JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(December 01-December 08, 2019)

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1. *Station House Officer, CBI/ACB/Bangalore v. B.A. Srinivasan and Another, (2019 SCC OnLine SC 1555)*

Decided on : -05.12.2019

Bench :- 1. Hon'ble Mr. Justice U. U. Lalit
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Mr. Justice Krishna Murari

(Protection under section 197 of the Code is available to the public servants when an offence is said to have been committed 'while acting or purporting to act in discharge of their official duty'. However, where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected)

Facts

The Respondent No. 1 retired on 31.10.2012 as Assistant General Manager, Vijaya Bank. On 28.10.2013, FIR was registered pursuant to complaint given by the General Manager, Vijaya Bank, Head Office, Bangalore against the Respondent No. 1 in respect of the offences punishable under Sections 419, 420, 467, 468, 471 read with Section 120B of the Penal Code, 1860 ('IPC', for short) and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 ('the Act', for short).

An application was moved by the Respondent No. 1 seeking discharge in terms of Sections 227 and 239 of the Code of Criminal Procedure, 1973 ('the Code', for short). The application was rejected by the Additional City Civil and Sessions Judge and Principal Special Judge for CBI cases, Bangalore, vide order dated 13.04.2015.

The Respondent No. 1, being aggrieved, preferred Criminal Revision in the High Court, which was allowed by the judgment and order. The High Court, thus set aside the order dated 13.04.2015 as regards the Respondent No. 1 and discharged him of the offences with which he was sought to be charged. It was concluded that the material on record was sufficient to frame a charge against Respondent No. 1. The benefit of discharge was however granted on the issue of absence of sanction under Section 197 of the Code.[1]

[1] On the issue of sanction, the High Court, however, stated:—
"11. However, another finding regarding sanction cannot be sustained. The special court has held that the sanction is not necessary as accused no. 1 has retired by the time charge-sheet was filed. But the argument of petitioner's counsel is that sanction in accordance with Section 197 CrPC is necessary. Before adverting to this point, I think it necessary to opine that the offences triable by Special Judge related to time when an accused was in service as a public servant. Sanction under Section 19 of Prevention of Corruption Act is necessary to see

The present Appeal challenges the judgment and order dated 08.08.2018 passed by the High Court allowing Criminal Revision Petition No. 834 of 2015 preferred by the Respondent No. 1; and thereby discharging the Respondent No. 1 of the offences punishable under Sections 419, 420, 467, 468, 471 read with Section 120B of the Penal Code, 1860 ('IPC', for short) and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 ('the Act', for short).

Decision and Observations

The Apex Court referred to ***S.A. Venkataraman v. The State***[2] wherein while dealing with the requirement of sanction under the *pari materia* provisions of the Prevention of Corruption Act, 1947, it was laid down that the protection under the concerned provisions would not be available to a public servant after he had demitted his office or retired from service. This case was followed in ***State of Punjab v. Labh Singh***[3]. Therefore, the Apex Court stated that "there was no occasion or reason to entertain any application seeking discharge in respect of offences punishable under the Act, on the ground of absence of any sanction under section 19 of the Act."

Also, regarding the protection under section 197 of the Code, the Apex Court said that the same is available to the public servants when an offence is said to have been committed 'while acting or purporting to act in discharge of their official duty' as has been consistently laid down. However, where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected. On this point the Apex Court relied upon ***Inspector of Police v. Battenapatla Venkata Ratnam***[4] in which several other decisions like ***Shambhoo Nath Misra* v. *State of U.P.,***[5] ***Parkash Singh Badal* v. *State of Punjab,***[6] ***Rajib Ranjan* v. *R. Vijaykumar***[7] were referred to.

