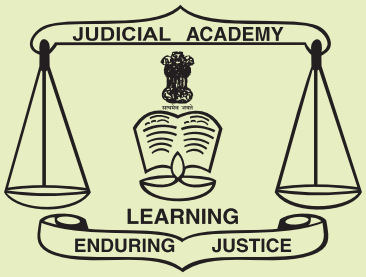

Judicial Academy Jharkhand

Interdisciplinary conference on the

"Role of Prosecution and Courts in CBI Cases"

READING MATERIAL

for

CBI/Vigilance Judges and CBI/Vigilance Prosecutors

Date : 17th - 18th March, 2018

Venue : Judicial Academy Jharkhand

FOR PRIVATE CIRCULATION ONLY

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Organised by :

Judicial Academy Jharkhand

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THE PREVENTION OF CORRUPTION ACT, 1988

Year : 1988

CHAPTER 1

PRELIMINARY

1. Short title and extent . —

(1) This Act may be called the Prevention of Corruption Act, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

2. Definitions . — In this Act, unless the context otherwise requires, —

(a) "election" means any election, by whatever means held under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority;

(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 company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)

(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;

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any 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 officer by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or 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;

(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.

CHAPTER II

APPOINTMENT OF SPECIAL JUDGES

3. Power to appoint special Judges . —

(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely: —

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Session Judge or an Assistant Session Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

4. Cases triable by special Judges . —

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of Section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

5. Procedure and powers of special Judge . —

(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973, for the trial of warrant cases by Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of Section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under Section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of Sections 326 and 475 of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ordinance 38 of 1944).

6. Power to try summarily . —

(1) Where a special Judge tries any offence specified in sub-section (1) of Section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of Section 12-A of the Essential Commodities Act, 1955, or of an order referred to in Clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of Section 5 of this Act or Section 260 of the Code of Criminal Procedure, 1973, the special Judge shall try the offence in a summary way, and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year: Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973, there shall be no appeal by a convicted person in any case tried summarily under this section in which the Special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under Section 452 of the said Code is made in addition to such sentence, but an appeal shall lie whether any sentence in excess of the aforesaid limits is passed by the special Judge.

CHAPTER III

OFFENCES AND PENALTIES

7. Public servant taking gratification other than legal remuneration in respect of an official act . — Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise shall, be punishable with imprisonment which shall be not less than [1][three years] but which may extend to [1][seven years] and shall also be liable to fine.

Explanation. —

(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification. — The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration". — The words "legal remuneration" are not restricted to remunerations which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing". — A person who receives a gratification as motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression;

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

8. Taking gratification, in order, by corrupt or illegal means, to influence public servant . — Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or such public servant to show favour or disfavour to any person, or to render or attempt to render any service or dis-service to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than [1][three years] but which may extend to [1][seven years] and shall also be liable to fine.

9. Taking gratification for exercise of personal influence with public servant . — Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render to attempt to render any service or dis-service to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

1 Substituted by Act 1 of 2014, S. 58 and Sch., for "six months" and "Five years", respectively (w.e.f. 16-1-2014).

10. Punishment for abetment by public servant of offences defined in Section 8 or 9. — Whoever, being a public servant, in respect of whom either of the offences defined in Section 8 or Section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant. — Who- ever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, of or any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

12. Punishment for abetment of offences defined in Section 7 or 11. — Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than [1][three years] but which may extend to [1][seven years] and shall also be liable to fine.

13. Criminal misconduct by a public servant. —

(1) A public servant is said to commit the offence of criminal misconduct, —

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he, —

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation. — For the purposes of this section "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to public servant.

1 Substituted by Act 1 of 2014, S. 58 and Sch., for "six months" and "Five years", respectively (w.e.f. 16-1-2014).

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

14. Habitual committing of offence under Sections 8, 9 and 12. — Whoever habitually commits —

(a) an offence punishable under Section 8 or Section 9; or

(b) an offence punishable under Section 12, shall be punishable with imprisonment for a term which shall be not less than [1][five years] but which may extend to [1][ten years] and shall also be liable to fine.

15. Punishment for attempt. — Whoever attempts to commit an offence referred to in Clause (c) or Clause (d) or sub-section (1) of Section 13 shall be punishable with imprisonment for a term [2][which shall not be less than two years but which may extend to five years].

16. Matters to be taken into consideration for fixing fine. — Where a sentence of fine is imposed under sub-section (2) of Section 13 of Section 14, the Court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which, the accused person has obtained by committing the offence or where the conviction is for an offence referred to in Clause (e) of sub-section (1) of Section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

CHAPTER IV

INVESTIGATION INTO CASES UNDER THE ACT

17. Persons authorised to investigate. — Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank, —

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973, of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the the case may be, or make any arrest therefor without a warrant;

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be or make arrest therefor without a warrant:

Provided further that an offence referred to in Clause (e) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. 18. Power to inspect bankers$ books. — If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under Section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers, books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers, books in so far as they relate to the accounts of the persons suspected to have committed that offence or of other person suspected to be holding money on behalf of such person, and take or cause or to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his power under this section.

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation. — In this section, the expressions "bank" and "bankers books" shall have the meanings respectively assigned to them in the Bankers$ Books Evidence Act, 1891.

1 Substituted by Act 1 of 2014, S. 58 and Sch., for "one year" and "seven years" and "two years", respectively (w.e.f. 16-1-2014).
2 Substitued by Act 1 of 2014, S.58 and Sch., for " which may extend to three years".

CHAPTER V

SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

19. Previous sanction necessary for prosecution. —

(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction [1][save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)] —

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 —

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any inter-locutory order passed in inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. — For the purposes of this section, — (a) error includes competency of the authority to grant sanction; (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

STATE AMENDMENT

Uttar Pradesh

In Section 19 of Prevention Corruption Act, 1988 in sub-section (1), after clause (c), the following clause shall be inserted, namely : —

(d) Notwithstanding anything contained in clause (c), the State Government may, where it considers necessary so to do, requires the authority referred to in caluse (c), to give previous sanction within the specified in this behalf and if the said authority fails to give the previous sanction within such period, the previous sanction may be given by the State Government.

1 Inserted by Act 1 of 2014, S. 58 and Sch. (w.e.f. 16-1-2014).

Explanation —

(1) For the purposes of this clause "authority" does not include any authority under the control of the Central Government.

(2) For removal of doubts it is hereby declared that the power of the State Government under this clause may be exercised also in a case where the authority referred to in clasue (c) has earlier refused to give the previous sanction. [U.P. Act 4 of 1991]

20. Presumption where public servant accepts gratification other than legal remuneration. —

(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain from himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under Clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

21. Accused person to be a competent witness. — Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that —

(a) he shall not be called as a witness except at his own request;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless —

(i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or

(ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence.

22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications. — The provisions of the Code of Criminal Procedure 1973, shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if, —

(a) in sub-section (1) of Section 243, for the words "The accused shall then be called upon," the words "The accused shall then be required to give in writing at once or within such time as the court may allow, a list

of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;

(b) in sub-section (2) of Section 309, after the third proviso, the following proviso had been inserted, namely: — "Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under Section 397 has been made by a party to the proceeding.";

(c) after sub-section (2) of Section 317, the following sub-section had been inserted, namely: — "(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";

(d) in sub-section (1) of Section 397, before the Explanation, the following proviso had been inserted, namely: — "Provided that where the powers under this section are exercised by a court on an application made by a party to such proceedings, the court shall not ordinarily call for the record of the proceedings —

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

23. Particulars in a charge in relation to an offence under Section 13 (1) (c). — Notwithstanding anything contained in the Code of Criminal Procedure, 1973, when an accused in charged with an offence under Clause (c) of sub-section (1) of Section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219 of the said Code:

Provided that the time included between the first and last of such dates shall not exceed one year.

24. Statement by bribe-giver not to subject him to prosecution. — Notwith- standing anything contained in any law for the time being in force, a statement made by person in any proceeding against a public servant for an offence under Sections 7 to 11 or under Sections 13 or Section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under Section 12.

25. Military, Naval and Air force or other law not to be affected. —

(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957, the Border Security Force Act, 1968, the Coast Guard Act, 1978 and the National Security Guard Act, 1986.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the Court of a Special Judge shall be deemed to be a court of ordinarily criminal justice.

26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act. — Every Special Judge appointed under the Criminal law Amendment Act, 1952 for any area or areas and is holding office on the commencement of this Act shall be deemed to be a Special Judge, appointed under Section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

27. Appeal and revision. — Subject to the provisions of this Act, the High Court may exercise, so faras they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973, on a High court as if the Court of the special Judge were a Court of Session trying cases within the local limits of the High Court.

28. Act to be in addition to any other law. — The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time beings in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

29. Amendment of Ordinance 38 of 1944. — In the Criminal Law Amendment Ordinance, 1944, —

(a) in sub-section (1) of Section 3, sub-section (1) of Section 9 Clause (a) of Section 10, sub-section (1) of Section 11 and sub-section (1) of Section 13, for the words "State Government," wherever they occur, the words "State Government or, as the case may be, the Central Government" shall be substituted;

(b) in Section 10, in Clause (a), for the words "three months", the words "one year" shall be substituted;

(c) in the Schedule, —

(i) paragraph 1 shall be omitted;

(ii) in paragraphs 2 and 4 —

(a) after words "a local authority", the words and figures "or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by a such corporation, authority, body or Government company" shall be inserted;

(b) after the words "or authority", the words "or corporation or body or Government Company or Society" shall be inserted;

(iii) for paragraph 4-A, the following paragraph shall be substituted, namely — "4-A. An offence punishable under the Prevention of Corruption Act, 1988";

(iv) in paragraph 5, for the words and figures "items 2, 3 and 4", the words, figures and letter items 2, 3, 4 and 4- A" shall be substituted.

30. Repeal and saving. —

(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897, anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of this Act.

31. Omission of certain sections of Act 45 of 1860. — Section 161 to 165-A (both inclusive) of the Indian Penal Code shall be omitted, and Section 6 of the General Clauses Act, 1897, shall apply to such omission as if the said section had been repealed by a Central Act.

❑❑❑

JUDGMENTS

DR. SUBRAMANIAN SWAMY VERSUS DR. MANMOHAN SINGH AND ANOTHER

SUPREME COURT OF INDIA

Civil Appeal No. 1193 of 2012
(Arising out of SLP(C) No. 27535 of 2010)
Citation : (2012) 3 SCC 64

Dr. Subramanian Swamy — Appellant
versus
Dr. Manmohan Singh and another — Respondents

Coram : G.S. Singhvi and Asok Kumar Ganguly, JJ.

Decided on : 31-1-2012

All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the concerned authority. Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months, an extension of one month period may be allowed. But the request for consultation is to be sent in writing within the three months. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit. At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit.

JUDGMENT

G. S. Singhvi, J.

1. Leave granted.

2. Whether a complaint can be filed by a citizen for prosecuting a public servant for an offence under the Prevention of Corruption Act, 1988 (for short, 'the 1988 Act') and whether the authority competent to sanction prosecution of a public servant for offences under the 1988 Act is required to take an appropriate decision within the time specified in clause I(15) of the directions contained in paragraph 58 of the judgment of this Court in Vineet Narain v. Union of India1 (1998) 1 SCC 226 and the guidelines issued by the Central Government, Department of Personnel and Training and the Central Vigilance Commission (CVC) are the question which require consideration in this appeal.

3. For the last more than three years, the appellant has been vigorously pursuing, in public interest, the cases allegedly involving loss of thousands of crores of rupees to the Public Exchequer due to arbitrary and illegal grant of licences at the behest of Mr. A. Raja (respondent No. 2) who was appointed as Minister for Communication and Information Technology on 16.5.2007 by the President on the advice of Dr. Manmohan Singh (respondent No. 1). After collecting information about the grant of licences, the appellant made detailed representation dated 29.11.2008 to respondent No. 1 to accord sanction for prosecution of respondent No. 2 for offences under the 1988 Act. In his representation, the appellant pointed out that respondent No. 2 had allotted new licences in 2G mobile services on 'first come, first served' basis to novice telecom companies, viz., Swan Telecom and Unitech, which was in clear violation of Clause 8 of the Guidelines for United Access Services Licence issued by the Ministry of Communication and Information Technology vide letter No.10-21/2005-BS.I(Vol.II)/49 dated 14.12.2005 and, thereby, caused loss of over Rs. 50,000 crores to the Government. The appellant gave details of the violation of Clause 8 and pointed out that the two officers, viz., R.J.S. Kushwaha and D. Jha of the Department of Telecom, who had opposed the showing of undue favour to Swan Telecom, were transferred just before the grant of licences and Bharat Sanchar Nigam Limited (BSNL) which had never entered into a roaming

agreement with any operator, was forced to enter into such an agreement with Swan Telecom. The appellant further pointed out that immediately after acquiring 2G spectrum licences, Swan Telecom and Unitech sold their stakes to foreign companies, i.e., Etisalat, a telecom operator from UAE and Telenor of Norway respectively and, thereby, made huge profits at the expense of public revenue. He claimed that by 2G spectrum allocation under respondent No. 2, the Government received only one-sixth of what it would have received if it had opted for an auction. The appellant pointed out how respondent No. 2 ignored the recommendations of the Telecom Regulatory Authority of India (TRAI) and gave totally unwarranted benefits to the two companies and thereby caused loss to the Public Exchequer. Some of the portions of the appellant's representation are extracted below:

> "Clause 8 has been violated as follows: While Anil Dhirubhai Ambani Group (ADAG), the promoters of Reliance Communications (R Com), had more than 10 per cent stake in Swan Telecom, the figures were manipulated and showed as 9.99 per cent holding to beat the said Clause. The documents available disclose that on March 2, 2007, when Swan Telecom applied for United Access Services Licences, it was owned 100 per cent by Reliance Communications and its associates viz. Reliance Telecom, and by Tiger Trustees Limited, Swan Infonet Services Private Limited, and Swan Advisory Services Private Limited (see Annexure I). At one or the other point of time, employees of ADAG (Himanshu Agarwal, Ashish Karyekar, Paresh Rathod) or its associate companies have been acquiring the shares of Swan Telecom itself. But still the ADAG manipulated the holdings in Swan to reduce it to only 9.99 per cent. Ambani has now quietly sold his shares in Swan to Delphi Investments, a Mauritius based company owned by Ahmed O. Alfi, specializing in automobile spare parts. In turn, Swan has sold 45% of its shares to UAE's Emirates Telecom Corporation (Etisalat) for Rs.9000 crores! All this is highly suspicious and not normal business transactions. Swan company got 60% of the 22 Telecom licenced areas at a throw away price of Rs.1650 crores, when it was worth Rs.60,000 crores total. Room has operations in the same circles where the application for Swan Telecom was filed. Therefore, under Clause 8 of the Guidelines, Swan should not have been allotted spectrum by the Telecommunication Ministry. But the company did get it on Minister's direction, which is an undue favour from him (Raja). There was obviously a quid pro quo which only a CBI enquiry can reveal, after an FIR is registered. There is no need for a P/E, because the CVC has already done the preliminary enquiry.
>
> Quite surprisingly, the 2G spectrum licences were priced at 2001 levels to benefit these private players. That was when there were only 4 million cellphone subscribers; now it is 350 million. Hence 2001 price is not applicable today.
>
> Immediately after acquiring 2G spectrum licences both Swan and Unitech sold their stakes to foreign companies at a huge profits. While Swan Telecom sold its stakes to UAE telecom operator Etisalat, Unitech signed a deal with Telenor of Norway for selling its share at huge premiums.
>
> In the process of this 2G spectrum allocation, the government received only one-sixth of what it would have got had it gone through a fresh auction route. The total loss to the exchequer of giving away 2G GSM spectrum in this way - including to the CDMA operators - is over Rs.50,000 crores and is said to be one of the biggest financial scams of all times in the country. While approving the 2G licences, Minister Raja turned a blind eye to the fact that these two companies do not have any infrastructure to launch their services. Falsely claiming that the Telecom Regulatory Authority of India had approved the first-cum-first served rule, Raja went ahead with the 2G spectrum allocation to two debutants in the Telecom sector. In fact earlier TRAI had discussed the spectrum allocation issue with existing services providers and suggested to the Telecom Ministry that spectrum allocation be made through a transparent tender and auction process. This is confirmed by what the TRAI Chairman N. Misra told the CII organized conference on November 28, 2008 (Annexure 2). But Raja did not bother to listen to the TRAI either and pursued the process on 'first come, first served' basis, benefiting those who had inside information, causing a loss of Rs.50,000 crores to the Government. His dubious move has been to ensure benefit to others at the cost of the national exchequer."

The request made in the representation, which was relied upon by the learned Attorney General for showing that the appellant had himself asked for an investigation, is also extracted below:

> "According to an uncontradicted report in CNN-IBN news channel of November 26, 2008, you are said to be "very upset with A. Raja over the spectrum allocation issue". This confirms that an investigation is necessary, for which I may be given sanction so that the process of law can be initiated.
>
> I, therefore, write to demand the grant of sanction to prosecute Mr. A. Raja, Minister for Telecom of the Union of India for offences under the Prevention of Corruption Act. The charges in brief are annexed herewith (Annexure 3)."

4. Since the appellant did not receive any response from respondent No.1, he sent letters dated 30.5.2009, 23.10.2009, 31.10.2009, 8.3.2010 and 13.3.2010 and reiterated his request/demand for grant of sanction to prosecute respondent No.2. In his letter dated 31.10.2009, the appellant referred to the fact that on being directed by the CVC, the Central Bureau of Investigation (CBI) had registered a first information report, and claimed that prima facie case is established against respondent No. 2 for his prosecution under Sections 11 and 13(1)(d) of the 1988 Act. The appellant also claimed that according to various Supreme Court judgments it was not necessary to carry out a detailed inquiry, and he had produced sufficient evidence for grant of sanction to initiate criminal prosecution against respondent No. 2 for the misuse of authority and pecuniary gains from corrupt practices. In his subsequent letters, the appellant again asserted that the nation had suffered loss of nearly Rs.65,000 crores due to arbitrary, unreasonable and mala fide action of respondent No.2. In letter dated 13.3.2010, the appellant referred to the proceedings of the case in which this Court refused to interfere with the order of the Delhi High Court declaring that the decision of respondent No.2 to change the cut off date fixed for consideration of applications made for grant of licences was arbitrary and mala fide.

5. After 1 year and 4-1/2 months of the first letter written by him, Secretary, Department of Personnel and Training, Ministry of Personnel sent letter dated 19.3.2010 to the appellant mentioning therein that the CBI had registered a case on 21.10.2009 against unknown officers of the Department of Telecommunications (DoT), unknown private persons/companies and others and that the issue of grant of sanction for prosecution would arise only after perusal of the evidence collected by the investigating agency and other material provided to the Competent Authority and that it would be premature to consider sanction for prosecution at that stage.

6. On receipt of the aforesaid communication, the appellant filed Civil Writ Petition No. 2442/2010 in the Delhi High Court and prayed for issue of a mandamus to respondent No.1 to pass an order for grant of sanction for prosecution of respondent No. 2. The Division Bench of the Delhi High Court referred to the submission of the learned Solicitor General that when respondent No. 1 has directed investigation by the CBI and the investigation is in progress, it is not permissible to take a decision on the application of the appellant either to grant or refuse the sanction because that may affect the investigation, and dismissed the writ petition by recording the following observations:

> "The question that emanates for consideration is whether, at this stage, when the investigation by the CBI is in progress and this Court had earlier declined to monitor the same by order dated 25th May, 2010, which has been pressed into service by the learned Solicitor General of India, it would be appropriate to direct the respondent no. 1 to take a decision as regards the application submitted by the petitioner seeking sanction to prosecute.
>
> In our considered opinion, when the matter is being investigated by the CBI, and the investigation is in progress, it would not be in fitness of things to issue a mandamus to the first respondent to take a decision on the application of the petitioner."

7. The special leave petition filed by the appellant, out of which this appeal arises, was initially taken up for consideration along with SLP(C) No. 24873/2010 filed by the Center for Public Interest Litigation against order dated 25.5.2010 passed by the Division Bench of the High Court in Writ Petition (Civil) No. 3522/2010 to which reference had been made in the impugned order. During the course of hearing of the special leave petition filed by the appellant, the learned Solicitor General, who had appeared on behalf of respondent No. 1, made a statement that he has got the record and is prepared to place the same before the Court. However,

keeping in view the fact that the record sought to be produced by the learned Solicitor General may not be readily available to the appellant, the Court passed order dated 18.11.2010 requiring the filing of an affidavit on behalf of respondent No. 1. Thereafter, Shri V. Vidyavati, Director in the PMO filed affidavit dated 20.11.2010, which reveals the following facts:

"(i) On 1.12.2008, the Prime Minister perused the letter and noted "Please examine and let me know the facts of this case". This was marked to the Principal Secretary to the Prime Minister who in turn marked it to the Secretary. The Secretary marked it to me as Director in the PMO. I prepared a note dated 5.12.2008 factually summarizing the allegations and seeking approval to obtain the factual position from the sectoral side (in the PMO dealing with Telecommunications).

(ii) On 11.12.2008, a copy of appellant's letter dated 29.11.2008 was sent to the Secretary, Department of Telecommunication for submitting a factual report. The Department of Telecommunication sent reply dated 13.02.2009 incorporating his comments.

(iii) In the meanwhile, letters dated 10.11.2008 and 22.11.2008 were received from Shri Gurudas Gupta and Shri Suravaran Sudhakar Reddy respectively (copies of these letters have not been produced before the Court). The same were forwarded to the Department of Telecommunication on 25.03.2009 for sending an appropriate reply to the appellant.

(iv) On 01.06.2009, letter dated 30.05.2009 received from the appellant was placed before respondent No.1, who recorded the following endorsement "please examine and discuss".

(v) On 19.06.2009, the Director of the concerned Sector in the PMO recorded that the Minister of Telecommunications and Information Technology has sent D.O. letter dated 18.06.2009 to the appellant. When letter dated 23.10.2009 of the appellant was placed before respondent No.1, he recorded an endorsement on 27.10.2009 "please discuss".

(vi) In response to letter dated 31.10.2009 of the appellant, respondent No.1 made an endorsement "please examine".

(vii) On 18.11.2009, respondent No.1 stated that Ministry of Law and Justice should examine and advice. The advice of Ministry of Law and Justice was received on 8.2.2010. Para 7 thereof was as follows:

> "From the perusal of letter dated 23.10.2009 and 31.10.2009, it is noticed that Shri Swamy wants to rely upon the action and investigation of the CBI to collaborate and strengthen the said allegation leveled by him against Shri A. Raja, Minister for Communication and Information Technology. It is specifically mentioned in Para 2 of the letter dated 31.10.2009 of Shri Swamy that the FIR was registered by the CBI and "the substance of the allegation made by me in the above cited letters to you are already under investigation". If it is so, then it may be stated that decision to accord of sanction of prosecution may be determined only after the perusal of the evidence (oral or documentary) collected by the investigation agency, i.e., CBI and other materials to be provided to the competent authority."

(viii) On 05.03.2010, the deponent prepared a note that an appropriate reply be sent to the appellant in the light of the advice given by the Law Department and final reply was sent to the appellant after respondent No.1 had approved note dated 17.03.2010."

8. The appellant filed rejoinder affidavit on 22.11.2010 along with a copy of letter dated 18.6.2009 written to him by respondent No. 2 in the context of representation dated 29.11.2008 submitted by him to respondent No.1.

9. Although, respondent No.2 resigned from the Council of Ministers on 14.11.2010, the appellant submitted that the issues relating to his right to file a complaint for prosecution of respondent No.2 and grant of sanction within the time specified in the judgment in Vineet Narain's case should be decided.

10. During the course of hearing, the learned Attorney General filed written submissions. After the hearing concluded, the learned Attorney General filed supplementary written submissions along with a compilation of

126 cases in which the sanction for prosecution is awaited for periods ranging from more than one year to few months

11. Final order in this case was deferred because it was felt that the directions given by this Court in Vineet Narain's case may require further elaboration in the light of the order passed in Civil Appeal No. 10660/2010 (arising out of SLP(C) No. 24873/2010) and the fact that decision on the question of grant of sanction under the 1988 Act and other statutes is pending for a sufficiently long time in 126 cases. However, as the investigation with regard to some of the facets of what has come to be termed as 2G case is yet to be completed, we have considered it appropriate to pass final order in the matter.

12. Appellant Dr. Subramanian Swamy argued that the embargo contained in Section 19(1) of the 1988 Act operates only against the taking of cognizance by the Court in respect of offences punishable under Sections 7, 10, 11, 13 and 15 committed by a public servant, but there is no bar to the filing of a private complaint for prosecution of the concerned public servant and grant of sanction by the Competent Authority, and that respondent No. 1 was duty bound to take appropriate decision on his representation within the time specified in clause I(15) of the directions contained in paragraph 58 of Vineet Narain's case, more so because he had placed sufficient evidence to show that respondent No.2 had committed offences under the 1988 Act.

13. The learned Attorney General argued that the question of grant of sanction for prosecution of a public servant charged with any of the offences enumerated in Section 19(1) arises only at the stage when the Court decides to take cognizance and any request made prior to that is premature. He submitted that the embargo contained in Section 19(1) of the Act is applicable to the Court which is competent to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant and there is no provision for grant of sanction at a stage before the competent Court applies its mind to the issue of taking cognizance. Learned Attorney General relied upon the judgment of the Calcutta High Court in Superintendent and Remembrancer of Legal Affairs v. Abani Kumar Banerjee2 AIR 1950 Cal. 437 as also the judgments of this Court in R.R. Chari v. State of Uttar Pradesh3 1951 SCR 312, Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy4 (1976) 3 SCC 252, Ram Kumar v. State of Haryana5 (1987) 1 SCC 476, Krishna Pillai v. T.A. Rajendran,6 1990 (Supp) SCC 121, State of West Bengal v. Mohd. Khalid7 (1995) 1 SCC 684, State through C.B.I. v. Raj Kumar Jain8 (1998) 6 SCC 551, K. Kalimuthu v. State9 (2005) 4 SCC 512, Centre for Public Interest Litigation v. Union of India10 (2005) 8 SCC 202 and State of Karnataka v. Pastor P. Raju11 (2006) 6 SCC 728 and argued that letter dated 29.11.2008 sent by the appellant for grant of sanction to prosecute respondent No.2 for the alleged offences under the 1988 Act was wholly misconceived and respondent No.1 did not commit any illegality or constitutional impropriety by not entertaining his prayer, more so because the appellant had himself asked for an investigation into the alleged illegal grant of licences at the behest of respondent No.2. Learned Attorney General further argued that the appellant does not have the locus standi to file a complaint for prosecuting respondent No.2 because the CBI is already investigating the allegations of irregularity committed in the grant of licences for 2G spectrum and the loss, if any, suffered by the Public Exchequer.

14. We have considered the respective submissions. Section 19 of the 1988 Act reads as under:

"19. Previous sanction necessary for prosecution. -

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub- section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. - For the purposes of this section, (a) error includes competency of the authority to grant sanction; (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specifiedperson or any requirement of a similar nature."

15. The question whether sanction for prosecution of respondent No.2 for the offences allegedly committed by him under the 1988 Act is required even after he resigned from the Council of Ministers, though he continues to be a Member of Parliament, need not detain us because the same has already been answered by the Constitution Bench in R. S. Nayak v. A. R. Antulay (1984) 2 SCC 183 the relevant portions of which are extracted 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. We would however, like to make it abundantly clear that if the two decisions purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decision in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Section 6."

16. The same view has been taken in Habibullsa Khan v. State of Orissa (1995) 2 SCC 437 (para 12), State of H.P. v. M. P. Gupta1(2004) 2 SCC 349 (paras 17 and 19), Parkash Singh Badal v. State of Punjab (2007) 1 SCC 1 and Balakrishnan Ravi Menon v. Union of India (2007) 1 SCC 45. In Balakrishnan Ravi Menon's case, it was argued that the observations made in para 25 of the judgment in Antulay's case are obiter. While negating this submission, the Court observed :

"Hence, it is difficult to accept the contention raised by Mr. U.R. Lalit, the learned Senior Counsel for the petitioner that the aforesaid finding given by this Court in Antulay case is obiter. Further, under Section 19 of the PC Act, sanction is to be given by the Government or the authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed. The question of obtaining sanction would arise in a case where the offence has been committed by a public servant who is holding the office and by misusing or abusing the powers of the office, he has committed the offence. The word "office" repeatedly used in Section 19 would mean the "office" which the public servant misuses or abuses by corrupt motive for which he is to be prosecuted. Sub-sections (1) and (2) of Section 19 are as under:

"19. Previous sanction necessary for prosecution. —

(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central

> Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

Clauses (a) and (b) of sub-section (1) specifically provide that in case of a person who is employed and is not removable from his office by the Central Government or the State Government, as the case may be, sanction to prosecute is required to be obtained either from the Central Government or the State Government. The emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In case where the person is not holding the said office as he might have retired, superannuated, be discharged or dismissed then the question of removing would not arise. Admittedly, when the alleged offence was committed, the petitioner was appointed by the Central Government. He demitted his office after completion of five years' tenure.

Therefore, at the relevant time when the charge-sheet was filed, the petitioner was not holding the office of the Chairman of Goa Shipyard Ltd. Hence, there is no question of obtaining any previous sanction of the Central Government." (emphasis supplied)

17. The same view was reiterated in Parkash Singh Badal's case and the argument that even though some of the accused persons had ceased to be Ministers, they continued to be the Members of the Legislative Assembly and one of them was a Member of Parliament and as such cognizance could not be taken against them without prior sanction, was rejected.

18. The next question which requires consideration is whether the appellant has the locus standi to file a complaint for prosecution of respondent No.2 for the offences allegedly committed by him under the 1988 Act. There is no provision either in the 1988 Act or the Code of Criminal Procedure, 1973 (CrPC) which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence. Therefore, the argument of the learned Attorney General that the appellant cannot file a complaint for prosecuting respondent No.2 merits rejection. A similar argument was negatived by the Constitution Bench in A.R. Antulay v. Ramdas Sriniwas Nayak (1984) 2 SCC 500. The facts of that case show that on a private complaint filed by the respondent, the Special Judge took cognizance of the offences allegedly committed by the appellant. The latter objected to the jurisdiction of the Special Judge on two counts, including the one that the Court set up under Section 6 of the Criminal Law Amendment Act, 1952 (for short, 'the 1952 Act') was not competent to take cognizance of any of the offences enumerated in Section 6(1)(a) and (b) upon a private complaint. His objections were rejected by the Special Judge. The revision filed by the appellant was heard by the Division Bench of the High Court which ruled that a Special Judge is competent and is entitled to take cognizance of offences under Section 6(1)(a) and (b) on a private complaint of the facts constituting the offence. The High Court was of the opinion that a prior investigation under Section 5A of the Prevention of Corruption Act, 1947 (for short, 'the 1947 Act') by a police officer of the designated rank is not sine qua non for taking cognizance of an offence under Section 8(1) of the 1952 Act. Before the Supreme Court, the argument against the locus standi of the respondent was reiterated and it was submitted that Section 5A of the 1947 Act is mandatory and an investigation by the designated officer is a condition precedent to the taking of cognizance by the Special Judge of an offence or offences committed by a public servant. While dealing with the issue relating to maintainability of a private complaint, the Constitution Bench observed:

> "It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by

necessary implication the general principle gets excluded by such statutory provision. Numerous statutory provisions, can be referred to in support of this legal position such as (i) Section 187-A of Sea Customs Act, 1878 (ii) Section 97 of Gold Control Act, 1968 (iii) Section 6 of Import and Export Control Act, 1947 (iv) Section 271 and Section 279 of the Income Tax Act, 1961 (v) Section 61 of the Foreign Exchange Regulation Act, 1973, (vi) Section 621 of the Companies Act, 1956 and (vii) Section 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the CrPC. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force is not merely an offence committed relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait- jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far fetched implication, cannot be a substitute for an express statutory provision." (emphasis supplied)

The Constitution Bench then considered whether the Special Judge can take cognizance only on the basis of a police report and answered the same in negative in the following words:

"In the matter of initiation of proceeding before a Special Judge under Section 8(1), the Legislature while conferring power to take cognizance had three opportunities to unambiguously state its mind whether the cognizance can be taken on a private complaint or not. The first one was an opportunity to provide in Section 8(1) itself by merely stating that the Special Judge may take cognizance of an offence on a police report submitted to it by an investigating officer conducting investigation as contemplated by Section 5-A. While providing for investigation by designated police officers of superior rank, the Legislature did not fetter the power of Special Judge to take cognizance in a manner otherwise than on police report. The second opportunity was when by Section 8(3) a status of a deemed public prosecutor was conferred on a private complainant if he chooses to conduct the prosecution. The Legislature being aware of a provision like the one contained in Section 225 of the CrPC, could have as well provided that in every trial before a Special Judge the prosecution shall be conducted by a Public Prosecutor, though that itself would not have been decisive of the matter. And the third opportunity was when the Legislature while prescribing the procedure prescribed for warrant cases to be followed by Special Judge did not exclude by a specific provision that the only procedure which the Special Judge can follow is the one prescribed for trial of warrant cases on a police report. The disinclination of the Legislature to so provide points to the contrary and no canon of construction permits the court to go in search of a hidden or implied limitation on the power of the Special Judge to take cognizance unfettered by such requirement of its being done on a police report alone. In our opinion, it is no answer to this fairly well-established legal position that for the last 32 years no case has come to the notice

of the court in which cognizance was taken by a Special Judge on a private complaint for offences punishable under the 1947 Act." (emphasis supplied)

The Court then referred to Section 5A of the 1947 Act, the provisions of the 1952 Act, the judgments in H.N. Rishbud and Inder Singh v. State of Delhi18 (1955) 1 SCR 1150, State of M.P. v. Mubarak Ali19 1959 Supp. (2) SCR 201, Union of India v. Mahesh Chandra20 AIR 1957 M.B. 43 and held:

"Having carefully examined these judgments in the light of the submissions made, the only conclusion that unquestionably emerges is that Section 5-A is a safeguard against investigation of offences committed by public servants, by petty or lower rank police officer. It has nothing to do directly or indirectly with the mode and method of taking cognizance of offences by the Court of Special Judge. It also follows as a necessary corollary that provision of Section 5-A is not a condition precedent to initiation of proceedings before the Special Judge who acquires power under Section 8(1) to take cognizance of offences enumerated in Section 6(1)(a) and (b), with this limitation alone that it shall not be upon commitment to him by the Magistrate.

Once the contention on behalf of the appellant that investigation under Section 5-A is a condition precedent to the initiation of proceedings before a Special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line of decisions commencing from Taylor v. Taylor ; Nazir Ahmad v. King-Emperor and ending with Chettiam Veettil Ammad v. Taluk Land Board , laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. Once Section 5-A is out of the way in the matter of taking cognizance of offences committed by public servants by a Special Judge, the power of the Special Judge to take cognizance of such offences conferred by Section 8(1) with only one limitation, in any one of the known methods of taking cognizance of offences by courts of original jurisdiction remains undented. One such statutorily recognised well-known method of taking cognizance of offences by a court competent to take cognizance is upon receiving a complaint of facts which constitutes the offence. And Section 8(1) says that the Special Judge has the power to take cognizance of offences enumerated in Section 6(1)(a) and (b) and the only mode of taking cognizance excluded by the provision is upon commitment. It therefore, follows that the Special Judge can take cognizance of offences committed by public servants upon receiving a complaint of facts constituting such offences.

It was, however, submitted that even if it be held that the Special Judge is entitled to entertain a private complaint, no further steps can be taken by him without directing an investigation under Section 5-A so that the safeguard of Section 5-A is not whittled down. This is the selfsame argument under a different apparel. Accepting such a submission would tantamount to saying that on receipt of the complaint the Special Judge must direct an investigation under Section 5-A, There is no warrant for such an approach. Astounding as it appeared to us, in all solemnity it was submitted that investigation of an offence by a superior police officer affords a more solid safeguard compared to a court. Myopic as this is, it would topsy turvy the fundamental belief that to a person accused of an offence there is no better safeguard than a court. And this is constitutionally epitomised in Article 22 that upon arrest by police, the arrested person must be produced before the nearest Magistrate within twenty-four hours of the arrest. Further, numerous provisions of the Code of Criminal Procedure such as Section 161, Section 164, and Section 25 of the Indian Evidence Act would show the Legislature's hesitation in placing confidence on police officers away from court's gaze. And the very fact that power is conferred on a Presidency Magistrate or Magistrate of the first class to permit police officers of lower rank to investigate these offences would speak for the mind of the Legislature that the court is a more reliable safeguard than even superior police officers." (emphasis supplied)

19. In view of the aforesaid judgment of the Constitution Bench, it must be held that the appellant has the right to file a complaint for prosecution of respondent No.2 in respect of the offences allegedly committed by him under the 1988 Act.

20. The argument of the learned Attorney General that the question of granting sanction for prosecution of a public servant charged with an offence under the 1988 Act arises only at the stage of taking cognizance and not before that is neither supported by the plain language of the section nor the judicial precedents relied upon by him. Though, the term 'cognizance' has not been defined either in the 1988 Act or the CrPC, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially". In R. R. Chari v. State of U.P. (1951) SCR 312, the three Judge Bench approved the following observations made by the Calcutta High Court in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abni Kumar Banerjee (supra):

> "What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence under section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter - proceeding under section 200 and thereafter sending it for inquiry and report under section 202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

21. In Mohd. Khalid's case, the Court referred to Section 190 of the CrPC and observed :

> "In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word `cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

22. In Pastor P. Raju's case, this Court referred to the provisions of Chapter XIV and Sections 190 and 196 (1-A) of the CrPC and observed :

> "There is no bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173 CrPC. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) CrPC and no illegality of any kind would be committed."

The Court then referred to some of the precedents including the judgment in Mohd. Khalid's case and observed:

> "It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out."

23. In Kalimuthu's case, the only question considered by this Court was whether in the absence of requisite sanction under Section 197 CrPC, the Special Judge for CBI cases, Chennai did not have the jurisdiction to take

cognizance of the alleged offences. The High Court had taken the view that Section 197 was not applicable to the appellant's case. Affirming the view taken by the High Court, this Court observed :

> "The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted."

24. In Raj Kumar Jain's case, this Court considered the question whether the CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173(2) of the CrPC. This question was considered in the backdrop of the fact that the CBI, which had investigated the case registered against the respondent under Section 5(2) read with Section 5(1)(e) of the 1947 Act found that the allegation made against the respondent could not be substantiated. The Special Judge declined to accept the report submitted under Section 173(2) CrPC by observing that the CBI was required to place materials collected during investigation before the sanctioning authority and it was for the concerned authority to grant or refuse sanction. The Special Judge opined that only after the decision of the sanctioning authority, the CBI could submit the report under Section 173(2). The High Court dismissed the petition filed by the CBI and confirmed the order of the Special Judge. This Court referred to Section 6(1) of the 1947 Act and observed:

"From a plain reading of the above section it is evidently clear that a court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the above section, the legislature thought of providing a reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary prosecutions. Viewed in that context, the CBI was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the CBI had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge-sheet (challan) against him, then only the question of obtaining sanction of the authority under Section 6(1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the charge-sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173(2) CrPC."

25. In our view, the decisions relied upon by the learned Attorney General do not have any bearing on the moot question whether respondent No.1, being the Competent Authority to sanction prosecution of respondent No.2, was required to take appropriate decision in the light of the direction contained in Vineet Narain's case.

26. Before proceeding further, we would like to add that at the time of taking cognizance of the offence, the Court is required to consider the averments made in the complaint or the charge sheet filed under Section 173. It is not open for the Court to analyse the evidence produced at that stage and come to the conclusion that no prima facie case is made out for proceeding further in the matter. However, before issuing the process, it that it is open to the Court to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, find out whether an offence has been made out. On finding that such an offence has been made out the Court may direct the issue of process to the respondent and take further steps in the matter.

If it is a charge-sheet filed under Section 173 CrPC, the facts stated by the prosecution in the charge-sheet, on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the Court. Thus, it is not the province of the Court at that stage to embark upon and shift the evidence to come to the conclusion whether or not an offence has been made out.

27. We may also observe that grant or refusal of sanction is not a quasi judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the Competent Authority before it takes a decision in the matter. What is required to be seen by the Competent Authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investigating agency prima facie disclose commission of an offence by a public servant. If the Competent Authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If

the satisfaction of the Competent Authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail appropriate legal remedy.

28. In Vineet Narain's case, the Court entertained the writ petitions filed in public interest for ensuring investigation into what came to be known as 'Hawala case'. The writ petition remained pending for almost four years. During that period, several interim orders were passed which are reported as Vineet Narain v. Union of India21 1996 (1) SCALE (SP) 42, Vineet Narain v. Union of India22 (1996) 2 SCC 199, Vineet Narain v. Union of India23 (1997) 4 SCC 778 and Vineet Narain v. Union of India24 (1997) 5 SCALE 254. The final order was passed in Vineet Narain v. Union of India (1998) 1 SCC 226. In (1996) 2 SCC 199, the Court referred to the allegations made in the writ petition that Government agencies like the CBI and the revenue authorities have failed to perform their duties and legal obligations inasmuch as they did not investigate into the matters arising out of seizure of the so-called "Jain Diaries" in certain raids conducted by the CBI. The Court took note of the allegation that the arrest of some terrorists led to the discovery of financial support to them by clandestine and illegal means and a nexus between several important politicians, bureaucrats and criminals, who were recipients of money from unlawful sources, and proceeded to observe:

> "The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: "Be you ever so high, the law is above you." Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies."

29. After examining various facets of the matter in detail, the three Judge Bench in its final order reported in (1998) 1 SCC 226 observed :

> "These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: R. v. Secy. of State for Foreign and Commonwealth Affairs."

In paragraph 58 of the judgment, the Court gave several directions in relation to the CBI, the CVC and the Enforcement Directorate. In para 58 (I)(15), the Court gave the following direction:

30. The CVC, after taking note of the judgment of the Punjab and Haryana High Court in Jagjit Singh v. State of Punjab(1996) Crl. Law Journal 2962, State of Bihar v. P. P. Sharma 1991 Supp. 1 SCC 222, Superintendent of Police (CBI) v. Deepak Chowdhary, (1995) 6 SC 225, framed guidelines which were circulated vide office order No.31/5/05 dated 12.5.2005. The relevant clauses of the guidelines are extracted below:

"2(i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of

giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would prima-facie constitutes the offence.

(ii) The competent authority cannot embark upon an inquiry to judge the truth of theallegations on the basis of representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/ enquiry by calling for the record/report of his department.

(vii) However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

(viii) If the Sanctioning Authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the Sanctioning Authority to adhere to the time limit allowed by the Supreme Court in Vineet Narain's case."

31. The aforementioned guidelines are in conformity with the law laid down by this Court that while considering the issue regarding grant or refusal of sanction, the only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The Competent Authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true.

32. In the light of the above discussion, we shall now consider whether the High Court was justified in refusing to entertain the writ petition filed by the appellant. In this context, it is apposite to observe that the High Court had proceeded under a wholly erroneous assumption that respondent No.1 had directed investigation by the CBI into the allegations of grave irregularities in the grant of licences. As a matter of fact, on receipt of representation dated 4.5.2009 that the grant of licences by respondent No.2 had resulted in huge loss to the Public Exchequer, the CVC got conducted an inquiry under Section 8(d) of the Central Vigilance Commission Act, 2003 and forwarded a copy of the report to the Director, CBI for making an investigation into the matter to establish the criminal conspiracy in the allocation of 2G spectrum under the UASL policy of the DoT and to bring to book all the wrongdoers. Thereupon, the CBI registered FIR No.RC-DI-2009- A-0045 dated 21.10.2009 against unknown officials of the DoT, unknown private persons/companies and others for offences under Section 120-B IPC read with Sections 13(2) and 13(1)(d) of the 1988 Act. For the next about one year, the matter remained dormant and the CBI took steps for vigorous investigation only when this Court intervened in the matter. The material placed on record does not show that the CBI had registered a case or started investigation at the instance of respondent No.1.

33. On his part, the appellant had submitted representation to respondent No. 1 almost one year to the registration of the first information report by the CBI and highlighted the grave irregularities committed in the grant of licences resulting in the loss of thousands of crores of rupees to the Public Exchequer. He continuously pursued the matter by sending letters to respondent No.1 at regular intervals. The affidavit filed by Shri V. Vidyawati, Director in the PMO shows that the matter was placed before respondent No.1 on 1.12.2008, who directed the concerned officer to examine and apprise him with the facts of the case. Surprisingly, instead of complying with the direction given by respondent No.1 the concerned officer sent the appellant's representation to the DoT which was headed by none other than respondent No.2 against whom the appellant had made serious allegations of irregularities in the grant of licences. It was natural for respondent No.2 to have seized this opportunity, and he promptly sent letter dated 18.6.2009 to the appellant justifying the grant of licences. The concerned officer in the PMO then referred the matter to the Ministry of Law and Justice for advice. It is not possible to appreciate that even though the appellant repeatedly wrote letters to respondent No.1 highlighting the seriousness of the allegations made in his first representation and the fact that he had already supplied the facts and documents which could be made basis for grant of sanction to prosecute respondent No.2 and also pointed out that as per the judgments of this Court, detailed inquiry was not required to be made into the allegations, the concerned

officers in the PMO kept the matter pending and then took the shelter of the fact that the CBI had registered the case and the investigation was pending.

