therein as well as 'public duty', as is defined by Section 2(b) is also to be understood. The definition of 'public duty' in Section 2(b) of the PC Act, indeed, is wide, which indicates the 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'.

40. There is no 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. Therefore, 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 public character.

41. Before proceeding further in the matter, it would be 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: -

*“1. The bill is intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions.*

*2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam 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.*

*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.*

*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.*

*5. The notes on clauses explain in detail the provisions of the Bill.”*

**42.** Now for the purpose of the instant case, this Court is required to examine as to whether the petitioner no.1, who is a proprietor of proprietorship concern and the petitioner no.2 who was the employee of petitioner no.1 and works as Office Boy in the proprietorship of petitioner no.1 would fall within the definition of ‘public servant’ as prescribed under Section 2(c) of the Act mentioned *supra*.

**43.** From the record, it transpires that the petitioner no.1 in order to run and operate his business operations and with a view to expand his business constructed a Godown over his proprietary land situated at Chandpora, Budgam in the year 2012 pursuant to the agreement entered into by and between petitioner no.1 and FCI. The record further reveals that the lease agreement that came to be entered into by and between petitioner no.1 and FCI was executed on 26.03.2014. On the strength of the aforesaid lease agreement, the petitioner no.1 became a lessor and FCI became a lessee.

**44.** Perusal of lease deed *supra* would indicate that it was a ‘private participation Godown’ constructed by petitioner no.1 and it was on 18.08.2023 when the official of the FCI entered into the premises of petitioner no.1 on the basis of some compliant made by a person

namely Altaf Hamza Mir. The allegations leveled in the FIR reveals that petitioners had demanded a bribe of Rs.3500/- from the driver for unloading the trucks and from the perusal of FIR it transpires that there were allegations against petitioner no.1 of demanding bribe and consequently, trap proceedings were initiated on the basis of said complaint. It has been further alleged in the FIR that on the basis of trap proceedings, the tainted money was also recovered. Accordingly, petitioners came to be arrested on 18.08.2023. The record further reveals that the petitioners were enlarged on bail on 28.08.2023 by the court of Special Judge Anti Corruption Kashmir, Srinagar. Another agreement titled 'model agreement' was executed between petitioner no.1 and FCI on 09.06.2023. From the perusal of the lease deed, it is apparent that the agreement was executed by the petitioner no.1 with FCI, which is a Government of India undertaking, a body corporate under the 'The Food Corporations Act 1964', and as per clause 29 of the lease agreement, it was liability of lessor to indemnify the losses suffered by the lessee.

**45.** Petitioner No.1 was also liable for any shortage or damage/loss to the stocks for whatsoever reason while the same were in the custody of the lessor, or during the rail/road transit to and from the Godown for which fault would have been found attributable to the lessor, he shall be liable to make good all the losses suffered by lessee. In this regard the decision of lessee would be final and binding on the lessor.

**46.** The lessor shall be also responsible for any loss, destruction or deterioration of food grains or delay in the performance of duties due to any negligence or default on the part of their employees/labourers

or due to failure of equipment or due to non availability of adequate safety aids with the labourers or due to pilferage of food grains by their employees/labourers or due to the carelessness, neglect, misconduct of their employees/labourers in their employment and any liability for payment of compensation by the lessee to the depositors on account thereof.

**47.** The remuneration clause-31 of the lease agreement further reveals that the lessor shall have to provide all the services provided for in this lease and the lessor for the said service shall be paid at the agreed rates.

**48.** The 'model agreement' which has been executed subsequently between petitioner no.1 and FCI reveals that the stocks stored on account of FCI shall be subject to monthly/periodical joint inspection report by Warehouse Service Provider and FCI.

**49.** Now coming to the law laid down by the Hon'ble Supreme Court of India in this regard. In *P.V. Narasimha Rao vs. State* reported as (1998) 4 SCC 626, the Apex Court has explained 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". In McMillan v. Guest (1942 AC 561) 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.”*

**50.** In *Statesman (P) Ltd. v. H.R. Deb* reported as AIR 1968 SC 1495 and *Mahadeo v. Shantibhai* reported as (1969) 2 SCR 422, the Apex 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.”*

**51.** In *Manish Trivedi v. State of Rajasthan* reported as (2014) 14 SCC 420, the Apex 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.*

*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.”*

**52.** The present Act of 1988 envisages widening of the scope of the definition of the expression “public servant”, which was brought in force to purify public administration. The legislature in its wisdom 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. Furthermore, 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. Bearing in mind the aforesaid principle, when the terms and conditions of lease agreement and model agreement are perused minutely and the duties being carried out by petitioner no.1 in furtherance of the said lease agreement on behalf of the FCI are examined, I have no doubt that petitioner no.1 can be categorized as a 'public servant' falling within the meaning of Section 2(c) of the Act.