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that a public servant is not entangled in a frivolous and false case. Sanction insulates a public servant from a false or vexatious or frivolous prosecution. Therefore, a protection available to a public servant while in service should also be available after his retirement. It cannot be forgotten that even after retirement, he is prosecuted for offences under prevention of Corruption Act. Indeed, the retirement removes one from the garb of a public servant; but justice requires that same protection should be available even after one's retirement. …"

[2] [1958] SCR 1037

[3] (2014) 16 SCC 807

[4] (2015) 13 SCC 87

[5] (1997) 5 SCC 326, in this case it was held in para 5 of the judgment, " It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds, etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund, etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction…"

The Apex Court also stated that "the issue whether the alleged act is intricately connected with the discharge of official functions and whether the matter would come within the expression *'while acting or purporting to act in discharge of their official duty'*, would get crystalized only after evidence is led and the issue of sanction can be agitated at a later stage as well." On this point the Apex Court referred **to *P.K. Pradhan* v. *State of Sikkim represented by the Central Bureau of Investigation.*[8]**

[6] (2007) 1 SCC 1, in this case it was held in para 20 of the judgment, "Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity "
[7] (2015) 1 SCC 513
[8] (2001) 6 SCC 704

2. *Bhawna Bai v. Ghanshyam and Others, (2019 SCC OnLine SC 1540)*

Decided on : -03.12.2019

Bench :- 1. Hon'ble Ms. Justice R. Banumathi
2. Hon'ble Mr. Justice A. S. Bopanna
3. Hon'ble Mr. Justice Hrishikesh Roy

(At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only *prima facie* case against the accused is to be seen.)

Facts

On 24.12.2015, the husband of the complainant-Gopal Saran at about 06.00 pm went outside to plough the field while stating that he shall return by 09.00-10.00 pm. Even by 12.00 mid night, Gopal Saran did not return home; then his wife Bhawna Bai, appellant herein tried to contact him over his mobile; but he did not receive the call. The appellant informed her father-in-law who tried to search the deceased and there was no information about the deceased. On the next morning at about 08.00 am, the appellant-complainant and her family members came to know from the neighbours that Gopal Saran was lying in the tank//hose in the field of the first respondent-Ghanshyam. The appellant has alleged that when she tried to approach her husband then Ganesh s/o Mohanlal Kushwah prevented her going near her husband and locked her in a room and did not allow her to see her husband. The dead body of Gopal Saran was taken to government hospital.

Upon hearing the prosecution and also the respondents-accused, vide order dated 12.12.2018, the learned Second Additional Sessions Judge has found that there are sufficient grounds for proceeding against the accused and framed the charges against the accused-respondent Nos. 1 and 2 under Section 302 IPC read with Section 34 IPC.

Challenging the order of framing charges, respondent Nos. 1 and 2 have filed revision before the High Court. Holding that, while framing charges, the court should apply the judicial mind and should give reasons in concise manner for framing charges and that the trial court has failed to apply its mind while framing charges, the High Court vide impugned order dated 25.02.2019 has quashed the charges against respondent Nos. 1 and 2 and discharged them. Being aggrieved, the appellant-complainant has preferred the appeal.

Decision and Observations

The Apex Court was of the opinion that at the time of framing the charges, only *prima facie* case is to be seen and not whether case is beyond reasonable doubt, is to be seen. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only *prima facie* case against the accused is to be seen.

The Apex Court then considered the scope of Sections 227 and 228 Cr.P.C., as it has been held in ***Amit Kapoor v. Ramesh Chander***[9] :

> **"17.** [....] There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.
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> **19.** At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."

The Apex Court referred to ***Dinesh Tiwari v. State of Uttar Pradesh***[10] wherein it was held that for framing charge under Section 228 Cr.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

Therefore, the Apex Court held that for framing the charges under Section 228 Cr.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only *prima*

[9] (2012) 9 SCC 460
[10] (2014) 13 SCC 137

facie case is to be seen. On this point, the Apex Court mentioned ***Knati Bhadra Shah v. State of West Bengal***[11] .

While holding that the High Court erred in quashing the charges framed against the accused and the impugned order cannot therefore be sustained and is liable to be set aside, the Apex Court said that, "Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused-respondent Nos. 1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos. 1 and 2 under Section 302 IPC read with Section 34 IPC…"

[11](2000) 1 SCC 722

3. *Mahipal v. Rajesh Kumar @ Polia and Another, (2019 SCC OnLine SC 1556)*

Decided on : -05.12.2019

Bench :- 1. Hon'ble Mr. Justice D. Y. Chandrachud
2. Hon'ble Mr. Justice Hrishikesh Roy

(The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a *prima facie* view of the involvement of the accused are important)

Facts

The present batch of appeals arise from a judgment of a Single Judge of the High Court of Rajasthan at its Jaipur Bench dated 10 May 2019. Allowing the bail application filed under Section 439 of the Code of Criminal Procedure 1973, the High Court enlarged the first respondent on bail subject to certain conditions therein. The appellant has filed the present appeal before this Court assailing the order of the High Court enlarging the first respondent on bail.