In our view, the officers in the PMO and the Ministry of Law and Justice, were duty bound to apprise respondent No.1 about seriousness of allegations made by the appellant and the judgments of this Court including the directions contained in paragraph 58(I) of the judgment in Vineet Narain's case as also the guidelines framed by the CVC so as to enable him to take appropriate decision in the matter. By the very nature of the office held by him, respondent No. 1 is not expected to personally look into the minute details of each and every case placed before him and has to depend on his advisers and other officers. Unfortunately, those who were expected to give proper advice to respondent No. 1 and place full facts and legal position before him failed to do so. We have no doubt that if respondent No.1 had been apprised of the true factual and legal position regarding the representation made by the appellant, he would have surely taken appropriate decision and would not have allowed the matter to linger for a period of more than one year.

34. In the result, the appeal is allowed. The impugned order is set aside. It is declared that the appellant had the right to file a complaint for prosecuting respondent No.2. However, keeping in view the fact that the Court of Special Judge, CBI has already taken cognizance of the offences allegedly committed by respondent No.2 under the 1988 Act, we do not consider it necessary to give any other direction in the matter. At the same time, we deem it proper to observe that in future every Competent Authority shall take appropriate action on the representation made by a citizen for sanction of the prosecution of a public servant strictly in accordance with the direction contained in Vineet Narain v. Union of India (1998) 1 SCC 226 and the guidelines framed by the CVC.

Asok Kumar Ganguly, J.

Dr. Subramanian Swamy — Appellant(s)
versus
Dr. Manmohan Singh & another — Respondent(s)

Civil Appeal No.1193 of 2012
(Arising out of SLP (C) No.27535/2010)

Decided on : 31-1-2012

JUDGMENT

Ganguly, J.

1. After going through the judgment rendered by my learned brother G.S. Singhvi, J., I am in agreement with the various conclusions reached by His Lordship. However, I have added my own views on certain important facts of the questions raised in this case. 2.Brother Singhvi, J., has come to a finding that having regard to the very nature of the office held by respondent No.1, it may not be expected of respondent No.1 to personally look into the minute details of each and every matter and the respondent No.1, having regard to the burden of his very onerous office, has to depend on the officers advising him. At the same time it may be noted that in the course of submission, the appellant, who argued in person, did not ever allege any malafide or lack of good faith against the respondent No.1. The delay which had taken place in the office of the respondent No.1 is unfortunate but it has not even been alleged by the appellant that there was any deliberate action on the part of the respondent No.1 in causing the delay. The position of respondent No.1 in our democratic polity seems to have been summed up in the words of Shakespeare "Uneasy lies the head that wears a crown" (Henry, The Fourth, Part 2 Act 3, scene 1).

3. I also agree with the conclusions of bother Singhvi, J., that the appellant has the locus to file the complaint for prosecution of the respondent No.2 in respect of the offences alleged to have been committed by him under the 1988 Act. Therefore, I agree with the finding of brother Singhvi, J., that the argument of the learned Attorney General to the contrary cannot be accepted. Apart from that the learned Attorney General in the course of his submission proceeded on the basis that the question of sanction has to be considered with reference to Section 19 of the Prevention of Corruption Act (hereinafter "the P.C. Act") or with reference to Section 197 of the Code of Criminal Procedure, 1973 (hereinafter "the Code"), and the scheme of both the sections being similar (Vide paragraph 3 of the supplementary written submission filed by the learned Attorney General). In fact, the entire submission of the learned Attorney General is structured on the aforesaid assumption. I fail to

appreciate the aforesaid argument as the same is contrary to the scheme of Section 19 of the P.C. Act and also Section 197 of the Code. In Kalicharan Mahapatra vs. State of Orissa reported in1 (1998) 6 SCC 411, this Court compared Section 19 of P.C. Act with Section 197 of the Code. After considering several decisions on the point and also considering Section 6 of the old P.C. Act, 1947 which is almost identical with Section 19 of the P.C. Act, 1988 and also noting Law Commission's Report, this Court in paragraph 13 of Kalicharan (supra) came to the following conclusions:

> "13. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code."

4. The above passage in Kalicharan (supra) has been quoted with approval subsequently by this Court in Lalu Prasad vs. State of Bihar reported in2 2007 (1) SCC 49 at paragraph 9, page 54. In paragraph 10, (page 54 of the report) this Court held in Lalu Prasad (supra) that "Section 197 of the Code and Section 19 of the Act operate in conceptually different fields".

5. In view of such consistent view by this Court the basic submission of the learned Attorney General to the contrary is, with respect, untenable.

6. I also entirely agree with the conclusion of learned brother Singhvi, J., that the argument of the learned Attorney General that question for granting sanction for prosecution of a public servant charged with offences under the 1988 Act arises only at the stage of cognizance is also not acceptable.

7. In formulating this submission, the learned Attorney General substantially advanced two contentions. The first contention is that an order granting sanction is not required to be filed along with a complaint in connection with a prosecution under Section 19 of the P.C. Act. The aforesaid submission is contrary to the settled law laid down by this Court in various judgments. Recently a unanimous three-judge Bench decision of this Court in the case of State of Uttar Pradesh vs. Paras Nath Singh,3 [(2009) 6 SCC 372], speaking through Justice Pasayat and construing the requirement of sanction, held that without sanction:

> ".....The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word `cognizance' means `jurisdiction' or `the exercise of jurisdiction' or `power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty." (Para 6, page 375 of the report)

8. The other contention of the learned Attorney General is that in taking cognizance under the P.C. Act the Court is guided by the provisions under Section 190 of the Code and in support of that contention the learned Attorney General relied on several judgments. However, the aforesaid submissions were made without noticing the judgment of this Court in the case of Dilawar Singh vs. Parvinder Singh alias Iqbal Singh and Another (2005) 12 SCC 709. Dealing with Section 19 of P.C. Act and Section 190 of the Code, this Court held in paragraph 8 at page 713 of the report as follows:

> ".....The Prevention of Corruption Act is a special statute and as the preamble shows, this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim generalia specialibus non derogant would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See Godde Venkateswara Rao v. Govt. of A.P., State of Bihar v. Dr. Yogendra Singh and Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth.) Therefore, the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190....."

9. Therefore, concurring with brother Singhvi, J., I am unable to uphold the submission of the learned Attorney General.

10. As I am of the humble opinion that the questions raised and argued in this case are of considerable constitutional and legal importance, I wish to add my own reasoning on the same.

11. 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.

12. Time and again this Court has expressed its dismay and shock at the ever growing tentacles of corruption in our society but even then situations have not improved much. [See Sanjiv Kumar v. State of Haryana & ors., (2005) 5 SCC 517; State of A.P. v. V. Vasudeva Rao, (2004) 9 SCC 319; Shobha Suresh Jumani v. Appellate Tribunal Forfeited Property & another, (2001) 5 SCC 755; State of M.P. & ors. v. Ram Singh, (2000) 5 SCC 88; J. Jayalalitha v. Union of India & another, (1999) 5 SCC 138; Major S.K. Kale v. State of Maharashtra,10 (1977) 2 SCC 394.]

13. Learned Attorney General in the course of his submission fairly admitted before us that out of total 319 requests for sanction, in respect of 126 of such requests, sanction is awaited. Therefore, in more than 1/3rd cases of request for prosecution in corruption cases against public servants, sanctions have not been accorded. The aforesaid scenario raises very important constitutional issues as well as some questions relating to interpretation of such sanctioning provision and also the role that an independent judiciary has to play in maintaining rule of law and common man's faith in the justice delivering system.

14. Both rule of law and equality before law are cardinal questions in our Constitutional Laws as also in International law and in this context the role of the judiciary is very vital. In his famous treatise on Administrative Law, Professor Wade while elaborating the concept of rule of law referred to the opinion of Lord Griffith's which runs as follows:

> "the judiciary accept a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law."
>
> [See R. v. Horseferry Road Magistrates' Court ex p. Bennett11 (1994) 1 AC 42 at 62]

15. I am in respectful agreement with the aforesaid principle.

16. In this connection we might remind ourselves that courts while maintaining rule of law must structure its jurisprudence on the famous formulation of Lord Coke where the learned Law Lord made a comparison between "the golden and straight metwand of law" as opposed to "the uncertain and crooked cord of discretion".

17. The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the Court in order to set the criminal law in motion against a corrupt public official. This right of access, a Constitutional right should not be burdened with unreasonable fetters. When a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindication of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the rule of law. It was pointed out by the Constitution Bench of this Court in Sheonandan Paswan vs. State of Bihar and Others,12 (1987) 1 SCC 288 at page 315:

> ".....It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is for this reason that in A.R. Antulay v. R.S. Nayak this Court pointed out that (SCC p. 509, para 6) "punishment of the offender in the

interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed orfettered by putting it into a strait jacket formula of locus standi....."

18. Keeping those principles in mind, as we must, if we look at Section 19 of the P.C. Act which bars a Court from taking cognizance of cases of corruption against a public servant under Sections 7, 10, 11, 13 and 15 of the Act, unless the Central or the State Government, as the case may be, has accorded sanction, virtually imposes fetters on private citizens and also on prosecutors from approaching Court against corrupt public servants. These protections are not available to other citizens. Public servants are treated as a special class of persons enjoying the said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was extended in public interest cannot become a shield to protect corrupt officials. These provisions being exceptions to the equality provision of Article 14 are analogous to provisions of protective discrimination and these protections must be construed very narrowly. These procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption. Therefore, in every case where an application is made to an appropriate authority for grant of prosecution in connection with an offence under P.C. Act it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue without being influenced by any extraneous consideration. In doing so, the authority must make a conscious effort to ensure the rule of law and cause of justice is advanced. In considering the question of granting or refusing such sanction, the authority is answerable to law and law alone. Therefore, the requirement to take the decision with a reasonable dispatch is of the essence in such a situation. Delay in granting sanction proposal thwarts a very valid social purpose, namely, the purpose of a speedy trial with the requirement to bring the culprit to book. Therefore, in this case the right of the sanctioning authority, while either sanctioning or refusing to grant sanction, is coupled with a duty. The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of rule of law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecution and is adversely viewed in public mind that in the name of considering a prayer for sanction, a protection is given to a corrupt public official as a quid pro quo for services rendered by the public official in the past or may be in the future and the sanctioning authority and the corrupt officials were or are partners in the same misdeeds. I may hasten to add that this may not be factual position in this but the general demoralizing effect of such a popular perception is profound and pernicious. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny and determination of the allegations against corrupt official and thus the legitimacy of the judicial institutions is eroded. It, thus, deprives a citizen of his legitimate and fundamental right to get justice by setting the criminal law in motion and thereby frustrates his right to access judicial remedy which is a constitutionally protected right. In this connection, if we look at Section 19 of the P.C. Act, we find that no time limit is mentioned therein. This has virtually armed the sanctioning authority with unbridled power which has often resulted in protecting the guilty and perpetuating criminality and injustice in society.

19. There are instances where as a result of delayed grant of sanction prosecutions under the P.C. Act against a public servant has been quashed. See Mahendra Lal Das vs. State of Bihar and Others, (2002) 1 SCC 149, wherein this Court quashed the prosecution as the sanctioning authority granted sanction after 13 years. Similarly, in the case of Santosh De vs. Archna Guha and Others, (1994) Supp.3 SCC 735, this Court quashed prosecution in a case where grant of sanction was unduly delayed. There are several such cases. The aforesaid instances show a blatant subversion of the rule of law. Thus, in many cases public servants whose sanction proposals are pending before authorities for long periods of time are being allowed to escape criminal prosecution.

20. Article 14 must be construed as a guarantee against uncanalized and arbitrary power. Therefore, the absence of any time limit in granting sanction in Section 19 of the P.C. Act is not in consonance with the requirement of the due process of law which has been read into our Constitution by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India and Another, (1978) 1 SCC 248.

21. I may not be understood to have expressed any doubt about the constitutional validity of Section 19 of the P.C. Act, but in my judgment the power under Section 19 of the P.C. Act must be reasonably exercised. In my judgment the Parliament and the appropriate authority must consider restructuring Section 19 of the P.C. Act in such a manner as to make it consonant with reason, justice and fair play.

22. In my view, the Parliament should consider the Constitutional imperative of Article 14 enshrining the rule of law wherein 'due process of law' has been read into by introducing a time limit in Section 19 of the P.C. Act 1988 for its working in a reasonable manner. The Parliament may, in my opinion, consider the following guidelines:

a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under section 19 of the P.C. Act must be decided within a period of three months of the receipt of the proposal by the concerned authority.

b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit.

c) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit.

23. With these additional reasons, as indicated, I agree with Brother Singhvi, J., and allow the appeal and the judgment of the High Court is set aside. No costs.

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VINEET NARAIN & ORS. VERSUS UNION OF INDIA & ANR.

SUPREME COURT OF INDIA

Writ Petition (Crl.) Nos. 340-343 of 1993
Citation : (1998) 1 SCC 226

Vineet Narain & Ors. —Appellants

versus

Union of India & Anr. —Respondents

Decided on 18-12-1997

Coram : J.S. Verma, CJI, S.P. Bharucha and S.C. Sen, JJ.

All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the concerned authority. Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months, an extension of one month period may be allowed. But the request for consultation is to be sent in writing within the three months. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit. At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit.

JUDGMENT

Verma, CJI.—

These writ petitions under Article 32 of the Constitution of India brought in public interest, to begin with, did not appear to have the potential of escalating to the dimensions they reached or to give rise to several issues of considerable significance to the implementation of rule of law, which they have, during their progress. They began as yet another complaint of inertia by the Central Bureau of Investigation (CBI) in matters where the accusation made was against high dignitaries. It was not the only matter of its kind during the recent past. The primary question was: Whether it is within the domain of judicial review and it could be an effective instrument for activating the investigative process which is under the control of executive?

The focus was on the question, whether any judicial remedy is available in such a situation? However, as the case progressed, it required innovation of a procedure within the constitutional scheme of judicial review to permit intervention by the court to find a solution to the problem. This case has helped to develop a procedure within the discipline of law for the conduct of such a proceeding in similar situations. It has also generated awareness of the need of probity in public life and provided a mode of enforcement of accountability in public life. Even though the matter was brought to the court by certain individuals claiming to represent public interest, yet as the case progressed, in keeping with the requirement of public interest, the procedure devised was to appoint the petitioners' counsel as the amicus curiae and to make such orders from time to time as were consistent with public interest. Intervention in the proceedings by everyone else was shut out but permission was granted to all, who so desired, to render such assistance as they could, and to provide the relevant material available with them to the amicus curiae for being placed before the court for its consideration. In short, the proceedings in this matter have had great educative value and it does appear that it has helped in future decision making and functioning of the public authorities.

2. We must at the outset place on record our great appreciation of the assistance rendered by the amicus curiae Shri Anil B. Divan and the lawyers assisting him, namely, Shri Abani Kumar Sahu, Shri Anil Kumar Panda, Shri Mukul Mudgal, Shri Anil Nauriya and also Ms. Latha Krishnamurthy. We also place on record equal appreciation of the law officers and the team which has assisted them in these proceedings. At the commencement of the proceedings, the then Solicitor General Shri Dipankar P. Gupta appeared for the Union of India and the government agencies.

Later after Shri Dipankar P. Gupta demitted office, the Attorney General Shri Ashok H. Desai appeared in this case throughout. The law officers and their team of assistants, namely, Shri K.N. Bhat, Additional Solicitor General, Shri Pallav Shishodia, Shri P. Parmeswaran and Ms. Anuradha Bindra, rendered very able assistance throughout and discharged the duty expected of law officers. All of them, at great personal inconvenience and expense, rose to extraordinary heights in keeping with the true traditions of the Bar. In essence, everyone of them discharged the role of amicus curiae, without, at any stage, adopting the adversarial stance. If it has been possible to achieve some success in these proceedings to improve and innovate the procedure and fructify new ideas for betterment of the polity, it is only because of the positive response of the Bar and the assistance rendered by it. We must also record our appreciation of the officers of the CBI and the Revenue Department who actively participated in these proceedings and showed a definite improvement in their perception of the rule of law as the case progressed; and their ability to perform improved once they were assured of protection in the honest discharge of their duties.

3. This experience revealed to us the need for the insulation of these agencies from any extraneous influence to ensure the continuance of the good work they have commenced. It is this need which has impelled us to examine the structure of these agencies and to consider the necessary steps which would provide permanent insulation to the agencies against extraneous influences to enable them to discharge their duties in the manner required for proper implementation of the rule of law. Permanent measures are necessary to avoid the need of every matter being brought to the court for taking ad hoc measures to achieve the desired results. This is the occasion for us to deal with the structure, constitution and the permanent measures necessary for having a fair and impartial agency. The faith and commitment to the rule of law exhibited by all concerned in these proceedings is the surest guarantee of the survival of democracy of which rule of law is the bedrock. The basic postulate of the concept of equality: 'Be you ever so high, the law is above you', has governed all steps taken by us in these proceedings.

Facts

4. A brief narration of the facts of this case is necessary: On 25th March,1991, one Ashfak Hussain Lone, alleged to be an official of the terrorist organisation Hizbul Mujahideen, was arrested in Delhi. Consequent upon his interrogation, raids were conducted by the Central Bureau of Investigation (CBI) on the premises of Surender Kumar Jain, his brothers, relations and businesses. Along with Indian and foreign currency, the CBI seized two diaries and two note books from the premises. They contained detailed accounts of vast payments made to persons identified only by initials. The initials corresponded to the initials of various high ranking politicians, in power and out of power, and of high ranking bureaucrats. Nothing having been done in the matter of investigating the Jains or the contents of their diaries, the present writ petitions were filed on 4th October, 1993, in the public interest under Article 32 of the Constitution of India.

5. The gist of the allegations in the writ petitions is that Government agencies like the CBI and the revenue authorities had failed to perform their duties and legal obligations inasmuch as they had failed to investigate matters arising out of the seizure of the "Jain diaries"; that the apprehension of the terrorists had led to the discovery of financial support to them by clandestine and illegal means using tainted funds obtained through `havala' transactions; that this had also disclosed a nexus between politicians, bureaucrats and criminals, who were recipients of money from unlawful sources, given for unlawful consideration; that the CBI and other Government agencies had failed to investigate the matter, take it to its logical conclusion and prosecute all persons who were found to have committed an offence; that this was done with a view to protect the persons involved, who were very influential and powerful; that the matter disclosed a nexus between crime and corruption at high places in public life and it posed a serious threat to the integrity, security and economy of the nation; that probity in public life, the rule of law and the preservation of democracy required that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against every person involved, irrespective of where he was placed in the political hierarchy. The writ petitions prayed, inter alia, for the following reliefs :

"(a) that the above said offences disclosed by the facts mentioned in the petition be directed to be investigated in accordance with law;

(b) that this Hon'ble Court may be pleased to appoint officers of the police or others in whose integrity, independence and competence his Hon'ble Court has confidence for conducting and/or supervising the said investigation;

(c) that suitable directions be given by this Hon'ble Court and orders issued to ensure that theculprits are dealt with according to law;

xxxxx

(f) that directions be given so that such evil actions on the part of the investigating agencies and their political superior are not repeated in future."

6. It will be seen that the reliefs sought in the writ petitions fall into broad classes. The first class relates to investigations in the matter of the "Jain diaries". The second class [prayer (f)] relates to the manner in which investigations of offences of a similar nature that may occur hereafter should be conducted. Procedure adopted

7. We have taken the view that, given the political personalities of the people to be investigated in the "Jain diaries" case and the time already lost in commencing the investigations, it was advantageous not to hear the matter through and issue a writ of mandamus, leaving it to the authorities to comply with it, but to keep the matter pending while the investigations were being carried on, ensuring that this was done by monitoring them form time to time and issuing orders in this behalf.

Our reasoned orders are dated 18.4.1995, 16.1.1996 [1996(2) Scale (SP) 42], 30.1.1996 [1996(2) SCC 199], 22.2.1996 [1996 (2) Scale (SP) 84], 1.3.1996 [1997(4) SCC 778], 13.3.1996 [1996(4) Scale (SP) 3], 1.5.1996 [1996(4) Scale (SP) 56], 26.7.1996 [1996(6) Scale (SP) 24], 9.7.1997 [1997(5) Scale 254]. Orders in similar matters, being the orders dated 12.2.1996 [1996(3) Scale (SP) 35]. 2.4.1996, 26.4.1996 [1996(4) Scale (SP) 71], 26.7.1996 [1996(6) Scale (SP) 23] and 7.10.1996 in Writ Petition (Civil) No.640 of 1995 – Anukal Chandra Pradhan v. Union of India Others and orders dated 24.2.1997 and 18.3.1997 in Writ Petition (Civil) No.38 of 1997 – Dr. Subramaniam Swamy v. Director, CBI & Others, are also relevant.

8. The sum and substance of these orders is that the CBI and other Governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would end the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of 'continuing mandamus'.

9. Even after this matter was brought to the court complaining of the inertia of CBI and the other agencies to investigate into the offences because of the alleged involvement of several persons holding high offices in the executive, for quite some time the disinclination of the agencies to proceed with the investigation was apparent. The accusation, if true, revealed a nexus between high ranking politicians and bureaucrats who were alleged to have been funded by a source linked with the source funding the terrorists. In view of the funding also through foreign currency, some undesirable foreign elements appeared to be connected. This revealed a grave situation posing a serious threat even to the unity and integrity of the nation. The serious threat posed to the Indian polity could not be underscored. The obvious need for an expeditious and thorough probe which had already been delayed for several years could not but be countenanced. The continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer. In view of the persistence of that situation, it became necessary as the proceedings progressed to make some orders which would activate the CBI and the other agencies to at least commence a fruitful investigation. Merely issuance of a mandamus directing the agencies to perform their task would be futile and, therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that monitoring by the court could ensure continuance of the investigation. It was, therefore, decided to direct the CBI and other agencies to complete the investigation expeditiously, keeping the court informed from the time to time of the progress of the investigation so that the court retained siesin of the matter till the investigation was completed and the chargesheets were filed in the competent court for being dealt with, thereafter, in accordance with law.

10. The first order to this effect was made on 5.12.1994 when the CBI Director was required to personally supervise the investigations carried on by the CBI as the overall incharge and to report to the court the progress made from time to time. The true scope of the matter was indicated in an order dated 30th January, 1996 (reported in 1996(2) SCC 199) as under:

> "The true scope of this writ petition has been indicated during the earlier hearings. At this stage, when some charge sheets have been filed in the Special Court and there is considerable publicity in the media regarding this matter, with some speculation about its true scope, it is appropriate to make this order to form a part of the record.
>
> The gist of the allegations in the writ petition are that Government agencies, like the CBI and the revenue authorities have failed to perform their duties and legal obligations inasmuch as they have failed to properly investigate matters arising out of the seizure of the so called "Jain Diaries" in certain raids conducted by the CBI. It is alleged that the apprehending of certain terrorists led to the discovery of financial support to them by clandestine and illegal means, by use of trained funds obtained through `havala' transactions; that this also disclosed a nexus between several important politicians, bureaucrats and criminals, who are all recipients of money from unlawful sources given for unlawful considerations; that the CBI and other Government agencies have failed to fully investigate into the matter and take it to the logical end point of the trail and to prosecute all persons who have committed any crime; that this is being done with a view to protect the persons involved, who are very influential and powerful in the present set up; that the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation; that probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power set up.
>
> The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all Government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law : "Be you ever so high, the law is above you". Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the imparital working of the Government agencies.
>
> In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.
>
> In case of persons against whom a prima facie case is made out and a charge sheet is filed in the competent court, it is that court which will then deal with that case on merits, in accordance with law.
>
> However, if in respect of any such person the final report after full investigation is that no prima facie case is made out to proceed further, so that the case must be closed against him, that report must be promptly submitted to this Court for its satisfaction that the concerned authorities have not failed to perform their legal obligations and have reasonably come to such conclusion. No such report having been submitted by the CBI or any other agency till now in this Court, action on such a report by this Court would be considered, if and when that occasion arises. We also direct that no settlement should be arrived at nor any offence compounded by any authority without prior leave of this Court.
>
> We may add that on account of the great public interest involved in this matter, the CBI and other Government agencies must expedite their action to complete the task and prevent pendency of

this matter beyond the period necessary. It is needless to observe that the results achieved so far do not match the available time and opportunity for a full investigation ever since the matter came to light. It is of utmost national significance that no further time is lost in completion of the task."

Relevant portions of other significant orders dated 1.3.1996 (reported in 1997(4) SCC 778) and 9.7.1997 (reported in 1997(5) Scale 254) read as under:

Order dated 1.3.1996 :

"... ... ...

V. Criminal Misc. Petition Nos. 1153-56/1996 :

We have heard Shri Anil Diwan and the learned Solicitor General. Insofar as the larger relief of suitable guildelines is sought therein, that matter is deferred for consideration at the appropriate later stage of these proceedings. As for the interim relief claimed in the application, it is sufficient for us to direct as stated hereafter.

To eliminate any impression of bias and avoid erosion of credibility of the investigations being made by the C.B.I. and any reasonable impression of lack of fairness and objectivity therein, it is directed that the C.B.I. would not take any instructions from, report to, or furnish any particulars thereof to any authority personally interested in or likely to be affected by the outcome of the investigations into any accusation. This direction applies even in relation to any authority which exercises administrative control over the C.B.I. by virtue of the office he holds, without any exception. We may add that this also accords with what the Learned Solicitor General has very fairly submitted before us about the mode of functioning of the C.B.I. in this matter.

We also place on record the further statement made by the learned Solicitor General on instructions from the C.B.I. Director that neither the C.B.I. Director nor any of his officers has been reporting to any authority about any particulars relating to these investigations. No further direction in this behalf is necessary at this stage."

Order dated 9.7.1997 :

"The question pertaining to interference with or shifting of any of the officer in any of the investigative teams of the C.B.I. or any other connected investigating agency such as the Enforcement Directorate in the serveral matters under investigation by them which are being monitored by this Court and some of the High Courts, is under consideration by this Court in this matter which is being heard by a 3-Judge Bench and for this reason the same question even though raised in some other pending matters in this Court is not being considered therein. It is, therefore, inappropriate that the same question or any question connected with it in any manner be entertained or dealt with by any other court including any High Court in any of the matters before it. It has become necessary to say so in view of the fact that we are informed that the same question in different forms is being raised in some other courts including High Courts by different persons. The question being comprehensively dealt with by this 3-Judge Bench in this matter by this Court, we make it clear that no other court including any High Court will entertain or deal with the same in any direct or indirect manner. Such a course is essential in public interest.

....."

11. It is significant that the machinery of investigation started moving as a result of these orders and after investigation of the allegations made against several persons on the basis of the contents of the Jain Diaries, chargesheets were filed in the competent court in the first instance against 14 persons, as reported to the court on 22.2.1996. Chargesheets against many other persons were filed in the competent court thereafter as reported later from time to time. In all, 34 chargesheets against 54 persons have been filed on this basis. Thus, as indicated earlier, the purpose of these proceedings to the extent of the complaint of inertia of the investigating agencies came to an end with the filing of these chargesheets, since the merits of the accusation against each individual has, thereafter, to be considered and dealt with by the competent court at the trial, in accordance with law. Trial in the competent court is now a separate proceeding.

12. After the commencement of these proceedings, some other matters of a similar nature came to this Court in which the inaction of the investigating agencies to investigate into some serious offences was alleged. Two such significant matters are Writ Petition (Civil) No. 640 of 1995 – Anukul Chandra Pradhan v. Union of India and Others – and Writ Petition (Civil) No. 38 of 1997 – Dr. Subramaniam Swamy v. Director, CBI & Ors. These cases revealed a serious situation eroding the rule of law, where the accusation was against persons holding high offices and wielding power. Relevant portions of some significant orders made in the above two cases read as under:-

Anukul Chandra Pradhan

Order dated 12.2.1996 [reported in 1996(3) Scale (SP) 35]:

"We do not consider it appropriate to permit any intervention in this matter. Shri Anil Diwan has been requested by us to appear as Amicus Curiae in this matter. He has kindly agreed to do so. It is open to anyone who so desires, to assist Shri Anil Diwan and to make available to him whatever material he chooses to rely on in public interest to enable Shri Diwan to effectively and properly discharge functions as Amicus Curiae. Except for this mode of assistance to the learned Amicus Curiae, we do not permit any person either to be impleaded as party or to appear as an intervenor. In our opinion, this is necessary for expeditious disposal of the matter and to avoid the focus on the crux of the matter getting diffused in the present case by the appearance of many persons acting independently in the garb of public interest.

Order dated 2.4.1996

"... ... ...

Learned S.G. as well as Shri Anil Diwan, learned counsel, are heard. The Secretary, Revenue Shri Sivaraman, the C.B.I. Director - Shri K. Vijay Rama Rao and the Commissioner of Police - Shri Nikhil Kumar are also present. We direct that from now each of these three officers would be overall incharge of the investigations which are being carried on by their respective departments pertaining to the matters within the scope of this Writ Petition. Learned S.G. on instructions prayed for deferring the further hearing to enable the above officers to report the progress made in the investigations by these agencies on the next date."

Order dated 7.10.1996 (reported in 1996(6) SCC 354 : 1996(7) Supreme 371 :

"... ... ...

In accordance with the directions so given, it has been reported to us that chargesheets have been filed by the C.B.I. in two cases and the Delhi Police in one case which they were investigating. These cases are:

(1) St. Kitts' Forgery Case.

(Chargesheet filed by C.B.I.)

(2) Lakhubhai Pathak Cheating case.

(Chargesheet filed by C.B.I.)

(3) Rajendra Jain case

(Chargesheet filed by Delhi Police)

In view of the fact that chargesheet has been filed under Section 173 Criminal Procedure Code in each of the above three cases in the competent court, it is that court which is now to deal with the case on merits, in accordance with law. Any direction considered necessary for further investigation, if any, or to proceed against any other person who also appears to have committed any offence in that transaction, is within the domain of the concerned court according to the procedure prescribed by law. The purpose of this proceeding is to command performance of the duty under law to properly investigate into the accusation of commission of the crime and to file a chargesheet in the competent court, if a prima facie case is made out. This purpose has been served in the above three cases, in respect of which no further action in this proceeding is called for.

Accordingly, this proceeding has come to an end, in so far as it relates to the above three criminal cases. For the remaining part, it is to continue till the end result prescribed by law is achieved. The concerned court in which

the chargesheet has been filed has to proceed entirely in accordance with law without the slightest impression that there is any parallel proceeding in respect of the same matter pending in this court.

We may also observe, that the concerned court dealing with the above matters has to bear in mind that utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of this kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into Article 21.

A note of caution may be appropriate. No occasion should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial. This requirement, undoubtedly has to be kept in view during the entire trial. It is reiterated, that any observation made by this Court for the purpose of the proceedings pending here has no bearing on the merits of the accusation, and is not to influence the trial in any manner. Care must be taken to ensure that the credibility of the judicial process is not undermined in any manner.

This proceeding is to continue in respect of the remaining matters only which are incomplete.

... ..."

Dr. Subramaniam Swamy

Order dated 24.2.1997:

"... ... ..

It is also made clear to the petitioner that the petition having been entertained as a public interest litigation in view of the public interest involved, the locus of the petitioner is confined only to assisting the court through amicus curiae appointed by the court and that the petitioner has no independent or additional right in the conduct or hearing of the proceedings hereafter. We request Shri Anil B. Divan, Sr. Advocate to appear as amicus curiae in this case....."

Order dated 18.3.1997:

".... ....

In accordance with the practice followed by the Court in other similar pending matters, we alsodirect that any person wishing to bring any material or point before this Court for consideration in this behalf may do so by furnishing the same to Shri Anil B. Divan, the learned amicus curiae, who would take the necessary steps in accordance with the need and relevance thereof, to place it before this Court in this proceeding."

In-camera proceedings

13. During the monitoring of the investigations, the Solicitor General / Attorney General, from time to time, reported the progress made during the course of investigation, in order to satisfy us that the agencies were not continuing to drag their feet and the "continuing mandamus" was having the effect of making the agencies perform their statutory function. The procedure adopted by us was merely to hear that what they had to report or the CBI Director and the Revenue Secretary had to tell us to be satisfied that the earlier inaction was not persisting. We maintained this stance throughout. We also ensured that no observation of any kind was made by us nor was any response given which may be construed as our opinion about the merits of the case or the accusation against any accused. We also did not identify or name any accused during performance of this task. At the very outset, the then Solicitor General Shri Dipankar P. Gupta requested that a part of the proceedings be held 'in camera' to enable him to state certain facts and, if necessary, place before us material, the secrecy of which was required to be maintained for integrity of the investigation and also to a void any prejudice to the concerned accused. In these circumstances, such a procedure was adopted only to the extent necessary for this purpose, in the interest of justice, and that is how a part of some hearings was held in camera. This innovation in the procedure was made, on request, to reconcile the interest of justice with that of the accused.

14. It is settled that the requirement of a public hearing in a court of law for a fair trial is subject to the need of proceedings being held in camera to the extent necessary in public interest and to avoid prejudice to the accused.

We consider it appropriate to mention these facts in view of the nature of these proceedings wherein innovations in procedure were required to be made from time to time to sub-serve the public interest, avoid any prejudice to the accused and to advance the cause of justice. The medium of "continuing mandamus", was a new tool forged because of the peculiar needs of this matter.

15. Inertia was the common rule whenever the alleged offender was a powerful person. Thus, it became necessary to take measures to ensure permanency in the remedial effect to prevent reversion to inertia of the agencies in such matters.

16. Everyone against whom there is reasonable suspicion of committing a crime has to be treated equally and similarly under the law and probity in public life is of great significance. The constitution and working of the investigating agencies revealed the lacuna of its inability to perform whenever powerful persons were involved. For this reason, a close examination of the constitution of these agencies and their control assumes significance. No doubt, the overall control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive, is imperative. It is this exercise which became necessary in these proceedings for the future. This is the surviving scope of these writ petitions.

Point for consideration

17. As a result of the debate in these proceedings and the experience gained thereby the Union of India came to realise than an in-depth study of the selection of personnel of these agencies, particularly the CBI and the Enforcement Directorate of the Revenue Department, and their functioning is necessary. The Government of India, sharing this perception, by an Order No. S/7937/SS(ISP)/93 dated 9th July, 1993 constituted a Committee headed by the then Home Secretary Shri N.N.Vohra to take stock of all available information about the activities of crime syndicate/mafia organisations which had developed links with, and were being protected by, government functionaries and political personalities. It was stated that on the basis of recommendations of the Committee the Government shall determine the need, if any, to establish a special organisation/agency to regularly collect information and pursue cases against such elements. The Committee was headed by the then Home Secretary Shri N.N. Vohra and had as its Members-Secretary (Revenue), Director, Intelligence Bureau, Director, CBI, Joint Secretary (PP), Ministry of Home Affairs. The Committee gave its recommendations dated 5.10.1993. It has made seathing comments and has painted a dismal picture of the existing scene. It has said that the network of the mafia is virtually running a paralled government pushing the State apparatus into irrelevance. The Committee recommended the creation of a nodal agency under the Ministry of-Home Affairs for the collation and compilation of all information received from Intelligence Bureau (IB). Central Bureau of Investigation (CBI) and Research and Analysis Wing (R&AW) and the various agencies under the Department of Revenue. The report is significant for the dismal picture of the existing scenario which discloses a powerful nexus between the bureaucracy and politicians with the mafia gangs, smugglers and the underworld. The report of the Vohra Committee is the opinion of some top bureaucrats and it confirmed our worst suspicions focusing the need of improving the procedure for constitution and monitoring the functioning of intelligence agencies. There is, thus, no doubt that this exercise cannot be delayed further.

18. The same perception of the Government of India led it to constitute another Committee by Order No.226/2/97-AVD-II dated 8th September, 1997 comprising of Shri B.G. Deshmukh, former Cabinet Secretary, Shri N.N. Vohra, Principal Secretary to the Prime Minister and Shri S.V. Giri, Central Vigilance Commissioner, called the Independent Review Committee (IRC). The order reads as under :

> "Whereas the Government of India is of the opinion that it is necessary to set up a Committee for going the matters mentioned hereinafter;
>
> 2. Now, therefore, a Committee of the following is hereby set up :-
>
> (i) Shri B.G. Deshmukh, former Cabinet Secretary
>
> (ii) Shri N.N. Vohra, Principal Secretary to the Prime Minister
>
> (iii) Shri S.V. Giri, Central Vigilance Commissioner
>
> Shri N.N. Vohra shall act as Convenor.

3. The terms of reference of the Committee are as under :

(i) To monitor the functioning of the nodal agency established by the Ministry of Home Affairs in pursuance of the recommendations of the Vohra Committee Report.

(ii) To examine the present structure and working of the Central Bureau of Investigation (CBI), the Enforcement Directorate and related agencies to suggest the changes, if any, needed to ensure :

(a) that offences alleged to have been committed by any person, particularly those in positions of high authority, are registered, investigated and prosecuted fairly and expeditiously, ensuring against, inter alia, external pressure, arbitrary withdrawals or transfers of personnel etc., and ensuring adequate protection to the concerned functionaries to effectively discharge their duties and responsibilities;

(b) that there are sufficient cheeks and balances to ensure that the powers of investigation and prosecution are not misused;

(c) that there are no arbitrary restrictions to the initiation of investigations or launching of prosecutions.

4. The Committee should give its report with regard to the items mentioned in paragraph 3(ii) above within a period of 3 months."

19. Before we refer to the report of the Independent Review Committee (IRC), it would be appropriate at this stage to refer to the Single Directive issued by the Government which requires prior sanction of the designated authority to initiate the investigation against officers of the Government and the Public Sector Undertakings (PSUs), nationalised banks above a certain level. The Single Directive is a consolidated set of instruction issued to the CBI by the various Ministries/Departments in this behalf. It was first issued in 1969 and thereafter amended on many occasions. The Single Directive contains certain instructions to the CBI regarding modalities of initiating an inquiry or registering a case against certain categories of civil servants. Directive No. 4.7(3) in its present form is as under :

"4.7(3)(i) In regard to any person who is or has been a decision making a level officer (Joint Secretary or equivalent or above in the Central Government or such officers as are or have been on deputation to a Public Sector undertaking; officers of the Reserve Bank of India of the level equivalent to Joint Secretary or above in the Central Government, Executive Directors and above of the SEBI and Chairman & Managing Director and Executive Directors and such of the Bank officers who are one level below the Board of Nationalised Banks), there should be prior sanction of the Secretary of the Ministry/Department concerned before SPE takes up an enquiry (PE or RC), including ordering search in respect of them. Without such sanction, no enquiry shall be initiated by the SPE.

(ii) All cases referred to the administrative Ministries/Departments by CBI for obtaining necessary prior sanction as aforesaid, except those pertaining to any officer of the rank of Secretary of Principal Secretary, should be disposed of by them preferably within a period of two months of the receipt of such a reference. In respect of the officers of the rank of Secretary or Principal Secretary to Government, such references should be made by the Director, CBI to the Cabinet Secretary for consideration of a Committee consisting of the Cabinet Secretary as its chairman and the Law Secretary and the Secretary (Personnel) as its members. The Committee should dispose of all such references preferably within two months from the date of receipt of such a reference by the Cabinet Secretary.

(iii) When there is any difference of opinion between the Director, CBI and the Secretary of the Administrative Ministry/Department in respect of an officer up to the rank of Additional Secretary or equivalent, the matter shall be referred by CBI to Secretary (Personnel) for placement before

the Committee referred to in Clause (ii) above. Such a matter should be considered and disposed of by the Committee preferably within two months from the date of receipt of such a reference by Secretary (Personnel).

(iv) In regard to any person who is or has been Cabinet Secretary, before SPE takes any step of the kind mentioned in (i) above the case should be submitted to the Prime Minister for orders."

20. We were informed that the above Directive, in its application, is limited to officials at decision making levels in the Government and certain other public institutions like the RBI, SEBI, nationalised banks, etc. and its scope is limited to official acts. The stated objective of the Directive is to protect decision making level officers from the threat and ignominy of malicious and vexatious inquiries/ investigations. It is said that such protection to officers at the decision making level is essential to protect them and to relieve them of the anxiety from the likelihood of harassment for taking honest decisions. It was also stated that absence of any such protection to them could adversely affect the efficiency and efficacy of these institutions because of the tendency of such officers to avoid taking any decisions which could later lead to harassment by any malicious and vexatious inquiries/investigations. It was made clear that the Directive does not extend to any extraneous or non-official acts of the government functionaries and a time frame has been prescribed for grant of sanction in such cases to prevent any avoidable delay.

21. Two questions arise in relation to Directive No. 4.7(3) of the Single Directive, namely, its propriety/legality and the extent of its coverage, if it be valid.

22. The learned Attorney General categorically stated in response to our repeated query that the Single Directive acts as a restriction only on the CBI but is inapplicable against the general power of the State Police to register and investigate any such offence under the general law, i.e., Code of Criminal Procedure. He added that it is also not an inhibition against a complaint being lodged under the Cr.P.C. before the competent court for any such offence. The Single Directive was sought to be supported by the Attorney General on the ground that the CBI being a special agency created by the Central Government, it was required to function according to the mandate of the Central Government which has constituted this special agency for specified purpose. The desirability of the Single Directive was supported by the learned Attorney General on the ground that the officers at the decision making level need this protection against malicious or vexatious investigations in respect of honest decisions taken by them. We were also informed that during hearing of this matter when this aspect was being debated, the Ministry of Finance has set up a High Power Board of experts in finance and a retired High Court Judge to examine the merits in every case for the purpose of grant of sanction to the CBI for recording the information and investigating into any such offence, and a time frame for the decision has also been specified. Similarly, in the case of government servants, the authority for grant of sanction with a provisionfor appeal in case the sanction is declined has been provided. It was submitted that such a structure to regulate the grant of sanction by a high authority together with a time frame to avoid any delay is sufficient to make the procedure reasonable and to provide for an objective decision being taken for the grant of sanction within the specified time. It was urged that refusal of sanction with reasons would enable judicial review of that decision in case of any grievance against refusal of the sanction. Reliance was placed by the learned Attorney General on the decisions of this Court in K. Veeraswami v. Union of India and Others2, and State of Bihar and Another etc. v. J.A.C. Saldanha and others3, to support the argument of legality of the Single Directive. We shall advert to this aspect later.

23. The provision made for deciding the question of grant of sanction in the cases of officers to whom the Single Directive applies is, as under :

Office Memorandum dated February 17, 1997 of the Reserve Bank of India, Central Office, Department of Administration & Personnel Management

"Advisory Board on bank frauds It has been decided to set-up an 'Advisory Board on bank frauds' to advise the Bank on the cases referred by the Central Bureau of Investigation either directly or through the Ministry of Finance for investigation/registration of cases against bank officers of the rank of General Manager and above. The constitution of the Board will be as under :

Shri S.S. Tarapore, Chariman Ex-Deputy Governor Reserve Bank of India

Justice Shri B.V. Chavan Member Retd. Judge of Bombay High Court & Member, Reserve Bank of India Services Board.

Shri B.N. Bhagwat, Member Retd. Secretary, Government of India

Shri Satish Sawhney, Member Retd. Director General of Police, Maharashtra.

Shri. Y.H. Malegam, Member Chartered Accountant & Senior Partner in M/s. S.S. Billimoria & Co."

Another action taken by the Government of India is, as under:

Letter No. I 11011/33/95-IS DI(B) dated 1st/2nd August, 1995 of Ministry of Home Affairs, Government of India

"Government had through its Order No. S-7937/SS(ISP)/93 dated 9th July, 1993 constituted a Committee under the Chairmanship of former Home Secretary (Shri N.N.Vohra) to take stock of all available information about the activities of the crime syndicates/mafia organisations which had developed links with and were being protected by Government functionaries and political personalities. The Vohra Committee in its Report submitted to the Government recommend a Nodal Set-up directly under the Home Secretary to which all existing intelligence and enforcement agencies of the Government shall promptly pass on any information which they may come across, relating to links of crime syndicates with functionaries of the Government and political personalities.

2. Accordingly, Government have now decided to set up a Group under the Chairmanship of the Home Secretary to act as a Nodal Set-up to collect and collate the information and to decide on the action that is required to be taken to ensure that the nexus of criminals with businessmen, politicians or bureaucrats is broken.