**53.** In the present case, the lessor has a liberty under the lease agreement to deploy further staff / personnel in terms of clause 34 of the lease agreement to verify the correctness of the receipt/dispatch of stocks and the authorized representative of lessor will duly verify the entries of receipt and dispatch and correctness of weight of stocks by putting his signatures alongwith the employees on the weight check memo, register/weightment sheets and the daily transaction register in addition to deploying workers for preservation and maintenance of stocks and the watch and ward thereof. This, in the opinion of the Court, amounts to a public duty as the lessor (Petitioner herein) is acting on behalf of the Food Corporation of India and is discharging the duties in which the public at large has an interest for the reason that it relates to the Public Distribution System and the storing of food grains which helps in maintaining national food security.

**54.** It must be taken into consideration that thrust of Section 2(c) is not on the position held by the individual; rather, the public duty performed by him/her as the legislative intention was not to provide

an exhaustive list of authorities which are covered, but a general definition of “public servant”. In other words, this section also applies to individuals who are not conventionally considered as public servants. Accordingly, this Court is required to adopt a purposive approach which would give the effect to the intention of legislature.

**55.** In the light of the Statement of Objects and Reasons contained in the Bill leading to the passing of the Act and after taking assistance thereof, it gives the background in which the legislation was enacted. The present Act has been enacted with a much wider definition of “public servant”, with a view to purify the public administration. When the legislature has used such a comprehensive definition of “public servant” to achieve the purpose of punishing and curbing the 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. Therefore, the definition of “public servant” deserves a wide construction by this Court.

**56.** In this regard I am supported by the judgment of Apex Court in ‘*State of M.P Vs. Ram Singh*’ reported as (2000) 5 SCC 88, and the operative portion of the said judgment is reproduced under:-

*“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.”*

**57.** The Apex Court in another judgment reported as **(2016) 3 SCC 788**

***Central Bureau of Investigation Vs. Ramesh Gelli & Ors.,***

observed and held as under:-

*“...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 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 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.”*

**58.** The Supreme Court in ***State of Gujarat v. Mansukhbhai Kanjibhai***

***Shah, (2020) 20 SCC 360*** has observed: -

***“34. On a perusal of Section 2(c) of the PC Act, we may observe that the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him/her. In this regard, the legislative intention was not to provide an exhaustive list of authorities which are covered, rather a general definition of “public servant” is provided thereunder. This provides an important internal evidence as to the definition of the term “university”.***

***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”*

**[Emphasis Supplied]**

- 59.** Therefore, having considered the submissions of both the counsel for the parties and having gone through the relevant record and also in the light of the statement of objects and reasons of the Bill relating to the Act of 1988 and the definition clause of ‘public servant’ under Section 2(c) of the Act and Section 2(b) read with the terms and conditions of the lease agreement and the model agreement, this Court is of the view that both the petitioners fall within the ambit of ‘public servant’ as defined under Section 2(c) of the Act.
- 60.** Thus, this Court holds that the role of petitioner no.1 falls under Section 2(c) of the Act, as he has performed the public duty as defined under Section 2(b) of the Act. This Court further holds that since petitioner no.2 being the employee of petitioner no.1 has performed duties in conformity with the lease agreement/model agreement and in his case definition clause of ‘public servant’ and ‘public duty’ can also be made applicable keeping in view the object of the enactment of the Act which has made anti corruption law more effective and wider in its coverage as both the petitioners have been authorized and were required to perform public duty on behalf of FCI on the strength of the lease agreement/model agreement.

- 61.** Thus, **Question (a)** is answered accordingly.

**62.** Further, the preamble of the Act of 1988 indicates that it was passed as it was expedient to make provisions for the prevention of bribery and corruption more effective. The long title as well as the preamble indicate that the Act was passed to put down the said social evil i.e. bribery and corruption by a public servant. Bribery is a form of corruption. The fact that in addition to the word “bribery”, the word “corruption” is used shows that the legislation was intended to combat every other evil in addition to bribery. The existing law i.e. Penal Code was found insufficient to eradicate or even to control the growing evil of bribery and corruption corroding the public service of our country.

**63.** Thus, the object of the Act of 1988 was to make more effective provisions for the prevention of bribery and corruption. Corruption includes bribery and has a wider connotation. It may take in the use of all kind of corrupt practices.

**64.** Receiving of illegal gratification, as it has been alleged to have been done in the instant case, while performing public duty will attract the Prevention of Corruption Act against a person who has been performing the public duty as a public servant. The proliferation of novel ways of indulging in corrupt practices is alarming and has prompted the courts to widen the scope of interpretation of the words “public servant” in line with the objective of the Act.