Decision and Observations

In the present case, the Apex Court was required to analyse whether there was a valid exercise of the power conferred by Section 439 of the CrPC to grant bail. The Apex Court referred to *Ram Govind Upadhyay v. Sudarshan Singh*[12], wherein the factors that must guide the exercise of the power to grant bail were laid down.[13] The Apex Court then stated:

[12] (2002) 3 SCC 598

[13] "3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case…The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(*a*) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(*b*) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

> **13.** The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a *prima facie* view of the involvement of the accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a *prima facie* or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

The Apex Court also referred to ***Prasanta Kumar Sarkar* v. *Ashis Chatterjee***[14] wherein the principles that guide the Court in assessing the correctness of an order passed by the High Court granting bail were succinctly laid down in the following words:

> "9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:
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> (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
> (ii) nature and gravity of the accusation;
> (iii) severity of the punishment in the event of conviction;
> (iv) danger of the accused absconding or fleeing, if released on bail;
> (v) character, behaviour, means, position and standing of the accused;
> (vi) likelihood of the offence being repeated;
> (vii) reasonable apprehension of the witnesses being influenced; and
> (viii) danger, of course, of justice being thwarted by grant of bail.
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(*c*) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(*d*) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

[14] (2010) 14 SCC 496

> 12. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal…"

The decision in *Prasanta* has been consistently followed by the Apex Court in ***Ash Mohammad* v. *Shiv Raj Singh***[15], ***Ranjit Singh* v. *State of Madhya Pradesh***[16], ***Neeru Yadav* v. *State of U.P***[17], ***Virupakshappa Gouda* v. *State of Karnataka***[18], and ***State of Orissa* v. *Mahimananda Mishra***[19].

The Apex Court distinguished between the order granting bail and the cancellation of bail in the following words:

> **17.** The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. .....
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> **18.** Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a *prima facie* view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a *prima facie* or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. ...

Reverting to the facts of the case, the Apex Court found that a case has been made out for setting aside the bail granted by the High Court as the order passed by the High Court failed to notice material facts and a non- application of mind is shown to the seriousness of the crime. Also, the Apex Court stated that it is a sound exercise of judicial discipline for an order granting or rejecting bail to record the reasons which have weighed with the court for the exercise of its discretionary power.

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[15] (2012) 9 SCC 446
[16] (2013) 16 SCC 797
[17] (2014) 16 SCC 508
[18] (2017) 5 SCC 406
[19] (2018) 10 SCC 516

4. *Embassy Property Developments Pvt. Ltd v. State of Karnataka and Others,(2019 SCC OnLine SC 1542)*

Decided on : -03.12.2019

Bench :- 1. Hon'ble Mr. Justice R. F. Nariman
2. Hon'ble Mr. Justice Aniruddha Bose
3. Hon'ble Mr. Justice V. Ramasubramanian

(Whether the High Court ought to interfere, under Article 226/227 of the Constitution, with an Order passed by the National Company Law Tribunal, held, Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was *coram non judice*)

Issues

i) Whether the High Court ought to interfere, under Article 226/227 of the Constitution, with an Order passed by the National Company Law Tribunal in a proceeding under the Insolvency and Bankruptcy Code, 2016, ignoring the availability of a statutory remedy of appeal to the National Company Law Appellate Tribunal and if so, under what circumstances; and

ii) Whether questions of fraud can be inquired into by the NCLT/NCLAT in the proceedings initiated under the Insolvency and Bankruptcy Code, 2016

Background

i) A company by name M/s. Udhyaman Investments Pvt. Ltd. which is the twelfth Respondent in the first of these three appeals, claiming to be a Financial Creditor, moved an application before the NCLT Chennai, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the *IBC, 2016*), against M/s. Tiffins Barytes Asbestos & Paints Ltd., the Corporate Debtor (which is the fourth Respondent in the first of these three appeals and which is also the appellant in the next appeal).