3. The Group shall comprise:

   (i) Home Secretary, Chairman

   (ii) Secretary (Revenue) Member

   (iii) Director, IB Member

   (iv) Director, CBI Member

   (v) Secretary, R & AW Member

4. It is felt that it would be necessary for this Group to interact with various State Governments in order to both make use of such information as may be available with the States as well as to utilise the expertise of the relevant agencies of the State Governments. For this purpose, the above Group would ineract appropriately from time to time with Chief Secretaries and other senior functionaries of the State Governments.

5. All the Intelligence and enforcement agencies under the Government like the Intelligence Bureau, the CBI and various bodies functioning under the Department of Revenue shall forthwith report to the Home Secretary whenever substantive information/evidence of collusion of officials/politicians with criminal syndicates comes to their knowledge in the course of their working. The Group shall meet periodically to decide upon the action required to be taken and identify an agency or agencies to take up further investigations. The Nodal Group would also review the information in the above context already available with the various agencies and decide upon the follow up action that is required to be taken.

6. This issues with the approval of Home Minister."

Report of IRC

24. The IRC has in its report accepted the legality of the Single Directive placing reliance on the decision of this Court in K. Veeraswami (supra). After considering the functions of the CBI and the Directorate of Enforcement, it has made certain recommendations which are us under :

"Measures for speedy investigations and trials

4.1 The Committee recommends that the following measures should be taken to ensure speedy investigations and trials :

(a) Special Courts should be got established at identified stations to deal exclusively with FERA offences so that cases can be decided speedily.

(b) To ensure against delays in investigation abroad, the Revenue Secretary should be the competent authority to approve filing of applications for Letters Rogatory.

(c) The Directorate of Enforcement should be delegated powers to appoint special counsels for conducting trials, who may also act as legal advisers for the Department in respect of the cases entrusted to them.

(d) In many of the major cases of the Directorate, the suspects have been able to abuse the process of law by stalling the investigations at the initial stages through litigation at various levels, obtaining stay orders from High Courts and injunctions on flimsy grounds. In consultation with the Attorney General, the Revenue Department may examine the possibility of making a representation to the Apex Court to consider issuing appropriate directions so that the pace of progress of cases is not thwarted by interlocutory procedures or stay orders issued by the Courts below.

(e) Taking into account the instances in which suspected persons have been able to stall investigations on alleged health grounds, the Revenue Department should approach the Ministry of Health to establish standing medical boards in identified cities to examine such persons. Such boards should comprise outstanding medical experts of unimpeachable integrity. The Courts can be requested to refer the prayer of the accused for staying proceedings on health grounds to such medical boards before passing judgment."

"Checks and Balances

5.1 The Directorate must be provided adequate financial and administrative delegations to enable it to exercise autonomy in the conduct and pursuit of investigations without let or hindrance. Side by side, it is necessary to provide appropriate checks and balances to ensure against miscarriage of justice. In this context, the Committee recommends the following :

(a) The Revenue Department should undertake regular review of the progress of cases before the Directorate. To enable this, the Directorate should regularly furnish information regarding the number of cases instituted, progress of investigations, cases settled in adjudication and those put to Courts. The Committee note that while such information is already being supplied in reply to Parliament Questions, information to be placed before the Parliamentary Committee/Standing Committee, etc., there is no established procedure for the Directorate to furnish relevant information in a well devised format.

(b) The present system of the Directorate furnishing fortnightly reports providing statistical information and brief outline of the cases taken up for investigation should be further fine tuned. These reports should be carefully examined by the Revenue Department to ensure that the Directorate is performing its functions efficiently. The Revenue Secretary should hold regular review meetings with the Director Enforcement, also involving the Director Revenue Intelligence and other concerned officers.

(c) Guidelines relating to interrogation, prosecution, adjudication, time frame for completion of investigation, etc., have been issued by the Directorate from time to time. These guidelines should be comprehensively reviewed and, based thereon, a circular should be released for the information of the public at large, to enable all concerned to know the systems and procedures followed by the Directorate. This shall contribute to greater transparency. This effort should be concluded within 2-3 months.

5.2 It is important that the Directorate lays down a clearly spelt out time frame for the completion of investigation, launching of prosecution and completion of adjudication proceedings and for the Director to ensure that the prescribed time limits are strictly adhered to. The Committee are of the view that the Directorate would be able to more efficiently discharge its functions if immediate steps are taken to upgrade the level and quality of its in house legal advice mechanism. At our request the Cabinet Secretary convened a meeting with the Revenue Department, Enforcement Directorate and other concerned officers to consider various proposals for strengthening the Directorate. The Committee hope that the various decisions taken at the Cabinet Secretary's level shall witness implementation within 6-8 weeks.

5.3 The Committee recommends that the Directorate should take time bound steps to establish a grievances redressal mechanism to promptly deal with complaints received from the public against actions of the Enforcement Directorate. Insofar as complaints of arbitrary action by senior officers of the Directorate are concerned, the Committee recommends that these should be looked into by a Committee headed by the Central Vigilance Commissioner and comprising Revenue Secretary, Director General Revenue Intelligence, Enforcement Director and a senior representative of the Ministry of Law.

5.4 As regards the pursuit of cases which appear to have a politico-beaurocrat-criminal nexus, the Home Secretary agreed with the Committee's suggestion that the Nodal Agency in the Home Ministry (chaired by Home Secretary) shall also include Member (Investigation) of the Central Board of Direct Taxes, Director General Revenue Intelligence and the Director Enforcement as members.

5.5. The Committee recommends that the Annual Report of the Department of Revenue should have a section devoted exclusively to the functioning of the Enforcement Directorate. This report should highlight the number of cases taken up for investigation by ED, raids and searches conducted, amount of Indian and foreign currency seized, etc. The report should also indicate the number of persons arrested, prosecutions launched and convictions ordered by the Courts. The Committee feels that enhanced public knowledge about the work being done by the Directorate shall demystify its operations and contribute to improved public confidence."

"Summary of Recommendations

I. CBI and CVC

1. CVC to be conferred statutory status; appointment of Central Vigilance Commissioner to be made under the hand and seal of the President (para 4.2)

2. Constitution of a Committee for selection of CVC (Para 4.3)

3. CVC to overview CBI's functioning (para 5)

4. CBI's reporting to Government to be streamlined without diluting its functional autonomy (para 3.3)

5. CVC to have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it (para 6)

6. Constitution of a Selection Committee for identifying a panel of names for selection of Director CBI; final selection to be made by ACC from such panel (para 8.2)

7. Central Government to pursue with the State Governments to set up credible mechanism for selection of Police Chief (para 8.3)

8. Director CBI to have a minimum tenure of 2 years (para 8.4)

9. Transfer of incumbent Director CBI would need endorsement of the Selection Committee (para 8.5)

10. Director CBI to ensure full freedom for allocation of work within the Agency, including constitution of investigation teams (para 8.6)

11. Selection/extension of tenure of officers upto to the level of Joint Director (JD) to be decided by a Board under Central Vigilance Commissioner; JD and above would need the approval of ACC (para 8.7)

12. Change in the existing Tenure Rules not recommended (para 8.8)

13. Proposals for improvement of infrastructure, methods of investigation,etc., to be decided urgently (para 8.9.2)

14. No need for creation of a permanent core group in the CBI (para 8.9.3)

15. Severe disciplinary action against officers who deviate from prescribed investigation procedures (para 9.1)

16. Director CBI to be responsible for ensuring time limits for filing charge sheets in courts (para 9.2)

17. Document on CBI's functioning to be published within three months (para 9.4)

18. Essential to protect officers at the decision making levels from vexatious enquiries/ prosecutions (para 10.6)

19. Secretaries of adhere strictly to prescribed time frames for grant of permission for registration of PE/RC. CBI to be free to proceed if decision not conveyed within the specified time (para 10.9)

20. Secretary of Administrative Ministry to convey a decision regarding registration of PE/RC within 2 months of receipt of request. If not satisfied with decision, Director CBI free to make fresh reference to the Committee headed by Cabinet Secretary within a period of four weeks and the latter to decide thereon within a period of four weeks (para 10.10)

21. Protection under the Single Directive not to cover offences like bribery, when prima-facie established in a successful trap (para 10.12)

22. Cases of disproportionate assets of Central Government and All India Services Officers to be brought within the ambit of the Single Directive (para 10.13)

23. Time limit of 3 months for sanction for prosecution. Where consultation is required with the Attorney General or the Solicitor General, additional time of one months could be allowed (para 10.14 and 10.15)

24. Government to undertake a review of the various types of offences notified for investigation by the CBI to retain focus on anti-corruption activities which is its primary objective (para 11.1)

25. Cases falling within the jurisdiction of the State Police which do not have inter-state or inter-national ramifications should not be handed over to CBI by States/Courts (para 11.2)

26. Government to establish Special Courts for the trial of CBI cases (para 11.3)

27. Severe action against officials found guilty of high handedness; prompt action against those officials chastised by the Courts (para 11.4)

28. Director CBI to conduct regular appraisal of personnel to weed out the corrupt and inefficient, and maintain strict discipline within the organisation (para 11.5)

II. Enforcement Directorate

1. Selection Committee headed by Central Vigilance Commissioner to recommend panel for appointment of Director Enforcement by the ACC (para 2.2)

2. Director Enforcement to have minimum tenure of 2 years. For his premature transfer, the Selection Committee headed by Central Vigilance Commissioner to make suitable recommendations to the ACC (para 2.3)

3. Post of Enforcement to be upgraded to that of Additional Secretary/Special Secretary to the Government (para 2.4)

4. Officers of the Enforcement Directorate handling sensitive assignments to be provided adequate security for enabling fearless discharge of their functions (para 2.5)

5. Extension of tenures up to the level of Joint Directors in the Enforcement Directorate to be decided by a Committee headed by Central Vigilance Commissioner (para 2.6)

6. Proposals for foreign visits to conduct investigations to be cleared by the Revenue Secretary and the Financial Adviser (para 2.7)

7. While enjoying full internal autonomy Enforcement Directorate to be made accountable. Responsibility of Government to ensure efficient and impartial functioning (para 3.1)

8. Premature media publicity to be ensured against (para 3.3)

9. Adjudication proceedings/prosecution to be finalised by the Enforcement Directorate within a period of one year (para 3.4)

10. Director Enforcement to monitor speedy completion of investigation and launching of adjudications/prosecution. Revenue Secretary to review regularly (para 3.4)

11. The Director Enforcement to keep .... such against vexatious search; action against functionaries who act without due care (para 3.5)

12. Special Courts to be established to deal with FERA offences for speedy completion of trials [para 4.1(a)]

13. For speedy conduct of investigations abroad, Revenue Secretary be authorised to approve filing of applications for Letters Rogatory [para 4.1(b)]

14. The Enforcement Directorate to be delegated powers to appoint Special Counsels for trials [para 4.1(c)]

15. The Revenue Department to consult Attorney General regarding measures against conclusion of cases being thwarted by stay orders, etc. [para 4.1(d)]

16. Revenue Department to approach Health Ministry to establish Standing Medical Boards in identified cities for examination of accused persons seeking deferment of proceedings on health grounds [para 4.1(c)]

17. Revenue Department to undertake regular reviews of cases pending with the Directorate [paras 5.1(a) and (b)]

18. Comprehensive circular to be published by the Directorate to inform public about procedures/systems of its functioning [Para 5.1(c)]

19. In-house legal advice mechanism to be strengthened (para 5.2)

20. Proposals for strengthening the Directorate to be implemented within 8 weeks (para 5.2)

21. Directorate to establish a grievance redressal mechanism (para 5.3)

22. Committee headed by Central Vigilance Commissioner to decide complaints of arbitrary action by Directorate officials (para 5.3)

23. Nodal Agency headed by Home Secretary on politico-beaurocrat-criminal nexus to include Member Investigation CBDT, Director General Revenue Intelligence and Director Enforcement as members (para 5.4)

24. Annual Report of the Department of Revenue to contain an exhaustive section on the working of the Enforcement Directorate (para 5.5)

25. Suitable incentives to be provided to functionaries of Enforcement Directorate at various levels, to attract best material, to be decided within two months (para 6.1)

III. Nodal Agency on Criminal Nexus

1. Requirements of inter-agency co-ordination at field unit level to be evolved by Home Secretary (para 2.1)

2. NA's functioning to be watched for some time before considering need for structural changes (para 3)

3. Home Secretary will hold meetings of NA every month (para 3)"

25. The reference to paragraphs within brackets at the end of each recommendation is to the paragraphs of the report containing discussion pertaining to the Central Bureau of Investigation (CBI) and the Central Vigilance Commission (CVC) in Part I and Directorate of Enforcement in Part II of the report. These recommendations have, therefore, to be read along with the discussion in the corresponding paras in Part I and Part II of the report.
Need for Court's intervention

26. The IRC is a body constituted by the Central Government itself as a result of its perception that the constitution and functioning of the CBI, CVC and Directorate of Enforcement require a close scrutiny in the background of the recent unsatisfactory functioning of these agencies with a view to improve their functioning. The view taken by the IRC is a reaffirmation of this belief shared by everyone. The preface to the report indicates the reason for the constitution of the IRC and says that "In the past several years, there has been progressive increase in allegations of corruption involving public servants. Understandably, cases of this nature have attracted heightened media and public attention. A general impression appears to have gained ground that the concerned Central investigating agencies are subject to extraneous pressures and have been indulging in dilatory tactics in not bringing the guilty to book. The decisions of higher courts to directly monitor investigations in certain cases have added to the aforesaid belief". There can thus be no doubt that there is need for the exercise we were called upon to perform and which has occasioned consideration of this crucial issue by this Court in exercise of its powers conferred by the Constitution of India. The conclusions reached by the IRC and the recommendations it has made for improving the functioning and thereby the image of these agencies is a further reaffirmation of this general belief. There can also be no doubt that the conclusions reached by the IRC and its recommendations are the minimum which require immediate acceptance and implementation in a bid to arrest any further decay of the polity. It follows that the exercise to be performed now by this Court is really to consider whether any modifications/additions are required to be made to the recommendations of the IRC for achieving the object for which the Central Government itself constituted the IRC. We are informed by the learned Attorney General that further action on the report of the IRC could not be taken so far because of certain practical difficulties faced by the Central Government but there is no negative reaction to the report given by the Central Government.

27. The only caveat entered by the Attorney General is on the basis of a note by an individual Minister in the Central Cabinet in which emphasis has been laid that the ultimate responsibility for the functioning of these agencies to the Parliament is that of the concerned Minister and this aspect may be kept in mind. It has been specifically mentioned that the Minister would remain the final disciplinary authority and would have the power to refer complaints against the agency or its officers to an appropriate authority for necessary action. There can be no quarrel with the Minister's ultimate responsibility to the Parliament for the functioning of these agencies and he being the final disciplinary authority in respect of the officers of the agency with power to refer complaints against them to the appropriate authority. Some other specific powers of the Minister were indicated as under :

1. The Minister has the power to review the working of the agencies which are under his Department.
2. The Minister has the power to give broad policy directions regarding investigation and prosecution of classes or categories of cases.
3. The Minister has the power to appraise the quality of the work of the Head of the agency as well as other senior officers of the agency.
4. The Minister has the power to call for information regarding progress of cases.

28. It is sufficient to say that the Minister's general power to review the working of the agency and to give broad policy directions regarding the functioning of the agencies and to appraise the quality of the work of the Head of the agency and other officers as the executive head is in no way to be diluted. Similarly, the Minister's power to call for information generally regarding the cases being handled by the agencies is not to be taken away. However, all the powers of the Minister are subject to the condition that none of them would extend to permit the Minister to interfere with the course of investigation and prosecution in any individual case and in that respect the concerned officers are to be governed entirely by the mandate of law and the statutory duty cast upon them.

29. It is useful to remember in this context what this Court has on several occasions in the past said about the nature of duty and functions of Police officers in the investigation of an offence. It is sufficient to refer to one of them, namely, Union of India & Ors. v. Sushil Kumar Modi & Ors. (Bihar Fodder Scam case), wherein it was said, as under :

> "4. At the outset, we would indicate that the nature of proceedings before the High Court is somewhat similar to those pending in this Court in Vineet Narain v. Union of India, 1996(2) SCC 199 : 1996(1) Supreme 644 and Anukul Chandra Pradhan v. Union of India, 1996(6) SCC 354 : 1996(7) Supreme 455 and, therefore, the High Court is required to proceed with the matter in a similar manner. It has to be borne in mind that the purpose of these proceedings is essentially to ensure performance of the statutory duty by the CBI and the other government agencies in accordance with law for the proper implementation of the rule of law. To achieve this object a fair, honest and expeditious investigation into every reasonable accusation against each and every person reasonably suspected of involvement in the alleged offences has to be made strictly in accordance with law. The duty of the Court in such proceedings is, therefore, to ensure that the CBI and other government agencies do their duty and do so strictly in conformity with law. In these proceedings, the Court is not required to go into the merits of the accusation or even to express any opinion thereon, which is a matter for consideration by the competent court in which the charge-sheet is filed and the accused have to face trial. It is, therefore, necessary that not even an observation relating to the merits of the accusation is made by the Court in these proceedings lest it prejudice the accused at the trial. The nature of these proceedings may be described as that of "continuing mandamus" to require performance of its duty by the CBI and the other government agencies concerned. The agencies concerned must bear in mind and, if needed, be reminded of the caution administered by Lord Denning in this behalf in R. v. Metropolitan Police Commr., 1968(1) All ER 763/1968 (2) QB 118. Indicating the duty of the Commissioner of Police, Lord Denning stated thus : (All ER p. 769)
>
> "I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, .. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law

> of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

The nature of such a proceeding in a court of law was also indicated by Lord Denning, as under:

> "A question may be raised as to the machinery by which he could be compelled to do his duty. On principle, it seems to me that once a duty ....., there should be a means of enforcing it. This duty can be enforced. I think, either by action at the suit of the Attorney General: or by the prerogative order of mandamus." (emphasis supplied)

There can hardly be any doubt that the obligation of the police in our constitutional scheme is no less.

> "5. According to the Code of Criminal Procedure, 1973 the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the police and by no other authority, see Abhinandan Jha v. Dinesh Mishra, 1967(3) SCR 668. This must be borne in mind as also that the scope and purpose of a proceeding like the present is to ensure a proper and faithful performance of its duty by the police officer by resort to the prerogative writ of mandamus."

30. The Minister's power in these matters has, therefore, to be understood as circumscribed by these limitations under the law. History of CBI

31. It is useful to refer at this stage to the history of the CBI. The Special Police Establishment was formed during the World War II when large sums of public money were being spent in connection with the War and there arose enormous potential for corruption amongst the officers dealing with the supplies. An executive order was made by the Government of India in 1941 setting up the Special Police Establishment (SPE) under a DIG in the then Department of War. The need for a Central Government agency to investigate cases of bribery and corruption by the Central Government servants continued and, therefore, the Delhi Special Police Establishment Act was brought into force in 1946. Under this Act, the superintendence of the Special Police Establishment was transferred to the Home Department and its functions were enlarged to cover all departments of the Government of India. The jurisdiction of the SPE extended to all the Union Territories and could also be extended to the States with the consent of the concerned State Governments. Then the SPE was put under the charge of Director, Intelligence Bureau. Later in 1948 a post of Inspector General of Police, SPE was created and the organisation was placed under his charge. The Central Bureau of Investigation was established on 1.4.1963 vide Government of India's Resolution No. 4/31/61-T/MHA. This was done to meet the felt need of having a Central Police agency at he disposal of the Central Government to investigate into cases not only of bribery and corruption but also those relating to the breach of central fiscal laws, frauds in Government departments and PSUs and other serious crimes. On enlargement of the role of CBI an Economic Offences Wing was added to the existing Divisions of the CBI. In 1987 two Divisions were created in the CBI known as Anti-Corruption Division and Special Crimes Division, the latter dealing with cases of conventional crimes besides economic offences. In 1944 due to increased workload relating to bank frauds and economic offences a separate Economic Offences Wing was establishing in CBI with the result that since then the CBI has three Investigation Divisions, namely, Anti-Corruption Division, Special Crimes Division and Economic Offences Division. Further particulars thereof are not necessary in the present context.

32. We are informed that almost all the State Governments have given concurrence for extension of the jurisdiction of the Delhi Special Police Establishment in their States with the exception of only a few. The result is that for all practical purposes, the jurisdiction in respect of all such offences is exercised in the consenting States only by the CBI and not by the State Police. This is the significance of the role of the CBI in such matters and, therefore, technically the additional jurisdiction under the general law of the State Police in these matters is of no practical relevant. The pragmatic effect of the Single Directive is, therefore, to inhibit investigation against the specified

category of officers without sanction in accordance with the Single Directive. Validity of Directive No. 4.7(3) of the Single Directive

33. We may now refer to the two decisions on which specific reliance has been placed by the learned Attorney General before us as well as the IRC in its report. 34. The decision in J.A.C. Saldanha (supra) is on Section 3 of the Police Act, 1861 and deals with the ambit and scope of State Government's power of 'superintendence' thereunder. It was held in J.A.C. Saldanha (supra) that the power of superintendence of the State Government includes its power to direct further investigation under Section 173(8) Cr.P.C. That was a case in which there was occasion to require further investigation because of the unsatisfactory nature of the investigation done earlier of a cognizable offence. Thus, in that case the power of superintendence was exercised for directing further investigation to complete an unsatisfactory investigation of a cognizable offence to promote the cause of justice and not to subvert it by preventing investigation. In our opinion, in the present context, that decision has no application to support the issuance of the Single Directive in exercise of the power of superintendence, since the effect of the Single Directive might thwart investigation of a cognizable offence and not to promote the cause of justice by directing further investigation leading to a prosecution.

35. The other decision of this Court is in K. Veeraswami (supra). That was a decision in which the majority held that the Prevention of Corruption Act applies even to the Judges of the High Court and the Supreme Court. After taking that view, it was said by the majority (per Shetty, J.) that in order to protect the independence of judiciary, it was essential that no criminal case shall be registered under Section 154 Cr.P.C. against a Judge of the High Court or of the Supreme Court unless the Chief Justice of India is consulted and he assents to such an action being taken. The learned Attorney General contended that this decision is an authority for the proposition that in case of high officials, the requirement of prior permission/sanction from a higher officer or Head of the Department is permissible and necessary to save the concerned officer from harassment caused by a malicious or vexatious prosecution. We are unable to accept this submission.

36. The position of Judges of High Courts and Supreme Court, who are constitutional functionaries, is distinct, and the independence of judiciary, keeping it free from any extraneous influence, including that from executive, is the rationale of the decision in K. Veeraswami (supra). In strict terms the Prevention of Corruption Act, 1946 could not be applied to the superior Judges and, therefore, while bringing those Judges within the purview of the Act yet maintaining the independence of judiciary, this guideline was issued as a direction by the Court. The feature of independence of judiciary has no application to the officers covered by the Single Directive. The need for independence of judiciary from the executive influence does not arise in the case of officers belonging to the executive. We have no doubt that the decision in K. Veeraswami (supra) has no application to the wide proposition advanced by the learned Attorney General to support the Single Directive. For the same reason, reliance on that decision by the IRC to uphold the Single Directive is misplaced.

37. The question, however, is whether, without the aid of these decisions, the Single Directive can be upheld. In this context, meaning of the word "superintendence" in Section 4(1) of the Delhi Special Police Establishment Act, 1946 requires consideration.

38. The Delhi Special Police Establishment Act, 1946 is an Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in the Union Territories for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences. Section 6 of the Act requires consent of the State Government to exercise powers and jurisdiction under the Act by the Delhi Special Police Establishment. This is because 'Police' is a State subject, being in List II, Entry 2 of the Seventh Schedule. For this reason, the learned Attorney General contended that the power and jurisdiction of the State Police in respect of an offence within its jurisdiction remains intact and is not inhibited by the Single Directive; and that the CBI alone is inhibited thereby. Section 2 of the Act deals with constitution and powers of the Special Police Establishment (SPE). This is how the CBI has been constituted. Section 3 provides for offences to be investigated by the SPE and says that the offences or class of offences to be investigated by the agency may be specified by notification in the Official Gazette by the Central Government.

39. Section 3 of the Police Act, 1861 is in pari materia with Section 4 of the Delhi Special Police Establishment Act, 1946. These Sections read as under:-

Section 3 of the Police Act, 1861:

> "3. Superintendence in the State Government.—The superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate, and except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary. Sections 3 and 4 of the Delhi Special Police Establishment Act, 1946 :
>
> "Offences to be investigated by S.P.E.
>
> 3. The Central Government may, by notification in the Official Gazette specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment. Superintendence & Administration of S.P.E.
>
> 4. (1) The Superintendence of the Delhi Special Police Establishment shall vest in the Central Government.
>
> (2) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State, as the Central Government may specify in this behalf."

40. The meaning of the word "superintendence" in Section 4(1) of the Delhi Special Police Act, 1946 determines the scope of the authority of the Central Government in this context.

41. There can be no doubt that the overall administration of the said force, i.e. CBI vests in the Central Government, which also includes, by virtue of Section 3, the power to specify the offences or class of offences which are to be investigated by it. The general superintendence over the functioning of the Department and specification of the offences which are to be investigated by the agency is not the same as and would not include within it the control of the initiation and the actual process of investigation, i.e., direction. Once the CBI is empowered to investigate an offence generally by its specification under Section 3, the process of investigation, including its initiation, is to be governed by the statutory provisions which provide for the initiation and manner of investigation of the offence. This is not an area which can be included within the meaning of "superintendence" in Section 4(1).

42. It is, therefore, the notification made by the Central Government under Section 3 whichconfers and determines the jurisdiction of the CBI to investigate an offence; and once that jurisdiction is attracted by virtue of the notification under Section 3, the actual investigation is to be governed by the statutory provisions under the general law applicable to such investigations. This appears to us the proper construction of Section 4(1) in the context, and it is in harmony with the scheme of the Act, and Section 3 in particular. The word "superintendence" in Section 4(1) cannot be construed in a wider sense to permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions. The broad proposition urged on behalf of the Union of India that it can issue any directive to the CBI to curtail or inhibit its jurisdiction to investigate an offence specified in the notification issued under Section 3 by a directive under Section 4(1) of the Act cannot be accepted. The jurisdiction of the CBI to investigate an offence is to be determined with reference to the notification issued under Section 3 and not by any separate order not having that character.

43. This view does not conflict with the decision in J.A.C. Saldanha (supra) as earlier indicated. In Saldanha, the question was whether an unsatisfactory investigation already made could be undertaken by another officer for further investigation of the offence so that the offence was properly investigated as required by law, and it was not to prevent the investigation of an offence. The Single Directive has the effect of restraining recording of FIR and initiation of investigation and not of proceeding with investigation, as in Saldanha. No authority to permit control of statutory powers exercised by the police to investigate an offence within its jurisdiction has been cited before us except K. Veeraswami which we have already distinguished. The view we take accords not only with reason but also with the very purpose of the law and is in consonance with the basic tenet of the rule of law.

44. Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification under Section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be estopped or

curtailed by any executive instruction issued under Section 4(1) thereof. This result follows from the fact that conferment of jurisdiction is under Section 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that statutory jurisdiction cannot be subject to executive control.

45. There is no similarity between a mere executive order requiring prior permission or sanction for investigation of the offence and the sanction needed under the statute for prosecution. The requirement of sanction for prosecution being provided in the very statute which enacts the offence, the sanction for prosecution is a pre-requisite for the court to take cognisance of the offence. In the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification under Section 3 of the Act. The word "superintendence" in Section 4(1) of the Act in the context must be construed in a manner consistent with the other provisions of the Act and the general statutory powers of investigation which govern investigation even by the CBI. The necessity of previous sanction for prosecution is provided in Section 6 of the Prevention of Corruption Act, 1947 (Section 19 of the 1988 Act) without which no court can take cognisance of an offence punishable under Section 5 of that Act. There is no such previous sanction for investigation provided for either in the Prevention of Corruption Act or the Delhi Special Police Establishment Act or in any other statutory provision. The above is the only manner in which Section 4(1) of the Act can be harmonised with Section 3 and the other statutory provisions.

46. The Single Directive has to be examined in this background. The law does not classify offenders differently for treatment thereunder, including investigation of offences and prosecution for offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The Single Directive is applicable only to certain persons above the specified level who are described as "decision making officers". The question is whether any distinction can be made for them for the purpose of investigation of an offence of which they are accused.

47. Obviously, where the accusation of corruption is based on direct evidence and it does not require any inference to be drawn dependent on the decision making process, there is no rational basis to classify them differently. In other words, if the accusation be of bribery which is supported by direct evidence of acceptance of illegal gratification by them, including trap cases, it is obvious that no other factor is relevant and the level or status of the offender is irrelevant. It is for this reason that it was conceded that such cases, i.e., of bribery, including trap cases, are outside the scope of the Single Directive. After some debate at the Bar, no serious attempt was made by the learned Attorney General to support inclusion within the Single Directive of cases in which the offender is alleged to be in possession of disproportionate assets. It is clear that the accusation of possession of disproportionate assets by a person is also based on direct evidence and no factor pertaining to the expertise of decision making is involved therein. We have, therefore, no doubt that the Single Directive cannot include within its ambit cases of possession of disproportionate assets by the offender. The question now is only with regard to cases other than those of bribery, including trap cases, and of possession of disproportionate assets being covered by the Single Directive.

48. There may be other cases where the accusation cannot be supported by direct evidence and is a matter of inference of corrupt motive for the decision, with nothing to prove directly and illegal gain to the decision maker. Those are cases in which the inference drawn is that the decision must have been made for a corrupt motive because the decision could not have been reached otherwise by an officer at that level in the hierarchy. This is, therefore, an area where the opinion of persons with requisite expertise in decision making of that kind is relevant and, may be even decisive in reaching the conclusion whether the allegation requires any investigation to be made. In view of the fact that the CBI or the Police force does not have the expertise within its fold for the formation of the requisite opinion in such cases, the need for the conclusion of such a mechanism comprising of experts in the field as a part of the infrastructure of the CBI is obvious, to decide whether the accusation made discloses grounds for a reasonable suspicion of the commission of an offence and it requires investigation. In the absence of any such mechanism within the infrastructure of the CBI, comprising of experts in the field who can evaluate the material for the decision to be made, introduction therein of a body of experts having expertise of the kind of business which requires the decision to be made, can be appreciated. But then, the final opinion is to be of the

CBI with the aid of that advice and not that of anyone else. It would be more appropriate to have such a body within the infrastructure of the CBI itself.

49. The Single Directive cannot, therefore, be upheld as valid on the ground of it, being permissible in exercise of the power of superintendence of the Central Government under Section 4(1) of the Act. The matter has now to be considered de hors the Single Directive. Power of the Supreme Court

50. In view of the common perception shared by everyone including the Government of India and the Independent Review Committee (IRC) of the need for insulation of the CBI from extraneous influence of any kind, it is imperative that some action is urgently taken to prevent the continuance of this situation with a view to ensure proper implementation of the rule of law. This is the need of equality guaranteed in the Constitution. The right to equality in a situation like this is that of the Indian polity and not merely of a few individuals. The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality.

51. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharge its role. It is in the discharge of this duty that the IRC was constituted by the Government of India with a view to obtain its recommendations after an indepth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted. The report of the IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe to act on the recommendations of the IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of the IRC and its recommendations, suitable directions can be formulated to fill the entire vacuum. This is the exercise we propose to perform in the present case since this exercise can no longer be delayed. It is essential and indeed the constitutional obligation of this Court under the aforesaid provisions to issue the necessary directions in this behalf. We now consider formulation of the needed directions in the performance of this obligation. The directions issued herein for strict compliance are to operate till such time as they are replaced by suitable legislation in this behalf.

52. There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition. The recent experience in the field of prosecution is also discouraging. To emphasis this point, some reference has to be made to a large number of prosecutions launched as a result of monitoring by the court in this matter which have resulted in discharge of the accused at the threshold. It took several years for the CBI to commence investigation and that too as a result of the monitoring by this Court. It is not as if the CBI, on conclusion of the investigation, formed the opinion that no case was made out for prosecution so that the earlier inaction may have been justified. The CBI did file numerous chargesheets which indicated that in its view a prima facie case for prosecution had been made out. This alone is sufficient to indicate that the earlier inaction was unjustified. However, discharge of the accused on filing of the chargesheet indicates, irrespective of the ultimate outcome of the matters pending in the higher courts, that the trial Court at least was not satisfied that a prima facie case was made out by the investigation. These facts are sufficient to indicate that either the investigation or the prosecution or both were lacking. A similar result of discharge of the accused in such a large number of cases where chargesheet had been filed by the CBI is not consistent with other inference. The need for a strong and competent prosecution machinery and not merely a fair and competent investigation by the CBI can hardly be overemphasised. This is the occasion for us to take the view that a suitable machinery for prosecution of the cases filed in court by the CBI is also essential to ensure discharge of its full responsibility by the CBI. Unless a competent prosecution follows a fair and competent investigation, the exercise in the ultimate analysis would be futile. Investigation and prosecution are inter-related and improvement of investigation without improving the prosecution machinery is of no practical significance. We would, therefore, consider the aspect of prosecution also in the formulation of the guidelines.

53. In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In Erach Sam Kanga etc. v. Union of India & Anr. (Writ Petition No. 2632 of 1978 etc. etc. decided on 20th March, 1979, the Constitution Bench laid down certain guidelines relating to the Emigration Act. In Lakshmi Kant Pandey v. Union of India (in re: Foreign Adoption), guidelines for adoption of minor children by foreigners were laid down. Similarly in State of West Bengal & Others, etc. v. Sampat Lal & Others, etc., K. Veeraswami v. Union of India and Others (supra), Union Carbide Corporation and Others v. Union of India and Others. Delhi Judicial Service Association etc. v. State of Gujarat and Others etc. (Nadiad Case)8, Delhi Development. Authority v. Skipper Construction Co. (P) Ltd. and Another9, and Dinesh Trivedi, M.P. and Others v. Union of India and Others10, guidelines were laid down having the effect of law, requiring rigid compliance. In Supreme Court Advocates-on-Records Association and Others v. Union of India (IInd Judges Case), a 9-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in Vishakha and Others v. State of Rajasthan and Others12, elaborate guidelines have been laid down for observance in work places relating to sexual harassment of working women. In Vishaka, it was said :

> "The obligation of this court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the Lawasla region. These principles were accepted by the Chief Justice of Asia and the Pacific at Beijing in 1995 (*) [As amended at Manila, 28th August, 1997] as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are :
>
> "Objective of the Judiciary :
>
> 10. The objectives and functions of the judiciary include the following :
>
> (a) to ensure that all persons are able to live securely under the Rule of Law;
>
> (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
>
> (c) to administer the law impartially among persons and between persons and the State."

Thus, an exercise of this kind by the court is now a well settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field.

54. As pointed out in Vishakha (supra), it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.

55. On the basis, we now proceed to give the directions enumerated hereafter for rigid compliance till such time as the legislature steps in to substitute them by proper legislation. These directions made under Article 32 read with Article 142 to implement the rule of law wherein the concept of equality enshrined in Article 14 is embedded, have the force of law under Article 141 and, by virtue of Article 144, it is the duty of all authorities, civil and judicial, in the territory of India to act in aid of this Court. In the issuance of these directions, we have accepted and are reiterating as far as possible the recommendations made by the IRC.

56. It is a similar perception in England which has led to the constitution of a Committee headed by Lord Nolan on 'Standards in Public Life'. In Volume 1 of Lord Nolan's Report (1995), the general recommendations made are :

"General recommendations

4. Some of our conclusions have general application across the entire service : Principles of public life

5. The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership are set out in full on page 14.

Codes of Conduct

6. All public bodies should draw up Codes of Conduct incorporation these principles. Independent Scrutiny

7. Internal systems for maintaining standards should be supported by independent scrutiny. Education

8. More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training."

The Seven Principles of Public Life are stated in the Report by Lord Norlan, thus :

"The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example."

57. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

58. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to under-developed countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries : R v. Secretary of State for Foreign and Commonwealth Affairs13.

59. Of course, the necessity of desirable procedures evolved by court rules to ensure that such a litigation is properly conducted and confined only to matters of public interest is obvious. This is the effort made in these proceedings for the enforcement of fundamental rights guaranteed in the Constitution in exercise of powers conferred on this Court for doing complete justice in a cause. It cannot be doubted that there is a serious human rights aspect involved in such a proceeding because the prevailing corruption in public life, if permitted to continue unchecked, has ultimately the deleterious effect of eroding the Indian polity.

60. As a result of the aforesaid discussion, we hereby direct as under :

I. Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC)

1. The Central Vigilance Commission (CVC) shall be given statutory status.

2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and others with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.

3. The CVC shall be responsible for the efficient functioning of the CBI. While Governmentshall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overviewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which chargesheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.

4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a non-partisan agency.

5. The CVC shall have a separate section in its Annual Report on the CBI's functioning after the supervisory function is transferred to it.

6. Recommendation for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.

8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the Selection Committee.

9. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

10. Selection/extension of tenure of officers upto the level of Joint Director (JD) shall be decided by a Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers upto the level of Joint Director shall be with final approval of this Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the Cabinet (ACC) for decision.

11. Proposals for improvement of infrastructure, method of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the revenue, banking and security sectors should be inducted into the CBI.

12. The CBI Manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigation functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe discipline action taken against the concerned officials.

13. The Director, CBI shall be responsible for ensuring the filing of chargesheets in courts within the stipulated time limits, and the matter should be kept under constant review by the Director, CBI.

14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

15. Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency.

II. Enforcement Directorate

1. A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the Director, Enforcement Directorate. The appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.

2. The Director, Enforcement Directorate like the Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid Selection Committee headed by the Central Vigilance Commissioner.

3. In view of the importance of the post of Director, Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/Special Secretary to the Government.

4. Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly.

5. Extensions of tenure upto the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner.

6. There shall be no premature media publicity by the CBI/Enforcement Directorate.

7. Adjudication/commencement of prosecution shall be made by the Enforcement Directorate within a period of one year.

8. The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/adjudications and launching of prosecutions. Revenue Secretary must review their progress regularly.

9. For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue Secretary authorised to grant the approval.

10. A comprehensive circular shall be published by the Directorate to inform the public about the procedure/systems of its functioning for the sake of transparency.

11. In-house legal advice mechanism shall be strengthened by appointment of competent legal advisers in the CBI/Directorate of Enforcement.

12. The Annual Report of the Department of Revenue shall contain a detailed account on the working of the Enforcement Directorate.

III. Nodal Agency

1. A Nodal Agency headed by the Home Secretary with Member (Investigation), Central Board of Direct Taxes, Director General, Revenue Intelligence, Director, Enforcement and Director, CBI as members, shall be constituted for coordinated action in cases having politicobureaucrat- criminal nexus.

2. The Nodal Agency shall meet at least once every month.

3. Working and efficacy of the Nodal Agency should be watched for about one year so as to improve it upon the basis of the experience gained within this period.

IV. Prosecution Agency

1. A panel of competent lawyers of experience and impeccable reputation shall be prepared with the advice of the Attorney General. Their services shall be utilised as Prosecuting Counsel in cases of significance. Even during the course of investigation of an offence, the advice of a lawyer chosen from the panel should be taken by the CBI/Enforcement Directorate.

2. Every prosecution which results in the discharge or acquittal of the accused must be reviewed by a lawyer on the panel and, on the basis of the opinion given, responsibility should be fixed for dereliction of duty, if any, of the concerned officer. In such cases, strict action should be taken against the officer found guilty of dereliction of duty.

3. The preparation of the panel of lawyers with the approval of the Attorney General shall be completed within three months.

4. Steps shall be taken immediately for the constitution of an able and impartial agency comprising persons of unimpeachable integrity to perform functions akin to those of the Director of Prosecutions in U.K. On the constitution of such a body, the task of supervising prosecution launched by the CBI/Enforcement Directorate shall be entrusted to it.

5. Till the constitution of the aforesaid body, Special Counsel shall be appointed for the conduct of important trials on the recommendation of the Attorney General or any other law officer designated by him.

61. The learned amicus curiae had urged us to issue directions for the appointment of an authority akin to the Special or Independent Counsel in the United States of America for the investigation of charges in politically sensitive matters and for the prosecution of those cases and to ensure that appointments to sensitive posts in the CBI and other enforcement agencies and transfers therefrom were not made by the political executive. We are of the view that the time for these drastic steps has not come. It is our hope that it never will, for we entertain the belief that the investigative agencies shall function far better now, having regard to all that has happened since these

writ petitions were admitted and to the directions which are contained in this judgment. The personnel of the enforcement agencies should not now lack the courage and independence to go about their task as they should, even where those to be investigated are prominent and powerful persons.

62. In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Governments also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/ appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicizing the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister in his letters to the State Governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances.

63. In the result, we strike down Directive No. 4.7(3) of the Single Directive quoted above and issue the above directions, which have to be construed in the light of the earlier discussion. The Report of the Independent Review Committee (IRC) and its recommendations which are similar to this extent can be read, if necessary, for a proper appreciation of these directions. To the extent we agree with the conclusions and recommendations of the IRC, and that is a large area, we have adopted the same in the formulation of the above directions. These directions require the strict compliance/adherence of the Union of India and all concerned.

64. The writ petitions are disposed of in the above terms. Criminal Misc. Petition Nos. 5879-5882 of 1997

65. In view of the disposal of the writ petitions in the manner indicated above and in the facts and circumstances of the case, we do not consider it necessary now to examine the appointment of Shri R.C. Sharma as Director, CBI. Moreover, the tenure of Shri Sharma as Director, CBI is to end soon. We make it clear that Shri Sharma is not to be continued as CBI Director beyond the date of expiry of his present tenure. Accordingly, these Crl. M.Ps. are disposed of in this manner. 66. In view of the withdrawal of C.W.P. No. 2992 of 1997 in the Delhi High Court as required by this Court's order dated 11.9.1997, no further order for the disposal of C.W.P. No. 2992 of 1997 is necessary.

Petitions disposed of accordingly.

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C.B.I. VERSUS ASHOK KUMAR AGGARWAL

IN THE SUPREME COURT OF INDIA

CRIMINAL APPEAL NO. 1838 OF 2013
2014 (84) ACC 252

C.B.I. - Appellant
Versus
Ashok Kumar Aggarwal - Respondent

Decided on : November 22, 2013

Coram : DR. B.S. CHAUHAN, S.A. BOBDE, JJ.

In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

JUDGMENT

Dr. B.S. Chauhan, J.

1. This appeal has been preferred against the impugned judgment and order dated 3.10.2007 passed by the High Court of Delhi at New Delhi allowing Crl. R.P. No. 589 of 2007, setting aside the order dated 28.7.2007 passed by the court of Special Judge, Central Bureau of Investigation (hereinafter referred to as the 'CBI'), by which and whereunder the Special Judge rejected the application of the respondent questioning the sanction granted by the competent authority under Section 19 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act 1988'), observing that the issue could be examined during trial.

2. Facts and circumstances giving rise to this appeal are that:

A. The appellant, CBI registered a preliminary enquiry against the respondent for disproportionate assets to the tune of Rs.8,38,456/- on 17.9.1999. After conclusion of the preliminary enquiry, a regular case was registered on 7.12.1999 as FIR No. S19/E0006/99 in respect of the same to the tune of Rs.40,42,23,478/-

B. During the course of investigation, it came to light that disproportionate assets were only to the tune of Rs.12,04,46,936/-, which was 7615.45 times of his known sources of income. It further surfaced that the respondent was involved in money laundering; and for channelising his ill-gotten wealth, had established a number of companies wherein his family members were the founding directors.

C. The CBI sent a letter to the Ministry of Finance dated 24.5.2002 for accord of sanction for prosecution of the respondent. The same was accompanied by the Superintendent of Police's (hereinafter referred to as the 'SP') report of 163 pages containing a detailed gist of the relevant statements and documents including the information on income tax returns etc.

D. The Central Vigilance Commission after examining the said case advised the Ministry of Finance to grant sanction for prosecution. The Investigating Officer visited the Directorate of Income Tax (Vigilance) in September 2002 and placed necessary documents for the perusal of the Additional Director, Income Tax (Vigilance) who was seized of the matter pertaining to the sanction for prosecution of the respondent. The Finance Minister accorded sanction vide order dated 2.11.2002 and as a consequence thereof, the sanction order was issued vide order dated 26.11.2002 under the seal and signature of the Under Secretary (V&L), Ministry of Finance.

E. A charge sheet was filed by the CBI before the Court of Special Judge on 5.12.2002 and on the basis of the same, the court took cognizance and issued summon to the respondent on 10.1.2003.

F. The respondent challenged the validity of the sanction by filing an application dated 1.5.2003 and a similar application was again filed on 12.9.2005. The learned Special Judge heard the said applications and

dismissed the same vide order dated 28.7.2007, holding that it was not the appropriate stage to decide as to whether sanction granted by the competent authority was invalid.