**65.** Since the allegations levelled against the petitioners are that they have demanded bribe of Rs.3,500/- and the trap was laid and the money was also recovered, it will attract the penal provisions of the Act against the petitioners in the light of Section 7A of PC Act. The

language of Section 7A is explicit which provides that whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

**66.** It would be advantageous to reproduce Section 7A of PC Act:-

***“7A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.”***

**67.** Similarly, from a bare reading of Section 7 of PC Act 1988, the same can be extended to any public servant who obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public

duty or for forbearing to perform such duty either by himself or another public servant; or performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

**68.** The *explanation- I* further amplifies the scope of Section 7 which provides that for the purpose of this Section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant is not or has not been improper.

**69.** *Explanation- II* further provides that for the purpose of this section, the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means, and it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

**70.** From a bare perusal of *Explanation I and II*, it is emphatically clear that accepting, or attempting to obtain an undue advantage shall itself constitute an offence. Further, the expression “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing

his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means, and it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

**71.** Thus, it may safely be concluded that while Section 7 and 7A are independent to each other but Section 7A has been inserted with sole object to reach aiders and abettors of the offence. It, therefore, extends all the persons whether they are or are not public servant. However, where a person accepting bribe is a public servant, the Section for charging him is Section 7 of PC Act 1988, and for a private person, Section 7A would be applicable. Therefore, Section 7A gives wider power to the authorities to initiate action against a private individual, which means involvement of public servant is not a condition precedent for registering of FIR.

**72.** From the record, it is apparently clear that initially a complaint was made against the official of FCI. Accordingly, as per the stand of respondent, Section 7 was incorporated in the FIR. Since this Court in preceding paras has held that both the petitioners were performing *public duty* under the definition of Section 2 of PC Act, the petitioners can also come under the ambit of Section 7 of PC Act.

**73.** As per the stand of the respondent, the investigation conducted so far revealed that as per the communication made by FCI authorities, there was no scope for obtaining and demanding money from the truck drivers under any pretext while unloading their trucks. However, the facts of the instant case reveal that exchange of money

has taken place. This *prima facie* gives the impression that the demand of money by the petitioners at the time of occurrence from the truck drivers, could have been done under a well-knit conspiracy hatched with the official of FCI and in order to obtain undue advantage for themselves, which also falls within the ambit of Section 7A of the Prevention of Corruption Act, 1988. Since this case is just in its infancy stage and the investigation is being carried out at present by the respondents, this Court does not deem it proper to stall the investigation at this stage, as the allegations leveled in the FIR are yet to be probed.

**74.** This Court is of the firm view that a zero tolerance towards corruption should be the top notch priority for ensuring system based and policy driven, transparent and responsive governance. Corruption cannot be annihilated but strategically be dwindled by reducing monopoly and enabling transparency in decision making. However, fortification of social and moral fabric must be an integral component of long-term policy for nation building to accomplish corruption free society.

**75.** In furtherance of the fight against corruption, a broad interpretation to the provisions of this statute is required to be given and the arms of this Act are required to be extended to the maximum. The offences under the P.C.Act can be invoked not only against a public servant but also against a person, who by virtue of his office has been discharging 'public duty'.

**76.** I draw support from the judgment titled *State of Gujarat Vs. Manusukhbhai Kanjibhai Shah reported a 2020 SCC OnLine SC 412*, wherein the Apex Court has observed as under:-

*“...Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.”*

**77.** When the legislature has introduced such a comprehensive definition of “public servant” to achieve the purpose of punishing and curbing the growing menace of corruption in the society imparting public duty, it would be apposite not to limit the contents of the definition clause by construction which would be against the spirit of the statute.

**78.** Since this Court has already held the petitioners to be public servant performing the public duty, therefore, the respondent has rightly initiated action against the petitioners by registering FIR under Section 7 and 7A of the Prevention of Corruption Act, 1988.

**79.** The argument of learned senior counsel for the petitioners that the respondent has no power to register the case against the petitioners under the provisions of P.C. Act for a simple reason that the petitioners are not public servants, is unsustainable in light of what has been discussed hereinabove.

**80.** From a bare reading of the definition of word ‘public servant’ as defined in the P.C. Act, it is emphatically clear that a person who holds the office by virtue of which he is authorized or required to perform any public duty and any person or employee of any institution, receiving or having received any financial assistance from the Central Government or State Government or local or other public authority, shall be considered as public servant.

**81.** The explanation to Section 2(c) of P.C. Act would further go to show that such a person may be appointed by the Government or not, therefore, a ‘public servant’ needs not be a Government / civil servant, but a Government / civil servant is always a public servant.

