IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CRIMINAL MISCELLANEOUS APPLICATION NO. 103 OF 2002

Rear Adm.(Retd.) Balkrishnan
Ravi Menon, son of late
P. Balkrishnan Menon,
59 years of age, married,
Indian National, former
Chairman and Managing Director,
Goa Shipyard Ltd., Vasco, Goa,
and presently resident of
Baleyam, Thrikkakhra P.O.
Kochi 682021. ... Petitioner.

versus

Union of India
(N. K. Mukherjee),
Dy. Suptd. of Police,
Anti-Corruption Unit(I) CBI,
Block III, C.G.O. Complex,
New Delhi. ... Respondent.

Mr. S. G. Dessai, Senior Advocate with Mr. Arun Bras de Sa, Advocate for the Petitioner.

Mr. V. P. Thali, Senior Central Government Standing Counsel for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 26TH JULY, 2002.

JUDGMENT

By consent of parties, this Criminal Miscellaneous Application, filed under Section 482 of the Code of Criminal Procedure, is taken up for final disposal at the stage of admission.

2. Mr. V. P. Thali, the learned Senior Central Government Standing Counsel, appearing on behalf of the Respondent, has raised a preliminary objection regarding the maintainability of the present application under Section 482 of the Code of Criminal Procedure. According to the learned Senior Central Government Standing Counsel appearing on behalf of the Respondent, the Petitioner herein had filed an application for discharge and the learned Trial Court had rejected his application thereby declining to discharge the Petitioner and had ordered the framing of charge. Thus, according to the learned Senior Central Government Standing Counsel appearing on behalf of the Respondent, the Petitioner ought to have filed a Criminal Revision Application under Section 397 of the Code of Criminal Procedure, in this Court, instead of invoking the inherent powers under Section 482 of the Code of Criminal Procedure.

3. Mr. S. G. Dessai, the learned Senior Counsel appearing on behalf of the Petitioner has rightly conceded that a Criminal Revision Application ought to have been filed instead of an application under Section 482 of the Code of Criminal Procedure and accordingly requests permission of this Court to convert the present application into a Criminal Revision Application under Section 397 of the Code of Criminal Procedure. The Order impugned in the

present Petition has been passed by the Special Judge, South Goa, Margao. It is not disputed that a Criminal Revision Application against the Order of the learned Special Judge, South Goa, Margao would lie to this Court. No prejudice is likely to be caused to the Respondent if the prayer of the Petitioner for converting this application into a Criminal Revision Application is allowed.

4. Mr. V. P. Thali, the learned Senior Central Government Standing Counsel appearing on behalf of the Respondent has very fairly stated that he has no objection if the aforesaid request of the Petitioner is granted. This Criminal Miscellaneous Application, under Section 482 of the Code of Criminal Procedure is, therefore, treated, heard and decided as a Criminal Revision Application under Section 397 of the Code of Criminal Procedure. Undisputedly, since the Order of the learned Special Judge, South Goa, Margao, is dated 3rd July, 2002, the Criminal Revision Application would be within the prescribed period of limitation.

5. The facts necessary for decision of the Criminal Revision Application are set out hereunder:-

In 1994, the Petitioner was Rear Admiral in the Indian Navy and was prematurely retired. The Petitioner

was then the Chief of Staff(Technical) of the Western Naval Command, Mumbai. On his retirement as a Rear Admiral, the Petitioner took over as the Chairman and Managing Director of Goa Shipyard Ltd., a Central Government pulic sector undertaking, which is essentially concerned with ship building and repairs activity including constructions of ships for defence purposes. The Petitioner has averred that he was awarded "Vishist Seva Medal" for the meritorious service rendered to the Indian Navy.

6. On 7th November, 1999, the Petitioner retired as the Chairman and Managing Director of Goa Shipyard Ltd. after holding the said post for five years. Meanwhile, on 12th February, 1999, the Respondent, Central Bureau of Investigation, hereinafter referred to as CBI for the sake of brevity had conducted raid on the residential premises of the Petitioner. As a consequence of raid, the Bank Accounts of the Petitioner were frozen.

7. On 8th March, 2000, the Petitioner joined as Chairman and Managing Director of Transformers and Electricals Ltd., Kerala, a public sector undertaking of the Government of Kerala. Meanwhile, the Petitioner had filed a Writ Petition No.3595/2000/C in the Kerala High Court, with a prayer that the Petitioner be allowed to operate his Bank Accounts in Kochi. The learned Single Judge of the Kerala High Court, by Judgment dated 5th June,

2000, disposed of the Petition by the following Order, which is annexed to the Petition as Exh. P-3:-

"J. B. KOSHY, J.
O. P. NO.3595 OF 2000 C
Dated this the 5th June, 2000.