G. The respondent filed a Revision Application under Sections 397, 401 r/w 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') for setting aside the said order of the Special Judge dated 28.7.2007. The said petition was contested by the appellant. However, the High Court vide impugned judgment and order set aside the order of the Special Judge and remanded the case to record a finding on the question of any failure of justice in according sanction and to examine the sanctioning authority, as a witness even at pre-charge stage, if it deems fit. Hence, this appeal.

3. Shri K.V. Vishwanathan, learned Additional Solicitor General appearing for the appellant has submitted that the application challenging the validity of the sanction at a stage anterior even to framing of the charges is unheard of and is in contravention of the settled legal propositions. In view of the fact that the sanction had been granted by the competent authority, the only issue remains as to whether the relevant material had been disclosed/placed before the sanctioning authority and the said authority had considered the same. The sanctioning authority can delegates its power to other officer or at least can act on the advice or notes prepared by his subordinates. However, such an issue can be agitated only during the trial. Therefore, the High Court committed an error in setting aside the order of the learned Special Judge and remanding the matter and also to examine, if necessary, the sanctioning authority i.e. the then Hon'ble Finance Minister at a precharge stage. Thus, the appeal deserves to be allowed.

4. Per contra, Shri Ram Jethmalani, learned senior counsel appearing for the respondent has opposed the appeal contending that the court is not permitted to take cognizance in the absence of valid sanction granted by the competent authority in accordance with law. In the instant case, the relevant material including the statement of the witnesses recorded by the investigating officer under Section 161 Cr.P.C. and a large amount of documentary evidence collected during the investigation were not placed before the Hon'ble Minister when the sanction was granted. The sanctioning authority did not examine the relevant documents which had been of an impeccable character before granting the sanction. Statement of 13 witnesses had been recorded between 10.5.2002 and 16.10.2002 out of which the statement of 10 witnesses had been recorded only after sending the SP's report to the sanctioning authority for obtaining the sanction for prosecution. Even if any officer of the CBI was present with the record in the office of the Finance Minister, there is nothing on record to show that the sanctioning authority was informed about this fact or that the sanctioning authority had examined any record so sent to his office. In the earlier litigation, the High Court vide order dated 9.4.2002 had directed the Revenue Secretary to examine and consider the record of the investigation fairly and objectively, by taking into consideration all relevant facts and circumstances and then proceed with the case. By the said order, the Director, CBI was also asked to examine the investigation record of the case and to consider all relevant aspects and factors in the light of the representation of the respondent and to pass appropriate orders within a stipulated period of two months. In such a fact-situation, the issue of sanction has to be considered at a pre-charge stage and such a void sanction cannot be a foundation for a valid trial. In pursuance of the impugned order, the Special Judge has summoned the then sanctioning authority and the latter filed an affidavit before the Special Judge that relevant material was not placed before him at the relevant time. The appellant suppressed all these facts and obtained the interim order from this court. The conduct of the appellant disentitles it for any relief from this court. Further placing reliance on the judgments of this court in Costao Fernandes v. State, AIR 1996 SC 1383; and Center for PIL & Anr. v. UOI & Ors., AIR 2001 SC 80, it is submitted that CBI is not a trustworthy investigating agency. Thus, no interference is required with the impugned judgment and order. The appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. In State of M.P. v. Dr. Krishna Chandra Saksena (1996) 11 SCC 439, while dealing with the issue this Court held:

> "…the sanctioning authority was satisfied after complete and conscious scrutiny of the records produced in respect of the allegation against the accused. Now the question whether all the relevant evidence which would have tilted the balance in favour of the accused if it was considered by the sanctioning authority before granting sanction and which was actually left out of consideration could be examined only at the stage of trial when the sanctioning authority comes forward as a

prosecution witness to support the sanction order if challenged during the trial. As that stage was not reached the prosecution could not have been quashed at the very inception on the supposition that all relevant documents were not considered by the sanctioning authority while granting the impugned sanction." (Emphasis added)

7. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter-alia on the ground that the order suffers from the vice of total non-application of mind. (Vide: Gokulchand Dwarkadas Morarka v. King, AIR 1949 PC 82; Jaswant Singh v. State of Punjab, AIR 1958 SC 124; Mohd. Iqbal Ahmed v. State of A.P., AIR 1979 SC 677; State through Anti- Corruption Bureau, Govt. of Maharashtra v. Krishanchand Khushalchand Jagtiani, AIR 1996 SC 1910; State of Punjab v. Mohd. Iqbal Bhatti, (2009) 17 SCC 92; Satyavir Singh Rathi, ACP v. State, AIR 2011 SC 1748; and State of Maharashtra v. Mahesh G. Jain, (2013) 8 SCC 119).

8. In view of the above, the legal propositions can be summarised as under:

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. (c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/ materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

9. In view of the above, we do not find force in the submissions advanced by Shri Vishwanathan, learned ASG that the competent authority can delegate its power to some other officer or authority, or the Hon'ble Minister could grant sanction even on the basis of the report of the SP. The ratio of the judgment relied upon for this purpose, in A. Sanjeevi Naidu etc. v. State of Madras & Anr., AIR 1970 SC 1102, is not applicable as in the case of grant of sanction, the statutory authority has to apply its mind and take a decision whether to grant sanction or not.

10. This Court in Ashok Tshering Bhutia v. State of Sikkim, AIR 2011 SC 1363, while dealing with the issue whether invalid sanction goes to the root of jurisdiction of the Court which would vitiate the trial and conviction, held that in the absence of anything to show that any defect or irregularity therein caused a failure of justice, the contention was without any substance. The failure of justice would be relatable to error, omission or irregularity in the grant of sanction. However, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice or has been occasioned thereby.

11. The court must examine whether the issue raised regarding failure of justice is actually a failure of justice in the true sense or whether it is only a camouflage argument. The expression 'failure of justice' is an extremely pliable or facile an expression which can be made to fit into any case.

The court must endeavour to find out the truth. There would be 'failure of justice' not only byunjust conviction but also by acquittal of the guilty as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be over emphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under Indian Criminal Jurisprudence. 'Prejudice' is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope.

Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under legal jurisprudence, the accused can seek relief from the Court. (Vide: Nageshwar Sh. Krishna Ghobe v. State of Maharashtra, AIR 1973 SC 165; Shamnsaheb M. Multtani v. State of Karnataka, AIR 2001 SC 921; State by Police Inspector v. T. Venkatesh Murthy, AIR 2004 SC 5117; Rafiq Ahmed @ Rafi v. State of U.P., AIR 2011 SC 3114; Rattiram & Ors. v. State of M.P. through Inspector of Police, AIR 2012 SC 1485; Bhimanna v. State of Karnataka, AIR 2012 SC 3026; Darbara Singh v. State of Punjab, AIR 2013 SC 840; and Union of India & Ors. v. Ex-GNR Ajeet Singh, (2013) 4 SCC 186).

12. Be that as it may, in State of T.N. v. M.M. Rajendran, (1998) 9 SCC 268, this Court dealt with a case under the provisions of Act 1988, wherein the prosecuting agency had submitted a very detailed report before the Sanctioning Authority and on consideration of the same, the competent authority had accorded the sanction. This Court found that though the report was a detailed one, however, such report could not be held to be the complete records required to be considered for sanction on application of mind to the relevant material on record and thereby quashed the sanction.

13. In view thereof, the CBI - appellant herein, immediately issued circular dated 6.5.1999 to give effect to the observations made in the said judgment in M. M. Rajendran (Supra) and directed that all the investigating officers to give strict adherence to the said observations made by this Court. The CBI manual was amended accordingly, adding paragraph 22.16, wherein it was directed that in view of the said judgment in M. M. Rajendran (Supra), it was imperative that alongwith SP's report, the branches must send the copies of all the relied upon relevant material "including the statements of witnesses recorded by the investigating officers under Section 161 Cr.P.C. as well as statements under Section 164 Cr.P.C. recorded by the Magistrate to the authority competent to grant sanction for prosecution". Further, the investigating officer concerned shall be deputed to the competent authority to produce the relevant material for perusal of the competent authority and this fact be recorded in the case diary of the case concerned. Paragraph 22.16 of the CBI manual reads as under:

> "On completion of investigation in a case covered in item 22.15.1 and 22.15.2, even the CBI shall send its report to the administrative authority alongwith relevant statements of witnesses recorded during investigation and the documents. The judgment of the Supreme Court in State of T.N. v. M.M. Rajendran reported in (1998) 9 SCC 268 and the Circular No. 21/33/98-PD dated 6.5.1999 issued by the Policy Division which also referred to in this regard."

14. A Three-Judge Bench of this Court in Vineet Narain & Ors. v. Union of India & Anr., AIR 1998 SC 889 to prevent the erosion of the rule of law, issued large number of directions to various authorities. Relevant part of directions issued to CBI, reads: "59(12). The CBI Manual based on statutory provisions of the CrPC provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the

Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned."

15. Thus from the above, it is evident that the CBI manual, being based on statutory provisions of the Cr.P.C., provides for guidelines which require strict compliance. More so, in view of the fact that the ratio of judgment of this Court in M.M. Rajendran (Supra) has been incorporated in the CBI manual, the CBI manual itself is the best authority to determine the issue at hand. The court has to read the relevant provisions of the CBI manual alone and no judgment of this Court can be a better guiding factor under such a scenario.

16. The sanction order runs into 27 pages. The relevant part thereof reads as under:

> "And whereas the Central Government, after fully and carefully considering the material placed before him and taking into account the available evidence, including the case diaries and documents collected, by the investigating officer during the course of investigation and statements of witnesses including the statements of witnesses recorded by the investigation officer U/s 161 Cr.P.C. and statements recorded before Magistrates under u/s 164 Cr.P.C. with regard to the said allegations and circumstances of the case, is satisfied that Shri Ashok Kumar Aggarwal should be prosecuted in the competent Court of Law for the abovementioned offences and any other offences if made out on these facts," (Emphasis added)

17. Before proceeding further, it may be pertinent to note that the sanction order speaks of consideration of the entire material including the case diaries and documents collected during the course of investigation and statements recorded under Section 161 Cr.P.C. and statements recorded by the Magistrate under Section 164 Cr.P.C. The learned Special Judge dealt with the issue in its order and brushed aside the same observing that the same may be factually incorrect, and there was a letter on record showing the true picture that the relevant documents had not been sent to the sanctioning authority. However, it is open to the prosecution during the course of trial to examine the sanctioning authority where such a discrepancy can be explained. The learned Special Judge has wrongly labeled such a fact which goes to the root of jurisdiction and clearly shows that the extent to which there could be application of mind was a mere discrepancy. The relevant part of the order of the Special Judge reads:

> "The contents of Para 27 of the sanction order dated 26th November, 2002 stating that the case diaries, documents collected by the investigating officer during the course of investigation, statements of witnesses under Section 161 CrPC and under Section 164 CrPC were considered by the sanctioning authority may be factually incorrect in view of the letter dated 24th May, 2002, written by the DIG of the CBI, which shows that this document had not been sent. However, this statement by itself at this stage cannot be construed s non-application of mind by the sanctioning authority. If the charges are framed against the accused and the case goes for trial the sanctioning authority shall get an opportunity to explain the discrepancy." (Emphasis added)

18. The High Court in the impugned judgment and order has taken a prima facie view that:

a) The CBI had not sent the complete record to the sanctioning authority.

b) The order dated 11.7.2007 passed by the Special Judge made it evident that the learned counsel appearing on behalf of the CBI had conceded before the court that only SP's report alongwith list of evidence (oral) and list of evidence (documentary) were sent to the sanctioning authority for the purpose of according sanction.

c) The statement of witnesses and other relevant documents were not sent to the sanctioning authority as per the own case of CBI.

d) The observation in the sanction order dated 26.11.2002 that "the case diaries and documents collected by the investigating officers during the course of investigation, statements of witnesses under Section 161 Cr.P.C. and under Section 164 Cr.P.C. were considered by the sanctioning authority" is factually incorrect.

e) The aforesaid facts make it clear that the sanctioning authority had not considered the entire material available with the investigating agency.

19. The High Court further held:

"30. In the present case, petitioner has raised objections to the validity of sanction at the very initial stage, i.e. even before arguments on charge could be advanced. However, the trial court has not recorded any finding in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19 of the Act, that non-production of the relevant material before the sanctioning authority at the time of grant of sanction "has not resulted in a failure of justice".

31. Under these circumstances, it would be appropriate to require the trial court to record the findings in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19 of the Act.

32. Hence, the impugned order, passed by the learned Special Judge is set aside and the matter is remanded back to the trial court with direction to record a finding in terms of clause (b) of sub-section (3) and sub-section (4) of Section 19 of the Act. The trial court, if it deems fit, for this purpose, can examine the sanctioning authority as a witness even before charge, keeping in view the provisions of Section 311 Cr.PC."

20. The aforesaid concluding paragraphs of the judgment give rise to questions as to what is the proper stage to examine the issue of sanction; as well as relating to the applicability of the provisions of Section 19(3)(b) and 19(4) of the Act 1988. Section 19(1) reads as under:

"19.(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction --

(a) xxxxxx

(2) xxxxxx

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)--

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice"

(c) xxxxxx

(4) In determining under sub- section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-- For the purposes of this section,--

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

Sub-section (4) thereof clearly provides that the question of validity of sanction could be raised at an earlier stage of proceedings.

21. This Court considered the aforesaid statutory provisions in Satya Narayan Sharma v. State of Rajasthan, AIR 2001 SC 2856 and held as under:

"3. The prohibition is couched in a language admitting of no exception whatsoever, which is clear from the provision itself. The prohibition is incorporated in sub-section (3) of Section 19 of the

Act. The sub-section consists of three clauses. For all the three clauses the controlling non obstante words are set out in the commencing portion as:

"19. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 …."

Hence none of the provisions in the Code could be invoked for circumventing any one of the bans enumerated in the sub-section."

22. The letter dated 17.5.2005 written by the Addl. DIT (Vigilance) to DIG, CBI makes it clear that the documents relied upon were voluminous and therefore, were not enclosed with the SP's report. It further revealed that an order was passed by the High Court directing the Revenue Secretary and the Director (CBI) to examine the grievance of the respondent/accused and to dispose of his representations in this regard.

23. In Commissioner of Police v. Gordhandas Bhanji, AIR 1952 SC 16, this Court held as under:

> "We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself……..Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order." (Emphasis added)

(See also: Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors., AIR 1978 SC 861; and Chairman, All India Railway Recruitment Board & Anr. v. K. Shyam Kumar & Ors., (2010) 6 SCC 614).

24. The provisions of Sections 91 and 92 of the Evidence Act provide that evidence may be led to invalidate a document itself. The best evidence as to the contents of a document is the document itself and it is the production of the document that is required by this section in proof of its contents. Section 91 describes the "best evidence rule", while Section 92 comes into operation for the purpose of excluding evidence of any oral agreement, statement etc., for the purpose of contracting or adding or subtracting from its terms. However, these sections differ in some material particulars.

25. Charge sheet filed by the appellant, CBI against the respondent does not reveal that it had examined any witness to the effect that the relevant documents had been produced before the sanctioning authority or the authority had asked for a document and the same had been shown to him.

26. In the counter affidavit it has been stated by the respondent that there is no evidence on record to indicate that all material records had been separately examined by the Vigilance Wing of the department as permissible under Chapter VII of the Vigilance Manual. Clause 18 of the Manual enables the accused to make a representation to withdraw the prosecution. The relevant part thereof reads as under:

> "18.1. Once a case has been put in a court, it should be allowed to take its normal course. Proposal for withdrawal of prosecution may however, be initiated by the S.P.E. on legal consideration. In such cases the S.P.E. will forward its recommendations to the Department of Personnel and Training in cases in which sanction for prosecution was accorded by that Ministry and to the administrative Ministry concerned in other cases. The authority concerned will in all such cases consult the Ministry of Law and accept their advice.
>
> 18.2. Requests for withdrawal of prosecution may also come up from the accused. Such requests should not generally be entertained except in very exceptional cases where, for instance, attention is drawn to certain fresh, established or accepted facts which might alter the whole aspect of the case. In such cases also the administrative Ministry concerned should consult the Ministry of Law and accept their advice."

27. The respondent had given a representation on 13.3.2003 making various averments, inter-alia, that there was no evidence to indicate that the relevant material/record had been separately examined by the Vigilance Wing

of the department, and for the verification of which the Finance Minister had requisitioned the records. The appellant, CBI brushed aside the said representation on the pretext that the issue of validity of sanction was sub-judice.

28. It has further been averred therein that before the court, the Special PP of CBI has stated that no relevant material had been placed before the sanctioning authority except the SP's report as is evident from the order dated 11.7.2007. The relevant part of the order reads as under:

> "It is conceded by Shri N.K. Sharma, Ld. Special PP that only SP's report alongwith list of evidence oral and list of evidence documentary were sent to the sanctioning authority for the purpose of according sanction."

29. The representation made by the respondent was considered at various levels. The letter written by Shri Rakesh Singh, Joint Secretary (Revenue) to the Director General of Income Tax (Vigilance) with a copy of the same to the Chairman, CBDT stated that in order to consider the representation of the respondent, it was necessary that the concerned records including those of the Income Tax Department for the relevant period be requisitioned from the CBI and examined by the Vigilance Wing of the Income-Tax Department and the finding of such examination be sent to him within 10 days, based on which a final view could be taken on the representation of the respondent.

30. The letter dated 17.5.2004 by Shri B.P.S. Bisht, Additional DIT(V) HQ, CBI revealed that as in the representation, the respondent had averred that all relevant material had not been placed before the sanctioning authority, it was necessary for the CBI to provide all relied upon documents, as referred to in the letter dated 24.5.2002, as also the relevant income tax records which were in the CBI custody to enable compliance of the directions received from the Revenue Secretary. In case it was not possible to provide the original records as above, authenticated copies thereof be given, treating it to be a matter of utmost urgency.

31. The DIG, CBI vide its letter dated 5.6.2004 informed Shri B.P.S. Bisht that it was not possible to send the record. The matter was pending consideration in the trial court and as such was sub-judice.

32. The covering letter of the draft sanction dated 24.5.2007 does not make it clear as to what had been sent to the sanctioning authority. It reveals that alongwith the draft sanction order, a list of witnesses and list of documents had been sent. The relevant part thereof reads as under:

> "The SP's report sent herewith may please be treated as a secret document and no reference to it may be made in the sanction order when issued. In case the Ministry/Department, due to some reasons wants to depart from the material placed on record for issuing sanction, the matter may please be discussed with the undersigned so that the sanction for prosecution so accorded not found wanting legally.
>
> Since the relied upon documents are very large in quantity, they are not being enclosed. The Investigating Officer of this case Shri V.K. Pandey, will show the documents and also explain the evidence as and when required. Further List of witnesses and List of documents will be provided, if necessary." (Emphasis added)

Thus, it is evident that even on the date the draft sanction was sent, the investigation was not complete.

33. It appears from the facts and figures given in the report, particularly from the Income Tax returns/assessment orders of the respondent and his family members, that there has not been a fair assessment regarding the income of the respondent and other family members as shown by them in their income-tax returns and it is far from satisfaction, as is evident from the preliminary enquiry report dated 17.9.1995. Same remained the position regarding the assessment of the value of the apartments purchased by the respondent at Barakhamba Road, New Delhi, if compared with the property purchased by the Indian Oil Corporation in the same locality.

34. The judgment delivered by the Delhi High Court in the case of Vijay Aggarwal, brother of the respondent, in Writ Petition (Crl.) No. 675 of 2001 against the officers of the CBI impleading them by name, make it evident that very serious allegations had been made against the said officers of having acted with oblique motive to force him to ensure that his brother Ashok Kumar Aggarwal withdraws the complaint filed by him against them under

Section 340 Cr.P.C. The court ultimately held that investigation had not been conducted in a fair manner. The order passed therein reads:

> "33. In the result, the petition is partly allowed. The Special Cell of Delhi Police is directed to register an FIR on the basis of the allegations contained in the present petition and the complaint of the petitioner dated 23.2.2004 addressed to the Commissioner of Police, Delhi and take up the investigation of the case. The investigation shall be conducted by an officer not below the rank of Assistant Commissioner of Police in the said Cell independently and uninfluenced by the findings and observations contained in the report of enquiry dated 26.4.2005 conducted by the Joint Director, CBI and shall endeavour to conclude the investigation expeditiously within a period of two months from the date of this order and shall file a status report in the court on 5th September, 2006."

35. Another Writ Petition (Crl.) No. 738 of 2001 was filed by Shish Ram Saini, Chartered Accountant against the CBI and its officers making allegations against them that he had been harassed by the CBI's officers as he was employed as an Accountant in the firms and companies of respondent herein. The court held that the authorities had proceeded with high-handedness and found substance in the allegations made by the petitioner therein. The order runs as under:

> "31. In view of the above discussion and in the result, the present petition is partly allowed and the Special Cell of Delhi Police is directed to register a case on the basis of allegations contained in the complaint dated 5.7.2001 lodged by the petitioner with police station Lodhi Colony and those contained in the present petition. The investigation shall be conducted by an officer not below the rank of Assistant Commissioner of Police in the said Cell independently and uninfluenced by the findings and observations contained in the report of enquiry dated 26.4.2005 conducted by the Joint Director, CBI."

36. The record reveals that VIP reference was made by the Ministry of Finance to the Law Ministry in respect of the case against the respondent as the matter had been agitated by one Hon'ble Member of the Parliament and the Law Ministry gave its opinion. The salient features thereof are that the sanction had been accorded without considering and examining the relevant material as the same had not been sent by the CBI and even thereafter despite being requested by the Vigilance Department of CBDT, the Vigilance, CBI did not send the relied upon documents to the authorities.

37. Similarly, it is also evident from the records that the Ministry of Finance, Department of Revenue had written a letter dated 11.3.2011 to the Law Department seeking the said opinion and earlier the Directorate General of Income Tax (Vigilance) had also sent a letter to the Law Ministry seeking its opinion. Thus, the concerned authorities had sought legal opinion of the Law Ministry on the issue.

38. The CVC Manual provides that opinion of the Law Ministry was to be accepted by the other departments in such cases. However, the respondent claims that the said legal opinion was subsequently withdrawn. Whether the legal opinion could be validly withdrawn or not can be considered by the trial court while considering the validity of the sanction.

39. It may also be pointed out that after the impugned judgment was passed, the Special Judge in order to ensure compliance thereof, dealt with the case on 12.10.2007 and directed:

"Let the sanctioning authority be produced on 3.11.2007."

It was on the suggestion made by Special Public Prosecutor for CBI that the court issued summon to the sanctioning authority. The order sheet dated 3.11.2007 further reveals that after passing of the order and signing the same, the matter was again taken up at 2.00 P.M., wherein the affidavit purported to have been given by the then sanctioning authority was taken on record and it was directed that the matter be listed on 20.11.2007.

40. The relevant part of the affidavit filed by the then sanctioning authority dated 3.11.2007 reads as under:

> "4. I confirm the statement of facts in Paragraphs 8 and 24 of the order of the Hon'ble High Court. No statements of witnesses or the documents relied in the charge-sheet are ordinarily forwarded to the Finance Minister of the day. What is sent is a draft order, whereafter sanctioning by the

Minister in normally a routine acceptance of that draft. What was considered by me was only that which was sent or recommended to me.

5. If the obligation was to consider more than which was sent, then that has not been done, therefore, unwittingly prejudice might have been caused and justice miscarried. I leave it to the Court to decide the matter."

41. The aforesaid affidavit, whatever may be its evidentiary value and without going into technicalities such as the issue of whether it is admissible in evidence or not or whether it may be considered at a later stage, one thing is clear that it is in consonance and confirmation of the findings recorded by the High Court in paragraphs 8 and 24 of the impugned judgment. Paragraph 8 of the judgment reads as under:

> "8. Further, it is contended that the charge sheet relies upon 366 witnesses, whereas the list annexed to the SP's report mention only 278 witnesses. 88 witnesses were not even mentioned in the list and the statement of not even a single witness, out of 366 witnesses was sent to the sanctioning authority. Moreover, the charge sheet refers to 1220 documents, whereas the list attached to the SP's report only mention 282 documents. Thus, 938 documents were withheld from the sanctioning authority including documents consisting of income tax record of the petitioner. The Apex Court has held in DSP Chennai v. K. Inbasagaran, (2006) 1 SCC 420 that: "Income tax return and assessment orders are relevant in a case of disproportionate assets." Paragraph 24 mentioning relevant part of sanction order has already been quoted hereinabove."

42. Thus, it becomes crystal clear that the statements of 28 witnesses were not even mentioned in the SP's report. Similarly, there was no reference to the 938 documents in the said report and there had been no reference to the income tax returns and assessment orders so far the respondent and his family members were concerned therein.

43. The present special leave petition was drawn/drafted on 20.11.2007 and filed thereafter. Interim order was granted by this Court on 10.12.2007. In the special leave petition it has not been disclosed that the Special Judge, after remand, entertained the matter and issued summons to the then sanctioning authority i.e. Hon'ble Finance Minister, and in response thereto, an affidavit dated 3.11.2007 had been filed by the then sanctioning authority, disclosing that no material had been considered by him while granting sanction. However, leaving the issue open as to what prejudice had been caused to the respondent, it is apparent that all the material facts had not been disclosed in the special leave petition. Thus, the appellant suppressed some of the most material facts from this Court.

44. Section 19(3) of the Act, 1988 puts a complete embargo on the court to grant stay of trial/proceedings. In Selvi J. Jayalalithaa & Ors. v. State of Karnataka & Ors., JT 2013 (13) SC 176, this court while dealing with the scope of power under Article 142 of the Constitution held that the court cannot pass an order in contravention of the statutory provisions:

> "28.1 The powers under Article 142 of the Constitution stand on a wider footing than ordinary inherent powers of the court to prevent injustice. The constitutional provision has been couched in a very wide compass that it prevents "clogging or obstructing of the stream of justice." However, such powers are used in consonance with the statutory provisions." (emphasis added)

(See also: Teri Oat Estates (P) Ltd. v. UT, Chandigarh & Ors., (2004) 2 SCC 130, Manish Goel v. Rohini Goel, AIR 2010 SC 1099, and State of Uttar Pradesh v. Sanjay Kumar, (2012) 8 SCC 537).

45. This court passed the interim order in contravention of the provisions of Section 19 of the Act 1988. Though the appellant claims that it did not ask for such order, the court itself granted the stay. Even the respondent never applied for vacating the said interim order. In such a factsituation, it is not desirable to make any comment on the issue.

46. The most relevant issue involved herein is as at what stage the validity of sanction order can be raised. The issue is no more res-integra. In Dinesh Kumar v. Chairman Airport Authority of India & Anr., AIR 2012 SC 858, this Court dealt with an issue and placing reliance upon the judgment in Parkash Singh Badal & Anr. v. State of Punjab & Ors., AIR 2007 SC 1274, came to the conclusion as under:

> "13. In our view, having regard to the facts of the present case, now since cognizance has already been taken against the appellant by the trial Judge, the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the trial court and giving liberty to the appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of this Court in Parkash Singh Badal…"

47. Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pretrial stage.

48. However, in the instant case, the fact-situation warrant a different course altogether as the impugned order had already been partly complied with before filing the petition before this Court. The appellant admittedly did not disclose the material facts in this petition. Had the said facts been disclosed perhaps this Court would not have entertained this petition and the matter could have been concluded by the Trial Court much earlier. The affidavit filed by the sanctioning authority may tilt the balance in favour of the respondent if duly supported by the deponent and not disclosing the material fact i.e. filing of such an affidavit by the sanctioning authority before the Special Judge, indicates serious and substantial prejudice to the respondent. The material on record reveals that it could be a case of serious prejudice to the respondent so far as the decision making process by the sanctioning authority is concerned. The benefit of interim protection granted in favour of the appellant where the appellant has not disclosed the material facts, should be neutralized.

49. We do not find any force in the submission made by Shri Jethmalani, learned senior counsel that as the matter is about one and a half decade old and the respondent has already suffered because of protracted legal proceedings at various stages before different forums, it is warranted that prosecution against him be closed altogether. This Court has consistently held that no latitude can be given in the matter of corruption. (Vide: C.S. Krishnamurthy v. State of Karnataka, AIR 2005 SC 2790) wherein contrary view had been taken from Mansukhlal Vithaldas Chauhan v. State of Gujarat, AIR 1997 SC 3400.

50. In view of the above, we are of the considered opinion that the peculiar facts and circumstances of the case do not warrant any interference and the appeal is dismissed.

However, before parting with the case, we clarify that the trial court will proceed without being influenced by any observation made hereinabove as we have considered the facts of the case only to decide this appeal. In the facts and circumstances of the case, as the matter remained pending before the court for a long time, we request the learned Special Judge to proceed with the matter from the stage when the stay operated and conclude the same at the earliest.

❑❑❑

M.P. SPECIAL POLICE ESTABLISHMENT VERSUS STATE OF M.P. & OTHERS

SUPREME COURT OF INDIA

(2004) 8 SCC 788

Madhya Pradesh Special Police Establishment
Versus
State of Madhya Pradesh

Decided on SEPTEMBER 5, 2004

No sanction u/s 19 of the P.C. Act, 1988 is required for prosecution of a Minister, after his resignation, for offences committed by him during his tenure as Minister.

JUDGMENT

S. N. Variava, J.

(1) LEAVE granted.

(2) THESE Appeals are against the Judgment of the Madhya Pradesh High Court dated 10th January, 2003.

(3) BRIEFLY stated the facts are as follows: respondents No. 4 (in both these Appeals), i. e. Rajender Kumar Singh and Bisahu ram Yadav, were Ministers in the Government of M. P. A Complaint was made to the lokayukta against them for having released 7. 5 acres of land illegally to its earlier owners even though the same had been acquired by the indore Development Authority. After investigation the Lokayukta submitted a report holding that there were sufficient grounds for prosecuting the two Ministers under Section 13 (l) (d) read with Section 13 (2) of the Prevention of corruption Act, 1983 and also for the offences of criminal conspiracy punishable under Section 120-B of the Indian Penal Code. It must be mentioned that by the time the report was given the two Ministers had already resigned.

(4) SANCTION was applied for from the council of Ministers for prosecuting the two ministers. The Council of Ministers held that there was not an iota of material available against both the Ministers from which it could be inferred that they had entered into a criminal conspiracy with anyone. The Council of ministers thus refused sanction on the ground that no prima-facie case had been made out against them.

(5) THE Governor then considered grant of sanction keeping in view the decision of the council of Ministers. The Governor opined that the available documents and the evidence was enough to show that a prima-facie case for prosecution had been made out. The Governor accordingly granted sanction for prosecution under Section 197 of the Criminal Procedure Code.

(6) BOTH the Ministers filed separate Writ petitions under Articles 226 and 227 of the constitution of India assailing the Order of the governor. A Single Judge of the High Court held that granting sanction for prosecuting the ministers was not a function which could be exercised by the Governor "in his discretion" within the meaning of these words as used in article 163 of the Constitution of India. It was held that the Governor could not act contrary to the "aid and advice" of the Council of Ministers. It was further held that the doctrine of bias could not be applied against the entire council of Ministers and that the doctrine of necessity could not be invoked on the facts of the case to enable the Governor to act in his discretion.

(7) THE Appellants filed two Letters Patent appeals which have been disposed off by the impugned Judgment. The Division Bench dismissed the Letters Patent Appeals upholding the reasoning and Judgment of the Single judge. It must be mentioned that the authority of this Court in the case of State of Maharashtra vs. Ramdas Shrinivas Nayak reported in 1982 (2) SCC 463 was placed before the division Bench. The Division Bench, however, held that the observations made therein may apply to the case of a Chief Minister but they could not be stretched to include cases of ministers.

(8) THE question for consideration is whether a Governor can act in his discretion and against the aid and advice of the Council of Ministers in a matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or under the Indian Penal Code.

(9) AS this question is important, by Order dated 12th September, 2003 it has been directed that these Appeals be placed before a bench of five Judges. Accordingly these Appeals are before this Bench. Article 163 of the Constitution of India reads as follows:

> "163. COUNCIL OF MINISTERS TO aid AND ADVISE GOVERNOR. (1) there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. (3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court. "

(10) MR. Sorabjee submits that even though normally the Governor acts on the aid and advice of the Council of Ministers, but there can be cases where the Governor is by or under the Constitution required to exercise his function or any of them in his discretion. The constitution of India expressly provides for contingencies/cases where the Governor is to act in his discretion. Articles 239 (2), 371a (l) (b), 371a (2) (b), 371a (2) (f) and Paragraphs 9 (2) and 18 (3) of the-Sixth Schedule are some of the provisions. However, merely because the Constitution of India expressly provides, in some cases, for the Governor to act in his discretion, can it be inferred that the Governor can so act only where the Constitution expressly so provides. If that were so then Subclause (2) of Article 163 would be redundant. A question whether a matter is or is not a matter in which the Governor is required to act in his discretion can only arise in cases where the Constitution has not expressly provided that the Governor can act in his discretion. Such a question cannot arise in respect of a matter where the Constitution expressly provides that the governor is to act in his discretion. Article 163 (2), therefore, postulates that there can be matters where the Governor can act in his discretion even though the Constitution has not expressly so provided.

(11) MR. Sorabjee relies on the case of samsher Singh vs. State of Punjab, reported in 1974 (2) SCC 831. A seven Judges Bench of this Court, inter alia, considered whether the Governor could act by personally applying his mind and/or whether, under all circumstances, he must act only on the aid and advice of the Council of Ministers. It was inter alia held as follows:

> "54. The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in articles to which reference has been made. To illustrate, Article 239 (2) states that where a Governor is appointed an administrator of an adjoining union territory he shall exercise his functions as such administrator independently of his Council of Ministers. The other articles which speak of the discretion of the Governor are paragraphs 9 (2) and 18 (3) of the Sixth schedule and Articles 371a (1) (b), 371a (1) (d) and 371a (2) (b) and 371a (2) (f). The discretion conferred on the Governor means that as the constitutional or formal head of the State the power is vested in him. In this connection, reference may be made to Article 356 which states that the Governor can send a report to the president that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution. Again article 200 requires the Governor to reserve for consideration any Bill which in his opinion if it became law, would so derogate from the powers of the High court as to endanger the position which the High Court is designed to fill under the Constitution. 55. In making a report under Article 356 the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the governor to enable him to report to the president who, however, must act on the advice of his Council of Ministers in all matters. In this context Article 163 (2) is explicable that

the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matter. The President acts on the advice of his council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the governor to go against the advice of the Council of Ministers. 56. Similarly Article 200 indicates another instance where the Governor may act irrespective of any advice from the council of Ministers. In such matters where the Governor is to exercise his discretion he must discharge his duties to the best of his judgment. The Governor is required to pursue such courses which are not detrimental to the State. "the law, however, was declared in the following terms:

"154. We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief minister), restricted though this choice is by the paramount consideration that he should command a majority in the house, (b) the dismissal of a Government which has lost its majority in the House; but refuses to quit office; (c) the dissolution of the House where an appeal to the country is necessitous, although in this area the head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief minister) who will eventually take the responsibility for the step. We do not examine in detail the constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de smiths statement (Constitutional and administrative law by S. A de Smith penguin Books on Foundations of law), regardingroyal assent holds good for the President and Governor in india: "refusal of the royal assent on the ground that the Monarch strongly disapproved of a Bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course - a highly improbable contingency - or possibly if it was notorious that a bill had been passed in disregard to mandatory procedural requirements; but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent".

Thus, as rightly pointed out by Mr. Sorabjee, a seven Judges Bench of this Court has already held that the normal rule is that the Governor acts on the aid and advice of the Council of ministers and not independently or contrary to it. But there are exceptions under which the governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is however clarified that the exceptions mentioned in the Judgment are not exhaustive. It is also recognized that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognized that there may be situations where by reason of peril to democracy or democratic principles an action may be compelled which from its nature is not amendable to Ministerial advice. Such a situation may be where bias is inherent and/or manifest in the advice of the Council of Ministers.

(12) MR. Sorabjee also points out that this court in the case of Ramdas Shriniuas Nayak (supra) has carved out a further exception. In this case, an MLA filed a complaint against the then Chief Minister of Maharashtra in the Court of Metropolitan Magistrate, 28th Court, Esplanade, Bombay, charging the Chief Minister with commission of offences punishable under Sections 161 and 185 of the Indian Penal Code and Section 5 of the Prevention of Corruption act. The Metropolitan Magistrate refused to entertain the complaint without requisite sanction of the Government under Section 6 of the Prevention of Corruption Act. Against the order of the Metropolitan Magistrate, R. S. Nayak filed a Criminal Revision Application in the High Court of Bombay wherein the State of Maharashtra and Shri Antulay were impleaded as Respondents. During the pendency of this Criminal Revision Application, shri Antulay resigned as the Chief Minister of the State of Maharashtra. A Division bench of the

Bombay High Court dismissed the Revision Application, but whilst dismissing the application it was recorded by Gadgil, J. as follows:

> "however, I may observe at this juncture itself that at one stage it was expressly submitted by the learned counsel on behalf of the respondents that in case if it is felt that bias is well apparently inherent in the proposed action of the concerned Ministry, then in such a case situation notwithstanding the other ministers not being joined in the arena of the prospective accused, it would be a justified ground for the Governor to act on his own, independently and without any reference to any Ministry, to decide that question. " kotwal, J. in his concurring judgment observed:
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> ". . . At one stage it was unequivocally submitted by the learned counsel on behalf of the respondents in no uncertain terms that even in this case notwithstanding there being no accusation against the law Minister as such if the court feels that in the nature of things a bias in favour of the respondents and against a complainant would be manifestly inherent, apparent and implied in the mind of the Law Minister, then in that event, he would not be entitled to consider complainants application and on the equal footing even the other Ministers may not be qualified to do so and the learned counsel further expressly submitted that in such an event, it would only the Governor, who on his own, independently, will be entitled to consider that question. "the State of Maharashtra sought Special Leave to Appeal to this Court, under Article 136 of the Constitution of India, against that portion of the Judgment which directed the Governor of Maharashtra to exercise his individual discretion. Before this Court it was argued that the High Court could not have decided that the Governor should act in his individual discretion and without the aid the advice of the council of Ministers. It was submitted that under Article 163 (2) if a question arose whether any matter was or was not one in which the governor was required to act in his discretion, it was the decision of the Governor which was to be final. It was also submitted that under article 163 (3) any advice tendered by the Council of Ministers to the Governor could not be inquired into by the Court. This Court noticed that an express concession had been made in the High Court to the effect that in circumstances like this bias may be apparently inherent and thus it would be a justified ground for the Governor to decide on his own, independently and without any reference to any Ministry. Before this Court it was sought to be contended that no such concession had been made out. This Court held that public policy and judicial decorum required that this Court does not launch into an enquiry whether any such concession was made. It was held that matters of judicial records are unquestionable and not open to doubt. It was held that this Court was bound to accept the statement of the Judges recorded in their Judgment, as to what transpired in Court. This Court then went on to hold as follows:
>
> "10. We may add, there is nothing before us to think that any such mistake occurred, nor is there any ground taken in the petition for grant of special leave that the learned Judges proceeded on a mistaken view that the learned counsel had made a concession that there might arise circumstances, under which the governor in granting sanction to prosecute a minister must act in his own discretion and not on the advice of the council of Ministers. The statement in the judgment that such a concession was made in conclusive and, if we may say so, the concession was rightly made. In the facts and circumstances ofthe present case, we have no doubt in our mind that when there is to be a prosecution of the Chief Minister, the Governor would, while determining whether sanction for such prosecution should be granted or not under Section 6 of the Prevention of Corruption act, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Ministers. 11. The question then is whether we should permit the State of Maharashtra to resile from the concession made before the High Court and raise before us the contention now advanced by the learned Attorney-General. We have not the slightest doubt that the cause of justice would in no way be advanced by permitting the State of Maharashtra to now resile from the concession and agitate the question posed by the learned attorney-General. On the other hand we are satisfied that the concession was made to advance the cause of justice as it was rightly thought that in deciding to sanction or not to sanction the prosecution of a Chief Minister, the Governor would act in the exercise of his discretion and not with the aid and advice of the

Council of Ministers. The application for grant of special leave is, therefore, dismissed. " (Emphasis supplied)

(13) AS has been mentioned above, the division Bench had noted this case. The Division Bench however held that even though this principle may apply to the case of a Chief Minister it cannot apply to a case where Ministers are sought to be prosecuted. We are unable to appreciate the subtle distinction sought to be made by the Division Bench. The question in such cases would not be whether they would be bias. The question would be whether there is reasonable ground for believing that there is likelihood of apparent bias. Actual bias only would lead to automatic disqualification where the decision-maker is shown to have an interest in the outcome of the case. The principle of real likelihood of bias has now taken a tilt to real danger of bias and suspicion of bias. [see Kumaon Mandal Vikas Ninag Ltd. vs. Girja Shankar Pant and Others reported in (2000) 1 SCC 182 paras 27, 33 and 35 and judicial Review of Administrative Action, by de Smith, Woolf and Jowell (5th Edn. at p. 527 where two different spectrums of the doctrine have been considered].

(14) ANOTHER exception to the aforementioned general rule was noticed in Bhuri Nath and Others etc. vs. State of Jammu and Kashmir and Others reported in (1997) 2 SCC 745, where the Governor was to chair the Board in terms of the Jammu and Kashmir Shri Mata vatshno Devi Shrine Act, 1988 on the premise that in terms of the statute he is required to exercise his ex-officio power as Governor to oversee personally the administration, management and governance of the Shrine. It was observed that the decision taken by him would be his own on his personal satisfaction and not on the aid and advice of the Council of ministers opining:

". . . THE exercise of powers and functions under the Act is distinct and different from those exercised formally in his name for which responsibility rests only with his Council of Ministers headed by the Chief Ministers. "

(15) IN the case of A. K. Kraipak vs. Union of India reported in 1969 (2) SCC 262, the question was whether a selection made by the Selection Board could be upheld. It was noticed that one of the candidates for selection had become a member of the Selection board. A Constitution Bench of this Court considered the question of bias in such situations. This Court held as follows:

"15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorneygeneral that a mere suspicion of bias is not sufficient. There must be a reasonable likeliood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

16. The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selections. In a group deliberation each member of the group is bound toinfluence the

> others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than naqishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund. "

(16) ON the basis of the ratio in this case mr. Sorabjee rightly contends that bias is likely to operate in a subtle manner. Sometime members may not even be unaware of the extent to which their opinion gets influenced.

(17) AGAIN in the case of Kirti Desh- mankar vs. Union of India, reported in 1991 (1) SCC 104, the mother-in-law of the selected candidate had participated in the Selection committee. This Court held that the mother- in-law was vitally interested in the admission of her daughter-in-law and her presence must be held to have vitiated the selection for the admission. It was held that there was a conflict between interest and duty and taking into consideration human probabilities and the ordinary course of human conduct, there was reasonable ground to believe that she was likely to have been biased.

(18) ARTICLE 163 has been extracted above. Undoubtedly, in a matter of grant of sanction to prosecute the Governor is normally required to act on aid and advice of the Council of ministers and not in his discretion. However, an exception may arise whilst considering grant of sanction to prosecute a Chief Minister or a minister where as a matter of propriety the governor may have to act in his own discretion. Similar would be the situation if the council of Ministers disable itself or disentitles itself.

(19) MR. Tankha, on behalf of the Ministers, submitted that a case of Chief Minister would be completely different from that of Ministers. He submitted that in this case the Council of Ministers had considered all the materials and had applied their minds and come to the conclusion that sufficient material to grant sanction was not there. He submitted that the Governor was not an Appellate Body and he could not sit in Appeal over the decision of the Council of Ministers. He submitted that the decision of the Council of Ministers could only have been challenged in a Court of Law.

(20) MR. Tankha submitted that the theory of bias cannot be applied to the facts of this case. In support of his submission, he relied upon the case of V. C. Shukla vs. State (Delhi administration), reported in (1980) Supp. SCC 249, wherein the vires of the Special court Act, 1979 had been challenged. Under section 5 of the Special Court Act, sanction had to be granted by the Central Government. Sub-section (2) of Section 5 provided that the sanction could not be called in question by any court. It had been submitted that this would enable an element of bias or malice to operate by which the Central Government could prosecute persons who are political opponents. This Court negatived this contention on the ground that the power was vested in a very high authority and therefore it could not be assumed that it was likely to be abused. This court held that as the power was conferred on a high authority the presumption would be that the power would be exercised in a bonafide manner and according to law. Mr. Tankha also relied upon the case of State of Punjab vs. V. K. Khanna, reported in 2001 (2) SCC 330. In this case, two senior IAS Officers in the State of Punjab were sought to be prosecuted after obtaining approval from the then Chief Minister of Punjab. Thereafter, there was a change in the Government. The new Government cancelled the sanction granted earlier. The question before the Court was whether the action in withdrawing the sanction was fair and correct. This Court held that fairness was synonymous with reasonableness and bias stood included within the attributes and broader purview of the word "malice". This Court held that mere general statements were not sufficient but that there must be cogent evidence available to come to the conclusion that there existed a bias which resulted in a miscarriage of justice. Mr. Tankha also relied upon the case of kumaon Mandal Vikas Nigal Ltd. vs. Girja shankar Pant, reported in 2001 (1) SCC 182. In this case, the question was whether the managing Director had a bias against the respondent therein. This Court held that mere apprehension of bias was not sufficient but that there must be real danger of bias. It was held that the

surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. It was held that if on facts the conclusion was otherwise inescapable that there existed a real danger of bias, the administrative action could not be sustained. It was held that if, on the other hand, the allegations pertaining to bias are rather fanciful, then the question of declaring them to be unsustainable would not arise.