**82.** Therefore, this Court is of the view that even if a person is not a public servant but by virtue of his office, however, if he is discharging a public duty, i.e., the petitioners in the instant case who are performing duties on behalf of FCI on the strength of lease agreement/model agreement, then they are covered under the ambit of P.C. Act.

**83.** Lastly, the allegations leveled in the impugned FIR makes out a case falling under the ambit of Section 7 as well as Section 7A.

**84.** Thus, this Court holds that if the allegations in the FIR are taken at face value then it *prima facie* reveals that the ingredients of Sections 7 and 7A are fulfilled and the petitioners, who have been held to be public servant performing public duty, can be proceeded in terms of the said of the Act.

**85.** In the landmark decision of *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426*, the Hon’ble Supreme

Court has laid down the myriad kinds of cases wherein the power under Section 482 should be exercised. These are: -

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

**103.** *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”*

**86.** Recently, in 2023, and with particular reference to prevention of corruption cases, the Supreme Court in the case of *State of Chhattisgarh v. Aman Kumar Singh, (2023) 6 SCC 559* has made the following observations: -

*“80. Having regard to what we have observed above in paras 47 to 50 (supra) and to maintain probity in the system of governance as well as to ensure that societal pollutants are weeded out at the earliest, it would be eminently desirable if the High Courts maintain a hands-off approach and not quash a first information report pertaining to “corruption” cases, specially at the stage of investigation, even though certain elements of strong-arm tactics of the ruling dispensation might be discernible. The considerations that could apply to quashing of first information reports pertaining to offences punishable under general penal statutes ex proprio vigore may not be applicable to a PC Act offence. Majorly, the proper course for the High Courts to follow, in cases under the PC Act, would be to permit the investigation to be taken to its logical conclusion and leave the aggrieved party to pursue the remedy made available by law at an appropriate stage. If at all interference in any case is considered necessary, the same should rest on the very special features of the case.”*

*[Emphasis Supplied]*

**87.** From a bare perusal of allegations leveled in the impugned FIR under Section 7 and 7A of PC. Act, 1988, case for indulgence *prima facie* is not made out and thus no fault can be found for registering

FIR against the petitioners under P.C.Act, 1988. This is not a case which falls within the ambit of an exceptional case and the principles carved out in *Bhajan Lal's* case (*Supra*), so as to warrant exercise discretion under Section 482 of CrPC especially when Courts must be more circumspect to quash investigation in cases pertaining to prevention of corruption.

**88.** Question (b) is, answered, accordingly.

**CONCLUSION:**

**89.** In conclusion, having considered the submissions of both the counsel for the parties and having gone through the relevant record in the light of the statement of objects and reasons of the Bill relating to the Act of 1988 and the definition clause of 'public servant' under Section 2(c) of the Act and Section 2(b) read with the terms and conditions of the lease agreement and the model agreement, this Court is of the view that both the petitioners fall within the ambit of 'public servant' as defined under Section 2(c) of the Act. Thus, this Court holds that the role of petitioner no.1 falls under Section 2(c) of the Act, as he has performed a public duty as defined under Section 2(b) of the Act. This Court further holds that since petitioner no.2 being the employee of petitioner no.1 has performed duties in conformity with the lease agreement/model agreement and in his case definition clause of 'public servant' and 'public duty' can also be made applicable keeping in view the object of the enactment of the Act.

**90.** This Court further holds that if the allegations in the FIR are taken at face value then it *prima facie* reveals that the ingredients of

Sections 7 and 7A are fulfilled and the petitioners, who have been held to be public servant performing public duty, can be proceeded against in terms of the said of the Act. Furthermore, this is not a case which falls within the ambit of an exceptional case and the principles carved out in *Bhajan Lal's* case (*Supra*), so as to warrant exercise discretion under Section 482 of CrPC especially when Courts must be more circumspect to quash investigation in cases pertaining to prevention of corruption.

**91.** In the light of the discussions made hereinabove, the instant petition, which has been filed under Section 482 of CrPC seeking quashment of FIR No. 16/2023 dated 18.08.2023 registered by Police Station, ACB Srinagar under Section 7 and 7A of PC.Act, 1988, does not merit any consideration and the same is accordingly dismissed for the afore-stated reasons. However, the observations made hereinabove, shall not in any manner come in the way of the Investigating Agency to conduct investigation as per the law.

(WASIM SADIQ NARGAL)  
JUDGE

Srinagar  
25.09.2023  
*Muzammil. Q*

***Whether the order is reportable:***      ***Yes***

***Whether the Judgment is Speaking:***      ***Yes***