JUDGMENT

An investigation is being conducted against the petitioner by C.B.I. The matter is pending for a long time. In the above circumstances, investigation may be completed according to law expeditiously, in any event, within five months from today. Meanwhile, in view of the facts and circumstances of the case, petitioner may be allowed to operate his bank accounts in Cochin as all the details were taken note of by the C.B.I. Petitioner shall not sell his immovable assets and shall not operate his bank accounts in Goa and Delhi.

The original petition is disposed of accordingly."

8. In pursuance to the directions issued by the learned Single Judge of the Kerala High Court, the CBI filed a charge-sheet against the Petitioner on 20th November, 2000 for offences under Section 13(1)(e) punishablle under Section 13(2) of the Prevention of Corruption Act, 1988. The charge-sheet so filed by the CBI was registered as Special Case No.5/2000 and subsequently it was renumbered as Special Case No.7/2002.

9. In pursuance to the filing of the charge-sheet by the CBI, the Petitioner filed an application on 29th

August, 2001, under Section 239 of the Code of Criminal Procedure for his discharge. The Petitioner had raised two pleas in the aforesaid application for discharge. The first plea was that in the absence of a sanction to prosecute, under Section 19 of the Prevention of Corruption Act, 1988, the cognizance taken by the learned Special Judge was bad in law as on the date of taking cognizance by the learned Special Judge, the Petitioner was a public servant as he was working as Chairman and Managing Director of Transformers and Electricals Ltd.,Kerala, which is a State Owned Public Undertaking. In support of his plea, the Petitioner had produced a copy of his appointment Order dated 8th March, 2000. The second plea, which was raised by the Petitioner in the aforesaid application was that the Complainant had not considered other sources of income of the Petitioner. However, from the Order impugned in the present revision, it appears that during the course of hearing, the Petitioner did not press for decision on the second plea which was raised and restricted his application to the first plea which is raised.

10. The learned Trial Court after hearing the parties, by his Order dated 3rd July, 2002, dismissed the application, filed under Section 239 of the Code of Criminal Procedure and ordered the framing of the charge against the Petitioner for an offence punishable under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption

Act, 1988. The learned Trial Judge while dismissing the aforesaid application filed by the Petitioner came to the conclusion that the controversy raised by the Petitioner was squarely answered by the Apex Court in the Judgment of **R.S.Nayak** v. **A.R.Antulay** reported in 1984(2) SCC 183.

11. The Petitioner/Original Accused, being aggrieved by the aforesaid Order, dated 7th July, 2002, had filed an application under Section 482 of the Code of Criminal Procedure which, by the permission of this Court is treated as a revision under Section 397 of the Code of Criminal Procedure.

12. Mr. S. G. Dessai, the learned Senior Counsel appearing on behalf of the Petitioner/Accused, has also reiterated before me that his submissions are confined to the first plea raised by the Petitioner/Accused in his Application before the learned Special Judge, South Goa, Margao. The learned Senior Counsel appearing on behalf of the Petitioner/Accused has urged before me that the Petitioner was admittedly a public servant, within the definition of Section 2(c) of the Prevention of Corruption Act, 1988 as on the date the learned Special Judge took cognizance, the Petitioner was working as Chairman and Managing Director of Transformers and Electricals Ltd., Kerala, which is a public sector undertaking of the Government of Kerala. Thus, according to the learned

Senior Counsel appearing on behalf of the Petitioner/Accused, the learned Special Judge, South Goa, Margao, could not have taken cognizance in the absence of a proper and valid sanction under Section 19 of the Prevention and Corruption Act, 1988. According to the learned Senior Counsel appearing on behalf of the Petitioner/Accused, it was incumbent on the prosecution to have obtained the sanction from the authority competent to remove the Petitioner when he was working as the Chairman and Managing Director of Goa Shipyard Ltd. It was also urged by the learned Counsel appearing on behalf of the Petitioner/Accused that a previous sanction from the Kerala Government was not necessary but a previous valid sanction from the authority competent to remove the Petitioner as Chairman and Managing Director of Goa Shipyard Ltd. was essential before the learned Special Judge, South Goa, Margao to take cognizance. According to the learned Counsel appearing on behalf of the Petitioner/Accused, the fact that the Petitioner/Accused was a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 as he was working as Chairman and Managing Director of Transformers and Electricals Ltd., Kerala is not denied by the Respondent, CBI. In support of this, the learned Senior Counsel appearing on behalf of the Petitioner/Accused has placed on record the written notes of arguments submitted by the Respondent wherein at para 5, the Respondent has admitted that the Petitioner is a public

servant in Transformers and Electricals Ltd., Kerala. Therefore, it is urged before me that the Petitioner is entitled to be discharged.