(21) THERE can be no dispute with the propositions of law. However, in our view, the above authorities indicate that if the facts and circumstances indicate bias, then the conclusion becomes inescapable.

(22) MR. Tankha is not right when he submits that the Governor would be sitting in Appeal over the decision of the Council of Ministers. However, as stated above, unless a situation arises as a result whereof the Council of ministers disables or disentitles itself, the Governor in such matters may not have any role to play. Taking a cue from Antulay, it is possible to contend that a Council of Ministers may not take a fair and impartial decision when his chief Minister or other members of the Council face prosecution. But the doctrine of apparent bias, however, may not be applicable in a case where a collective decision is required to be taken under a statute in relation to former ministers. In a meeting of the Council of Ministers, each member has his own say. There may be different views or opinions. But in a democracy the opinion of the majority would prevail.

(23) MR. Soli J. Sorabjee has not placed any material to show as to how the Council of ministers collectively or the members of the council individually were in any manner whatsoever biased. There is also no authority for the proposition that a bias can be presumed in such a situation. The real doctrine of likelihood of bias would also not be applicable in such a case. The decision was taken collectively by a responsible body in terms of its constitutional functions. To repeat only in a case of apparent bias, the exception to the general rule would apply.

(24) ON the same analogy in absence of any material brought on records, it may not be dossible to hold that the action on the part of the Council of Ministers was actuated by any malice. So far as plea of malice is concerned, the same must be attributed personally against the person concerned and not collectively. Even in such a case the persons against whom malice on fact is alleged must be impleaded as parties.

(25) HOWEVER, here arises another question. There are two competing orders; one of the Council of Ministers, another by the Governor, one refusing to grant sanction another granting the same. The Council of Ministers had refused to grant sanction on the premise that there existed no material to show that the respondent No. 4 in each appeal has committed an offence of conspiracy, whereas the governor in his order dated 24th September, 1998 was clearly of the view that the materials did disclose their complicity.

(26) A F. I. R. was lodged in relation to the commission of offence on 31st March, 1998.

(27) THE Lokayukta for the State of madhya Pradesh admittedly made a detailed inquiry in the matter on a complaint received by him. The inquiry covered a large area, namely, the statutory provisions, the history of the case, Orders dated 11th August, 1995, 24th February 1997 and 5th March, 1997 which were said to have been passed on the teeth of the statutory provisions, the clandestine manner in which the matter was pursued, the notings in the files as also how the accused persons deliberately and knowingly closed their minds and eyes from the realities of the case. The report of the Lokayukta is itself replete with the materials which led him to arrive at the conclusion which is as under:

> "having gone through the record of the ida and the State Government and the statements recorded by Shri P. P. Tiwari and the replies of the two Ministers Shri b. R. Yadav and Shri Rajendra Kumar singh and Shri R. D. Ahirwar the then additional Secretary, Department of environment, I have come to the conclusion that this is a fit case in which an offence should be registered. Therefore, in exercise of the powers vested in me u/s 4 (1) of the M. R Special Police Establishment Act, I direct the D. G. (SPE) to register and investigate an offence against Shri B. R. Yadav, Minister, Shri rajendra Kumar Singh, Minister and shri R. D. Ahirwar the then Additional secretary under relevant provisions of the P. C. Act, 1988 and I. P. C. It is also directed that investigation in this case will be done by an officer not below the rank of S. P. The entire record be transferred to the SPE Wing. "

(28) THE Office of the Lokayukta was held by a former Judge of this Court. It is difficult to assume that the said High Authority would give a report without any material whatsoever. We, however, do not intend to lay down any law in this behalf. Each case may be judged on its own merits. In this case, however, we are satisfied that the

Lokayukta made a report upon taking into consideration the materials which were placed or received by him. When the council of Ministers takes a decision in exercise of its jurisdiction it must act fairly and reasonably. It must not only act within the four- corners of the statute but also for effectuating the purpose and object for which the statute has been enacted. The Respondent No. 4 in each appeal are to be prosecuted under the prevention of Corruption Act wherefor no order of sanction is required to be obtained. A sanction was asked for and granted only in relation to an offence under Section 120b of the Indian Penal Code. It is now trite that it may not be possible in a given case even to prove conspiracy by direct evidence. It was for the Court to arrive at the conclusion as regard commission of the offence of conspiracy upon the material placed on records of the case during trial which would include the oral testimonies of the witnesses. Such a relevant consi deration apparently was absent in the mind the council of Ministers when it passed an order refusing to grant sanction. It is now well-set hled that refusal to take into consideration a relevant fact or acting on the basis of irrelevant and extraneous factors not germane for the purpose of arriving at the conclusion would vitiate an administrative order. In this case, on the material disclosed by the Report of the lokayukta it could not have been concluded, at the prima-facie stage, that no case was made out.

(29) IT is well-settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous.

(30) WE have, on the premises aforementioned, no hesitation to hold that the decision of the Council of Ministers was ex-facie irrational whereas the decision of the Governor was not. In a situation of this nature, the writ court while exercising its jurisdiction under Article 226 of the Constitution of India as also this Court under Articles 136 and 142 of the constitution of India can pass an appropriate order which would do complete justice to the parties. The High Court unfortunately failed to consider this aspect of the matter.

(31) IF, on these facts and circumstances, the Governor cannot act in his own discretion there would be a complete breakdown of the rule of law inasmuch as it would then be open for Governments to refuse sanction in spite of overwhelming material showing that a prima- facie case is made out. If, in cases where prima- facie case is clearly made out, sanction to prosecute high functionaries is refused or withheld democracy itself will be at stake. It would then lead to a situation where people in power may break the law with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted.

(32) MR. Tankha also pressed into play the doctrine of necessity to show that in such cases of necessity it is the Council of Ministers which has to take the decision. In support of this submission he relied upon the cases of J. Mohapatra and Co. vs. State of Orissa reported in 1984 (4) SCC 103; Institute of chartered Accountants vs. L. K. Ratna reported in 1986 (4) SCC 537; Charon Lai Sahu vs. Union of India reported in 1990 (1) SCC 613; badrinath vs. Government of Tamil Nadu reported in 2000 (8) SCC 395; Election Commission of India vs. Dr. Subramaniam Swamy reported in 1996 (4) SCC 104; Ramdas shrinivas Nayak (supra) and State of M. P. vs. Dr. Yashwant Trimbak reported in 1996 (2) scc 305. In our view, the doctrine of necessity has no application to the facts of this case. Certainly the Council of Ministers has to first consider grant of sanction. We also presume that a high authority like the Council of Ministers will normally act in a bonafide manner, fairly, honestly and in accordance with law. However, on those rare occasions where on facts the bias becomes apparent and/or the decision of Council of Ministers is shown to be irrational and based on non-consideration of relevant factor, the Governor would be right, on the facts of that case, to act in his own discretion and grant sanction.

(33) IN this view of the matter, the appeals are allowed. The decisions of the Single Judge and Division Bench cannot be upheld and are accordingly set aside. The Writ Petitions filed by the two Ministers will stand dismissed. For the reasons aforementioned we direct that the order of the Governor sanctioning prosecution should be given effect to and that of the council of Ministers refusing to do so may be set aside. The Court shall now proceed with the prosecution. As the case is very old, we request the Court to dispose off the case as expeditiously as possible. Appeal allowed.

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CENTRAL BUREAU OF INVESTIGATION VERSUS RAMESH GELLI

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

(2016) 3 SCC 788

CRIMINAL APPEAL NOS. 1077-1081 OF 2013

Central Bureau of Investigation, Bank Securities & Fraud Cell … Appellant
Versus
Ramesh Gelli and others … Respondents

WITH

WRIT PETITION (CRL.) NO. 167 OF 2015

Ramesh Gelli … Writ Petitioner
Versus
Central Bureau of Investigation through Superintendent of Police, BS & FC & Anr. … Respondents

The managing director and chairman of a private banking company were held to be public servants for the purposes of prosecution under the Prevention of Corruption Act 1988.

JUDGMENT

Prafulla C. Pant, J.

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

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

3. Briefly stated prosecution case is that the Global Trust Bank (hereinafter referred as "GTB") was incorporated on 29.10.1993 as banking company under Companies Act, 1956. Said Bank was issued licence dated 06.09.1994 under Banking Regulation Act, 1949 by Reserve Bank of India (for short "RBI"). Ramesh Gelli (writ petitioner before this Court) was Chairman and Managing Director, and Sridhar Subasri (writ petitioner before the High Court) was Executive Director of the Bank. The two were also promoters of GTB. For raising their contribution to the capital, the two accused (Ramesh Gelli and Sridhar Subasri) obtained loans from various individuals and companies, including M/s. Beautiful Group of Companies of accused Rajesh Mehta and Vijay Mehta, and M/s. Trinity Technomics Services Pvt. Ltd., of which accused Vijay Mehta and his employees were directors. M/s. Beautiful Group of Companies opened their first account in the name of Beautiful Diamonds Ltd. with G.T.B. in the year 1994-95. Investigation revealed that various credit facilities were allowed to said company by Ramesh Gelli and Sridhar Subasri, and they fraudulently instructed the branch heads, without following norms for sanctioning the credit facilities. The duo (Ramesh Gelli and Sridhar Subasri), abusing their official positions, sanctioned higher credit limits to M/s. Beautiful Diamonds Ltd. against regulations. According to CBI, the

investigation further revealed that in pursuance to the alleged conspiracy of the accused the funds of GTB were diverted, and release of Rs.5.00 crores was made in the name of M/s. Beautiful Realtors Ltd. on the request of Directors of M/s. Beautiful Diamonds Ltd. Said amount was further transferred to already overdrawn account of M/s. Beautiful Diamonds Ltd. In April, 2001, Directors of Beautiful Group of Companies in pursuance of conspiracy with other accused submitted another application for sanction of Rs.3.00 crores as diamond loan in the name of M/s. Crystal Gems. Ramesh Gelli, Sridhar Subasri and other accused, who were Directors of Beautiful Group of Companies, said to have caused total wrongful loss of about Rs.41.00 crores to GTB. The accounts of Beautiful Diamonds Ltd. and other companies, which availed funds from GTB, should have been declared Non Performing Assets (NPA), but accused Ramesh Gelli and Sridhar Subasri allegedly manipulated and showed the accounts of Beautiful Realtors Ltd. and Crystal Gems as higher profit yielding accounts. The scam did not come to the light till 2005.

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

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

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

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

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

8. It is admitted fact that GTB was a private sector bank operating under banking licence dated 06.09.1994, issued by RBI under Banking Regulation Act, 1949. It is also not disputed that on 14.08.2004 GTB merged/ amalgamated with OBC. The transactions of alleged fraud, cheating, misappropriation and corruption relate to the period between 1994 to 2001, i.e. prior to amalgamation with public sector bank (OBC). The dispute

relates as to whether the then Chairman-cum-Managing Director and Executive Director of GTB come under definition of 'public servant' or not, for the purposes of the P.C. Act, 1988.

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

10. On the other hand, Shri Tushar Mehta, learned senior counsel for CBI argued that accused Ramesh Gelli and Sridhar Subasri were public servants in view of definition contained in Section 2(c) of P.C. Act, 1988. Our attention is also drawn to Section 46A of Banking Regulation Act, 1949, which provides that a whole time Chairman, Managing Director, or Director of a banking company shall be deemed to be a public servant. It is also contended that a banking company as defined under Section 5(b) read with Section 35(A) of Banking Regulation Act, 1949 is nothing but extended arm of Reserve Bank of India. In support of arguments advanced on behalf of CBI, reliance is placed on the principle of law laid down by this Court in **Govt. of Andhra Pradesh and Others vs. P. Venku Reddy**[1]. Lastly, it is submitted that a private body discharging public duty or positive obligation of public nature actually performs public function. In this connection, reference was made to the observations made by this court in paragraph 18, in Federal Bank Ltd. vs. Sagar Thomas and others[2].

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

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

> "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 Santhanan Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.
>
> 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." (Emphasis supplied)

1 (2002) 7 SCC 631)

2 (2003) 10 SCC 733

From the Statement of Objects and Reasons of the P.C. Bill it is clear that the Act was intended to make the anti corruption law more effective by widening its coverage. It is also clear that the Bill was introduced to widen the scope of the definition of 'public servant'. Before P.C. Act, 1988, it was the Prevention of Corruption Act, 1947 and Sections 161 to 165A in Chapter IX of IPC which were governing the field of law relating to prevention of corruption. The Parliament repealed the Prevention of Corruption Act, 1947 and also omitted Section 161 to 165A of I.P.C as provided under Sections 30 and 31 of P.C. Act, 1988. Since a new definition of 'public servant' is given under P.C. Act, 1988, it is not necessary here to reproduce the definition of 'public servant' given in Section 21 of IPC.

13. Section 2(c) of P.C. Act, 1988, which holds the field, defines 'public servant' as under: -

"2.(c) "public servant" means-

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(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;

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any 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 authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered cooperative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

(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."

14. Above definition shows that under Clause (viii) contained in Section 2(c) of P.C. Act, 1988 a person who holds an office by virtue of which he is authorized or required to perform any public duty, is a public servant. Now, for the purposes of the present case this court is required to examine as to whether the chairman/managing director or executive director of a private bank operating under licence issued by RBI under Banking Regulation Act, 1949, held/holds an office and performed /performs public duty so as to attract the definition of 'public servant' quoted above.

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

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

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

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

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

18. In Federal Bank Ltd. v. Sagar Thomas and others (supra) this Court has held that a private company carrying banking business as a scheduled bank cannot be termed as a company carrying any statutory or public duty. However, in said case the Court was examining as to whether writ can be issued under Article 226 of the Constitution of India against a scheduled bank or not. There was no issue before the Court relating to deeming fiction contained in Section 46A of Banking Regulation Act, 1949 in respect of a chairman/managing director or director of a banking company against whom a crime relating to anti-corruption was registered. 19. In a recent case of **State of Maharashtra & ors. v. Brijlal Sadasukh Modani**[3], this Court has observed as under: -

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

20. In **P.V. Narasimha Rao vs. State (CBI/SPE)**[4], this Court has explained the word "office" in following manner: -

"61. … ….The word "office" is normally understood to mean "a position to which certain duties are attached, especially a place of trust, authority or service under constituted authority". (See: Oxford Shorter English Dictionary, 3rd Edn., p. 1362.) In McMillan v. Guest (1942 AC 561) Lord Wright has said:

3 2015 SCC Online SC 1403

4 (1998) 4 SCC 626

"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."

In Statesman (P) Ltd. v. H.R. Deb (AIR 1968 SC 1495) and Mahadeo v. Shantibhai [(1969) 2 SCR 422] this Court has adopted the meaning given by Lord Wright when it said:

> "An office means no more than a positionto which certain duties are attached."

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

22. In **Manish Trivedi v. State of Rajasthan**[6], which pertains to a case registered against a councillor under Prevention of Corruption Act, 1988, this Court, while interpreting the word "public servant", made following observations: -

> "14. Section 87 of the Rajasthan Municipalities Act, 1959 makes every Member to be public servant within the meaning of Section 21 of the Penal Code, 1860 and the same reads as follows:
>
> "87. Members, etc. to be deemed public servants.—
>
> (1) Every member, officer or servant, and every lessee of the levy of any municipal tax, and every servant or other employee of any such lessee shall be deemed to be a public servant within the 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.

5 (1996) 1 SCC 95

6 (2014) 14 SCC 420

xxx xxx xxx

16. Under the scheme of the Rajasthan Municipalities Act it is evident that the appellant happens to be a Councillor and a Member of the Board. Further in view of language of Section 87 of the Rajasthan Municipalities Act, he is a public servant within the meaning of Section 21 of the Penal Code. Had this been a case of prosecution under the Prevention of Corruption Act, 1947 then this would have been the end of the matter. Section 2 of this Act defines "public servant" to mean public servant as defined under Section 21 of the Penal Code. However, under the Prevention of Corruption Act, 1988, with which we are concerned in the present appeal, the term "public servant" has been defined under Section 2(c) thereof. In our opinion, prosecution under this Act can take place only of such persons, who come within the definition of public servant therein. The definition of "public servant" under the Prevention of Corruption Act, 1947 and Section 21 of the Penal Code is of no consequence. The appellant is sought to be prosecuted under the Prevention of Corruption Act, 1988 and, hence, to determine his status it would be necessary to look into its interpretation under Section 2 (c) thereof, read with the provisions of the Rajasthan Municipalities Act.

xxx xxx xxx

19. The present Act (the 1988 Act) envisages widening of the scope of the definition of the expression "public servant". It was brought in force to purify public administration. The legislature has used a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing corruption among public servants. Hence, it would be inappropriate to limit the contents of the definition clause by a construction which would be against the spirit of the statute. Bearing in mind this principle, when we consider the case of the appellant, we have no doubt that he is a public servant within the meaning of Section 2(c) of the Act. Clause (viii) of Section 2(c) of the present Act makes any person, who holds an office by virtue of which he is authorised or required to perform any public duty, to be a public servant. The word "office" is of indefinite connotation and, in the present context, it would mean a position or place to which certain duties are attached and has an existence which is independent of the persons who fill it. Councillors and Members of the Board are positions which exist under the Rajasthan Municipalities Act. It is independent of the person who fills it. They perform various duties which are in the field of public duty. From the conspectus of what we have observed above, it is evident that appellant is a public servant within Section 2(c)(viii) of the Prevention of Corruption Act, 1988." (Emphasis supplied)

23. At the end it is relevant to mention that in the case of Govt. of A.P. and others vs. Venku Reddy (supra), in which while interpreting word 'public servant' this court has made following observations: "12. In construing the definition of "public servant" in clause (c) of Section 2 of the 1988 Act, the court is required to adopt a 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. (See State of M.P. v. Shri Ram Singh (2000) 5 SCC 88)"

24. In the light of law laid down by this court as above, it is clear that object of enactment of P.C. Act, 1988, was to make the anti corruption law more effective and widen its coverage. In view of definition of public servant in Section 46A of Banking Regulation Act, 1949 as amended the Managing Director and Executive Director of a Banking Company operating under licence issued by Reserve Bank Of India, were already public servants, as such they cannot be excluded from definition of 'public servant'. We are of the view that over the general definition of 'public servant' given in Section 21 of IPC, it is the definition of 'public servant' given in the P.C. Act, 1988, read with Section 46-A of Banking Regulation Act, which holds the field for the purposes of offences under the said Act. For banking business what cannot be forgotten is Section 46A of Banking Regulation Act,

1949 and merely for the reason that Sections 161 to 165A of IPC have been repealed by the P.C. Act, 1988, relevance of Section 46A of Banking Regulation Act, 1949, is not lost.

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

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

27. Therefore, having considered the submissions made before us, and after going through the papers on record, and further keeping in mind the Statement of Objects and Reasons of the Bill relating to Prevention of Corruption Act, 1988 read with Section 46A of Banking Regulation Act, 1949, we are of the opinion that the courts below have erred in law in holding that accused Ramesh Gelli and Sridhar Subasri, who were Chairman/Managing Director and Executive Director of GTB respectively, were not public servants for the purposes of Prevention of Corruption Act, 1988. As such, the orders impugned are liable to be set aside. Accordingly, without expressing any opinion on final merits of the cases before the trial courts in Mumbai and Delhi, Criminal Appeal Nos. 1077-1081 of 2013 filed by CBI, are allowed, and Writ Petition (Crl.) No. 167 of 2015 stands dismissed.

… … … … … … … … … … … ….J.

[PRAFULLA C. PANT]

New Delhi;

February 23, 2016.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1077-1081 OF 2013

Central Bureau of Investigation, Bank Securities & Fraud Cell .....Appellant
Versus
Ramesh Gelli and Others ...Respondents

WITH

WRIT PETITION (CRL.) NO. 167 OF 2015

Ramesh Gelli ...Writ Petitioner
Versus
Central Bureau of Investigation through Superintendent of Police, BS & FC & Anr. ...Respondents

JUDGMENT

Per Ranjan Gogoi, J.

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

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

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

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

(i) xxxx xxxxx

(ii) xxxx xxxxx

(iii) xxxx xxxxx

(iv) xxxx xxxxx

(v) xxxx xxxxx

(vi) xxxx xxxxx

(vii) xxxx xxxxx

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

(ix) xxxx xxxxx

(x) xxxx xxxxx

(xi) xxxx xxxxx

(xii) xxxx xxxxx"

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

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

> "2.(b) "public duty" means a duty in discharge of which the State, the public or the community at large has an interest."

Explanation.- In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);"

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

6. In **P.V. Narasimha Rao Vs. State (CBI/SPE)**[7] the meaning of the expression 'office' appearing in the relevant provision of the PC Act has been understood as "a position or place to which certain duties are attached specially one of a more or less public character." Following the views expressed by Lord Atkin in **McMillan Vs. Guest**[8], this Court had approved the meaning of the expression 'office' to be referable to a position which has existence independent of the person who fills up the same and which is required to be filled up in succession by successive holders.

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

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

9. Sections 161 to 165A contained in Chapter IX of the Indian Penal Code have been repealed by Section 31 of the Prevention of Corruption Act, 1947 and the said offences have been engrafted in Sections 7, 8, 9, 10, 11 and 12 of the Prevention of Corruption Act, 1988. Section 166(as originally enacted), Section 167 (with amendment), Sections 168, 169, 170 and 171 (as originally enacted) continue to remain in Chapter IX of the Indian Penal Code even after enactment of the Prevention of Corruption Act, 1988. 10. By virtue of Section 46A of the BR Act office bearers/employees of a Banking Company (including a Private Banking Company) were "public servants" for the purposes of Chapter IX of the I.P.C. with the enactment of the PC Act the offences under Section 161 to 165A included in Chapter IX of Code came to be deleted from the said Chapter IX and engrafted under Sections 7 to 12 of the PC Act. With the deletion of the aforesaid provisions from Chapter IX of the I.P.C. and inclusion of the same in the PC Act there ought to have been a corresponding insertion in Section 46A of the BR Act with regard to the deeming provision therein being continued in respect of officials of a Banking Company in so far as the offences under Sections 7 to 12 of the PC Act are concerned. However, the same was not done. The Court need not speculate the reasons therefor, though, perhaps one possible reason could be the wide expanse of the definition of "public servant" as made by Section 2(c) of the PC Act. Be that as it may, in a situation where the legislative intent behind the enactment of the PC Act was, inter alia, to expand the definition of "public servant",

7 (1998) 4 SCC 626

8 (1942) AC 561

the omission to incorporate the relevant provisions of the PC Act in Section 46A of the BR Act after deletion of Sections 161 to 165A of the I.P.C. from Chapter IX can be construed to be a wholly unintended legislative omission which the Court can fill up by a process of interpretation. Though the rule of casus omissus i.e. "what has not been provided for in the statute cannot be supplied by the Courts" is a strict rule of interpretation there are certain well known exceptions thereto. The following opinion of Lord Denning in **Seaford Court Estates Ltd. Vs. Asher**[9] noticed and approved by this Court may be taken note of.

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

In **Magor & St. Mellons Rural District Council Vs. Newport Corporation4**[10] the learned judge restated the above principles in a somewhat different form to the following effect :

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

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

> "147. My learned Brother has relied on what was considered in England a somewhat unorthodox method of construction in Seaford Court Estates Ltd. v. Asher [(1949 2 ALL ER 155, 164], where Lord Denning, L.J., said :
>
> > When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament — and then he must supplement the written words so as to give 'force and life' to the intention of legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.
>
> When this case went up to the House of Lords it appears that the Law Lords disapproved of the bold effort of Lord Denning to make ambiguous legislation more comprehensible. Lord Simonds found it to be "a naked usurpation of the legislative function under the thin disguise of interpretation". Lord Morton (with whom Lord Goddard entirely agreed) observed: "These heroics are out of place" and Lord Tucker said "Your Lordships would be acting in a legislative rather than a judicial capacity if the view put forward by Denning, L.J., were to prevail."
>
> 148. Perhaps, with the passage of time, what may be described as the extension of a method resembling the "arm-chair rule" in the construction of wills. Judges can more frankly step into the shoes of the legislature where an enactment leaves its own intentions in much too nebulous or uncertain a state. In M. Pentiah v. Muddala Veeramallappa [(1961) 2 SCR 295], Sarkar, J.,

9 (1949) 2AllER 155 at page 164

10 (1950)2AllER 1226

11 (1978) 2 SCC 213

approved of the reasoning, set out above, adopted by Lord Denning. And, I must say that, in a case where the definition of "industry" is left in the state in which we find it, the situation perhaps calls for some judicial heroics to cope with the difficulties raised. (Underlining is mine)

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

Order XXI Rule 89 read with Rule 92(2) of the CPC provided for filing of an application to set aside a sale. Such an application was required to be made after deposit of the amounts specified within 30 days from the date of the sale. While the said provision did not undergo any amendment, Article 127 of the Limitation Act, 1963 providing a time limit of 30 days for filing of the application to set aside the sale was amended and the time was extended from 30 days to 60 days. Taking note of the objects and reasons for the amendment of the Limitation Act, namely, that the period needed to be enlarged from 30 to 60 days as the period of 30 days was considered to be too short, a Constitution Bench of this Court in Dadi Jagannadham (supra) harmonised the situation by understanding Order XXI rule 89 to be casting an obligation on the Court to set aside the sale if the application for setting aside along with deposit is made within 30 days. However, if such an application along with the deposit is made after 30 days but before the period of 60 days as contemplated by Article 127 of the Limitation Act, 1963, (as amended) the Court would still have the discretion to set aside the same. The period of 30 days in Order 21 Rule 89/92(2) CPC referred to hereinabove was subsequently (by Act 22 of 2002) amended to 60 days also.

13. Turing to the case in hand there can be no dispute that before enactment of the PC Act, Section 46A of the BR Act had the effect of treating the concerned employees/office bearers of a Banking Company as public servants for the purposes of Chapter IX of the IPC by virtue of the deeming provision contained therein. The enactment of the PC Act with the clear intent to widen the definition of 'public servant' cannot be allowed to have the opposite effect by expressing judicial helplessness 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.

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

.....J.

[RANJAN GOGOI]

NEW DELHI

FEBRUARY 23, 2016

❑❑❑

12 (2001) 7 SCC 71

M.R. PURUSHOTHAM VERSUS STATE OF KARNATAKA

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1578 OF 2011
(2015) 3 SCC 247

M.R. Purushotham ... Appellant

versus

State of Karnataka ... Respondent

Coram : M.B. Lokur and Chockalingam Nagappan, JJ.

In the instant case, the complainant PW 1 did not support the prosecution case insofar as demand by the accused was concerned. Further, no other evidence was adduced by the prosecution to prove the demand made by the accused with the complainant. Therefore, conviction was set aside.

Mere possession and recovery of currency notes from accused without proof of demand would not attract conviction under section 13(1)(d) r/w section 13(2).

JUDGMENT

C. Nagappan, J.

1. This appeal is directed against the judgment dated 4.1.2011 passed by the High Court of Karnataka at Bangalore in Criminal Appeal no.1130 of 2007 reversing the judgment of acquittal dated 8.12.2006 in Special Case no.36 of 2001 passed by the Principal Special Judge, Mandya. The High Court in the impugned judgment found the appellant/accused not guilty of the offence under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred as "the Act") but guilty of offences under Section 13(1)(d) read with Section 13(2) of the Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for a period of three months.

2. The case of the prosecution in brief is as follows :

The appellant/accused was working as Second Division Surveyor in the office of Assistant Director of Land Records, Nagamangala and on 18.2.2000 he demanded an illegal gratification of Rs.500/- from PW1 Ramesh for issuance of survey sketch pertaining to Survey no.255 of Hullenahalli village and it is further alleged that though the accused had surveyed the land on the application of the complainant he was postponing issuance of survey sketch, to force PW1 Ramesh to pay bribe. PW1 Ramesh lodged Exh.P1 complaint on 18.2.2000 with Lokayukta Police on which a case came to be registered in Crime no.1/2000 on the file of Mandya Lokayukta Police Station for the alleged offences under Sections 7, 13(1)(d) read with Section 13(2) of the Act. A trap was organized and PW2 Sridhar and PW3 Kumaraswamy, Government servants, were directed to be present as panch witnesses. PW1 Ramesh produced a sum of Rs.500/- i.e. five currency notes of Rs.100/- each and the numbers of the said currency notes were recorded in the presence of panch witnesses and the currency notes got smeared with phenolphthalein powder. The complainant Ramesh took the powder smeared notes and went along with PW3 Kumaraswamy to the house of the appellant/accused. PW2 Sridhar and PW4 Inspector Santosh Kumar stood outside the said house. The accused was watching T.V. inside the room and on seeing them, he asked PW1 Ramesh as to whether he has brought what he had asked and PW1 Ramesh answered yes and gave the currency notes of Rs.500/- and accused took them by his right hand and kept the same on his table and directed PW1 Ramesh to come on Monday for obtaining copy of the Re-Survey. They came out and PW1 Ramesh gave the signal, immediately PW4 Inspector Santosh Kumar along with PW2 Sridhar went inside the house and in the solution of clean water and sodium carbonate the right hand fingers of the accused was immersed upon which it turned into light pink color and on verification the numbers of the currency notes which were lying on the table were tallied with the numbers of the notes written in Exh.P2 Mahazar. All the formalities were completed and after obtaining sanction charge sheet came to be filed against accused.

3. The Trial Court framed charges under Sections 7, 13(1)(d) read with Section 13(2) of the Act and the accused pleaded not guilty. The prosecution examined four witnesses and marked Exh.P1 to P10 and M.Os. 1 to 10. The Trial Court held that the prosecution has failed to prove the charges against the accused and acquitted him. The State preferred appeal and the High Court in the impugned judgment held that the prosecution has failed to prove the offence under Section 7 of the Act and at the same time it proved the commission of offence under Section 13(1)(d) by the accused and consequently set aside the judgment of acquittal for said offences and convicted the appellant/accused for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Act and sentenced him as stated above. The said judgment is under challenge in this appeal.

4. We heard Ms. Kiran Suri, learned senior counsel appearing for the appellant and Mr. V.N. Raghupathy, learned counsel appearing for the respondent State.

5. PW1 Ramesh, the complainant did not support the prosecution case. He disowned making the complaint in Exh.P1 and stated in his examination-in-chief that the accused had not demanded anything from him and he did not know what is written in Exh.P1 and the police have not recorded his statement in respect to this case. He was, therefore, declared hostile. However, PW3 Kumaraswamy, panch witness has testified that after being summoned by PW4 Inspector Santosh Kumar on 18.2.2000, the contents of Exh.P1 were explained to him in the presence of the complainant and he accompanied the complainant to the house of the accused, wherein, the complainant gave the sum of Rs.500/- to the accused as illegal gratification. It is on the aforesaid basis that the liability of appellant/accused for commission of the offences alleged was held to be proved, notwithstanding the fact that in his evidence the complainant PW1 Ramesh had not supported the prosecution case.

6. In such type of cases the prosecution has to prove that there was a demand and there was acceptance of illegal gratification by the accused. As already seen the complainant PW1 Ramesh did not support the prosecution case insofar as demand by the accused is concerned. No other evidence was adduced by the prosecution to prove the demand made by the accused with the complainant. In this context the recent decision of a three Judge bench of this Court in B. Jayaraj vs. State of Andhra Pradesh reported in 2014(4) Scale 81 is relevant and it is held as follows :

> "8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established."

The above decision is squarely applicable to the facts of the present case. When PW1 Ramesh himself had disowned what he has stated in his initial complaint in Exh.P1 before PW4 Inspector Santosh Kumar and there is no other evidence to prove that the accused had made any demand, the evidence of PW3 Kumaraswamy and the contents of Exh.P1 complaint cannot be relied upon to conclude that the said material furnishes proof of demand allegedly made by the accused. The High Court was not correct in holding the demand alleged to be made by the accused as proved. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 13(1)(d) of the Act and the conviction and sentence imposed on the appellant are liable to be set aside.

7. For the aforesaid reasons the appeal is allowed and the conviction and sentence imposed on the appellant/ accused under Section 13(1)(d) read with Section 13(2) of the Act are set aside and he is acquitted of the charges. Bail bond, if any furnished by the appellant, be released.

... .J.

(Madan B. Lokur)

....J.

(C. Nagappan)

New Delhi;

September 24, 2014

B. JAYARAJ V. STATE OF ANDHRA PRADESH

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 696 OF 2014

(Arising Out of SLP (Crl.) No.2085 of 2012)

(2014) 13 SCC 55

B. Jayaraj ... Appellant (S)

Versus

State of A.P. ... Respondent (S)

Coram P. Sathasivam, C.J., Ranjan Gogoi and N.V. Ramana, JJ.

In the instant case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution also did not examine any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. Further, the complainant himself had disowned what he had stated in the initial complaint, and there stood no other evidence to prove that the accused had made any demand. Held-the evidence of PW-1 and the contents of Exhibit P-11(initial complaint) cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused.

Demand of illegal gratification is sine qua non to constitute the offence u/s 7 – Acceptance of money voluntarily by the accused knowing it to be bribe is to be proved beyond all reasonable doubt.

Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 25.04.2011 passed by the High Court of Andhra Pradesh affirming the order of conviction passed by the Additional Special Judge for SPE & ACB cases, City Civil Court Hyderabad, whereby the accused appellant has been found guilty of commission of the offences under Sections 7 and 13 (1)(d)(i)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act"). The accused appellant has been sentenced to undergo rigorous imprisonment for one year for each of the offences and also to pay a fine of Rs.1000/- in default to suffer simple imprisonment for three months more.

3. According to the prosecution, the accused appellant was, at the relevant point of time, working as a Mandal Revenue officer (MRO) in the Ranga Reddy District of the State of Andhra Pradesh. The complainant K.Venkataiah (PW-2) had a fair price shop in Dadupally village. On 8.11.1995, the complainant, it is alleged, had approached the accused appellant for release of essential commodities against his shop for the month of

November, 1995. The accused appellant, it is claimed, demanded a bribe of Rs.250/- to issue the release order. As the complainant was not willing to pay the said amount, he had approached listed witness No.9 K.Narsinga Rao, (since deceased) Deputy Superintendent of Police, ACB, Hyderabad on 9.11.1995 and submitted a written complaint (Exbt.P-11) before him. According to the prosecution, LW-9 after verifying the contents of the complaint registered a case and issued Exhibit P-12 (FIR). LW-9 directed the complainant to come with the bribe amount on 13.11.995. It is also alleged that LW-9 summoned PW-1, S. Hanuma Reddy, Deputy Director of Insurance to act as a panch witness and explained the details of the complaint (Exbt.P-11) to him. Furthermore, according to the prosecution, LW-9 got the currency notes treated with phenolphthalein powder and also explained to PW-1 the significance of the sodium carbonate solution test. The details of the trap that was planned was explained to all concerned including the complainant. Accordingly, the plan was put into execution and on receipt of the pre-arranged signal to the trap laying officer, the police party headed by LW-9, which also included PW-5, rushed into the office of the accused appellant. Thereafter, according to the prosecution, the sodium carbonate solution test was conducted on the right hand fingers of the accused as well as the right shirt pocket. Both tests proved to be positive. The tainted currency notes were recovered from the possession of the accused.

4. Chargesheet was filed against the accused-appellant on completion of investigation. Upon grant of sanction for prosecution, cognizance of the offences alleged was taken and charges were framed to which the accused pleaded not guilty. In the course of the trial 5 witnesses were examined on behalf of the prosecution and 12 documents (Exbt. P-1 to P-12) besides 10 material objects (MOs 1 to 10) were exhibited. The plea of the accused was that on the date of the trap, PW-2, the complainant had put the currency notes in his shirt pocket with a request to have the same deposited in the bank as fee for renewal of the licence of the complainant. It was at this point of time that the police party had come and seized the currency notes after taking the same from his pocket.

5. We have heard Mr. Guntur Prabhakar, learned counsel for the appellant and Mr. Mayur R. Shah, learned counsel appearing on behalf of the respondent-State.

6. PW-2, the complainant, did not support the prosecution case. He disowned making the complaint (Exbt.P-11) and had stated in his deposition that the amount of Rs.250/- was paid by him to the accused with a request that the same may be deposited with the bank as fee for the renewal of his licence. He was, therefore, declared hostile. However, PW-1 (panch witness) had testified that after being summoned by LW-9, K. Narsinga Rao, on 13.11.1995, the contents of Exhibit P-11 (complaint) filed by the complainant PW-2 were explained to him in the presence of the complainant who acknowledged the fact that the accused appellant had demanded a sum of Rs.250/- as illegal gratification for release of the PDS items. It is on the aforesaid basis that the liability of the accused-appellant for commission of the offences alleged was held to be proved, notwithstanding the fact that in his evidence the complainant PW-2 had not supported the prosecution case. In doing so, the learned trial court as well as the High Court also relied on the provisions of Section 20 of the Act to draw a legal presumption as regards the motive or reward for doing or forbearing to do any official act after finding acceptance of illegal gratification by the accused-appellant.

7. In so far as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in **C.M. Sharma Vs. State of A.P.**[1] and **C.M. Girish Babu Vs. C.B.I.**[2]

8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the

1 (2010) 15 SCC 1

2 (2009) 3 SCC 779

above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.

10. For the aforesaid reasons, we cannot sustain the conviction of the appellant either under Section 7 or under 13(1)(d)(i)(ii) read with Section 13(2) of the Act. Accordingly, the conviction and the sentences imposed on the accusedappellant by the trial court as well as the High Court by order dated 25.4.2011 are set aside and the appeal is allowed.

.....CJI.

[P. SATHASIVAM]

.....J.

[RANJAN GOGOI]

.....J.

[N.V. RAMANA]

NEW DELHI,

MARCH 28, 2014.

❑❑❑

RAKESH KAPOOR VERSUS STATE OF HIMACHAL PRADESH

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1839 OF 2012
(Arising out of SLP (Crl.) No. 23 of 2012
(2012) 13 SCC 552

Rakesh Kapoor .... Appellant(s)
Versus
State of Himachal Pradesh .... Respondent(s)

Coram P. Sathasivam and Ranjan Gogoi, JJ.

Conviction u/s 13 (2) of the PC Act cannot be sustained when the accused has been exonerated u/s 7 and charge u/s 13 (1) (a) was not included in the charge

Absence of the demand and acceptance accords benefit of doubt to the accused.

JUDGMENT

P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 08.09.2011 passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 713 of 2008 whereby the High Court while partly allowing the appeal filed by the appellant herein set aside the conviction under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the P.C. Act') and upheld the conviction and sentence awarded by the trial Court under Section 13(2) of the P.C. Act.

3) Brief facts:

(a) In January, 2003, the appellant had been posted as Divisional Tourism Development Officer, Dharamshala, H.P. His duty includes issuing permits for running of buildings as guest houses/hotels, by registering them as such and fixing the tariff for different types of rooms/accommodation in the said buildings.

(b) One Nirwan Singh is having a Tea Orchard and a house in Cheelgari in Dharamshala. He executed a general power of attorney in favour of the complainant - Sukhjit Singh Sidhu for managing his aforesaid properties. He renovated the said house and converted and converted it into a hotel and sought permission for registration and for fixing of tariff for the same from the appellant herein.

(c) On 28.04.2003, the appellant officially inspected the site of the hotel. After inspection, the appellant found everything in order and asked the complainant to go ahead with the running of the hotel. The complainant also requested him to give official permission to run the same. On 02.05.2003, the appellant recorded a note for registration of the same fixing tariff for different rooms. However, formal letter of registration and order of fixation of tariff had not been issued.

(d) It is the case of the prosecution that on 04.05.2003, the complainant received a telephonic call from the appellant at about 4.00 p.m. informing him that his case for registration of hotel and fixation of tariff had been cleared and that he could collect the registration certificate on the next day by paying him Rs. 10,000/-.

(e) The complainant being an Ex-serviceman not inclined to give bribe and therefore, he shared this conversation with his friend Ashwani Bhatia (PW-3) and on 05.05.2003, both of them went to the Police Station, A.C. Zone, Dharamshala and lodged a complaint. They carried with them ten currency notes of the denomination of Rs.1,000/- each and produced the same before the police. The currency notes of Rs. 1,000/- each amounting to Rs.10,000/- were treated by the Vigilance Police with phenolphthalein powder and their numbers were noted down and handed over to the complainant asking him to give

the same to the accused on demand with a direction to not to tamper with the same in any manner. The police asked Ashwani Bhatia (PW-3) to act as a shadow witness and requested him to go to the office of the appellant with the complainant and give signal to them as and when the bribe money stood paid.

(f) Thereafter, the members of the raiding party (Vigilance Police) took shelter near the office of the accused. At about 6.55 p.m., after receiving signal from the shadow witness, the raiding party caught hold of the appellant. The appellant was asked to produce the currency notes taken by him as bribe and the same had been taken out from the right pocket of his pant. The number of the currency notes were got tallied as the same which were shown to the police earlier. The appellant was arrested and grounds of arrest intimated to him. The case was committed to the Court of Special Judge, Kangra at Dharamshala.

(g) Vide judgment dated 16.10.2008, the Special Judge, on perusal of the record, held the appellant guilty and convicted him for the offences punishable under Sections 7 and 13(2) of the P.C. Act. Vide order dated 03.11.2008, the Special Judge sentenced the appellant to undergo Rigorous Imprisonment (RI) for two years and to pay a fine of Rs.10,000/-, in default, to further undergo simple imprisonment for 6 months.

(h) Being aggrieved, the appellant preferred an appeal being Criminal Appeal No. 713 of 2008 before the High Court of Himachal Pradesh. The High Court, by impugned judgment dated 08.09.2011, partly allowed the appeal and set aside the conviction under Section 7 of the P.C. Act and confirmed the same under Section 13(2) of the said Act.

(i) Aggrieved by the said order of the High Court, the appellant preferred this appeal by way of special leave petition.

4) Heard Mr. Parag P. Tripathi, learned senior counsel for the appellant and Ms. Kiran Bala Sahay, learned counsel for the respondent-State.

5) Mr. Tripathi, learned senior counsel for the appellant, after taking us through all the materials, the decision of the trial Judge and the reasoning of the High Court submitted that conviction of the appellant under Section 13(2) of the P.C. Act is unsustainable in law since his conviction under Section 7 has been set aside by the High Court. He further submitted that inasmuch as Section 13(2) of the P.C. Act merely provides for punishment for criminal misconduct which is defined in Section 13(1), the substantive provision applicable in the case is Section 13(1)(a) of the P.C. Act. He further pointed out that Section 13(1)(a) was held inapplicable since the offence under Section 7 was not proved, hence, there cannot be any conviction under Section 13(2) without there being a conviction under Section 7 of the Act. He further submitted that in the absence of any evidence for the demand of bribe, the conviction is liable to be set aside. He also pointed out that though according to the prosecution, a demand was made to Shri S.S. Sidhu (PW- 1), the complainant, over mobile phone, no call record was produced and reliance based on the contradictory statement of Shri Dharam Chand (PW-18), I.O., cannot be accepted. He further submitted that since the order, viz., registration certificate was made ready before the alleged demand of bribe on 02.05.2003, the entire case of the prosecution for demand and acceptance does not hold good. On the other hand, Ms. Kiran Bala Sahay, learned counsel for the State supported the case of the prosecution and, according to her, the High Court was fully justified in convicting the appellant.

6) We have carefully considered the rival contentions and perused all the relevant materials.

7) At the foremost, in order to understand the stand of both the parties, it is useful to refer the charge sheet which reads as under:

"IN THE COURT OF SH. C.B. BAROWALIA, SPECIAL JUDGE,

KANGRA AT DHARAMSHALA

STATE VS. RAKESH KAPOOR

CHARGE SHEET CC2/05

I, C.B. Barowalia, Special Judge, Kangra at Dharamshala do hereby charge you accused Rakesh Kapoor son of Shri Joginder Paul (HAS Officer), resident of H.No. 702, Old Chari Road, Dharamshala, District Kangra as under:-

That on 05.05.2003, at about 6.55 p.m. while you were posted as Divisional Tourism Development Officer at Dharamshala and being a Public Servant obtained Rs.10,000/- for the registration of Hotel of Shri N.S. Gill which was your official duty as a motive for doing the said official act and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and within my cognizance.