ii) By an Order dated 12.03.2018, NCLT Chennai admitted the application, ordered the commencement of the Corporate Insolvency Resolution Process and appointed an Interim Resolution Professional. Consequently, a Moratorium was also declared in terms of Section 14 of the IBC, 2016.

iii) At that time, the Corporate Debtor held a mining lease granted by the Government of Karnataka, which was to expire by 25.05.2018. Though a notice for premature termination of the lease had already been issued on 09.08.2017, on the allegation of

violation of statutory rules and the terms and conditions of the lease deed, no order of termination had been passed till the date of initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as CIRP).

iv) Therefore, the Interim Resolution Professional appointed by NCLT addressed a letter dated 14.03.2018 to the Chairman of the Monitoring Committee as well as the Director of Mines & Geology informing them of the commencement of CIRP. He also wrote a letter dated 21.04.2018 to the Director of Mines & Geology, seeking the benefit of deemed extension of the lease beyond 25.05.2018 upto 31.3.2020 in terms of Section 8-A (6) of the Mines & Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as MMDR Act, 1957).

v) Finding that there was no response, the Interim Resolution Professional filed a writ petition in WP No. 23075 of 2018 on the file of the High Court of Karnataka, seeking a declaration that the mining lease should be deemed to be valid upto 31.03.2020 in terms of Section 8A(6) of the MMDR Act, 1957.

vi) During the pendency of the writ petition, the Government of Karnataka passed an Order dated 26.09.2018, rejecting the proposal for deemed extension, on the ground that the Corporate Debtor had contravened not only the terms and conditions of the Lease Deed but also the provisions of Rule 37 of the Mineral Concession Rules, 1960 and Rule 24 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Rules, 2016.

vii) In view of the Order of rejection passed by the Government of Karnataka, the Corporate Debtor, represented by the Interim Resolution Professional, withdrew the Writ Petition No. 23075 of 2018, on 28.09.2018, with liberty to file a fresh writ petition.

viii) However, instead of filing a fresh writ petition (in accordance with the liberty sought), the Resolution Professional moved a Miscellaneous Application No. 632 of 2018, before the NCLT, Chennai praying for setting aside the Order of the Government of Karnataka, and seeking a declaration that the lease should be deemed to be valid up to 31.03.2020 and also a consequential direction to the Government of Karnataka to execute Supplement Lease Deeds for the period up to 31.03.2020.

ix) By an Order dated 11.12.2018, NCLT, Chennai allowed the Miscellaneous Application setting aside the Order of the Government of Karnataka on the ground that the same was in violation of the moratorium declared on 12.03.2018 in terms of Section 14(1) of IBC, 2016. Consequently the Tribunal directed the Government of Karnataka to execute Supplement Lease Deeds in favour of the Corporate Debtor for the period upto 31.03.2020.

x) Aggrieved by the order of the NCLT, Chennai, the Government of Karnataka moved a writ petition in WP No. 5002 of 2019, before the High Court of Karnataka. When the writ petition came up for hearing, it was conceded by the Resolution Professional

before the High Court of Karnataka that the order of the NCLT could be set aside and the matter relegated to the Tribunal, for a decision on merits, after giving an opportunity to the State to respond to the reliefs sought in the Miscellaneous Application. It is relevant to note here that the Order of the NCLT dated 11.12.2018, was passed ex-parte, on the ground that the State did not choose to appear despite service of notice.

xi) Therefore, by an Order dated 22.03.2019, the High Court of Karnataka set aside the Order of the NCLT and remanded the matter back to NCLT for a fresh consideration of the Miscellaneous Application No. 632 of 2018.

xii) Thereafter, the State of Karnataka filed a Statement of Objections before the NCLT, primarily raising two objections, one relating to the jurisdiction of the NCLT to adjudicate upon disputes arising out of the grant of mining leases under the MMDR Act, 1957, between the State-Lessor and the Lessee and another relating to the fraudulent and collusive manner in which the entire resolution process was initiated by the related parties of the Corporate Debtor themselves, solely with a view to corner the benefits of the mining lease.