13. From the Order of the learned Special Judge, South Goa, Margao, it is apparent from the perusal of para 10 that what was urged before the learned Special Judge, South Goa, Margao, was that since the Petitioner was a public servant on the date on which cognizance was taken under the State of Kerala, sanction was, therefore, required to be obtained from the Government of Kerala. However, in the present Criminal Revision, it is urged by the learned Senior Counsel appearing on behalf of the Petitioner/Accused that the sanction of the Central Government would be required i.e. of the authority competent to remove the Petitioner when he was serving as Chairman and Managing Director of Goa Shipyard Ltd. In the interest of justice, I propose to examine this plea of the Petitioner.

14. Mr. S. G. Dessai, the learned Senior Counsel appearing on behalf of the Petitioner/Accused has placed reliance on a Judgment of the Apex Court in the matter of **The State(SPE.Hyderabad)** v. **Air Commodore Kailash Chand** reported in AIR 1980 SC 522. Reliance is placed on paras 5 and 6 which are extracted below:-

"Where an accused is prosecuted under the Prevention of Corruption Act, without obtaining the sanction of the competent authority, it is for the prosecution to prove that at the time when the cognizance of the offence was taken, the accused ceased to be a public servant. AIR 1958 SC 107 and AIR 1977 SC 1772, Foll.

In the instant case the accused was serving as a member of the Indian Air Force. On retirement he was re-employed and after some time he was transferred to the Regular Air Force Reserve. In other words, he was transferred to the Auxiliary Reserve Air Force under the provisions of the Reserve and Auxiliary Air Forces Act, 1952 and rules thereunder. He was chargesheeted for having committed offences under S.5(2) of the Corruption Act and cognizance was taken at the time when his re-employment had ceased but while he continued to be a member of the Auxiliary Air Force. However, no prior sanction was taken for his prosecution.

Held that the provisions of the Reserve and Auxiliary Air Forces Act make it clear that as at the time of taking cognizance the accused continued to be a member of the Auxiliary Air Force he retained his character as a public servant and therefore he could not be prosecuted under the Corruption Act without prior sanction.(1973) 2 Andh WR 263, Affirmed.

Once the accused was transferred to the Auxiliary Air Force he retained his character as a public servant because he was required to undergo training and to be call up for services as and when required. It is true that the provisions of the

> Auxiliary Air Forces Act do not expressly contain the nature of the emoluments that the accused may receive but the general tenor and setting of the Act clearly show that a member of the Auxiliary Force is as much a public servant as an acting member of the Indian Air Force".

15. Mr. S. G. Dessai, the learned Senior Counsel appearing on behalf of the Petitioner/Accused has further placed reliance on a Judgment of the Apex Court in **P. V. Narasimha Rao** v. **State** reported in (1998) 4 SCC 626. According to Mr. S. G. Dessai, the learned Senior Counsel appearing on behalf of the Petitioner/Accused, this Judgment of the Apex Court overrules the earlier Judgment of the Apex Court in **R. S. Nayak** v. **A. R. Antulay**(supra).

16. In the Judgment of **P. V. Narasimha Rao** v. **State**(supra) at para 98 of the Report, Their Lordships of the Supreme Court have held as under:-

> "On the basis of the aforesaid discussion we arrive at the following conclusion:
>
> 1. A Member of Parliament does not enjoy immunity under Article 105(2) or under Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committees thereof.
>
> 2. A Member of Parliament is a public servant under Section 2(c) of the Prevention of

> Corruption Act, 1988.
>
> 3. Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be".

The facts of this case and the ratio laid down therein is not applicable to the facts of the present case.

17. In **R. S. Nayak** v. **A. R. Antulay**(supra), the Apex Court amongst the other findings given has held, relying on Section 21 of the Indian Penal Code that a Member of Legislative Assembly was not a public servant within the meaning of Section 21 of the Indian Penal Code. This finding was rendered by Their Lordships of the Apex Court in relation to the Prevention of Corruption Act, 1947.

18. In **P. V. Narasimha Rao** v. **State**(supra), Their Lordships of the Apex Court, have held that a Member of Parliament is a public servant in view of the definition of

public servant in Section 2(c) of the Prevention of Corruption Act, 1988. The Judgment in **R. S. Nayak v. A. R. Antulay**(supra) does not stand overruled by the Judgment of the Apex Court in **P. V. Narasimha Rao** v. **State**(supra).

19. The answer to the present controversy raised in this Criminal Revision stands answered by the Judgment of the Apex Court in **R. S. Nayak** v. **A. R. Antulay**(supra) at para 24 which is reproduced below:-

> "Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used(sic misused) nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used (sic misused) or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned counsel that

a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary: but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he

> may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurd end product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rogue's charter. (See **Davis & Sons Ltd.** v. **Atkins**.)"