That on the above said date, time and place you being Divisional Tourism Development Officer at Dharamshala, District Kangra accepted a gratification of Rs.10,000/- other than legal remuneration from the complainant for registration of his Hotel and thus you committed the offence of criminal misconduct punishable under Section 13(2) of the Prevention of Corruption Act, 1988 and within my cognizance. And I hereby direct that you be tried by this Court for the aforesaid charges.

Sd/-
Special Judge
Kangra at Dharamshala"

A reading of the charge sheet shows that the claim made by the prosecution in paras 2 and 3 is one and the same. It is not in dispute that the High Court on appreciation of the evidence led in by the prosecution and the stand taken by the defence exonerated the appellant in respect of the offence punishable under Section 7 of the P.C Act. Now, the moot question for consideration is whether in the absence of Section 7, conviction under Section 13(2) is permissible, particularly, when there is no reference to Section 13(1)(a) of the P.C. Act. It is not in dispute that Section 13(2) only speaks about punishment for committing criminal misconduct. Section 13(2) reads thus:

"13. Criminal misconduct by a public servant.- (1)

xxx xxx

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

We have already extracted the charge sheet which contains the offence under Sections 7 and 13(2) of the P.C. Act. The relevant substantive provision is Section 13(1)(a) which reads thus:

"13. Criminal misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

xxx xxx"

In the light of the language used in Section 13(1)(a) and in view of the conclusion by the High Court that the offence under Section 7 has not made out, the prosecution has not explained how Section 13(1)(a) is applicable. In this regard, it is useful to refer the decision of this Court in Joseph Kurian Philip Jose vs. State of Kerala, (1994) 6 SCC 535. The case relates to popularly known as 'Punalur Liquor Tragedy' in Kerala in which certain persons died and others received injuries due to consumption of poisonous adulterated arrack, ethyl alcohol adulterated with methyl alcohol. After investigation, a case under Section 272 IPC and Section 57(a) of the Kerala Abkari Act was registered. After trial, A-1 was convicted and sentenced under Sections 272 and 328 of the IPC along with the relevant provisions of the Kerala Abkari Act and the High Court confirmed the same, who filed an appeal before this Court. The High Court, however, set aside the similar conviction and sentence of A-4 recorded by the Court of Sessions and instead convicted him under Section 109 IPC for having abetted commission of offence punishable under Sections 272 and 328 IPC whereunder, without specificity, he was awarded rigorous imprisonment for two years. The said order was also under challenge before this Court. In para 13, this Court has held as under:

> "... ... ...Going by the High Court findings, Section 109 IPC could in no case be attracted and more so without charge to that effect put to A-4 to plead at the trial. Section 109 IPC is by itself an offence though punishable in the context of other offences. A-4 suffered a trial for substantive offences under the IPC and the Abkari Act. When his direct involvement in these crimes could not be established, it is difficult to uphold the view of the High Court that he could lopsidedly be taken to have answered the charge of abetment and convicted on that basis. There would, as is plain, be serious miscarriage of justice to the accused in causing great prejudice to his defence. The roles of the perpetrator and the abettor of the crime are distinct, standing apart from each other. The High Court was thus in error in employing Section 109 IPC to hold A-4 guilty. We thus set aside the conviction of A-4 and order his acquittal on all charges".

8) In Wakil Yadav and Another vs. State of Bihar, (2000) 10 SCC 500, this Court held that when the appellant was charged and convicted along with others for offences under Section 302 read with Section 149 IPC, the High Court cannot convict him for the offence under Section 302 read with Section 109 in appeal. In that case, it is undisputed that no charge was framed against the appellant with the aid of Section 109. As in Joseph Kurian (supra), here again, this Court held that Section 109 IPC is a distinct offence. In this way, this Court held that "the appellant having faced trial for being a member of an unlawful assembly which achieved the common object of killing the deceased, could in no event be substitutedly convicted for offence under Section 302 IPC with the aid of Section 109 IPC. There was obviously thus not only a legal flaw but also a great prejudice to the appellant in projecting his defence. He, on such error committed by the High Court, has rightly earned his acquittal...." By saying so, this Court allowed the appeal of the accused and set aside the conviction and sentence imposed on him.

9) The criminal misconduct which is defined in Section 13(1)(a) has not been included in the charge. In such a circumstance, the accused lost an important opportunity to defend himself, particularly, when he was acquitted under Section 7 of the Act. By applying the ratio rendered in the above decisions and in the light of the undisputed factual position that conviction of the appellant under Section 7 has been set aside by the High Court and in the absence of any appeal by the State against such acquittal and substantive charge under Section 13(1)(a), the conviction under Section 13(2) cannot be sustained.

10) Coming to the next argument that there was absolutely no demand for bribe and in the absence of such claim by the accused duly established by the prosecution, the conviction cannot be sustained. In support of the above claim, learned counsel for the appellant relied on the decision of this Court in Banarsi Dass vs. State of Haryana, (2010) 4 SCC 450. It was an appeal under Article 136 of the Constitution of India filed against the judgment and order of conviction dated 20.11.2002 passed by the learned single Judge of the High Court of Punjab and Haryana at Chandigarh. In that case, it was contended before this Court that there is no evidence to prove demand and voluntary acceptance of the alleged bribe so as to attract the offence under Section 5(2) of the Prevention of Corruption Act, 1947. The other contentions were also raised regarding merits with which we are not concerned. The accused was charged for the offence punishable under Section 5(2) of the 1947 Act as well as Section 161 (since repealed) of the IPC. In para 23, this Court held that "to constitute an offence under Section 161 IPC, it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused". It was further held that "similarly in terms of Section 5(1)(d) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused". In para 25, this Court quoted the decision rendered in C.M. Girish Babu vs. CBI, (2009) 3 SCC 779 and held that mere recovery of money from the accused by itself is not enough in the absence of substantive evidence of demand and acceptance. In the sama para, a reference was also made to Suraj Mal vs. State (Delhi Admn.) (1979) 4 SCC 725 wherein this Court took the view that mere recovery of tainted money from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. This Court further held that mere recovery by itself cannot prove the charge of the prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. After underlying the above principles, and noting that 2 prosecution witnesses turned hostile, while giving the benefit of doubt on technical ground to the accused, this Court, set aside the judgment of the High Court andacquitted the accused of both the charges i.e. under Section 161 IPC and under Section 5(2) of the 1947 Act.

11) In the case on hand, though prosecution heavily relied on the evidence of PW-1, the complainant that the demand was made to him over mobile phone, admittedly the call details have not been summoned. No doubt, the statement of PW-1, according to the prosecution is corroborated by Ashwani Bhatia (PW-3) who stated that he overheard PW-1 saying that he had brought the money, when the latter went to the office of the appellant in the evening of 05.05.2003. Interestingly, the I.O. who was examined as PW-18 has mentioned that PW-1 received the demand from the accused over landline and, hence, he could not secure those call details. Whatever may be the reason, the fact remains that except the oral testimony of PWs 1 and 3, there is no other proof in respect of the demand of bribe money and the I.O. could not collect the call details as stated by PW-1 from the department concerned. Accordingly, learned senior counsel for the appellant is right in contending that there is no material/evidence for the demand of bribe. In the light of the categorical enunciation in Banarsi Dass (supra), in the absence of the demand and acceptance, the accused is entitled to the benefit of doubt. In addition to the same, in the case on hand, even the official witness, Shri Madan Singh-who helped in the search of the accused-Municipal Commissioner, was examined as PW-14 but did not support the prosecution case and turned hostile.

12) Another important aspect which is in favour of the appellant accused is that the order, namely, granting licence in favour of PW-1 – the complainant was made ready before the alleged occurrence i.e. on 02.05.2003. In fact, the original order was available on the table and the same was in the hands of PW-1. Admittedly, he did not hand over the original to the I.O. and his only explanation was that he kept it under his custody to continue his business. As rightly pointed out, when the order itself was ready and available that too in the hands of the complainant, the demand of the accused as claimed by the prosecution is highly improbable. This aspect has also not been properly explained.

13) In the light of the above discussion and in view of the lacunae in the prosecution case, by giving the benefit of doubt to the accused, we hereby set aside the judgment of the High Court and the trial Court and acquit the accused of the remaining offence under Section 13(2) of the P.C. Act. Since the appellant was ordered to be released on bail on 13.02.2012 by this Court, the bail bonds shall stand discharged. The appeal is allowed.

.....J.

(P. SATHASIVAM)

.....J.

(RANJAN GOGOI)

NEW DELHI;

NOVEMBER 22, 2012.

❑❑❑

STATE OF MAHARASHTRA VERSUS DNYANESHWAR LAXMAN RAO WANKHEDE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1350 2009
[Arising out of SLP (Crl.) No. 211 of 2006]
(2009) 15 SCC 200

State of Maharashtra ... Appellant

Versus

Dnyaneshwar Laxman Rao Wankhede ... Respondent

Coram S.B. Sinha and Cyriac Joseph, JJ.

While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. The State is before us being aggrieved by and dissatisfied with a judgment and order dated 19.07.2005 passed by a learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur whereby and whereunder a judgment of acquittal was recorded in favour of the respondent herein who was convicted by the Special Judge, Wardha in Special Case No. 4 of 1996 under Section 7(1) of the Prevention of Corruption Act, 1988 (for short "the Act").

3. Respondent was, at all material times, serving as a Head Constable in Police Station, Karanja in the District of Wardha. Madhukar Dhote, hereinafter referred to as the complainant, was a resident of village Taroda in the Tehsil of Karanja (Ghadge). He had lodged a report against Dhanaraj Mohod and his servant Sudhkar Borkar for allegedly allowing their cattle to graze orange plants. Sudhkar Borkar's mother, however, lodged a report against the complainant that he had assaulted her son. In his capacity as a Head Constable, the respondent visited the village for making an enquiry.

4. Respondent informed that having regard to the complaint made by the mother of Sudhakar Borkar, he and his three brothers were to be proceeded for commission of an offence under Section 448 of the Indian Penal Code. He allegedly demanded a sum of Rs. 2,000/- for releasing him on bail.

5. On or about 14.07.1995, Ramesh Dhote, brother of the complainant and his servant had taken the cow of Dhanraj Mohod to the cattle - pound as the cow had damaged the crops in the complainant's field. On 31.07.1995, the respondent is said to have again demanded a sum of Rs. 1500/- for releasing Ramesh Dhote and his servant on bail in the aforementioned matter. Allegedly, a sum of Rs. 100/- and thereafter a sum of Rs. 200/- was paid to him.

6. The complainant thereafter on the premise that he was unwilling to pay the balance sum of Rs. 1200/- to the respondent lodged an oral report before the Anti Corruption Bureau against the respondent on or about 8.08.1995. A raid was conducted but allegedly the same was not successful. On 21.08.1995, the complainant lodged additional report stating that the respondent told that he should come to Karanja on 22.08.1995 with remaining amount of Rs. 1200/-. The entire procedure was repeated again on 22.08.1995. Complainant and one panch witness Ashok Waghade went to the police station. Respondent was not present at the police station. Then they went to his house. He is said to have again demanded the amount and asked them to come near the Veterinary hospital. Allegedly, nearabout the Veterinary Hospital, on demand of the amount of bribe by the respondent, the same was paid. He was apprehended by the raiding party. Upon obtaining sanction for the prosecution of the respondent, a case under Sections 7 and 13(1)(d) was initiated against him.

7. Respondent entered the plea of innocence. Charges were framed against him. Ashok Waghade, panch witness No. 1, died during pendency of the said proceeding. The other panch witness Gajanan Ambatkar although was not present when the respondent purported to have made a demand of the amount of gratification, deposed to the said effect. He was declared hostile and was permitted to be cross-examined by the prosecution. The complainant, however, examined himself as a prosecution witness and supported the prosecution case.

8. Respondent, on his part, examined a defence witness, Ramesh Kinkar who was an autorickshaw driver. According to the said witness, the complainant and a person accompanying him stopped his autorickshaw and the former allegedly requested the respondent to see a buffalo which was brought near the hospital in an injured condition. Respondent got down from his autorickshaw. Complainant is said to have thrust the amount in question on the left hand of the accused whereafter the raid was conducted by the official of the Anti Corruption Bureau.

9. The learned Special Judge held the respondent guilty of commission of the said offence and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1000/- in default whereof he was sentenced to undergo further rigorous imprisonment of two months.

10. Aggrieved by and dissatisfied with the said judgment of conviction and sentence, the respondent preferred an appeal before the High Court, which was marked as Criminal Appeal No. 155 of 2000. Inter alia on a finding that the prosecution has failed to prove any demand on the part of the accused as also payment thereof and opining that the recovery of the purported amount of bribe was not sufficient to bring home the charge under Section 7(1) of the Act reversed the said judgment of conviction and sentence recorded by the learned Special Judge and, thus, allowed the appeal of the respondent.

11. The State is, thus, before us.

12. Ms. Madhavi Divan, learned counsel appearing on behalf of the appellant, would contend that keeping in view the materials brought on record by the prosecution, the High Court committed a serious error in opining that all the three ingredients of commission of an offence under Section 7 of the Act have not been proved. It was urged that having regard to the provisions of Section 20 of the Act, the burden of proof was on the accused and he having failed to explain as to how the amount of Rs. 1200/- was found in his pocket, the High Court ought not to have recorded a judgment of acquittal in his favour.

13. The learned counsel furthermore would contend that the discrepancies in the depositions of the prosecution witness were not sufficient to record the judgment of acquittal.

14. Mr. Manish Pitale, learned counsel appearing on behalf of the respondent, on the other hand, would contend that the sole-surviving panch witness PW-1 having been disbelieved and in fact having been declared hostile, no reliance could be placed on his evidence. It was pointed out that the prosecution had earlier made several

raids and at least two other incidents have been brought on record, it is improbable that the respondent had demanded any amount by way of bribe or otherwise.

15. Before embarking on the rival contentions raised before us, it is our duty to remind ourselves that we are dealing with a judgment of acquittal and, thus, it is absolutely essential to keep in mind the well-settled principles of law that in the event two views are possible to be taken, this Court shall not interfere with a judgment of acquittal. There cannot be any doubt that in the event, having regard to the materials brought on record, the court comes to the conclusion on the basis thereof that only one view is possible, a judgment of acquittal may be interfered with. [See Shivappa and Ors. v. State of Karnataka (2008) 11 SCC 337, State of Maharashtra v. Rashid B. Mulani (2006) 1 SCC 407 and State through Inspector of Police, A.P. v. K. Narasimhachary (2005) 8 SCC 364]

16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

17. Indisputably, the complainant took with him two panch witnesses. One of them Ashok Waghade was a witness in respect of the alleged demand of illegal gratification on the part of the respondent. He having died during pendency of the matter before the learned Special Judge, no other independent witness was available to prove the prosecution case in that behalf. The second panch witness was not a witness of demand. Despite the said fact, the prosecution sought to prove the demand purported to have made by the respondent through him. It is of some significance to notice that although by the said process PW-1 did not support the accused, he was declared hostile and permission to cross-examine him was sought for by the prosecution.

18. Initially, an amount of Rs. 2000/- was demanded. A sum of Rs. 1800/- was said to have been paid against the aforementioned demand. Another criminal case was instituted on 14.07.1995. An amount of Rs. 1500/- was said to have been demanded on 31.07.1995. Only a very small part of the said amount had been paid, viz., Rs. 100/- and Rs. 200/- on two different occasions. Keeping in view the fact that the respondent enquired about the correctness or otherwise of the First Information Reports lodged by the complainant and the mother of said Sudhakar Borkar after a long time, it is doubtful that the respondent had been coming to the village again and again. Even complaint was made only on 8.08.1995. Indisputably, at least two attempts have been made, one on that date and another later on. The entire procedure for making a raid was repeated on 22.08.1995. This itself casts a serious doubt about the prosecution case. The matter does not end here. Complainant with Ashok Waghade went to the police station. Then, they went to their residence. If the respondent intended to take the amount, he would have accepted the same in his house itself and there was no reason to ask the complainant and the witness to meet him at a public place, i.e., near the Veterinary Hospital. Even the details of the said purported raid, viz., time of the complainant's visit to the police station, the residence of the respondent and Veterinary Hospital, have not been disclosed.

19. It is, therefore, highly doubtful that the version of the complainant was true. It is in the aforementioned backdrop only the evidence of DW-1 is to be considered. Even otherwise, in our opinion, the prosecution has failed to prove its case. It is, therefore, not a case where the High Court, as has been contended by Ms. Divan, has failed to take into consideration the legal implication of the provisions of Section 20 of the Act and/ or placed too much reliance on the minor inconsistencies in the statements of the prosecution witnesses.

20. Even in a case where the burden is on the accused, it is well-known, the prosecution must prove the foundational facts. [See Noor Aga v. State of Punjab 2008 (9) SCALE 691 and Jayendra Vishnu Thakur v. State of Maharashtra and Anr. 2009 (7) SCALE 757]

21. It is also a well-settled principle of law that where it is possible to have both the views, one in favour of the prosecution and the other in favour of the accused, the latter should prevail. [See Dilip and Another v. State of M.P. (2007) 1 SCC 450 and Gagan Kanojia and Another v. State of Punjab (2006) 13 SCC 516]

22. For the reasons aforementioned, there is no merit in this appeal, which is

dismissed accordingly.

... ...J.

[S.B. Sinha]

....J.

[Cyriac Joseph]

New Delhi;

July 29, 2009

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C.M. GIRISH BABU VERSUS CBI, COCHIN, HIGH COURT OF KERALA

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 377 OF 2009
(Arising out of SLP(Crl) No.578 of 2008)
(2009) 3 SCC 779

C.M. Girish Babu ... Appellant
Versus
CBI, Cochin, High Court of Kerala ... Respondent

Coram : L.S. Panta and B. Sudershan Reddy

Mere recovery of tainted money in the absence of substantive evidence not sufficient to convict the accused.

Presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification.

JUDGMENT

B.SUDERSHAN REDDY,J.

Leave granted.

2. The appellant along with Accused No.1 was tried for offences under Section 120B of IPC read with Section 7 and 13 (2) read with 13(1) (d) of Prevention of Corruption Act, 1988 (hereinafter referred to as "the said Act") by Special Judge (SPE/CBI)-I, Ernakulam who by his judgment dated 30th March, 2002 convicted the appellant for the offence punishable under Section 7 read with Section 13(1) (d) and 13(2) of the said Act. He was acquitted of the charge under Section 120B of the IPC. The appellant was accordingly sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.20,000. In default for payment of fine the appellant was further ordered to undergo rigorous imprisonment for a further period of six months for the offence punishable under Section 13(1) read with Section 13(2) of the said Act. He was also sentenced to undergo rigorous imprisonment for two years for the offence punishable under Section 7 of the said Act. The substantive sentences were directed to run concurrently.

3. The appellant preferred an appeal to the Kerala High Court at Ernakulam, which dismissed the appeal by its judgment dated 28th November, 2007. However, the Appellate Court reduced the substantive sentence to that of one year only. The High Court acquitted the first accused of all the charges against which State preferred no appeal. This appeal is brought, by special leave against the judgment of the High Court.

4. The prosecution case is that while accused no.1 working as the Inspector of Central Excise, Air Cargo Complex, Trivandrum, demanded an amount of Rs.1,500/- as gratification from one Dayanandhan-PW10 and Prakash Kumar-PW2, who were the Senior Assistant and Manager respectively of M/s. Interfrieght Services Pvt. Ltd., Trivandrum as a motive or reward for giving clearance for a wet grinder booked by one P. S. Shine to be sent to Dubai.

5. The appellant was also working as Inspector of Central Excise, Air Cargo Complex, Trivandrum along with Accused no. 1. On 2nd October, 1999 at about 6 a.m. the appellant is stated to have actually demanded the amount of Rs.1,500/- from Dayanandhan-PW10 as gratification for clearing the same wet grinder and accepted

the bribe amount for himself and on behalf of accused no.1 and thereby committed offences under Section 7 read with Section 13(1) (d) and 13(2) of the said Act.

6. The prosecution story as unfolded during the trial is that the appellant and Accused no. 1 together conspired and committed the act of demanding and accepting gratification.

7. In the present case, it may not be really necessary to discuss the entire evidence available on record for the simple reason that the High Court acquitted the Accused no. 1 of all the charges and found no case against him. It is the Accused no. 1 who is stated to have demanded the gratification for clearing and sending wet grinder to Dubai. The High Court as well as the trial court found that there was no criminal conspiracy between the appellant and accused no. 1 and therefore acquitted both of them of the charge under Section 120B of the IPC.

8. The High Court upon re-appreciation of evidence came to the conclusion that the prosecution miserably failed to prove the charge against the appellant for the offence under Section 13 (1) (d) read with Section 13 (2) of the said Act. In this regard, the High Court found that there is nothing in the evidence of PW-11 – Natarajan, official witness, to arrive at any conclusion of appellant making any demand of gratification. PW-11 stated that from the conversation between the appellant and PW-10, he could heard the appellant asking "is it ready?" and PW-10 only nodding his head. It is for that reason the High Court recorded that the alleged demand by the appellant on 2.10.1999 is highly doubtful and is not proved beyond reasonable doubt. The High Court relied upon yet another circumstance creating a doubt as regards the demand of any gratification by the appellant as there is no mention of any such demand in Exhibit P-9 - post trap mahazar. The High Court accordingly acquitted the appellant of charges under Section 13(1)(d) read with Section 13(2) of the said Act.

9. The prosecution story mainly rested upon the evidence of PW-10 who is the central figure in the entire story of the prosecution. He did not support the prosecution story and was declared hostile. It was to him that the Accused No.1 had allegedly made a demand of gratification on the morning of 1.10.99 and it was in his presence Accused No.1 repeated the demand when he went along with PW-2 in the evening of 1.10.99 to the Air Cargo office. This is the version given by PW-2. But PW-10 does not support this story. PW-10 in his evidence stated that on 1.10.99 Accused No.1 in the morning hours suggested certain corrections in the documents as regards the valuation and description of the item that was to be sent to Dubai. When PW-10 went back to office and told PW-2, PW-2 said that no correction need be made. Thereafter both of them visited Air Cargo Complex. It is in the evidence of PW-10 that he alone went inside the room to meet Accused no. 1 and told him that no corrections possibly could be made as PW-2 was not interested in making the suggested corrections. But Accused no. 1 insisted for carrying out corrections if the item was to be cleared for its despatch to Dubai. Then PW-10 requested the Accused no. 1 to meet PW-2 but Accused no. 1 retorted saying that whoever he may be, he will not meet him.

10. Be it noted that PW-2 thereafter never visited Air Cargo Complex till he came with the trap party early in the morning on 2.10.1999. PW-2 in his evidence stated that on 2.10.99 PW-10-Dayanadhan came to office at 4.30 a.m. and informed him that he went to the Air Cargo office and found that Accused no. 1 was not on duty and the appellant was on duty. According to PW-2, PW-10 informed him that on inquiry about the cargo the appellant told him that Accused no. 1 has already apprised him about the cargo and accordingly it would be cleared only if Rs.1500/- is brought. PW2 stated in his evidence that he immediately wrote Exh.P2-complaint. He clearly admitted in his evidence that he had no personal knowledge as to what transpired between PW-10 and the appellant at the Air Cargo Office. The evidence of PW-2 about the demand of bribe amount by the appellant is hear say and therefore inadmissible.

11. Interestingly enough, PW-10 does not support the story narrated by PW-2. According to him when he went to the Air Cargo Complex on 2nd October, PW-2 and another person who came to send the wet grinder was with him and PW-2 asked him to give Rs.1500/- to the appellant saying that it was a loan repayable by PW-2 to Accused no.1. He accordingly collected the money from PW-2 and gave it to the appellant. He in categorical terms accepted that the appellant had never demanded any bribe amount from him. The evidence of PW-10 also suggests that PW-2 was near the import Hall at a distance of about 40 metres between the Air Maldives Godown and import Hall.

12. An analysis of the evidence of PW-2, PW-10 and PW-11 the official witness reveals the following:

a) The prosecution miserably failed to establish the theory of criminal conspiracy hatched by the appellant along with Accused no. 1 to demand and receive gratification;

b) The prosecution miserably failed to establish its theory that there was a demand of gratification by Accused no.1 on 1.10.99;

c) There is no proof on any demand of gratification by the appellant on 2.10.99;

d) The evidence of PW-11, the official witness, Assistant Manager, Vigilance of FCI to the effect all that he heard was appellant asking PW-10 "is it ready?" to which PW-10 nodded his head. This evidence of the official witness present at the time of trap does not establish that there was any demand of gratification by the appellant. There is no reason to disbelieve the evidence of PW-11;

e) Exhibit P-9 post trap mahazar does not record the factum of any demand of gratification by the appellant.

13. The evidence on record suggests that PW10 had given money to the appellant stating that it was a loan repayable by PW2 to accused no.1. The appellant was lulled into that belief based on which he received the amount from PW-10.

14. The fact remains that the prosecution established through evidence of PW-12 and PW-13 and Exhibit P9-post trap mahazar that MO IV series tainted currency notes were recovered from the pocket of the appellant. A question then arises for consideration is that whether the recovery of the tainted money itself is sufficient to convict the appellant under Section 7 of the said Act?

15. The crucial question would be whether the appellant had demanded any amount as gratification to show any official favour and whether the said amount was paid by PW-10 and received by the appellant as consideration for showing such official favour. The only evidence available in this regard is that of PW-10 who did not support the case of the prosecution. The appellant at the earliest point of time explained that it was not the bribe amount received by him but the same was given to him by PW-10, saying that it was towards repayment of loan taken by his Manager-PW2 from the Accused no.1. This is evident from the suggestion put to PW-2 even before PW-10 was examined. Similar suggestion was put to the investigating officer that he had not recorded the version given by the appellant correctly in the post trap mahazar-Exhibit-P9 and no proper opportunity was given to explain the sequence of events.

16. In Suraj Mal Vs. State (Delhi Admn.) reported in [(1979) 4 SCC 725], this court took the view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show the accused voluntarily accepted the money knowing it to be bribe.

17. The learned counsel for the CBI submitted that the onus of proof was upon the appellant to explain as to how he came into possession of the amount recovered from him during the trap. The argument of the learned counsel is obviously based on Section 20 of the Prevention of Corruption Act, 1988 which reads as under:

> "20. Presumption where public servant accepts gratification other than legal remuneration.- (1) Where, in any trial of an offence punishable under Section 7 of Section 11 or clause (a) or clause (b) of subsection (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.
>
> (2) Where in any trial of an offence punishable under Section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification

> or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or as the case may be without consideration or for a consideration which he knows to be inadequate.
>
> (3) Notwithstanding anything contained in sub-sections (1) (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

18. A three-Judge Bench in M. Narsinga Rao Vs. State of A.P. (2001) 1 SCC 691 while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed:

> "... ... ...we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra.) The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (SCC p.577, para 12) T
>
> he premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

19. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification.

20. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt. "It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (See Jhangan Vs. State 1966 (3) SCR 736). (Emphasis supplied)

21. It is against this background of principles we have examined the contention of the appellant that the charges under Section 7 of the Act have not been proved against him. It was argued by Shri U. U. Lalit, Senior counsel, that the circumstances found by the High Court in their totality do not establish that the appellant accepted the amount of Rs.1500/- as gratification. Having examined the findings of both the Courts, we are satisfied that the appellant has proved his case by the test of preponderance of probability and we accordingly reach the conclusion that the amount was not taken by the appellant as gratification. He was made to believe that amount paid to him was towards the repayment of loan taken by PW2 from Accused no. 1.

22. The prosecution failed in establishing the guilt of the accused beyond reasonable doubt that the appellant received any gratification.

23. For the aforesaid reasons, we find it difficult to sustain the conviction of the appellant under Section 7 of the said Act. Accordingly, the conviction of the appellant and the sentence imposed upon him is set aside.

24. The appeal is allowed.

25. The bail bonds executed by the appellant for release on bail pursuant to the order dated 04.02.2008 shall stand discharged.

... ...J.

(Lokeshwar Singh Panta)

... ...J.

(B. Sudershan Reddy)

New Delhi;

February 24, 2009

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BENARSI DAS VERSUS STATE OF HARYANA

SUPREME COURT OF INDIA

Criminal Appeal No. 630 of 2003
(2010) 4 SCC 450

Banarsi Dass — Appellant
vs.
State of Haryana — Respondent

Coram : Aftab Alam and Swatanter Kumar , JJ.

Decided on : 05-04-2010

In the absence of the demand and acceptance, the accused is entitled to the benefit of doubt.

JUDGMENT

Swatanter Kumar, J.

1. The present appeal under Article 136 of the Constitution of India is directed against the final judgment and order of conviction dated 20.11.2002 passed by the learned Single Judge of the High Court of Punjab & Haryana at Chandigarh. Learned counsel appearing for the appellant has raised challenge to the impugned judgment, inter alia, but primarily on the following grounds:

(a) There is no evidence to prove demand and voluntary acceptance of the alleged bribe so as to attract the offence under Section 5(2) of the Prevention of Cor- ruption Act, 1947 (For short, 'the Act'). Reliance has been placed by the judgment of this Court in the case of C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala,1 [2009 (3) SCC 779].

(b) The High Court as well as the trial Court have passed an order of conviction despite the fact that there was serious contradiction between the statements of the prosecution witnesses. And in fact, there was no cogent and reliable evidence to support the charge against the appellant. Even the recovery has not been proved in accordance with law. These fac- tors clearly justify the benefit of doubt in favour of the appellant and thus entitling the accused of judgment of acquittal.

(c) The punishment awarded to the appellant is unreason- ably excessive. The appellant has faced the agony of trial and thereafter other proceedings arising therefrom for the last 20 years. In these circum- stances, the appellant has even faced great hardship having lost his livelihood which adversely affected the future of his family members. While relying upon the judgment of this Court in the case of Aditya Nath Pandey v. State of U.P.2 [2000 (9) SCC 206], it is contended that the sentence undergone would suf- fice and meet the ends of justice. Of course, this argument has been advanced without prejudice to the above contentions.

2. On behalf of the State, it has been argued that the judgment of conviction and sentence is duly supported by the oral and documentary evidence produced by the prosecution. The prosecution has been able to bring home the charge against the accused. The ingredients of Section 5(2) of the Act as well as Section 161 of the Indian Penal Code (for short, 'the IPC') are duly satisfied. The appellant being a public servant has not to indulge in demanding bribe. Thus, no leniency is called for in favour of the accused. In order to examine the merit or otherwise the contentions raised, it is important for us to refer to the basic facts as emerged from the records, giving rise to the present appeal.

3. The appellant was newly posted as patwari in Village Piruwala. One Pritam Kaur had agricultural land at Village Piruwala. Her daughter, namely, Sat Pal Kaur was informed during 1986 that Khasra Girdawaris of Pritam Kaur's land had been recorded in the name of Jit Singh and others as tenants by the previous Patwari. Smt. Sat Pal Kaur took up the matter with those tenants who admitted that the Khasra Girdawaris has been wrongly recorded by the Ex-Patwari in their favour. She also obtained no-objection on the application moved by her mother which was submitted to the Tehsildar Chachhrauli. The application was moved for the purposes of incorporating the

necessary changes at the time of the next Khasra Girdawaris in the coming season. Smt. Sat Pal Kaur contacted the village Patwari (appellant herein) in the Kharif season for recording Khasra Girdawaris in favour of her mother during the period of October, 1986. It is further the case of the prosecution that the appellant demanded illegal gratification of Rs. 900/- (rupees nine hundred) but that deal was struck at Rs. 400/- (rupees four hundred) for making the requisite changes, in the presence of Gurmej Singh, a taxi driver, whose taxi had been engaged by Sat Pal Kaur while visiting the appellant. Sat Pal Kaur contacted Shri Hari Singh, Deputy Superintendent of Police, Jagadhri at Bilaspur where Shri S.K. Joshi, Sub- Divisional Executive Magistrar, Jagadhri, was also present. She reported the matter. Her statement was recorded. She also produced four currency notes of the denomination of Rs. 100/- each and the same were signed both by Hari Singh, DSP and S.K. Joshi, Sub-divisional Executive Magistrate. They went to Patwari of Chachhrauli. They were told by the officers that on demand she should hand over the money and once money was accepted she should inform the Police Station and the trap was accordingly planned. Sat Pal Kaur accompanied by Gurmej Singh left for Patwar-khana which was about one km. from the Police Station, Chachhrauli. She took Rs. 400/- duly signed by the said officers to pay as gratification to the Patwari. The money was given to the appellant and accordingly Gurmej Singh reported the matter to Shri Hari Singh, DSP and Shri S.K. Joshi at the Police Station. They rushed to the spot in a jeep that was parked at some distance from Patwarkhana. On actual search of the appellant, four currency notes duly signed by the officers were recovered from the front left pocket of the shirt. Recovery memo for the same was prepared. The tenants had raised no objection and that application was also found on the table of the appellant in Patwar-khana which was taken into possession. After conclusion of the trap, the appellant was arrested and a case was registered with the Police Station Chachhrauli. After completion of the investigation, a challan regarding commission of offence under Section 161 of the IPC and under Section 5(2) of the Act was filed before the Court of competent jurisdiction. The Court framed charges on both these offences and the appellant was put to trial. 4. The prosecution in support of its case examined Tara Chand Pawar (PW-1), Smt. Sat Pal Kaur (PW-2), Rajiv Sharma (PW-3), Gurmej Singh (PW-4), Daya Singh (PW-5), Subhash Chander Patwari (PW-6), Shiv Dayal Reader (PW-7), Prem Bihari Lal (PW-8), Ram Chander, ASI(PW-9), Shri S.K. Joshi (PW-10) and Shri Hari Ram, DSP (PW-11) and closed its evidence. When the appellant was examined under Section 313 of Criminal Procedure Code, 1973 (for short 'the Cr.P.C.'), he denied the allegations leveled against him and claimed to be innocent.

5. The special Judge, Ambala, by order dated 30.01.1988 convicted and sentenced the appellant under Section 161 of the IPC to undergo rigorous imprisonment for three years and under Section 5(2) of the Act to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/-. Feeling aggrieved by this order, the appellant filed Criminal Appeal No. 83-SB of 1988 in the High Court of Punjab & Haryana at Chandigarh. The High Court by order dated 20.11.2002 dismissed the appeal holding that the appellant was rightly convicted.

6. To establish the charge against the appellant-accused, the prosecution in relation to the demand and receipt of the illegal gratification, had examined mainly four witnesses; Sat Pal Kaur (PW-2), Gurmej Singh (PW-4), S.K. Joshi (PW-10) and Hari Singh (PW-11). Out of these material witnesses, PW-2 and PW-4 both were declared hostile and were cross-examined by the public prosecutor. Leave to that effect was granted by the Court. PW-2 had stated in her examination-inchief that she apprehended that appellant wanted illegal gratification and for that reason he was not recording the change in Khasra Girdawaris in favour of her mother. PW-2 further stated that she had learnt from co-villagers that Rs.300-400/- as reward was to be given for such a job. She had contacted the police thereafter. She was confronted with her statement EX.PB recorded under Section 161 of the IPC wherein she had stated that Banarsi Dass had demanded illegal gratification of Rs. 400/- from her in the presence of Gumrej Singh. She also stated that she had signed the memos but she did not read them as she was quite puzzled. In the cross-examination, she also stated that "earlier to the day of the raid, Banarsi Dass has demanded Rs. 900/-. It is correct that accused Banarsi Dass had apologized to me and I have accepted his apology". She further volunteered, "it is my humble request to the Court that the Court should also accept the apology of the accused who has got small children to maintain". Thereafter, she proceeded to state that she had paid a sum of Rs. 400/- to the accused for recording girdwari of the current crop in favour of the mother. In her cross-examination, it has also been stated that when she placed Rs. 400/- on his table, the accused had already recorded girdawari in favour of Jit Singh and others and the same had been verified by the Kanungo. She (PW-2) had an altercation with the accused as to why he had recorded Girdwari in favour of Jit Singh and others. Then she placed Rs. 400/- on the table wherefrom the same was picked up by the police. Gumrej Singh (PW-4), the other witness who was also declared hostile and who was subjected to cross-examination by the prosecution, stated that the appellant

had not accepted or demanded any money from Sat Pal Kaur in his presence. He denied that he had made any statement to the police (Ex.PW-3/A). His statement under Section 161 of the IPC was completely denied by him. According to him, he had taken Sat Pal Kaur to Chachhrauli but he remained sitting in the car, 100 yards away from Patwarkhana and he did not know the accused as he hailed from Chachhrauli. 7. Witnesses PW-10 and PW-11 are the Senior Officers of the Administration and the Police. The complainant complained to them about the appellant demanding bribe from her for correcting the Khasra Girdawaris in the name of the mother of PW-2. A trap was planned. In furtherance to which PW-2 had gone to the Patwar-khana and gave Rs. 400/- (the signed notes of Rs.100/- each) upon which the Gurmej Singh was supposed to have informed the police, about the acceptance of money by the appellant. Thereafter, the police came to the spot and recovered the money from the front left pocket of the appellant's shirt. The search of the appellant was conducted by the police and money was recovered (Ex.P1 to Ex.P4) for which memo Ex.PD. was prepared. The tainted notes, shirt and even the money otherwise recovered from the pocket of the appellant were taken into custody vide these exhibits.

8. It is apparent that PW-10 and PW-11 were not present in the Patwar-khana when the money was demanded and accepted by the appellant. The prosecution primarily relied on the two witnesses PW-2 and PW-4 respectively who were declared hostile. Certainly the prosecution can rely upon the statements of these witnesses and list their depositions made before the Court by having those statements corroborated or contradicted, as the case may be, by their earlier statements recorded under Section 161 of the I.P.C. At this stage, the finding recorded by the High Court can usefully be referred to:

> "PW-2 Smt. Sat Pal Kaur has clearly stated that accused has informed her that Girdawari of her mother's land had been recorded in the name of Jit Singh and others as tenants. She had contacted Jit Singh and others and obtained no objection from them. The said application Ex.PA was forwarded by her through her servant to the Tehsildar. She had contacted Banarsi Dass and requested him to change the said girdawari in her mother's name, who told her that he will do so at the time of recording of khasra girdawari in the next season. She apprehended that he wanted illegal gratification and for that reason, he was not recording the change of girdawari in the name of her mother. She contacted the Police and informed them about the matter. She had visited Patwar-khana, where Banarsi Dass was present and placed Rs. 400/- on his table. In the meantime, police party came and seized that money. She was declared a hostile witness. In cross- examination, she admitted her statement made under Section 161 IPC. She also admitted that Gurmej Singh was not present when Banarsi Dass accused had made a demand of illegal gratification of Rs. 400/-. She admitted that it is correct that Banarsi Dass accused has apologized from her and she had accepted his apology. She further volunteered that it is her humble request to the Court that the Court should also accept the apology of the accused. The police party was sitting in the Thana. So. when the recovery was made by the police from the appellant- accused, somebody must have informed the police about the handing of the bribe and Gurmej Singh was the only person. Shri S.K. Joshi, Sub-Divisional Magistrate, Kalka has appeared as PW10. He has searched Smt. Satpal Kaur and her driver. Gurmej Singh visited the Police Station in the afternoon and complained that Shri Banarsi Dass Patwari Halqa has demanded Rs. 900/- for the correction of Khasra girdawari. Shri Hari Singh recorded the statement of Sat Pal Kaur and made search of her person and after the search, Rs.400/-, which were signed by him and Shri Hari Singh, were given to her. The DSP had prepared memo Ex-PC which was signed by him. He along with DSP, Smt. Sat Pal Kaur and Gurmej Singh went to Police Station Chachrauli and then went to Patwarkhana. Gurmej Singh was directed to come to the Police Station in case the accused accepted the money. After receiving message, they raided Patwar- khana. Accused was found sitting in the Patwar-khana and his person was searched by the DSP in his presence and currency notes Ex.P1 to Ex.P4 were recovered from the front pocket of the shirt, which the accused was wearing. These were taken into possession vide memo Ex.PD. Hari Singh also supported the same. So, if merely shadow witness had turned hostile, accused-appellant cannot be acquitted. Mr. S.K.Joshi (PW-10) can also be considered as a witness of recovery as currencynotes handed over to Smt. Sat Pal Kaur after being signed by PW-10 and PW-11 vide memo Ex.PC was recovered by DSP (PW- 11) vide memo Ex.PD in the presence of Sat Pal Kaur PW-2 and Shri S.K. Joshi, PW-10".

9. The above findings recorded by the High Court show that the Court relied upon the statements of PW-10 and PW-11. It is further noticed that recovery of currency notes Ex. P-1 to P-4 from the shirt pocket of the accused, examined in light of Ex. PC and PD, there was sufficient evidence to record the finding of guilt against the accused. The Court remained uninfluenced by the fact that the shadow witness had turned hostile, as it was the opinion of the Court that recovery witnesses fully satisfied the requisite ingredients. We must notice that the High Court has fallen in error in so far as it has drawn the inference of demand and receipt of the illegal gratification from the fact that the money was recovered from the accused.

10. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstancial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard. So far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. Applying these tests to the facts of the present case, P-10 and P-11 were neither the eye- witnesses to the demand nor to the acceptance of money by the accused from Smt. Sat Pal Kaur (PW-2). It is unfortunate but true that both PW-2 and PW-4 made statements before the Court which were quite different from the one made by them before the police during the investigation under Section 161 of the IPC. Gurmej Singh (PW-4) completely denied the incident and refused to acknowledge that the sum of Rs. 900/- only was demanded by the accused from PW-2 in his presence and that the money was accepted in the Patwar-khana by the accused. PW-2 obviously has not stated the complete truth before the Court. Though after being declared hostile in her cross-examination she has supported some part of the prosecution case, but she has virtually denied the essential ingredients to bring home the guilt of the accused either under Section 5 (2) of the Act or under Section 161 of the IPC. She seems to have forgiven the accused for making such a demand and made such a statement before the Court that the Court should also ignore the offence.

We are not and should not even be taken to have suggested that PW-10 and PW-11 have not made correct statement before the Court or that the Court has disbelieved any part of their statement. But, fact of the matter remains that their statement with regard to demand and acceptance is based on hearsay i.e. what was told to them together by PW-2 and even by PW-4 at that stage. The money was certainly recovered from the pocket of the accused vide memo Ex. PD. We, therefore, do not accept the contention on behalf of the accused that the amount was not recovered and the recovery is improper in law. Ex. P-D has duly been attested by witnesses. Thus, it cannot be said that the recovery from the pocket of the accused is unsustainable in law and is of no consequence.

11. To constitute an offence under Section 161 of the IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5 (1) (d) of the Act, the demand and acceptance of the money for doing a favour in discharge of its official duties is sine qua non to the conviction of the accused. In the case of M.K. Harshan v. State of Kerala3 [1996 (11) SCC 720], this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under :

> ".....It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1) (d) of the Act, particularly when the version of the accused appears to be probable".

12. Reliance on behalf of the appellant was placed upon the judgment of this Court in the case of C.M. Girish Babu (supra) where in the facts of the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive evidence for demand and acceptance. The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the accused of the evidence on record, the Court in para 18 and 20 of the judgment held as under :

> "18. In Suraj Mal v. State (Delhi Admn.) [1979 (4) SCC 725] this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.
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> 20. A three-Judge Bench in M. Narsinga Rao v. State of A.P.[2001 (1) SCC 691: SCC (Cri) 258] while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p. 700, para 24)
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> "24. ... we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra [2000 (8) SCC 571]).The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (Madhukar case, SCC p. 577, para 12)
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> '12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

13. In fact, the above principle is no way derivative but is a reiteration of the principle enunciated by this Court in Suraj Mal case (supra), where the Court had held that mere recovery by itself cannot prove the charge of prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money. Reference can also be made to the judgment of this Court in Sita Ram v. State of Rajasthan4 [1975 (2) SCC 227], where similar view was taken.

14. The case of C.M. Girish Babu (supra) was registered under the Prevention of Corruption Act, 1988, Section 7 of which is in pari materia with Section 5 of the Prevention of Corruption Act, 1947. Section 20 of the 1988 Act raises a rebuttable presumption where the public servant accepts gratification other than legal remuneration, which presumption is absent in the 1947 Act. Despite this, the Court followed the principle that mere recovery of tainted money divorced from the circumstances under which it is paid would not be sufficient to convict the accused despite presumption and, in fact, acquitted the accused in that case.