xiii) Overruling the objections of the State, the NCLT Chennai passed an Order dated 03.05.2019 allowing the Miscellaneous Application, setting aside the order of rejection and directing the Government of Karnataka to execute Supplemental Lease Deeds.

xiv) Challenging the Order of the NCLT, Chennai, the Government of Karnataka moved a writ petition in WP No. 41029 of 2019 before the High Court of Karnataka. When the writ petition came up for orders as to admission, the Corporate Debtor represented by the Resolution Professional appeared through counsel and took notice and sought time to get instructions. Therefore, the High Court, by an Order dated 12.09.2019 adjourned the matter to 23.09.2019 and granted a stay of operation of the direction contained in the impugned Order of the Tribunal. Interim Stay was necessitated in view of a Contempt Application moved by the Resolution Professional before the NCLT against the Government of Karnataka for their failure to execute Supplement Lease deeds.

xv) It is against the said ad Interim Order granted by the High Court that the Resolution Applicant, the Resolution Professional and the Committee of Creditors have come up with the present appeals.

Decision and Observations

In order to answer the first question the Apex Court found it relevant to see the scope of the jurisdiction and the nature of the powers exercised by - (i) the High Court under Article 226

of the Constitution and (ii) the NCLT and NCLAT under the provisions of IBC, 2016. The Apex Court stated:

> **24.** Therefore in so far as the question of exercise of the power conferred by Article 226, despite the availability of a statutory alternative remedy, is concerned, *Anisminic* [*Anisminic Ltd.* v. *Foreign Compensation Commission,* (1969) 2 WLR 163] cannot be relied upon. The distinction between the lack of jurisdiction and the wrongful exercise of the available jurisdiction, should certainly be taken into account by High Courts, when Article 226 is sought to be invoked bypassing a statutory alternative remedy provided by a special statute.
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> **25.** On the basis of this principle, let us now see whether the case of the State of Karnataka fell under the category of (1) lack of jurisdiction on the part of the NCLT to issue a direction in relation to a matter covered by MMDR Act, 1957 and the Statutory Rules issued thereunder or (2) mere wrongful exercise of a recognised jurisdiction, say for instance, *asking a wrong question or applying a wrong test or granting a wrong relief*.
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> **28.** Therefore as rightly contended by the learned Attorney General, the decision of the Government of Karnataka to refuse the benefit of deemed extension of lease, is in the public law domain and hence the correctness of the said decision can be called into question only in a superior court which is vested with the power of judicial review over administrative action. The NCLT, being a creature of a special statute to discharge certain specific functions, cannot be elevated to the status of a superior court having the power of judicial review over administrative action. Judicial review, as observed by this court in *Sub-Committee on Judicial Accountability* v. *Union of India*, flows from the concept of a higher law, namely the Constitution....
>
> **29.** The NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT.

Regarding the jurisdiction of the NCLT, the Apex Court stated:

> **41.** This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-

circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

42. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.

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47. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was *coram non judice*.

Regarding the second question the Apex Court was of the opinion:

52. Even fraudulent tradings carried on by the Corporate Debtor during the insolvency resolution, can be inquired into by the Adjudicating Authority under Section 66. Section 69 makes an officer of the corporate debtor and the corporate debtor liable for punishment, for carrying on transactions with a view to defraud creditors. Therefore, NCLT is vested with the power to inquire into (i) fraudulent initiation of proceedings as well as (ii) fraudulent transactions. It is significant to note that Section 65(1) deals with a situation where CIRP is initiated fraudulently "***for any purpose other than for the resolution of insolvency or liquidation***".

53. Therefore, if, as contended by the Government of Karnataka, the CIRP had been initiated by one and the same person taking different avatars, not for the genuine purpose of resolution of insolvency or liquidation, but for the collateral purpose of cornering the mine and the mining lease, the same would fall squarely within the mischief addressed by Section 65(1). Therefore, it is clear that NCLT has jurisdiction to enquire into allegations of fraud. As a corollary, NCLAT will also have jurisdiction. Hence, fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in Section 61.

While concluding, the Apex Court stated:

54. The upshot of the above discussion is that though NCLT and NCLAT would have jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes such as those arising under MMDR Act, 1957 and the rules issued thereunder, especially when the disputes revolve

around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action. Hence, the High Court was justified in entertaining the writ petition and we see no reason to interfere with the decision of the High Court. Therefore, the appeals are dismissed. There will be no order as to costs.