20. Mr. V. P. Thali, the learned Senior Central Government Standing Counsel appearing on behalf of the Respondent has invited my attention to para 25 of the Judgment in **R. S. Nayak** v. **A. R. Antulay**(supra) and has pointed out that Their Lordships of the Supreme Court have held that the Judgment in the matter of **The State(SPE. Hyderabad)** v. **Air Commodore Kailash Chand**(supra) does not lay down the correct law in making a correct interpretation of Section 6. In view of this, the Judgment of the Apex Court reported in **The State(SPE. Hyderabad)** v. **Air Commodore Kailash Chand**(supra) cannot assist the Petitioner.

21. A reference may usefully be made to the Judgment of the Apex Court in **S. A. Venkataraman** v. **The State** reported in 1958 SCR 1037 in which the Supreme Court has held thus:-

> "The words in S.6(1) of the Act are clear enough and they must be given effect to. There is nothing in the words used in S.6(1) to even remotely suggest that previous sanction was necessary before a Court could take cognizance of the offences mentioned therein in the case of

> a person who had ceased to be a public servant at the time the Court was asked to take cognizance, although he had been such a person at the time the offence was committed. It was suggested that cl.(c) in S.6(1) refers to persons other than those mentioned in cls.(a) and (b). The words 'is employed' are absent in this clause which would, therefore, apply to a person who had ceased to be a public servant though he was so at the time of the commission of the offence. Clause (c) cannot be construed in this way. The expression 'in the case of a person' and 'in the case of any other person' must refer to a public servant having regard to the first paragraph of the sub-section. Clauses (a) and (b), therefore, would cover the case of a public servant who is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government and cl.(c) would cover the case of any other public servant whom a competent authority could remove from his office. The more important words in cl.(c) are 'of the authority competent to remove him from his office'."

22. The same view was adopted by the Apex Court in **C. R. Bansi** v. **State of Maharashtra** reported in AIR 1971 SC 786 and **State of West Bengal** v. **Manmal Bhutoria** reported in AIR 1977 SC 1772. This view was upheld by the Constitution Bench in **K. Veeraswami** v. **Union of India** reported in (1991) 3 SCC 655. The same view is again upheld by the Apex Court in **Kalicharan Mahapatra** v. **State of Orissa** reported in AIR 1998 SC 2595.

23. Mr. V. P. Thali, the learned Senior Central Government Standing Counsel appearing on behalf of the Respondent has invited my attention to a recent Judgment of the Apex Court in **State of Kerala** v. **V. Padmanabhan Nair** reported in (1999) 5 SCC 690. The Apex Court has held thus:-

> "An accused facing prosecution for offences under the PC Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences".

24. Thus, it is clear from the aforesaid authorities that the prosecution is not required to obtain the prior sanction in order to prosecute a public servant if on the date the Court takes cognizance the Petitioner is no longer a public servant. Similarly, if after the alleged misuse or abuse of the Office which was held by the Petitioner, the Petitioner either resigns or retires and seeks some other employment though in the capacity of a public servant, the prosecution need not obtain the prior sanction either from the authority competent to remove the servant in his new employment or in his previous employment. If the public servant has ceased to hold the Office on the date on which the Court takes cognizance, no previous sanction is necessary. Undisputedly, in this case, when the charge-sheet came to be filed, the Petitioner was no

longer working as Chairman and Managing Director of Goa Shipyard Ltd., the Office which the Petitioner is alleged to have misused or abused. Thus, there was no question of having obtained sanction to prosecute the Petitioner from the authority competent to remove the Petitioner. The Petitioner was no doubt working as a public servant under the Kerala State. When the Special Judge, South Goa, Margao took cognizance, the Petitioner was a public servant but was not holding the Office alleged to have been misused or abused. There are no allegations of misuse or abuse of the Office held by the Petitioner under the State of Kerala. There was thus no occasion for obtaining the sanction of the authority competent to remove the Petitioner from the Office which he was holding under the Government of Kerala. Since the Petitioner had ceased to hold the Office as Chairman and Managing Director of Goa Shipyard Ltd. no sanction to prosecute the Petitioner was necessary. The learned Trial Judge, therefore, was perfectly right in holding that prior sanction to prosecute the Petitioner was not necessary and rightly dismissed the application for discharge.

25. After considering the various authorities particularly the Judgment of the Apex Court in **R. S. Nayak** v. **A. R. Antulay**(supra), I am unable to agree with the submissions advanced by the learned Counsel appearing on behalf of the Petitioner/Accused and consequently, I see

no merit in this Criminal Application which is treated and decided as a Criminal Revision Application and the same, therfore, deserves to be dismissed.

26. In the result, therefore, Criminal Miscellaneous Application No.103/2002 is dismissed with no order as to costs. R & P be remitted to the Trial Court.

P. V. HARDAS, J.