15. In light of the above principles enunciated by the Court now we may examine the evidence on record with specific emphasis to the demand and acceptance of illegal gratification for changing Khasra Girdawaris in the name of mother of Smt. Sat Pal Kaur (PW-2). Besides, the part of her statement which we have aforenoticed, she also stated that she had never made the statement Ex. PW-3/A before the police. Even on the memos which have been signed by her she stated that she had signed them without reading the same. She was educated up to 4th Class only. In her cross-examination she does support a few facts of the prosecution but on the material circumstance/ fact she has completely taken a somersault while making a statement before the Court. Gurmej Singh, besides disowning his statement under Section 161 of the IPC in its entirety, stated that he was not present either when the bribe was demanded or when the same was accepted. The accused, when was put to incriminating evidence

against him in terms of Section 313 of the Cr.P.C., did admit that PW-2 (complainant) had come to the office of Patwar-khana with the police but stated that no other persons had accompanied them. PW-2 insisted on chaning the Khasra Girdawaris and after she got annoyed, she got him falsely implicated. Money alleged to have been recovered from him, in fact, was lying on the table without his knowledge or demand. PW-2 has also stated in her statement that she kept the money on the table after some altercation with the accused. In these circumstances, it is difficult for the Court to hold that the prosecution has established the offence against the accused, that he accepted the money voluntarily as illegal gratification. The effect of the statement of PW-2 and PW-4 has a substantial adverse effect on the case of the prosecution. There are other witnesses examined by the prosecution which are formal witnesses and in the absence of support of PW-2 and PW-4, the prosecution has not been able to establish the charge (demand and acceptance of illegal gratification by the accused), thus entitling him to some benefit on the technical ground of two witnesses i.e. PW-2 and PW-4, turning hostile.

16. In light of the statement of two hostile witnesses PW-2 and PW-4, the demand and the acceptance of illegal gratification alleged to have been received by the accused for favouring PW- 2 by recording the Khasra Girdawaris in the name of her mother cannot be said to have been proved by the prosecution in accordance with law. We make it clear that it is only for the two witnesses having turned hostile and they having denied their statement made under Section 161 of the I.P.C. despite confrontation, that the accused may be entitled to accquital on technical ground. But, in no way we express the opinion that the statement of witnesses including official witnesses PW-10 and PW-11, are not accepted by the Court. Similarly, we have no reason to disbelieve the recovery of Ex. P-1 to P-4 vide Ex. P-D.

17. In the light of this we are of the considered view that the judgment of the High Court convicting the accused for the offences with which the accused was charged cannot be sustained in law.

18. For the reasons aforerecorded and particularly in view of the fact that two witnesses turned hostile, giving the benefit of doubt on technical ground to the accused, we hereby set aside the judgement of the High Court and acquit the accused of both the charges i.e. under Section 161 of the IPC and under Section 5 (2) of the Act. The appeal is accordingly allowed leaving the parties to bear their own costs. Bail bonds, if any, furnished by the appellant be released.

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KRISHAN CHANDER VERSUS STATE OF DELHI

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 14 OF 2016
(Arising out of SLP (Crl.) No.703 of 2015)
(2016) 3 SCC 108

Krishan Chander ... Appellant

Versus

State of Delhi ... Respondent

The Supreme Court postulated on the essential factors for determining whether bribery, as contemplated under Section 7 read with Section 13 of the act, has been committed. The court held that in order to prove an offence under these sections, it is necessary to establish that the public servant both demanded and accepted the bribe.

The Apex Court also dealt with the evidentiary value of a hostile witness's evidence and held that the evidence of a witness cannot be ignored in its entirety merely because such witness has become hostile.

JUDGMENT

V. GOPALA GOWDA, J.

Leave granted.

2. This criminal appeal is directed against the impugned judgment and order dated 7.11.2014 passed by the High Court of Delhi at New Delhi in Crl. Appeal No. 634 of 2008 wherein the High Court has dismissed the appeal filed by the appellant and upheld the order of conviction and sentence passed against the appellant by the court of Special Judge, Delhi (for short the "trial court") in CC No. 21 of 2005. The trial court convicted the appellant vide its judgment dated 14.7.2008 for the offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short "the PC Act") and vide order dated 15.7.2008 sentenced him to undergo rigorous imprisonment for two years with fine of Rs.5,000/- for the offence punishable under Section 7 of the PC Act and in default to undergo simple imprisonment for two months. For the offences punishable under Section 13(2) of the PC Act, he was further sentenced to undergo rigorous imprisonment for two years with fine of Rs.5,000/- and in default to undergo simple imprisonment for two months. Both the sentences imposed upon him for the above said offences were to run concurrently.

3. Brief facts of the case are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:-

4. The prosecution case before the trial court was that on 29.7.2004, an FIR No. 662 of 2004 was registered at Police Station, Nangloi, Delhi under Sections 279 and 337 of Indian Penal Code (for short "IPC") against one Krishan Kumar (PW-9), the brother of the complainant-Jai Bhagwan (PW-2). Krishan Kumar was arrested on 29.7.2004 in connection with the alleged offences referred to in the above said FIR.

5. The complainant-Jai Bhagwan (PW-2) had approached Assistant Sub-Inspector (ASI) Ranbir Singh (PW-11), the Investigating Officer of the said case for release of Krishan Kumar on bail. The Investigating Officer is stated to have accepted the bail bond for release of Krishan Kumar and directed the appellant (a constable at the said Police Station) to release him on bail in connection with the alleged offences referred to supra.

6. The appellant alleged to have demanded a bribe of Rs.5000/- from the complainant-Jai Bhagwan for releasing his brother Krishan Kumar on bail. It is alleged that under duress, complainant-Jai Bhagwan (PW-2) paid Rs.4,000/- as bribe to the appellant. Thereafter, Krishan Kumar (PW-9) was released on bail and the appellant asked the complainant-Jai Bhagwan to pay him the balance amount of Rs.1,000/- on 30.7.2004 between 6.00 p.m. and 7.00 p.m. at Ditchau Kalan Bus Stand, Najafgarh.

7. The complainant-Jai Bhagwan (PW-2) approached the office of Anti Corruption Branch on 30.07.2004 and made a written complaint regarding the demand of bribe by the appellant from him. The said written complaint was recorded by Sunder Dev (PW-12) in presence of Anoop Kumar Verma (PW-6).

8. The complainant-Jai Bhagwan took with him two Government Currency notes (for short the "GC notes") in the denomination of Rs.500/- each and handed over the same to Inspector Sunder Dev (PW-12) who noted down the serial numbers of the said GC notes. Thereafter, phenolphthalein powder was applied to the said GC notes and recorded in the pre-raid proceedings and its effect was demonstrated. The tainted GC notes were given to the complainant-Jai Bhagwan, who kept the same in the left pocket of his shirt.

9. As per the instructions, panch witness- Anoop Kumar Verma (PW-6) was directed to remain close to complainant-Jai Bhagwan to overhear the conversation between the complainant-Jai Bhagwan and the appellant. He was further instructed to give a signal to the raiding party by hurling his hand over his head when bribe amount had actually been given by the complainant-Jai Bhagwan.

10. On 30.07.2004, at around 4.30 p.m., the complainant-Jai Bhagwan, panch witness- Anoop Kumar Verma, Inspector Sunder Dev (PW-12), Sub-Inspector B.S. Yadav (PW-10) and Constable Rajiv Kumar (PW-5) along with other members of the raiding party left for Ditchau Kalan Bus Stand in a government vehicle and reached the spot at around 5.45 p.m. At around 7.00 p.m., appellant reached the spot and had conversation with complainant-Jai Bhagwan. Both the complainant and the appellant moved towards a water trolley, had water and again continued their conversation. Panch witness-Anoop Kumar Verma followed them. After sometime, the complainant-Jai Bhagwan took out the tainted GC notes from the left pocket of his shirt and gave them to the appellant which he took with his right hand and kept the same in the left pocket of his shirt. Soon after the said transaction, panch witness- Anoop Kumar Verma gave the pre-determined signal to the raiding team upon which the team rushed to the spot.

11. Anoop Kumar Verma informed the raiding team that the appellant had demanded and accepted the bribe money of Rs.1000/- from the complainant-Jai Bhagwan. Inspector Sunder Dev introduced himself as Inspector from Anti Corruption Branch to the appellant upon which he immediately took out the tainted GC notes from the pocket of his shirt with his left hand and threw the same on the ground. The said GC notes were then picked up from the ground by panch witness-Anoop Kumar Verma on the instructions of Inspector-Sunder Dev. The serial numbers of the recovered GC notes were matched with those noted in the pre-raid proceedings. The wash of right and left hand of the appellant as well as the wash of left pocket of his shirt was taken in colorless solution of sodium carbonate which turned pink. The solution was transferred into clean glass bottles which were sealed and labeled. Thereafter, the appellant was arrested and FIR No. 36 of 2004 was registered against him for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the PC Act.

12. The learned Special Judge after examining the evidence on record convicted the appellant vide its judgment dated 14.7.2008 for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act and vide order dated 15.7.2008 sentenced him to undergo rigorous imprisonment for two years with fine of Rs.5,000/- for the offence punishable under Section 7 of the PC Act and in default to undergo simple imprisonment for two months. For the offence punishable under Section 13(2) of the PC Act he was further sentenced to undergo rigorous imprisonment for two years with fine of Rs.5,000/- and in default to undergo simple imprisonment for two months. Both the sentences imposed upon him for the above said offences were to run concurrently.

13. Aggrieved by the decision of the learned Special Judge, the appellant filed Crl. Appeal No.634 of 2008 before the High Court of Delhi at New Delhi urging various grounds. The High Court vide its judgment and order dated 07.11.2014 upheld the decision of the learned Special Judge. The correctness of the same is questioned in this appeal urging various grounds.

14. Mr. Sidharth Luthra, the learned senior counsel on behalf of the appellant contended that the High Court has failed to appreciate the fact that Krishan Kumar (PW-9) at the time of occurrence was already released on bail in connection with the case registered in FIR No. 662 of 2004 by the appellant as per the directions of Ranbir Singh, ASI (PW-11). Thus, the demand of bribe money of Rs.1000/- by the appellant from the complainant-Jai Bhagwan is highly improbable.

15. It was further contended by him that the demand of illegal gratification by the accused is a sine qua non for constitution of an offence under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. A mere production of the tainted money recovered from the appellant along with positive result of phenolphthalein test, sans the proof of demand of bribe is not enough to establish the guilt of the charge made against appellant. In support of the above legal submission, he placed reliance upon the judgments of this Court in the cases of **B. Jayaraj v. State of Andhra Pradesh**[1], **A. Subair v. State of Kerala**[2] and **State of Kerala & Anr. v. C.P. Rao**[3], wherein this Court, after interpreting Sections 7 and 13(1)(d) of the PC Act, has held that the demand of bribe money made by the accused in a corruption case is a sine qua non to punish him for the above said offences. The learned senior counsel has also placed reliance upon the three Judge Bench decision of this Court in the case of **P. Satyanarayana Murthy v. The Dist. Inspector of Police, State of Andhra Pradesh & Anr.**[4], in which I was one of the companion Judges, wherein this Court, after referring to the aforesaid two Judge Bench judgments on the question of necessity of demand of bribe money by the accused, has reiterated the view stated supra.

16. It was further contended by him that the High Court has failed to appreciate the fact that the complainant-Jai Bhagwan turned hostile during his examination before the trial court and did not support the prosecution case that the demand of Rs.1000/- as illegal gratification was made by the appellant from him for release of Krishna Kumar (PW-2) on bail.

17. It was further contended by the learned senior counsel that the High Court has failed to re- appreciate the evidence on record that Panch witness- Anoop Kumar Verma was directed by the official of Anti Corruption Branch to remain close to the complainant-Jai Bhagwan in order to hear the conversation and see the transaction between the appellant and the complainant-Jai Bhagwan. He further submitted that the learned Special Judge as well as the High Court have arrived at an erroneous finding without considering the fact that the appellant after reaching the spot walked with the complainant-Jai Bhagwan for about 15 to 20 steps while conversing with each other. Thereafter, both moved towards water trolley and after taking water proceeded ahead.

Around that time the complainant-Jai Bhagwan took out the tainted GC notes from his pocket and gave it to the appellant. From the said evidence, it is clear that panch witness- Anoop Kumar Verma did not hear the conversation between the appellant and the complainant-Jai Bhagwan. Therefore, there was no occasion to reach the conclusion that the appellant demanded any bribe from the complainant-Jai Bhagwan.

18. He further contended that Ranbir Singh, ASI who was Investigating Officer in the case in which the arrest of Krishan Kumar was made, accepted his bail bond and directed the appellant to release him. It is an admitted fact that Krishan Kumar was released on bail in the presence of and as per the directions of Ranbir Singh, ASI. Therefore, there was no occasion for the appellant to demand any bribe money from the complainant-Jai Bhagwan.

19. It was further contended that the High Court has failed to appreciate the fact that the alleged demand and the acceptance of amount of Rs. 1000/- is not corroborated by any independent witness despite the fact that the transaction alleged to have taken in a public place.

20. On the other hand, Mr. P.S. Patwalia, the learned Additional Solicitor General (ASG), on behalf of the respondent-State sought to justify the impugned judgment and order passed by the High Court which is on proper appreciation of evidence on record and it is well reasoned and therefore not vitiated in law. Hence, he would submit that no interference with the same is required by this Court in exercise of its appellate jurisdiction.

21. He has submitted that the High Court has rightly re-appreciated the evidence of the complainant-Jai Bhagwan and other prosecution witnesses and concurred with the findings recorded on the charges.

Further it was submitted by him that the trial court while appreciating the evidence of the complainant- Jai Bhagwan relied upon the decision of this Court in the case of **Sat Paul v. Delhi Administration**[5], paragraphs 41 and 51 of which decision in recording the finding on the charges against the appellant, are extracted hereunder:

1 (2014) 13 SCC 55
2 (2009) 6 SCC 587
3 (2011) 6 SCC 450
4 (2015) 10 SCC 152
5 AIR 1976 SC 294

> "41. The fallacy underlying this view stems from the assumption that the only purpose of cross-examination of a witness is to discredit him; it ignores the hard truth that another equally important object of cross-examination is to elicit admissions of facts which would help build the case of the cross-examiner. When a party with the leave of the court, confronts his witness with his previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated previously. If the departure from the prior statement is not deliberate but is due to faulty memory or a like cause, there is every possibility of the witness veering round to his former statement. Thus, showing faultness of the memory in the case of such a witness would be another object of cross-examining and contradicting him by a party calling the witness. In short, the rule prohibiting a party to put questions in the manner of cross-examination or in a leading form to his own witness is relaxed not because the witness has already forfeited all right to credit but because from his antipathetic altitude or otherwise, the court feels that for doing justice, his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and searching way.
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> xx xx xx

51. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

22. It was further submitted that the trial court by placing reliance upon the Sat Paul's case (supra) found a part of the complainant-Jai Bhagwan's testimony reliable and held that the demand of bribe money by the appellant from the complainant-Jai Bhagwan to release his brother Krishan Kumar (PW-9) can be said to be proved. He has placed reliance on the following finding and reasons recorded by the trial court, which relevant portion from para 16 reads thus:

> "16…It is true that complainant has not testified entirely in terms of his statement recorded u/s 161 Cr.P.C and he was declared hostile and was cross examined with the leave of the court. But simply because he did not testify strictly as per the prosecution case does not mean that his statement is altogether effaced from the record."

Therefore, he would submit that the decision of the trial court on the charges framed against the appellant is based on proper evaluation of the evidence on record which has been rightly accepted by the High Court. Therefore, the same cannot be termed as erroneous in law and need not be interfered with by this Court in exercise of its appellate jurisdiction.

23. It was further contended by him that though the complainant-Jai Bhagwan turned hostile witness and he has deposed before the trial court by stating that he had inserted the tainted GC notes in the left pocket of appellant's shirt. The trial court has held that evidence of Anoop Kumar Verma and inspector-Sunder Dev have supported the case of the prosecution who have demolished the version given by the complainant- Jai Bhagwan (PW-2) in his examination-in-chief.

24. He has further submitted that as far as proof of demand of Rs.1000/- as illegal gratification made by the appellant is concerned, the trial court has rightly recorded the finding of fact holding that the appellant was caught red-handed accepting the bribe money at the Ditchau Kalan Bus Stand at Najafgarh and this evidence was sufficient enough to show that the complainant-Jai Bhagwan (PW-2) was asked by the appellant to bring the said amount as illegal gratification for having released Krishan Kumar (PW--9) on bail.

25. We have carefully heard Mr. Sidhartha Luthra the learned senior counsel on behalf of appellant and Mr. P.S. Patwalia, the learned Additional Solicitor General on behalf of respondent-State. On the basis of factual and legal aspects of the case and evidence on record produced in the case, it is clear that the High Court has recorded the concurrent findings on the charges framed against the Appellant in the impugned judgment and order. It has also failed to re-appreciate the evidence on record properly and consider the law on the relevant aspect of the case. Therefore, the said findings are not only erroneous in law but also suffer from error in law. Hence, the same is liable to be set aside.

26. We are of the view that as the complainant-Jai Bhagwan in his examination-in-chief before the trial court has categorically stated that it was Ranbir Singh, ASI (PW-11) who demanded Rs.5000/- for release of his brother, Krishan Kumar (PW-9) in connection with the offences registered against him in FIR No.662 of 2004, the trial court has wrongly accepted a part of testimony of the complainant-Jai Bhagwan while recording such findings on the charges to convict the appellant when there is nothing on record to show that it is the appellant who had demanded bribe money from the complainant-Jai Bhagwan. In his examination-in-chief before the trial court, he categorically stated thus :-

> "… …One Police Officer who was in civil uniform, who was the IO of that case, met me in the Police station told me that I would have to spend Rs.5000/- for the bail of my brother… …On the directions of that IO, I had given Rs.4000/- to accused Krishan on account of duress. That IO asked me that he would send accused Krishan to collect balance amount of Rs.1000/- to Najafgarh."

During the trial, the said witness did not support the prosecution version and therefore he was declared as hostile witness and thereafter, he was cross- examined by Mr. Alok Saxena, the learned Additional Public Prosecutor to the following effect:

> "I did not mention in my complaint that one ASI Ranbir Singh asked Constable Krishan Kumar to release my brother and he himself went for some other work and I requested Constable Krishan Kumar to release my brother and he demanded Rs.5000/- from me for releasing my brother (confronted with portion A to A of his complaint Ex. PW2/A… … It is incorrect to suggest that accused Krishan Kumar had demanded Rs.5000/- from me and today I am giving a false exception that one IO had demanded Rs.5000/- from me in order to save the accused… …I did not tell to the police that after receiving signal from the panch witnesses, Raid Officer came near me and challenged the accused that he had taken Rs.1000/- as bribe from me on which accused became perplexed and he took out those treated GC notes from his pocket and threw the same on the ground (confronted with portion B to B of his statement-ExPW-2/H recorded).

He has further stated that:

> "It is wrong to suggest that accused Krishan had accepted bribe from me in his right hand and kept the same in his pocket and after seeing raiding party. It is further wrong to suggest that I am deposing falsely."

The High Court has also erroneously appreciated the same and held thus:

> "23. …As already noticed, has been proved by PW-6 and fully corroborated by PW-12."

27. Adverting to the evidence of Ranbir Singh, ASI (PW-11) who is the Investigation Officer in the above case registered against Krishan Kumar; in his examination-in-chief before the trial court, he stated as under :-

> "… …After getting Sri Kishan medically examined, the accused brought him to PS Nangloi. No surety of Sri Kishan was present in the PS at that time. After about one hour one Jai Bhagwan brother of Sri Kishan came to P.S. Nangloi and presented the bail bond of his brother Sri Krishan. I accepted the bail bond of Sri Kishan at 10.00 pm and gave instruction to the accused to release Sri Kishan. I reported back at P.S. Nangloi at 11.55 pm and made the entry vide DD NO. 29/A dated 29.7.2004. I also recorded about the arrest and release of Sri Kishan in this very DD, although I accepted the surety bond of Sri Kishan in this very DD, although I accepted the surety bond of Sri Kishan at 10.00 PM on 29.7.2004."

From the aforesaid admitted facts stated in his statement of evidence, it is very clear that it was Ranbir Singh, ASI, who directed the appellant to release Krishan Kumar. Therefore, at the time of his releasing on bail, there was no occasion for the appellant to demand bribe money from the complainant- Jai Bhagwan as he was already released on bail in the above criminal case by Ranbir Singh, ASI, (PW-11).

28. We are unable to agree with the above contentions urged by the learned ASG that the complainant-Jai Bhagwan turned hostile witness in the case before the trial court, however, the statement of evidence of Anoop Kumar Verma (PW-6) and inspector-Sunder Dev (PW-12) was sufficient to support the case of the prosecution with regard to acceptance of bribe amount by the appellant from Jai Bhagwan (PW-2). This Court is of the view that whenever a prosecution witness turns hostile his testimony cannot be discarded altogether. In this regard, reliance is placed by the ASG on the decision of this court in the case of **Rabindra Kumar Dey v. State of Orissa**[6]. The relevant para 12 of the aforesaid case reads thus:

> "12. It is also clearly well settled that the mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him an unreliable witness so as to exclude his evidence from consideration altogether. In Bhagwan Singh v. State of Haryana Bhagwati, J., speaking for this Court observed as follows:
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> "The prosecution could have even avoided re- questing for permission to cross-examine the witness under Section 154 of the Evidence Act. But the fact that the court gave permission to the prosecutor to cross-examine his own wit- ness, thus characterising him as, what is de- scribed as a hostile witness, does not com- pletely efface his evidence. The evidence re- mains admissible in the trial and there is no legal bar to base a conviction upon his testi- mony if corroborated by other reliable evi- dence." (emphasis supplied)

However, in the instant case, from the material on record, it is amply clear that the complainant-Jai Bhagwan turned hostile on two important aspects namely, demand and acceptance of bribe by the appellant which is sine qua non for constituting the alleged offence under Sections 7 and 13(1)(d) read with 13(2) of the PC Act convicting the appellant and sentencing him for the period and fine as mentioned above.

29. As far as the evidence of Panch witness- Anoop Kumar Verma (PW-6) is concerned, in his examination- in-chief, he stated thus:

> "…Thereafter, the complainant and the accused walked for 15-20 steps and had some talk with the complainant and the complainant took out those GC notes from his pocket and gave in the right hand of accused which he kept in the left pocket of his shirt…"

Anoop Kumar Verma (PW-6) in his examination-in-chief has not deposed as to the exact conversation that took place between the appellant and the complainant- Jai Bhagwan at the time when he had approached him to give bribe money. He has simply mentioned about "some talk" had taken place between them but has failed to bring to light the factum of demand of bribe money by the appellant from the complainant-Jai Bhagwan. Thus, it is amply clear that panch witness- Anoop Kumar Verma did not hear the conversation between the appellant and the complainant-Jai Bhagwan. Therefore, there was no occasion for both the courts below to reach the conclusion that the appellant demanded any bribe from the complainant-Jai Bhagwan.

30. The Investigation Officer (PW-10) in his evidence, has not at all spoken of the contents of the statement of the complainant-Jai Bhagwan (PW-2), recorded by him under Section 161 of the Cr.P.C. Further, PW-2 in the light of the answers elicited from him in the cross-examination by Public Prosecutor, with regard to the contents of 161 statement which relevant portions are marked in his cross-examination and the said statements were denied by him, the prosecution was required to prove the said statements of the PW-2 through the Investigating Officer to show the fact that PW-2 Jai Bhagwan in his evidence has given contrary statements to the Investigation Officer at the time of investigation and, therefore, his evidence in examination-in-chief has no evidentiary value. The same could have been used by the prosecution after it had strictly complied with Section 145 of the Indian Evidence Act, 1872. Therefore, the I.O. should have spoken to the above statements of PW2 in his evidence to prove that he has contradicted in his earlier Section 161 statements in his evidence and, therefore, his evidence cannot be discarded to prove the prosecution case.

6 (1976) 4 SCC 233

31. It becomes amply clear from the perusal of the evidence of PW-10, I.O. in the case that the same has not been done by the prosecution. Thus, the statements of PW-2 marked from Section 161 of Cr.P.C. in his cross-examination cannot be said to be proved in the case to place reliance upon his evidence to record the findings on the charge. The position of law in this regard is well settled by this Court in the case of **V.K. Mishra v. State of Uttarakhand**[7]. The relevant paras are extracted hereinbelow:

> "16. Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re- examination of the witness if necessary.
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> 17. The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross- examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction.

18. Section 145 of the Evidence Act reads as under:

> '145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.'

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross- examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction." (emphasis laid by this Court)

Thus, the contradiction of evidence of the complainant-Jai Bhagwan (PW-2) does not prove the factum of demand of bribe by the appellant from the complainant-Jai Bhagwan as the statement recorded under Section 161 of Cr.P.C. put to him in his cross- examination was not proved by B.S. Yadav (PW-10) by speaking to those

7 (2015) 9 SCC 588

statements in his evidence and therefore, the evidence of PW-2 is not contradicted and proved his Section 161 statement in the case.

32. Further, the appellant in his examination under Section 313 of Code of Criminal Procedure, 1973 has, inter alia, stated thus:

"Q 4: it is in evidence against you that on 28.07.2004 you demanded Rs. 5000/- as bribe from complainant Jai Bhagwan and you accepted Rs. 4000/- as bribe from him and asked the complainant to bring Rs. 1000/- on 30.07.2004 near Dichau Kalan bus stand, Najafgarh. What you have to say? Ans. It is incorrect.

XXX XXX XXX

Q 14: It is evidence against you that at about 7:00 p.m. you came and you met with complainant and moved towards one water rairi and you demanded and accepted Rs. 1000/- as bribe from the complainant in the presence of panch witness with your right hand and kept the same in left pocket of your shirt. What you have to say ?

Ans. It is incorrect.

Q 15: It is in further evidence against you that in the meantime panch witness gave pre- determined signal and thereafter the members of raiding party came and you were apprehended and panch witness told the raiding officer that you had demanded and accepted the bribe of Rs. 1000/- from the complainant (PW-2) with your right hand and kept the same in your left pocket of your shirt. What you have to say?

Ans. It is incorrect."

33. After a careful reading of the evidence of the complainant-Jai Bhagwan (PW-2), statements made by the appellant in his examination under Section 313 of Cr.P.C. as well as the evidence of Anoop Kumar Verma (PW-6) and inspector-Sunder Dev (PW-12), it is clear that there was no demand of bribe money by the appellant from the complainant-Jai Bhagwan.

34. It is well settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in the case of B. Jayaraj (supra), A. Subair (supra) and P. Satyanarayana Murthy (supra) upon which reliance is rightly placed by the learned senior counsel on behalf of the appellant. The relevant paragraph 7 from B. Jayaraj case (supra) reads thus:

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. and C.M. Girish Babu v. CBI." (emphasis supplied)

In the case of P. Satyanarayana Murthy (supra), it was held by this Court as under:

"21. In State of Kerala and another vs. C.P. Rao, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held

to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d) (i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d) (i)&(ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder." (emphasis supplied)

35. Further, in the case of **Satvir Singh v. State of Delhi**[8], this Court has held thus:

"34. This Court, in K.S. Panduranga case has held that the demand and acceptance of the amount of illegal gratification by the accused is a condition precedent toconstitute an offence, the relevant paragraph in this regard from the abovesaid decision is extracted hereunder: (SCC pp. 740-41, para 39)

"39. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt. In the case at hand, we are disposed to think that the explanation offered by the accused does not deserve any acceptance and, accordingly, we find that the finding recorded on that score by the learned trial Judge and the stamp of (emphasis supplied)

35. The learned Senior Counsel for the appellant has also placed reliance upon the case of Banarsi Dass referred to supra wherein it was held that: (SCC pp. 456-57, para 24)

"24. In M.K. Harshan v. State of Kerala this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para 8)

'8. … It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it

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was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification.'…" (emphasis supplied)

36. In view of the aforesaid reasons, the approach of both the trial court and the High Court in the case is erroneous as both the courts have relied upon the evidence of the prosecution on the aspect of demand of illegal gratification from the complainant-Jai Bhagwan (PW-2) by the appellant though there is no substantive evidence in this regard and the appellant was erroneously convicted for the charges framed against him. The prosecution has failed to prove the factum of demand of bribe money made by the appellant from the complainant-Jai Bhagwan (PW-2), which is the sine qua non for convicting him for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. Thus, the impugned judgment and order of the High Court is not only erroneous but also suffers from error in law and therefore, liable to be set aside.

37. For the reasons stated supra, the impugned judgment and order of the High Court as well as the trial court are set aside. The appeal is allowed. The Jail Superintendent is directed to release the appellant forthwith from the Jail if he is not required in connection with any other case. The Registry is directed to communicate the above portion of the order to the concerned Jail Superintendent to comply with the directions issued to him.

… …

CJI. [T.S. THAKUR]

… …

J. [V. GOPALA GOWDA]

New Delhi, January 6, 2016

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MANZOOR ALI KHAN VERSUS UNION OF INDIA & ORS.

SUPREME COURT OF INDIA

WRIT PETITION (C) NO. 305 OF 2007
(2015) 2 SCC 33

Manzoor Ali Khan - Petitioners
Versus
Union of India & Ors. ... Respondent(s)

Coram : Hon'ble Mr. Justice T.S. THAKUR, Hon'ble Mr. Justice ADARSH KUMAR GOEL

Decided On : 06-08-2014

Section 19 of the P.C. Act is constitutional- Mere possibility of its abuse cannot be a ground to declare it unconstitutional.

Held

- *Requirement of sanction has salutary object of protecting an innocent public servant against unwarranted and mala fide prosecution. Undoubtedly, there can be no tolerance to corruption which undermines core constitutional values of justice, equality, liberty and fraternity. At the same time, need to prosecute and punish the corrupt is no ground to deny protection to the honest. Mere possibility of abuse cannot be a ground to declare a provision, otherwise valid, to be unconstitutional. The exercise of power has to be regulated to effectuate the purpose of law. The matter has already been dealt with in various decisions of this Court.*

Decision on the issue of sanction to be taken expeditiously

Held

- *While it is not possible to hold that the requirement of sanction in unconstitutional, the competent authority has to take a decision on the issue of sanction expeditiously as already observed. A fine balance has to be maintained between need to protect a public servant against mala fide prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other hand.*

JUDGMENT:

Adarsh Kumar Goel, J.

1. This petition, by way of public interest litigation, seeks direction to declare Section 19 of the Prevention of Corruption Act, 1988 ("PC Act") unconstitutional and to direct prosecution of all cases registered and investigated under the provisions of PC Act against the politicians, M.L.As, M.Ps and Government officials, without sanction as required under Section 19 of the PC Act.

2. According to the averments in the writ petition, the petitioner is a practising advocate in the State of Jammu & Kashmir. In the said State, several Government officials have been charged for corruption but in the absence of requisite sanction, they could not be prosecuted. Referring to several instances including those noticed by this Court in various orders, it is submitted that the provision for sanction as a condition precedent for prosecution is being used by the Government of India and the State Governments to protect dishonest and corrupt politicians and Government officials. The discretion to grant sanction has been misused.

3. The petition refers to various orders of this Court where incumbents were indicted but not prosecuted for want of sanction. In Common Cause, a registered Society vs. Union of India & Ors. (1996) 6 SCC 593, Captain Satish Sharma, the then Minister for Petroleum and Natural Gas was held to have acted in arbitrary manner in allotting petrol pumps but since sanction was refused, he could not be prosecuted. In Shiv Sagar Tiwari vs. Union of India & Ors. (1996) 6 SCC 599, Smt. Shiela Kaul, the then Minister for Housing and Urban Development, Government of India was indicted for making arbitrary, mala fide and unconstitutional allotments but still she could not be prosecuted. In M.C. Mehta (Taj Corridor Scam) vs. Union of India & Ors., (2007) 1 SCC 110, Ms. Mayawati, the then Chief Minister of U.P. and Shri Nasimuddin Siddiqui, the then Minister for Environment,

U.P. were indicted and allegations against them were noticed but they could not be prosecuted in the absence of sanction. It is further stated that in Prakash Singh Badal & Anr. vs. State of Punjab & Ors., 2007 (1) SCC 1, Lalu Prasad @ Lalu Prasad Yadav vs. State of Bihar Thr. CBI(AHD) Patna 2007 (1) SCC 49 and K. Karunakaran vs. State of Kerala 2007 (1) SCC 59, validity of requirement of sanction was not gone into on the ground of absence of challenge to its validity. In Shivajirao Nilangekar Patil vs. Mahesh Madhav Gosavi (Dr.) & Ors. (1987) 1 SCC 227, this Court noticed that there was a steady decline of public standards and morals. It was necessary to cleanse public life even before cleaning the physical atmosphere. The provision for sanction under the PC Act confers unguided and arbitrary discretion on the Government to grant or not to grant sanction to prosecute corrupt and dishonest politicians, M.Ps, M.L.As and Government officials.

4. In response to the notice issued by this Court, affidavits have been filed by several State Governments and Union Territories but no counter affidavit has been filed by the Union of India. The stand taken in all the affidavits is almost identical. According to the said stand, the object of Section 19 of the PC Act is to protect public servants against irresponsible, frivolous and vexatious proceedings for acts performed in good faith in the discharge of their official duties and to protect them from unnecessary harassment of legal proceedings arising out of unfounded and baseless complaints. In the absence of such a provision, the public servant may not be inclined to offer his/her free and frank opinion and may not be able to function freely.

5. We have heard Mr. D.K. Garg, learned counsel for the petitioner and Mr. P.S. Narasimha, learned Additional Solicitor General for the Union of India and learned counsel for various States.

6. Section 19 of the PC Act is as follows:-

"19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

7. Question for consideration is whether Section 19 of the PC Act is unconstitutional and whether any further direction is called for in public interest and for enforcement or fundamental rights?

8. The issue raised in this petition is no longer res integra. Requirement of sanction has salutary object of protecting an innocent public servant against unwarranted and mala fide prosecution. Undoubtedly, there can be no tolerance to corruption which undermines core constitutional values of justice, equality, liberty and fraternity. At the same time, need to prosecute and punish the corrupt is no ground to deny protection to the honest. Mere possibility of abuse cannot be a ground to declare a provision, otherwise valid, to be unconstitutional. The exercise of power has to be regulated to effectuate the purpose of law. The matter has already been dealt with in various decisions of this Court.

9. In Vineet Narain & Ors. vs. Union of India & Anr. (1996) 2 SCC 199, this Court observed in paragraph 3 as follows:

"3. The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: "Be you ever so high, the law is above you." Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies."

10. Again in a later order in the same case, i.e., Vineet Narain & Ors. vs. Union of India & Anr., reported in (1998) 1 SCC 226, it was observed as under:

"55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

56. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: R. v. Secy. of State for Foreign and Commonwealth Affairs, 1995 (1) WLR 386.

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15. Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office."

11. In a recent judgment of this Court in Subramanian Swamy vs. Manmohan Singh & Anr., (2012) 3 SCC 64, the question for consideration was whether a private citizen has locus to prosecute a public servant and to obtain sanction and how an application for sanction was to be dealt with. It was held that any application for sanction sought even by a private citizen must be looked into expeditiously and decided as per the observations of this Court in Vineet Narain case (supra) and guidelines framed by the CVC which were circulated vide Office Order No. 31/5/05 dated 12.05.2005. The relevant clauses have been quoted in the said judgment. In paragraphs 30, 33, 49, 50 of the leading judgment, it was observed:

"30. While dealing with the issue relating to maintainability of a private complaint, the Constitution Bench observed: (A.R. Antulay vs. Ramdas Sriniwas Nayak and Anr. (1984) 2 SCC 500, para 6) "6. It is a well-recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. Numerous statutory provisions, can be referred to in support of this legal position such as (i) Section 187-A of the Sea Customs Act, 1878 (ii) Section 97 of the Gold (Control) Act, 1968 (iii) Section 6 of the Imports and Exports (Control) Act, 1947 (iv) Section 271 and Section 279 of the Income Tax Act, 1961 (v) Section 61 of the Foreign Exchange Regulation Act, 1973, (vi) Section 621 of the Companies Act, 1956 and (vii) Section 77 of the Electricity (Supply) Act, 1948. This list is only illustrative and not exhaustive. While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 CrPC. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force ... is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straitjacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a farfetched implication, cannot be a substitute for an express statutory provision." (emphasis supplied)

33. In view of the aforesaid judgment of the Constitution Bench in Antulay case, it must be held that the appellant has the right to file a complaint for prosecution of Respondent 2 in respect of the offences allegedly committed by him under the 1988 Act.

49. CVC, after taking note of the judgment of the Punjab and Haryana High Court in Jagjit Singh v. State of Punjab, State of Bihar v. P.P. Sharma, Supt. of Police (CBI) v. Deepak Chowdhary, framed guidelines which were circulated vide Office Order No. 31/5/05 dated 12-5¬2005. The relevant clauses of the guidelines are extracted below:

"2 (i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would prima facie constitute the offence.

(ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the sanctioning authority, by asking the IO to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.

(vii) However, if in any case, the sanctioning authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind properly, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

(viii) If the sanctioning authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the sanctioning authority to adhere to the time-limit allowed by the Supreme Court in Vineet Narain case."

50. The aforementioned guidelines are in conformity with the law laid down by this Court that while considering the issue regarding grant or refusal of sanction, the only thing which the competent authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The competent authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true."

In concurring judgment, it was further observed:

"68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the 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.

70. The learned Attorney General in the course of his submission fairly admitted before us that out of the total 319 requests for sanction, in respect of 126 of such requests, sanction is awaited. Therefore,

in more than one-third cases of request for prosecution in corruption cases against public servants, sanctions have not been accorded. The aforesaid scenario raises very important constitutional issues as well as some questions relating to interpretation of such sanctioning provision and also the role that an independent judiciary has to play in maintaining the Rule of Law and common man's faith in the justice-delivering system. Both the Rule of Law and equality before law are cardinal questions (sic principles) in our constitutional laws as also in international law and in this context the role of the judiciary is very vital. In his famous treatise on Administrative Law, Prof. Wade while elaborating the concept of the Rule of Law referred to the opinion of Lord Griffiths which runs as follows:

> "... the judiciary accepts a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law." [See R. v. Horseferry Road Magistrates' Court, ex p Bennett, AC at p. 62 A.]

I am in respectful agreement with the aforesaid principle.

74. Keeping those principles in mind, as we must, if we look at Section 19 of the PC Act which bars a court from taking cognizance of cases of corruption against a public servant under Sections 7, 10, 11, 13 and 15 of the Act, unless the Central or the State Government, as the case may be, has accorded sanction, virtually imposes fetters on private citizens and also on prosecutors from approaching court against corrupt public servants. These protections are not available to other citizens. Public servants are treated as a special class of persons enjoying the said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was extended in public interest cannot become a shield to protect corrupt officials. These provisions being exceptions to the equality provision of Article 14 are analogous to the provisions of protective discrimination and these protections must be construed very narrowly. These procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption.

75. Therefore, in every case where an application is made to an appropriate authority for grant of prosecution in connection with an offence under the PC Act it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue without being influenced by any extraneous consideration. In doing so, the authority must make a conscious effort to ensure the Rule of Law and cause of justice is advanced. In considering the question of granting or refusing such sanction, the authority is answerable to law and law alone. Therefore, the requirement to take the decision with a reasonable dispatch is of the essence in such a situation. Delay in granting sanction proposal thwarts a very valid social purpose, namely, the purpose of a speedy trial with the requirement to bring the culprit to book. Therefore, in this case the right of the sanctioning authority, while either sanctioning or refusing to grant sanction, is coupled with a duty.

76. The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of the Rule of Law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecutions and is adversely viewed in public mind that in the name of considering a prayer for sanction, a protection is given to a corrupt public official as a quid pro quo for services rendered by the public official in the past or may be in the future and the sanctioning authority and the corrupt officials were or are partners in the same misdeeds. I may hasten to add that this may not be the factual position in this (sic case) but the general demoralising effect of such a popular perception is profound and pernicious.

77. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny and determination of the allegations against corrupt official and thus the legitimacy of the judicial institutions is eroded. It, thus, deprives a citizen of his legitimate and fundamental right to get justice by setting the criminal law in motion and thereby frustrates his right to access judicial remedy which is a constitutionally protected right. In this connection, if we look at Section

19 of the PC Act, we find that no time-limit is mentioned therein. This has virtually armed the sanctioning authority with unbridled power which has often resulted in protecting the guilty and perpetuating criminality and injustice in society.

79. Article 14 must be construed as a guarantee against uncanalised and arbitrary power. Therefore, the absence of any time-limit in granting sanction in Section 19 of the PC Act is not in consonance with the requirement of the due process of law which has been read into our Constitution by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India (1978) 1 SCC 248.

80. I may not be understood to have expressed any doubt about the constitutional validity of Section 19 of the PC Act, but in my judgment the power under Section 19 of the PC Act must be reasonably exercised. In my judgment Parliament and the appropriate authority must consider restructuring Section 19 of the PC Act in such a manner as to make it consonant with reason, justice and fair play.

81. In my view, Parliament should consider the constitutional imperative of Article 14 enshrining the Rule of Law wherein "due process of law" has been read into by introducing a time- limit in Section 19 of the PC Act, 1988 for its working in a reasonable manner. Parliament may, in my opinion, consider the following guidelines:

(a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.

(c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/ complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit."

The above observations fully cover the issue raised in this petition.

12. Thus while it is not possible to hold that the requirement of sanction is unconstitutional, the competent authority has to take a decision on the issue of sanction expeditiously as already observed. A fine balance has to be maintained between need to protect a public servant against mala fide prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other hand.

13. In view of the law laid down by this Court, no further directions are necessary.

14. The writ petition is disposed of.

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STATE OF MAHARASHTRA THROUGH C.B.I VERSUS MAHESH G. JAIN

SUPREME COURT OF INDIA

Criminal Appeal No. 2345 of 2009
(2013) 8 SCC 119

State of Maharashtra Through C.B.I
Versus
Mahesh G. Jain

Coram : B.S. CHAUHAN & DIPAK MISRA, JJ.

Decided on : 28-05-2013

(Question of Law - Whether the HC was justified in refusing grant to file an appeal by the C.B.I. to assaiL the judgment and order of the SpeciaL Judge whereby the Court had acquitted Respondent 1 u/s 7, 13 (1) (d) r/w S 2 of the P.C. Act, 1988 principally on the foundation that the sanction granted by the competent authority was defective and illegal as there was non-appLication of mind which would show lack of satisfaction)

Satisfaction of the sanctioning authority is essential to validate an order granting sanction.

Held

Grant of sanction is irrefutably a sacrosanct act and is intended to provide safeguard to a public servant against frivolous and vexatious litigations. Satisfaction of the sanctioning authority is essential to validate an order granting sanction.

Principles governing the grant of sanction for prosecution:

Held

- *It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.*
- *The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.*
- *The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.*
- *Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.*
- *The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.*
- *If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.*
- *The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper technical approach to test its validity.*

(Similar Judgments: Mohd. Iqbal Ahmed v. State of A.P. (1979) 4 172, Supt. Of Police (CBI) v. Deepak Chowdhary (1995) 6 SCC 225, C.S. Krishnamurthy v. State of Karnataka (2005) 4 SCC 81, R. Sundararajan v. State (2006) 12 SCC 749, State of Karnataka v. Ameerjan (2007) 11 SCC 273, Kootha Perumal v. State (2011) 1 SCC 491)

Held

- *Sanctity attached to an order of sanction should never be forgotten but simultaneously the rampant corruption in society has to be kept in view. It has come to the notice of this Court how adjournments are sought in a maladroit manner to linger*

the trial and how at every stage ingenious efforts are made to assail every interim order. It is the duty of the court that the maters are appropriately dealt with on proper understanding of law of the land. Minor irregularities or technicalities are not to be given Everestine status. It should be borne in mind that historically corruption is a disquiet disease for healthy governance. It has the potentiality to stifle the progress of a civilized society. It ushers in an atmosphere of distrust. Corruption fundamentally is perversion and infectious and an individual perversity can become a social evil. We have said so as we are of the convinced view that in these kind of matters there has to be reflection of promptitude, abhorrence for procrastination, real understanding of the law and to further remain alive to differentiate between hypertechnical contentions and the acceptable legal proponements.

JUDGMENT

Dipak Misra, J.

The singular question that emanates for consideration in this appeal is whether the High Court of Judicature at Bombay in Criminal Application No. 2648 of 2007 is justified in refusing to grant leave to file an appeal by the Central Bureau of Investigation, Anti Corruption Branch, Mumbai (for short "the CBI") to assail the judgment and order dated 8th September, 2006 in Special Case No. 62 of 2000 by the Court of Special Judge for Greater Bombay whereby the learned Special Judge had acquitted the respondent No. 1 under Sections 7, 13 (1) (d) read with 2 of the Prevention of Corruption Act, 1988 (For brevity "the Act") principally on the foundation that the sanction granted by the competent authority was defective and illegal as there was non-application of mind which would show lack of satisfaction.