5. *State of Telangana v. Managipet alias Mangipet Sarveshwar Reddy, (2019 SCC OnLine SC 1559)*

Decided on : -06.12.2019

Bench :- 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice Hemant Gupta

(The preliminary inquiry warranted in *Lalita Kumari* is not required to be mandatorily conducted in all corruption cases)

Facts

A charge sheet was filed on 9th October, 2017 on completion of the investigations. As per the Report, the Accused Officer was said to be in possession of assets worth Rs. 3,18,61,500/- alleged to be disproportionate to his known sources of income. The total worth of the property against his savings of Rs. 37 lakhs was found to be approximately Rs. 3,55,61,500/-. During the investigations, as many as 114 witnesses were examined. Ch. Sudhakar, DSP, CIU, ACB, Hyderabad and five more investigating officers conducted the investigations and prepared the final report.

The High Court in a petition for quashing of the charge sheet, held that there was no authorization to register the crime and that the informant cannot be the investigating officer and, thus, quashed the same. The State is aggrieved against the said two findings whereas, the Accused Officer has challenged the findings of the High Court not accepting the grounds pressed by him in seeking the quashing of the charge sheet - that there is no preliminary inquiry before the registration of the crime; that there is no sanction and that there is a delay in the completion of the investigation which has prejudiced the rights of the Accused Officer.

The order dated 24th December, 2018 passed by the High Court of Judicature at Hyderabad is the subject matter of challenge in the present appeals, one by the State and the other by the Accused Officer.

Decision and observations

On the issue that there was no authorization to register the crime and that the informant cannot be the investigating officer, the Apex Court stated in the following terms:

> **21.** Therefore, we find that Sri K. Sampath Kumar was discharging the duties of Joint Director in Anti-Corruption Bureau under the authority conferred by the State. The authorisation in favour of Ch. Sudhakar was issued when he was performing his duties in public interest and not for his own benefit. Therefore, such authorisation is valid and binding as if it was an act of an officer *de jure*.
>
> **22.** We further find that the High Court, while deciding a petition for quashing of proceedings under Section 482 of the Code, could not have

commented upon the nature of employment of Sri K. Sampath Kumar, as such a question does not fall within the jurisdiction of the High Court whilst deciding the aforementioned petition.

23. Sri K. Sampath Kumar has authorised Ch. Sudhakar and the final report had been filed after the investigation conducted by the latter, in terms of clause (c) of Section 17 of the Act. In this regard, it cannot be said that the investigation was not conducted in a manner contemplated under law. Thus, Ch. Sudhakar was an authorized Officer, competent to investigate and file a report for the offences under the Act including of an offence under Section 13(1)(e) of the Act.

24. Another finding recorded by the High Court is that the informant cannot be the investigating officer. Such a finding is based upon Ch. Sudhakar being both the informant and the initiator of the investigations. The High Court derives support from the judgment of this Court reported as *Mohan Lal* v. *State of Punjab* [(2018) 17 SCC 627] to hold that a fair investigation is the very foundation of fair trial, which necessarily postulates that the informant and the investigator must not be the same person.

25. The said judgment however has been held to be prospective in the judgment reported as *Varinder Kumar* v. *State of Himachal Pradesh* [2019 SCC OnLine SC 170] wherein, this Court has succinctly put as under:

"18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni-directional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in *Mohan Lal* (supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in *Mohan Lal* (supra) shall continue to be governed by the individual facts of the case."

26. Thus, we find that the orders of the High Court to quash the proceedings against the Accused Officer are not sustainable and are consequently, set aside. Accordingly, the appeal filed by the State is allowed and the matter is remitted back to the learned trial court for further proceedings in accordance with law.

Further, with regard to the appeal filed by the Accused officer, it was contended that a preliminary inquiry before the registration of crime is mandatory. Regarding the same the Apex Court first referred to ***Lalita Kumari* v. *Government of Uttar Pradesh***[20] and stated as follows:

[20] (2014) 2 SCC 1

> **30.** It must be pointed that this Court has not held that a preliminary inquiry is a must in all cases. A preliminary enquiry may be conducted pertaining to Matrimonial disputes/family disputes, Commercial offences, Medical negligence cases, Corruption cases etc. The judgment of this court in *Lalita Kumari* does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry...
>
> **32.** [..] The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in *Lalita Kumari*.
>
> **34.** Therefore, we hold that the preliminary inquiry warranted in *Lalita Kumari* is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.

On the issue of sanction, the Apex court stated:

> **36.** The High Court has rightly held that no ground is made out for quashing of the proceedings for the reason that the investigating agency intentionally waited till the retirement of the Accused Officer. The question as to whether a sanction is necessary to prosecute the Accused Officer, a retired public servant, is a question which can be examined during the course of the trial as held by this Court in *K. Kalimuthu*. In fact, in a recent judgment in *Vinod Kumar Garg* v. *State (Government of National Capital Territory of Delhi)* [2019 SCC OnLine SC 152] , this Court has held that if an investigation was not conducted by a police officer of the requisite rank and status required under Section 17 of the Act, such lapse would be an irregularity, however unless such irregularity results in causing prejudice, conviction will not be vitiated or be bad in law. Therefore, the lack of sanction was rightly found not to be a ground for quashing of the proceedings.

6. *BSES Yamuna Power Ltd v. Ghanshyam Chand Sharma and Another,(2019 SCC OnLine SC 1557)*

Decided on: 05.12.2019

Bench:- 1. Hon'ble Mr. Justice D. Y. Chandrachud
2. Hon'ble Mr. Justice Hrishikesh Roy

(The decision to resign is materially distinct from a decision to seek voluntary retirement.)

Facts

The first respondent was appointed as a daily rated mazdoor on 9 July 1968. His services were regularised on the post of a Peon on 22 December 1971. The first respondent tendered his resignation on 7 July 1990, which was accepted by the appellant with effect from 10 July 1990. The first respondent was subsequently denied pensionary benefits by the appellant on two grounds. First, that he had not completed twenty years of service, making him ineligible for the grant of pension. Second, in any case, by resigning, the first respondent had forfeited his past services and therefore could not claim pensionary benefits.

In holding that the legal effect of the first respondent's letter of resignation would amount to 'voluntary resignation', the Single Judge of the High Court of Delhi relied on the judgment of the Apex Court in ***Asger Ibrahim Amin* v. *LIC.***[21].By its order dated 26 May 2017 a Division Bench of the High Court of Delhi upheld the judgment of a Single Judge dated 21 March 2017 granting pensionary benefits to the first respondent. The judgment of the Single Judge directed the appellant to pay pensionary benefits to the first respondent on the ground that he had completed twenty years of service and had 'voluntarily retired' and not 'resigned' from service. The appellant challenges these findings in the present appeal.

Decision and Observations

As stated in para 5 of the present judgment the brief facts and judgment of ***Asger Ibrahim Amin*** are as follows:

[21](2016) 13 SCC 797

> "**5.** The court in *Asger Ibrahim Amin* held that despite the use of the term 'resignation' in the appellant's letter, the court had to independently determine whether the termination of service amounted to a 'resignation' or a 'voluntary retirement'. As the appellant in *Asger Ibrahim Amin* had fulfilled the prescribed years of service and, at the time of his resignation there was no provision for voluntary retirement, the Court held that the appellant had in fact 'voluntarily retired' and not 'resigned'. The LIC Pension Rules only made the provisions on retirement applicable retrospectively and did not make the provisions with respect to voluntary retirement applicable retrospectively. However, in holding that the court must determine whether there existed a case for 'voluntary retirement' or 'resignation', the effect of the decision was to apply the provisions on voluntary retirement retrospectively."

The Apex Court referred to ***Senior Divisional Manager, LIC v. Shree Lal Meena***[22]("*Shree Lal Meena II*") wherein the distinction between resignation and voluntary retirement was elucidated upon and the view in ***Asger Ibrahim Amin*** was disapproved which was stated in the present judgment as follows:

> **14.** The view in *Asger Ibrahim Amin* was disapproved and the court held that the provisions providing for voluntary retirement would not apply retrospectively by implication. In this view, where an employee has resigned from service, there arises no question of whether he has in fact 'voluntarily retired' or 'resigned'. The decision to resign is materially distinct from a decision to seek voluntary retirement. The decision to resign results in the legal consequences that flow from a resignation under the applicable provisions. These consequences are distinct from the consequences flowing from voluntary retirement and the two may not be substituted for each other based on the length of an employee's tenure.

Therefore, in the present case the Apex Court stated as follows:

> **15.** In the present case, the first respondent resigned on 7 July 1990 with effect from 10 July 1990. By resigning, the first respondent submitted himself to the legal consequences that flow from a resignation under the provisions applicable to his service. Rule 26 of the Central Civil Service Pension Rules 1972 states that:
>
> **"26. Forfeiture of service on resignation**
>
> (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails a forfeiture of past service..."
>
> **16.** Rule 26 states that upon resignation, an employee forfeits past service. We have noted above that the approach adopted by the court in *Asger Ibrahim Amin* has been

[22] "22. … [quoting *RBI* v. *Cecil Dennis Solomon* (2004) 9 SCC 461] In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering the prescribed period of qualifying service. Another fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in the case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary."

held to be erroneous since it removes the important distinction between resignation and voluntary retirement. Irrespective of whether the first respondent had completed the requisite years of service to apply for voluntary retirement, his was a decision to resign and not a decision to seek voluntary retirement. If this court were to re-classify his resignation as a case of voluntary retirement, this would obfuscate the distinction between the concepts of resignation and voluntary retirement and render the operation of Rule 26 nugatory. Such an approach cannot be adopted. Accordingly, the finding of the Single Judge that the first respondent 'voluntarily retired' is set aside.

7. *State of Bihar and Others v. Phulpari Kumari,(2019 SCC OnLine SC 1563)*

Decided on: 06.12.2019

Bench:- 1. Hon'ble Mr. Justice L. Nageswara Rao

2. Hon'ble Mr. Justice Hemant Gupta

(It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review.)

Facts

The Respondent was appointed as a Child Development Officer on 29.06.2011. Sh. Jitendra Rajak filed a complaint against the Respondent to the Vigilance Bureau of Investigation, Patna alleging demand of illegal gratification. The Vigilance Bureau conducted a raid and the Respondent was caught red-handed while accepting an amount of Rs. 40,000/-. A First Information Report (FIR) was registered against the Respondent on 17.08.2013. Simultaneously, disciplinary proceedings were commenced against the Respondent on 12.11.2013 and she was placed under suspension. An inquiry was held. The findings of the Inquiry Officer was that the charge of demanding and accepting illegal gratification was proved against her.

The Respondent was dismissed from service by an order dated 10.12.2014. She challenged the order of dismissal by filing a Writ Petition in the High Court, which was allowed by a judgment dated 12.12.2017. A learned Single Judge of the High Court disbelieved the version of the complainant as neither the complainant nor his wife were examined in the disciplinary proceedings. The learned Single Judge concluded that the charge of demand and acceptance of the illegal gratification by the Respondent was not proved.

The Division Bench of the High Court affirmed the judgment of the learned Single Judge in the Writ Petition and dismissed the Appeal filed by the Appellant. The Division Bench proceeded to examine the evidence and held that the charge of demand and acceptance of illegal gratification was not proved. The submission of the Respondent that she was falsely implicated in a trap case was accepted by the Division Bench.

The State of Bihar has filed the Appeal questioning the judgment of the High Court of Judicature at Patna by which the order of dismissal of the Respondent dated 10.12.2014 was set aside.

Decision and Observations

The Apex Court in para 6 of the judgment stated the following:

> **6.** The criminal trial against the Respondent is still pending consideration by a competent criminal Court. The order of dismissal from service of the Respondent was pursuant to a departmental inquiry held against her. The Inquiry Officer examined the evidence and concluded that the charge of demand and acceptance of illegal gratification by the Respondent was proved. The learned Single Judge and the Division Bench of the High Court committed an error in reappreciating the evidence and coming to a conclusion that the evidence on record was not sufficient to point to the guilt of the Respondent. It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. The High Court ought not to have interfered with the order of dismissal of the Respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the Inquiry Officer.
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> **7.** In view of the above, the judgment of the High Court is set aside and the order of dismissal of the Respondent is upheld.