2. At the very outset, it is condign to state that as we are only dealing with a singular issue it is not necessary to state the facts in detail. Suffice it to state one Satish P. Doshi, proprietor of Shree Travels, the complainant, had given his vehicles to State Bank of India on contract basis and was entitled to receive hire charges for his vehicles periodically. The complainant experienced certain difficulties in getting his cheques and Tax Deducted at Source certificates. When he approached the accused-respondent, he demanded illegal gratification which was not acceded to by the complainant. Despite consistent refusal by the complainant, the demand of the accused was persistent which constrained the complainant to approach the CBI with a written complaint. The CBI took up the investigation and the raiding party carried out a trap operation, seized the bribe amount of Rs.1000/-, sent the seized article to the CFSL, obtained the sanction order and ultimately on 5.10.2000 filed the charge-sheet before the learned Special Judge. After the trial was over the learned Special Judge adverted to all the issues and answered all of them in the affirmative against the accused but acquitted him solely on the base that the sanction order was defective and illegal and that went to the very root of jurisdiction of the court.

3. Grieved by the aforesaid judgment of acquittal, the CBI filed an application for grant of leave and the learned single Judge of the High Court of Bombay declined to grant leave on the ground that it was doubtful whether the sanctioning authority had, in fact, actually applied its mind while granting sanction. The High Court further opined that the view taken by the learned Special Judge in that regard was a plausible one being not contrary to material on record and hence, it did not require any interference.

4. We have heard Mr. Sidharth Luthra, learned Additional Solicitor General appearing for the appellant, and Mr. V.N. Bachawat, learned senior counsel appearing for the respondent.

5. Section 19(1) of the Act postulates that no court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant except with the previous sanction. The said provision enumerates about the competent authorities. In the case at hand, the competence of the authority who has granted sanction is not in question. The only aspect that is required to be scrutinized whether the order granting sanction is valid in law.

6. Grant of sanction is irrefragably a sacrosanct act and is intended to provide safeguard to public servant against frivolous and vexatious litigations. Satisfaction of the sanctioning authority is essential to validate an order granting sanction. This Court in Jaswant Singh v. State of Punjab [AIR 1958 SC 124] was considering the validity and effect of the sanction given under Section 6(1) of the Prevention of Corruption Act, 1947. After referring to the decisions in Basdeo Agarwala v. Emperor [AIR 1945 FC 18] and Gokulchand Dwarkadas Morarka v. The King [AIR 1948 PC 84], the Court opined as follows: -

"It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case."

In the said case, the two-Judge Bench had reproduced the order of sanction and opined that if the same, strictly construed, indicated the consideration by the sanctioning authority of the facts relating to the receiving of the illegal gratification by the accused. We think it apt to reproduce the order of sanction in that case: -

"Whereas I am satisfied that Jaswant Singh Patwari son of Gurdial Singh Kamboh of village Ajaibwali had accepted an illegal gratification of Rs.50 in 5 currency notes of Rs.10 denomination each from one Pal Singh son of S. Santa Singh of village Fatehpur Rajputan, Tehsil Amritsar for making a favourable report on an application for allotment of an ahata to S. Santa Singh father of the said S. Pal Singh.

And whereas the evidence available in this case clearly discloses that the said S. Jaswant Singh Patwari had committed an offence under S. 5 of the Prevention of Corruption Act.

Now therefore, I, N.N. Kashyap, Esquire I.C.S. Deputy Commissioner, Asr, as required by S. 6 of the Prevention of Corruption Act of 1947, hereby sanction the prosecution of the said S. Jaswant Singh Patwari under S. 5 of the said Act."

We have quoted the aforesaid order only to highlight the approach ofthis Court pertaining to application of mind that is reflected in theorder.

7. In Mohd. Iqbal Ahmed v. State of Andhra Pradesh [AIR 1979 SC 677] this Court lucidly registered the view that it is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out constituting an offence and the same should be done in two ways; either (i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (ii) by adducing evidence aliunde to show the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio.

8. In Superintendent of Police (C.B.I.) v. Deepak Chowdhary and others [(1995) 6 SCC 225] it has been ruled that the grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction.

9. In C.S. Krishnamurthy v. State of Karnataka [(2005) 4 SCC 81] it has been held as follows:

"...sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order."

10. In R. Sundararajan v. State by DSP, SPE, CBI, Chennai [(2006) 12 SCC 749], while dealing with the validity of the order of sanction, the two learned Judges have expressed thus: -

"it may be mentioned that we cannot look into the adequacy or inadequacy of the material before the sanctioning authority and we cannot sit as a court of appeal over the sanction order. The order granting sanction shows that all the available materials were placed before the sanctioning authority who considered the same in great detail. Only because some of the said materials could not be proved, the same by itself, in our opinion, would not vitiate the order of sanction. In fact in this case there was abundant material before the sanctioning authority, and hence we do not agree that the sanction order was in any way vitiated."

11. In State of Karnata v. Ameerjan [(2007) 11 SCC 273] it has been opined that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

12. In Kootha Perumal v. State through Inspector of Police, Vigilance and Anti-Corruption [(2011) 1 SCC 491], it has been opined that the sanctioning authority when grants sanction on an examination of the statements of the witnesses as also the material on record, it can safely be concluded that the sanctioning authority has duly recorded its satisfaction and, therefore, the sanction order is valid.

13. From the aforesaid authorities the following principles can be culled out: -

a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution.

c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.

d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

e) The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

g) The order of sanction is a pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity.

14. Keeping in view the aforesaid principles it is to be seen whether the order of sanction granted by the sanctioning authority withstands scrutiny or not. For the aforesaid purpose it is necessitous to reproduce the order of sanction in entirety: -

> "WHEREAS, it is alleged that Shri Mahesh Gandmal Jain, Accounts Clerk working in Office Administration Department, State Bank of India, Corporate Centre, Mumbai while working as such on 03.04.2000, abused his official position, in as much as demanded and accepted illegal gratification from Satish P. Doshi, Proprietor of Shree Travels, Matunga, Mumbai for handling over TDS Certificates in the form of 16A of Income Tax Act, in respect of Shree Travels.
>
> WHEREAS, it is alleged that in pursuance of aforesaid demand, Shri Mahes Gandmal Jain, Accourt Clerk, on 03.04.2000 accepted the illegal gratification of Rs. 1000/- from Shri Satish P. Doshi for the aforesaid purpose at the office of Shree Travels situated at 445, Mahilashram Road, Somaya Building No. 2, Matunga Central Railway, Mumbai-19, before the panch witness when Mahesh Gandmal Jain was caught red handed by the officers of CBI, ACB, Mumbai.
>
> AND WHEREAS, the said acts on the part of Shre Mahesh Gandmal Jain constitute offences punishable under Section 7, 13 (2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.
>
> AND WHEREAS, I, Shri Yeshwant Balkrishna Kelkar, Asst. General Manager, Office Administration Dept., State Bank of India, Corporate Centre, Mumbai, being the authority competent to remove the said Shri Mahesh Gandmal Jain, Accounts Clerk, Office Administration Dept., State Bank of India, Corporate Centre, Mumbai from office after fully examining the material, documents i.e. Statement of witnesses under the provisions of Section 161 of Criminal Procedure Code 1973, FIR, CFSL Opinion and other relevant documents placed before me in regard to the said above allegations and the facts and circumstances of the case, consider that the

said Shri Mahesh Gandmal Jain has committed the offences and he should be prosecuted in the court of law for the said offences.

NOW, therefore, I, Shri Yeshwant Balkrishna Kelakar, Asst. General Manager, Office Administration Dept., State of Bank of India, Corporate Centre, Mumbai, do hereby accord sanction under Section 19(1)(c) of the Prevention of Corruption Act, 1988 for the prosecution of the said Shri Mahesh Gandmal Jain for the said offences and any other offences punishable under the provisions of any law in respect of the acts aforesaid and for taking cognizance of the said offences by the court of competent jurisdiction.

Date : 04.10.2000 (Illegible)

(SHRI Y.B. KELKAR)

ASST. GENERAL MANAGER (OAD)

& APPOINTING AUTHORITY"

15. Reserving our opinion on the same for the present we shall proceed to deal with the reasons for treating the said order of sanction as invalid and improper by the learned trial Judge. The learned trial Judge has referred to the sanction order Ext.13 and the forwarding letter Ext. 14 and, thereafter, proceeded to observe that the order of sanction is completely bereft of elementary details; that though the date is not mentioned in the FIR, the authority has mentioned the date in the sanction order; that the order of sanction is delightfully vague; that the amount of bribe that finds place in the sanction order was told to him and he had no personal knowledge about it; that the minimum discussion is absent in the order of sanction; that grant of sanction being not an idle formality it was incumbent on the competent authority to ascribe proper reasons on perusal of the materials; that there is no material to show the existence of objective material to formulate the subjective satisfaction; that the authority has granted sanction in an absolute mechanical manner; and that the order of sanction does not reflect sincerity of approach. The High Court, while dealing with the said reason, has really not discussed anything except stating that a possible view has been taken by the learned trial Judge and in appeal it cannot substitute the findings merely because any other contrary opinion can be rendered in the facts of the case.

16. Presently, we shall proceed to deal with the contents of the sanction order. The sanctioning authority has referred to the demand of the gratification for handing over TDS certificate in Form 16A of the Income-tax Act, the acceptance of illegal gratification by the accused before the panch witnesses and how the accused was caught red handed. That apart, as the order would reveal, he has fully examined the material documents, namely, the FIR, CFSL report and other relevant documents placed in regard to the allegations and the statements of witnesses recorded under Section 161 of the Code and, thereafter, being satisfied he has passed the order of sanction. The learned trial Judge, as it seems, apart from other reasons has found that the sanctioning authority has not referred to the elementary facts and there is no objective material to justify a subjective satisfaction. The reasonings, in our considered opinion, are absolutely hyper-technical and, in fact, can always be used by an accused as a magic trick to pave the escape route. The reasons ascribed by the learned trial Judge appear as if he is sitting in appeal over the order of sanction. True it is, grant of sanction is a sacrosanct and sacred act and is intended to provide a safeguard to the public servant against vexatious litigation but simultaneously when there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused. In the obtaining factual matrix, we must say without any iota of hesitation that the approach of the learned trial Judge as well as that of the learned single Judge is wholly incorrect and does not deserve acceptance.

17. At this stage, we think it apposite to state that while sanctity attached to an order of sanction should never be forgotten but simultaneously the rampant corruption in society has to be kept in view. It has come to the notice of this Court how adjournments are sought in a maladroit manner to linger the trial and how at every stage ingenious efforts are made to assail every interim order. It is the duty of the court that the matters are appropriately dealt with on proper understanding of law of the land. Minor irregularities or technicalities are not to be given Everestine status. It should be borne in mind that historically corruption is a disquiet disease for healthy governance. It has the potentiality to stifle the progress of a civilized society. It ushers in an atmosphere of distrust. Corruption fundamentally is perversion and infectious and an individual perversity can become a

social evil. We have said so as we are of the convinced view that in these kind of matters there has to be reflection of promptitude, abhorrence for procrastination, real understanding of the law and to further remain alive to differentiate between hyper-technical contentions and the acceptable legal proponements.

18. We shall presently deal with the course of action that is required to be undertaken in the case at hand. Had the High Court dealt with the appeal on merits, we would have proceeded to deal with justifiability of the same. The High Court has declined to grant leave solely on the ground that the conclusion reached by the learned trial Judge pertaining to validity of sanction being justified, the judgment of acquittal did not warrant interference. There has been no deliberation on the merits of the case.

19. At this juncture, we may note that Mr. Luthra submitted that the matter should be remitted to the High Court to deal with the application for grant of leave as per law. Per contra, Mr. Bachawat, learned senior counsel, submitted that if this Court would think of remitting the entire matter it should be remanded to the learned trial Judge as he has not appropriately dealt with the real issues, for he has been guided by the impropriety and validity of sanction. On a perusal of the judgment of the learned trial Judge we find that he had recorded his conclusions on every aspect. He has not rested his conclusion exclusively on sanction. True it is, he has acquitted the accused on the ground that the order of sanction is invalid in law but simultaneously he has dealt with other facets. Thus, remitting the matter to the trial court is not warranted. If the High Court thinks it apt to grant leave, it has ample power to deal with the appeal from all the spectrums. It is well settled in law that it is obligatory on the part of the appellate court to scrutinize the evidence and further its power is coextensive with the trial court. It has power to consider all the matters which weighed with the trial court and the reasons ascribed by it for disbelieving or accepting the witnesses. This has been so held in Laxman Kalu v. State of Maharashtra [AIR 1968 SC 1390] and Keshav Ganga Ram Navge v. The State of Maharashtra [AIR 1971 SC 953]. Needless to emphasise that the High Court, while hearing an appeal against conviction, can scan the evidence and weigh the probabilities. It is incumbent on the High Court to analyse the evidence, deal with the legal issues and deliver a judgment. Thus, there is no merit in the submission that it should be remanded to the learned trial Judge. Apart from the aforesaid reason, we are also not inclined to remit the matter to the learned trial Judge as there would be another round of hearing before the learned trial Judge which is avoidable. It has to be kept uppermost in mind that remit to the trial court has to be done in very rare circumstances, for it brings in procrastination in the criminal justice dispensation system which is not appreciated.

20. Consequently, the appeal is allowed, the judgment of the High Court and the conclusion of the learned trial Judge pertaining to the validity of sanction are set aside and the matter is remitted to the High Court. As we have not dealt with any other finding recorded by the learned trial Judge, it has to be construed that there has been no expression of opinion on the merits of the case on those counts. The High Court shall be well advised to consider all the aspects barring what has been dealt with in this appeal while dealing with the application for grant of leave.

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CHITTARANJAN DAS VERSUS STATE OF ORISSA

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 820 of 2007 Decided On: 04.07.2011
(2011) 7 SCC 167

Chittaranjan Das
Versus
State of Orissa

Coram : G.S. Singhvi and Chandramauli Kr. Prasad, JJ.

(Brief facts- In the present case while the appellant was in service, sanction sought for his prosecution was declined by the State Government. The Vigilance Department did not challenge the same and allowed the appellant to retire from service. After the retirement, the Vigilance Department requested the State Government to reconsider its decision, which was not only refused but the State Government while doing so clearly observed that no prima facie case of disproportionate assets against the appellant is made out. Notwithstanding that the Vigilance Department chose to file a charge-sheet after the retirement of the appellant and on the Special Judge had taken cognizance and issued process.)

Sanction is a weapon at the hands of the sanctioning authority to protect the innocent public servants from uncalled for prosecution but not intended to shield the guilty.

Held *Sanction is a device provided by Law to safeguard pubLic servants from vexatious and frivoLous prosecution. It is to give them freedom and Liberty to perform their duty without fear or favour and not succumb to the pressure of unscrupuLous eLements. It is a weapon at the hands of the sanctioning authority to protect the innocent pubLic servants from uncaLLed for prosecution but not intended to shieLd the guiLty.*

Sanction sought for, refused by the competent authority to prosecute a public servant while in service, cannot subsequently be prosecuted after retirement.

Held *Case in which sanction sought for is refused by the competent authority, whiLe the pubLic servant is in service, he cannot be prosecuted Later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of the pubLic servant. Any other view wiLL render the protection iHusory. Situation may be different when sanction is refused by the competent authority after the retirement of the pubLic servant as in that case sanction is not at aLL necessary and any exercise in this regard would be action in futility.*

JUDGMENT

Chandramauli Kr. Prasad, J.

1. Bereft of unnecessary details the facts giving rise to the present appeal are that the Appellant, a member of the Orissa Administrative Service, at the relevant time was serving as a Deputy Secretary to the Government of Orissa in the Irrigation Department. The officers of the Vigilance Department searched his house after obtaining a search warrant from the Court, on 17th March, 1992. It led to registration of a first information report against the Appellant. During the investigation, it was found that the Appellant possessed disproportionate assets of Rs. 5,58,752.40. As the Appellant was removable from service by the State Government, the Vigilance Department sought its sanction for prosecution of the Appellant. The State Government by its letter dated 13th May, 1997, declined to grant sanction and advised that the proposal for prosecuting the Appellant be dropped. The Appellant superannuated from service on 30th June, 1997. It seems that even after the retirement of the Appellant, the Vigilance Department wrote on 25th of March, 1998 for reconsideration of the earlier order refusing the sanction for prosecution of the Appellant. The State Government by its letter dated 31st July, 1998 wrote back to the Vigilance Department and declined to grant sanction for prosecution, as in its opinion there was no prima facie case against the Appellant and the assets held by him were not disproportionate to the known sources of his income. Accordingly, the State Government reiterated that there is "no justification for reconsideration of the earlier orders refusing the sanction of prosecution" of the Appellant. Notwithstanding the aforesaid refusal of the Government, the Vigilance Department on 10th September, 1998 filed charge-sheet against the Appellant

under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 alleging acquisition of disproportionate assets of Rs. 1.44.234.78 between 1st January, 1980 and 31st December, 1985. The charge-sheet was laid before the Special Judge (Vig.), Bhubneshwar who by its order dated 2nd August, 1999 took cognizance of the aforesaid offence and issued non-bailable warrant against the Appellant.

2. Appellant, aggrieved by the above order taking Cognizance of offence and issuance of the non-bailable warrant of arrest, filed petition under Section 482 of the Code of Criminal Procedure seeking quashing of the aforesaid order inter alia on the ground that his prosecution without sanction of the State Government is bad in law but the High Court by its Order dated 22nd September, 2003 disposed of the application with liberty to the Appellant to raise this contention before Special Judge (Vig.) at the time of the framing of the charge.

3. Appellant, thereafter filed an application for discharge before the trial court which dismissed the same by order dated 9th June, 2004 inter alia on the ground that the Appellant having retired from service, prior sanction is not necessary. Appellant challenged the aforesaid order before the High Court which by the impugned order rejected the challenge and while doing so observed as follows:

6. On a conspectus of the facts and circumstances involved in the case and the position of law in the matter of sanction vis--vis the impugned order, this Court does not find any illegality in that order so as to invoke the inherent power with a view to quash the impugned order. Be that is it may, it is made clear that the disputed question as to whether in the present case a sanction order is necessary and whether that was refused by the State Government and what is the consequence thereof, may be gone into at the time of trial if raised by the accused-Petitioner notwithstanding rejection of his application by the impugned order inasmuch as the foregoing discussion by this Court in any manner does not interfere with that right of the accused to be pursued, if so legally advised at the time of trial.

4. Mr. Vinoo Bhagat appearing on behalf of the Appellant submits that the State Government having refused to grant sanction for prosecution and thereafter declined to reconsider this decision and further having declined to grant sanction for the prosecution of the Appellant his prosecution is illegal and an abuse of the process of the Court.

5. Mr. S.C. Tripathy, however, appearing on behalf of the Respondents submits that the charge-sheet was filed after the retirement of the Appellant and in fact on that basis cognizance of the offence was taken and process issued thereafter and hence, the Appellant cannot challenge his prosecution on the ground of want of sanction. According to him, as the Appellant ceased to be a public servant on the date when the Court took cognizance of the offence and issued process, sanction for his prosecution is not necessary at all.

6. We do not have the slightest hesitation in accepting the broad submission of Mr. Tripathi that once the public servant ceases to be so on the date when the Court takes cognizance of the offence, there is no requirement of sanction under the Prevention of Corruption Act. However, the position is different in a case where Section 197 of the Code of Criminal Procedure has application. In fact, the submission advanced finds support from the judgment of this Court in the case of N. Bhargavan Pillai (dead) by L.Rs. and Anr. v. State of Kerala AIR 2004 SC 2317 where it has been held as follows:

8. The correct legal position, therefore, is that an accused facing prosecution for offences under the Old Act or New 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. But the position is different in cases where Section 197 of the Code has application.

7. However, in the present case, we are faced with the situation in which Vigilance Department asked the State Government to grant sanction while the Appellant herein was in service which it refused. Not only that Vigilance Department sought for reconsideration of the decision by the State Government which prayer was also rejected. In fact the State Government reiterated that there is no prima facie case against the Appellant and the assets held by him were not disproportionate to the known sources of his income. Mr. Tripathy points out that refusal to grant sanction under Section 19 of the Prevention of corruption Act, 1947 while the Appellant was in service is of no consequence as undisputedly charge-sheet against the Appellant was filed and further the Court had taken cognizance of the offence and issued process after his retirement. He points out in the case of N. Bhargavan Pillai (Supra) sanction sought for was refused but this Court did not find any illegality in that.

8. We do not find any substance in the submission of Mr. Tripathy and the decision relied on is clearly distinguishable. Sanction is a devise provided by law to safeguard public servants from vexatious and frivolous prosecution. It is to give them freedom and liberty to perform their duty without fear or favour and not succumb to the pressure of unscrupulous elements. It is a weapon at the hands of the sanctioning authority to protect the innocent public servants from uncalled for prosecution but not intended to shield the guilty. Here in the present case while the Appellant was in service sanction sought for his prosecution was declined by the State Government. Vigilance Department did not challenge the same and allowed the Appellant to retire from service. After the retirement, Vigilance Department requested the State Government to reconsider its decision, which was not only refused but the State Government while doing so clearly observed that no prima-facie case of disproportionate assets against the Appellant is made out. Notwithstanding that Vigilance Department chose to file charge-sheet after the retirement of the Appellant and on that Special Judge had taken cognizance and issued process. We are of the opinion that in a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of Public Servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility.

9. Now we revert to the decision of this Court in the case of N. Bhargavan Pillai (Supra) relied on by the Respondents. True, it is that in paragraph 5 of the said judgment, it has been observed that "it is a case where the sanction which was sought for was refused" but from this paragraph, it is not clear whether it was sought before or after the retirement of the public servant. However, while reading the judgment as a whole, it is apparent that in this case Charge-sheet against the public servant was filed after retirement. Further, sanction for his prosecution was sought and refused thereafter. This would be evident from the following narration of facts in the said judgment: 3. ...The managing Director of the Corporation wrote to the Director of Vigilance (Investigation) along with a copy of Ext. P-I report. The Director of Vigilance (Investigation) sanctioned registration of a case. On the basis of the direction the then Deputy Superintendent of Police, Vigilance, Kollam (PW-10) registered a case as per Ext. P-39. He entrusted the investigation to Inspector of the Kollam Vigilance Unit-I (PW-11), who conducted the investigation and sent a report to his higher authorities. In the meantime, the accused retired from service on 28-2-1992. Since he had retired from service sanction for prosecution became unnecessary. The case was transferred to the newly established Pathanamthitta Vigilance Unit. PW-12, the Deputy Superintendent of Police, Vigilance, Pathanamthitta Unit who was put in charge of this case also verified the records and filed the charge sheet. (underlining ours)

Thus in the case relied on, the sanction for prosecution was not necessary and therefore its refusal had no bearing on the Trial of the public servant. However, in the present case sanction was sought and refused while the Appellant was in service. Hence, this judgment does not lend any support to the contention of the Respondents and is clearly distinguishable.

10. Otherwise also, the facts of the case are so telling that we are of the opinion that the prosecution of the Appellant shall be an abuse of the process of the Court. According to the First Information Report, Appellant possessed disproportionate assets worth Rs. 5.58 lakhs. However, according to the charge-sheet, the disproportionate assets were to the extent of Rs. 1.44 lakhs only. State Government while declining to grant sanction for prosecution observed that assets possessed by the Appellant are not disproportionate to his known source of income.

11. We are further of the opinion that no disputed question being involved, the High Court instead of making observation as to "whether in present case sanction order is necessary and whether that was refused by the State Government and what would be the consequence thereof" to be decided by the trial court, ought to have decided the issues itself. The facts being not in dispute the High Court erred in not deciding these issues.

12. In the result, we allow this appeal, set aside the order of the High Court and quash the Appellant's prosecution in TR No. 113 of 1999, pending in the Court of Special Judge (Vig.) Bhubaneshwar.

Appeal allowed

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ABHAY SINGH CHAUTALA VERSUS C.B.I.

SUPREME COURT OF INDIA

2011 (4) Supreme 683

Abhay Singh Chautala — Appellant
versus
C.B.I. — Respondent

Criminal Appeal No. 1257 of 2011
(Arising out of SLP (Crl.) No. 7384 of 2010)

with

Ajay Singh Chautala — Appellant
versus
C.B.I. — Respondent

Criminal Appeal No. 1258 of 2011
(Arising out of SLP (Crl.) No. 7428 of 2010) Decided on : 4-7-2011

(In the instant case the appellants were MLAs when charges under the PC act were framed against them. However, the charges pertained to wrongdoing committed during earlier periods of time during which they had also been MLAs and not during the current tenure. The charges were framed and no sanction under Section 19 was obtained. Special judge before whom an objection was raised regarding the absence of sanction, held in the common order that the charge-sheet did not contain the allegation that the appellants had abused their current office as MLAs and, therefore, no sanction was necessary. High Court did not interfere with the said prosecution. Hence, the appellants appealed before the Supreme Court.)

If the public servant had abused a particular office and was not holding that office on the date of taking cognizance, there would be no necessity to obtain sanction.

Held

- *In Antulay case, it is not as if Section 6 (2) of the Act as it then existed, was ignored or was not referred to, but the Constitution Bench had very specifically made a reference to and had interpreted Section 6 as a whole. Therefore, it cannot be said that the Constitution Bench had totally ignored the provisions of Section 6 and more particularly Section 6 (2). Once the Court had held that if the public servant had abused a particular office and was not holding that office on the date of taking cognizance, there would be no necessity to obtain sanction. It was obvious that it was not necessary for the court to go up to Section 6 (2) as in that case, there would be no question of doubt about the sanctioning authority. In our opinion also, Section 6(2) of the Act, which is pari materia to Section 19 (2), does not contemplate a situation as is tried to be argued by the Ld. Senior Counsel. We do not agree with the proposition that the Act expressly contemplates that public servant may be holding office in a different capacity from the one that he was holding when the office is alleged to have been committed at the time when cognizance is taken. That is not, in our opinion, the eventuality contemplated in Section 6 (2) or Section 19 (2), as the case may be.*

Words in Section 19 (2) are to be read in conjunction with sections 19(1)(a), 19(1)(b) and 19 (1)(c) – these clauses only fix the sanctioning authority to be the authority which is capable of "removing a public servant"

Held

- *In Antulay case, the Court went on to hold that where a public servant holds a different capacity altogether from the one which he is alleged to have abused, there would be no necessity of sanction at all. This view was taken on the specific interpretation of Section 6 generally and more particularly, Section 6 (1) (c), which is pari materia to section 19(1)(c) of the Act. Once it was held that there was no necessity of sanction at all, there would be no question of their being any doubt arising about the sanctioning authority.*

The doubt expressed in Section 19 (2), in our opinion, is not a pointer to suggest that a public servant may have abused any particular office, but when he occupies any other office subsequently, then the sanction is a must. That will

be the incorrect reading of this section. The section simply contemplates a situation where there is a genuine doubt as to whether sanctioning authority should be the Central Government or the fact that or any authority competent to remove. The Words in Section 19 (2) are to be read in conjunction with sections 19(1)(a), 19(1)(b) and 19 (1)(c). These clauses only fix the sanctioning authority to be the authority which is capable of "removing a public servant".

Therefore, in our opinion, the argument based on the language of Section 6(2) or as the case may be, Section 19 (2), is not correct.

Interpretation of Section 6(2), PC Act, 1947 (Now Section 19(2), PC Act, 1988 in Antulay case (1984 2 SCC 183) is not per incuriam – To base interpretation of Section 19 (1) of the Act on the basis of Section 19 (2) would be putting the cart before the horse.

Held

- *To base the interpretation of Section 19(1) of the Act on the basis of Section 19(2) would be putting the cart before the horse. The two sections would have to be interpreted in a rational manner. Once the interpretation is that the prosecution of a public servant holding a different capacity than the one which he is alleged to have abused, there is no question of going to Sections 6(2)/19(2) at all in which case there will be no question of any doubt. It will be seen that this interpretation of Section 6 (1) or as the case may be, Section 19(1), is on the basis of the expression "office" in three sub-clauses of Section 6(1), or the case may be, Section 19(1). For all these reasons, therefore, we are not persuaded to accept the contention that Antulay case was decided per incuriam of Section 6(2). In our opinion ,the decision in K. Veeraswami v. Union of India or, as the case may be, P.V. Narasimha Rao case are not apposite nor do they support the contention raised by the Ld. Senior Counsel as regards Antulay case being per incuriam of Section 6(2).*

Relevant time for deciding the question of 'sanction' is the date on which the cognizance is taken

Held

- *It may be that the appellants in this case held more than one office during the check period which they are alleged to have abused; however, there will be no question of any doubt if on the date when the cognizance is taken, they are not continuing to hold that very office. The relevant time, as held in S.A. Venkataraman v. State (AIR 1958 SC 107), is the date on which the cognizance is taken. If on that date, the appellant is not a public servant, there will be no question of any sanction. If he continues to be a public servan but in a different capacity or holding a different office than the one which is alleged to have been abused, still there will be no question of sanction and in that case, there will also be no question of any doubt arising because the doubt can arise only when the sanction is necessary. In case of the present appellants, there was no question of there being any doubt because basically there was no question of the appellants' getting any protection by a sanction.*

JUDGMENT

V.S. Sirpurkar, J. —

1. This judgment will dispose of two Special Leave Petitions, they being SLP (Crl.) No. 7384 of 2010 and SLP (Crl.) No. 7428 of 2010. While Abhay Singh Chautala is the petitioner in the first Special Leave Petition, the second one has been filed by Shri Ajay Singh Chautala. The question involved is identical in both the SLPs and hence they are being disposed of by a common judgment.

2. Leave granted in both the Special Leave Petitions.

3. Whether the sanction under Section 19 of The Prevention of Corruption Act (hereinafter called "the Act" for short) was necessary against both the appellants and, therefore, whether the trial which is in progress against both of them, a valid trial, is common question. This question was raised before the Special Judge, CBI before whom the appellants are being tried for the offences under Sections 13(1) (e) and 13(2) of the Prevention of Corruption Act read with Section 109 of Indian Penal Code in separate trials.

4. Separate charge sheets were filed against both the appellants for the aforementioned offences by the CBI. It was alleged that both the accused while working as the Members of Legislative Assembly had accumulated wealth disproportionate to their known sources of income. The charges were filed on the basis of the investigations conducted by the CBI. This was necessitated on account of this Court's order in Writ Petition (Crl.) No.93 of 2003 directing the CBI to investigate the JBT Teachers Recruitment Scam. The offences were registered on

24.5.2004. The CBI conducted searches and seized incriminating documents which revealed that Shri Om Prakash Chautala and his family had acquired movable and immovable properties valued at Rs.1,467 crores. On this basis a Notification came to be issued on 22.2.2006 under Sections 5 and 6 of the DSPE Act with the consent of the Government of Haryana extending powers and jurisdiction under the DSPE Act to the State of Haryana for investigation of allegations regarding accumulation of disproportionate assets by Shri Om Prakash Chautala and his family members under the Prevention of Corruption Act. A regular First Information Report then came to be registered against Shri Om Prakash Chautala who is the father of both the appellants. It is found that in the check period of 7.6.2000 to 8.3.2005, appellant Abhay Singh Chautala had amassed wealth worth Rs.1,19,69,82,619/- which was 522.79 % of appellant Abhay Singh Chautala's known sources of income. During the check period, Shri Abhay Singh Chautala was the Member of the Legislative Assembly Haryana, Rori Constituency. Similarly, in case of Ajay Singh Chautala, his check period was taken as 24.5.1993 to 31.5.2006 during which he held the following offices:-

1. 2.3.90 to 15.12.92 MLA Vidhan Sabha, Rajasthan
2. 28.12.93 to 31.11.98 MLA Vidhan Sabha, Rajasthan
3. 10.10.99 to 6.2.2004 Member of Parliament, Lok Sabha from Bhiwani Constituency
4. 2.8.2004 to 03.11.09 Member of Parliament, Rajya Sabha

He was later on elected as MLA from Dabwali constituency, Haryana in November, 2009. It was found that he had accumulated wealth worth Rs.27,74,74,260/- which was 339.26 % of his known sources of income. It was on this basis that the charge sheet came to be filed.

5. Admittedly, there is no sanction to prosecute under Section 19 of the Act against both the appellants.

6. An objection regarding the absence of sanction was raised before the Special Judge, who in the common order dated 2.2.2010, held that the allegations in the charge sheet did not contain the allegation that the appellants had abused their current office as member of Legislative Assembly and, therefore, no sanction was necessary.

7. This order was challenged by way of a petition under Section 482 Cr.P.C. before the High Court. The High Court dismissed the said petition by the order dated 8.7.2010.

8. The learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants, urged that on the day when the charges were framed or on any date when the cognizance was taken, both the appellants were admittedly public servants and, therefore, under the plain language of Section 19 (1) of the Act, the Court could not have taken cognizance unless there was a sanction. The learned senior counsel analyzed the whole Section closely and urged that in the absence of a sanction, the cognizance of the offences under the Prevention of Corruption Act could not have been taken. In this behalf, learned senior counsel further urged that the judgment of this Court in Prakash Singh Badal v. State of Punjab1 [2007 (1) SCC 1] as also the relied on judgment in RS Nayak v. A R. Antulay2 [1984 (2) SCC 183] were not correct and required reconsideration and urged for a reference to a Larger Bench.

9. Against these two judgments as also the judgments in Balakrishnan Ravi Menon v. Union of India3 [2007 (1) SCC 45], K. Karunakaran v. State of Kerala4 [2007 (1) SCC 59] and Habibullah Khan v. State of Orissa & Anr.5 [1995 (2) SCC 437], this Court had clearly laid down the law and had held that where the public servant had abused the office which he held in the check period but had ceased to hold "that office" or was holding a different office then a sanction would not be necessary. The learned Solicitor General appearing for the respondent urged that the law on the question of sanction was clear and the whole controversy was set at rest in AR Antulay's case (cited supra) which was followed throughout till date. The Solicitor General urged that the said position in law should not be disturbed in view of the principle of staire decicis. Extensive arguments were presented by both the parties requiring us now to consider the question.

Section 19 runs as under:-

"19. Previous sanction necessary for prosecution.

(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) In the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) In the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that

Government;

(c) In the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

(a) No finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;

(b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation: For the purposes of this Section, -

(a) Error includes competency of the authority to grant sanction;

(b) A sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

10. hri Mukul Rohtagi and Shri U.U. Lalit, learned senior counsel appearing on behalf of the appellants, firstly pointed out that the plain meaning of Section 19(1) of the Act is that when any public servant is tried for the offences under the Act, a sanction is a must. The learned senior counsel were at pains to point out that in the absence of a sanction, no cognizance can be taken against the public servant under Sections 7, 10, 11, 13 and 15 of the Act and thus, a sanction is a must. The learned senior counsel relied on the decision in Abdul Wahab Ansari Vs. State of Bihar6 [2000 (8) SCC 500], more particularly, paragraph 7, as also the decision in Baij Nath Prasad Tripathi Vs. State of Bhopal7 [1957 (1) SCR 650]. The plain language of Section 19(1) cannot be disputed. The learned senior counsel argued that Section 19(1) of the Act creates a complete embargo against taking cognizance of the

offences mentioned in that Section against the accused who is a public servant. The learned senior counsel also argued that it is only when the question arises as to which authority should grant a sanction that the sub-Section (2) will have to be taken recourse to. However, where there is no duty of any such nature, the Court will be duty bound to ask for the sanction before it takes cognizance of the offences mentioned under this Section.

11. As against this, Shri Gopal Subramanium, learned Solicitor General, pointed out the decision in RS Nayak v. A R. Antulay (cited supra) and the subsequent decisions in Balakrishnan Ravi Menon v. Union of India (cited supra), K. Karunakaran v. State of Kerala (cited supra), Habibullah Khan v. State of Orissa & Anr. (cited supra) and lastly, in Prakash Singh Badal v. State of Punjab (cited supra).

12. Shri Mukul Rohtagi and Shri U.U. Lalit, learned senior counsel appearing on behalf of the appellants, have no quarrel with the proposition that in all the above cases, it is specifically held that where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction.

13. To get over this obvious difficulty, the learned senior counsel appearing on behalf of the appellants contended that the basic decision in RS Nayak v. A R. Antulay (cited supra) was not correctly decided, inasmuch as the decision did not consider the plain language of the Section which is clear and without any ambiguity. The learned senior counsel contended that where the language is clear and admits of no ambiguity, the Court cannot reject the plain meaning emanating out of the provision. Further, the learned senior counsel pointed out that even in the judgments following the judgment in RS Nayak v. A R. Antulay (cited supra) upto the judgment in the case of Prakash Singh Badal v. State of Punjab (cited supra) and even thereafter, the learned Judges have not considered the plain meaning and on that count, those judgments also do not present correct law and require reconsideration. Another substantial challenge to the judgment in RS Nayak v. A R. Antulay (cited supra) is on account of the fact that the law declared to the above effect in RS Nayak v. A R. Antulay (cited supra) was obiter dictum, inasmuch as it was not necessary for the Court to decide the question, more particularly, decided by the Courts in paragraphs 23 to 26. The learned senior counsel pointed out that, firstly, the Court in RS Nayak v. A R. Antulay (cited supra), came to the conclusion that Shri Antulay who was a Member of the Legislative Assembly, was not a public servant. It is contended that once that finding was arrived at, there was no question of further deciding as to whether, the accused being a public servant in a different capacity, the law required that there had to be a sanction before the Court could take the cognizance. Learned senior counsel further argued that where the Court makes an observation which is either not necessary for the decision of the court or does not relate to the material facts in issue, such observation must be held as obiter dictum. In support of this proposition, the learned senior counsel relied on the decision in Director of Settlement, State of A.P. Vs. M.R. Apparao8 [2002 (4) SCC 638] (Paragraph 7), State of Haryana Vs. Ranbir @ Rana9 [2006 (5) SCC 167],

Division Controller, KSRTC Vs. Mahadeva Shetty & Anr.10 [2003(7) SCC 197] (Paragraph 23),

H.H. Maharajadhiraja Mahdav Rao Jiwaji Rao Scindia Bahadur Vs. Union of India11 [AIR 1971 SC 530] (Paragraph 325 onwards), State of Orissa Vs. Sudhansu Sekhar Misra12 [AIR 1968 SC 647] [in which the celebrated decision in Quinn Vs. Leathem13 1901 AC 495] was relied on and ADM Jabalpur etc. Vs. Shivkant Shukla14 [1976 (2) SCC 521] etc. The learned senior counsel also argued that the whole class of public servant would be deprived of the protection if the decision in RS Nayak v. A R. Antulay (cited supra) is followed. For this purpose, learned senior counsel argued that in such case, public servants would be exposed to frivolous prosecutions which would have disastrous effects on their service careers, though they are required to be insulated against such false, frivolous and motivated complaints of wrong doing. It is then argued that the decision in K. Veeraswami Vs. Union of India15 [1991 (3) SCC 655] has in fact removed the very foundation of the decision in RS Nayak v. A. R. Antulay (cited supra) in respect of the sanction. It is also argued that, in effect, the decision in RS Nayak v. A R. Antulay (cited supra) has added further proviso to the effect "provided that nothing in this sub-Section shall apply to a case where at the time of cognizance, the public servant is holding a different post with a different removing authority from the one in which the offence is alleged to have been committed". It is argued that such an addition would be clearly impermissible as it would negate the very foundation of criminal law which requires a strict interpretation in favour of the accused and not an interpretation which results into deprivation of the accused of his statutory rights. The decision in S.A. Venkataraman Vs. State16 [AIR 1958 SC 107] is also very heavily relied upon, more particularly, the observations in paragraphs 14 and 16 thereof.

14. It will be, therefore, our task to see as to whether the judgment in A. R. Antulay's case (cited supra) and the law decided therein, particularly in paragraphs 24, 25 and 26 is obiter. Paragraphs 24, 25 and 26 are as under:

"24. 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 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 use. 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 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. Ode 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 in contrary to all canons of construction and leads to an absurd and 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 rougue's charter. (See Davis & Sons Ltd. v. Atkins [1977] ICR 662

25. Support was sought to be drawn for the submission from the decision of the Andhra Pradesh High Court in Air Commodore Kailash Chand v. The State (S.P.E. Hyderabad) (1973) 2 AWR 263 and the affirmance of that decision by this Court in The State (S.P.E. Hyderabad) v. Air Commodore Kailash Chand : 1980CriLJ393 . In that case accused Kailash Chand was, a member of the Indian Air Force having entered the service on 17th November 1941. He retired from the service on 15th June , 1965, but was re-employed for a period of 2 years with effect from 16th June, 1965. On 7th September, 1966, the respondent was transferred to the Regular Air Force Reserve with effect from June 16, 1965 to June 15, 1970 i.e. for a period of 5 years. On 13th March, 1968, the re-employment given to the respondent ceased and his service was terminated with effect from April 1, 1968. A charge-sheet was submitted against him for having committed an offence under Section 5(2) of the Prevention of Corruption Act, 1947 during the period March 29, 1965 to March 16, 1967. A contention was raised on behalf of the accused that the court could not take cognizance of the offence in the absence of a valid sanction of the authority competent to remove him from the office held by him as a public servant. The learned special Judge negatived the contention. In the revision petition filed by the accused in the High Court, the learned Single Judge held that on the date of taking cognizance of the offence, the accused was a member of the Regular Air Force Reserve set up under the Reserve and Auxiliary Air Force, 1952 and the rules made there under. Accordingly, it was held that a sanction to prosecute him was necessary and in the absence of

which the court could not the cognizance of the offences and the prosecution was quashed. In the appeal by certificate, this Court upheld the decision of the High Court. This Court held following the decision in S.A. Venkataraman's case that if the public servant had ceased to be a public servant at the time of taking cognizance of the offence, Section 6 is not attracted. Thereafter the court proceeded to examine whether the accused was a public servant on the date when the court took cognizance of the offence and concluded that 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 called up for service as and when required. The court further held that as such the accused was a public servant as an active member of the Indian Air Force and a sanction to prosecute him under Section 6 was necessary. This decision is of no assistance for the obvious reason that nowhere it was contended before the court, which office was alleged to have been abused by the accused and whether the two offices were separate and distinct. It is not made clear whether the accused continued to hold the office which was alleged to have been abused or misused even at the time of taking cognizance of the offence. But that could not be so because the service of the accused was terminated on April 1, 1968 while the cognizance was sought to be taken in June, 1969. Indisputably, the accused had ceased to hold that office as public servant which he was alleged to have misused or abused. The court was however, not invited to consider the contention canvassed before us: Nor was the court informed specifically whether the subsequent office held by the accused in that case was the same from which his service was terminated meaning thereby he was re-employed to the same office. The decision appears to proceed on the facts of the case. We would however, like to make it abundantly clear that if the two decisions purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decisions in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Section 6.

26. Therefore, upon a true construction of Section 6, it is implicit therein that Sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive and for which a prosecution is intended to be launched against him."

15. It is clear from these paragraphs that the law laid down in Air Commodore Kailash Chand v. The State (S.P.E. Hyderabad) 17 [(1973) 2 AWR 263] was taken into consideration. The Court has also quoted S.A. Venkataraman's case (cited supra) and the decision in Kailash Chand's case (cited supra) was distinguished by holding thus:

"This decision is of no assistance for the obvious reason that nowhere it was contended before the court, which office was alleged to have been abused by the accused and whether the two offices were separate and distinct. It is not made clear whether the accused continued to hold the office which was alleged to have been abused or misused even at the time of taking cognizance of the offence. But that could not be so because the service of the accused was terminated on April 1, 1968 while the cognizance was sought to be taken in June, 1969. Indisputably, the accused had ceased to hold that office as public servant which he was alleged to have misused or abused. The court was however, not invited to consider the contention canvassed before us: Nor was the court informed specifically whether the subsequent office held by the accused in that case was the same from which his service was terminated meaning thereby he was re- employed to the same office. The decision appears to proceed on the facts of the case."

16. The propositions argued by the learned Solicitor General have, therefore, been totally accepted. However, that does not solve the question. The question is whether these propositions amount to obiter. The learned senior counsel for the appellants insists that it was not at all necessary for the Court to make these observations as

the Court had answered the question whether A.R. Antulay in his capacity as an MLA, was a public servant, in negative. The learned senior counsel argued that once it was found that Antulay in his capacity as an MLA, was not a public servant, it was not at all necessary for the Court to go further and probe a further question as to whether a public servant who has abused a particular office ceased to hold that office and held some other office on the date of cognizance would still require sanction for his prosecution for the offence under the Act. The argument is extremely attractive on the face of it because indeed in Antulay's case (cited supra) such a finding that Shri Antulay in his capacity is an MLA was not a public servant was unequivocally given. However, we do not agree to the proposition that the Court could not have gone further and recorded its finding in paragraphs 23 to 26 as they did. It is necessary firstly to note paragraph 15 which gives a clear cut idea as to what was the exact controversy therein and how the rival parties addressed Courts on various questions. Paragraph 15 is as under:-

> "15. The appellant, the original complainant, contends that the learned special Judge was in error in holding that M.L.A. is a public servant within the meaning of the expression under Section 21(12)(a). The second submission was that if the first question is answered in the affirmative, it would be necessary to examine whether a sanction as contemplated by Section 6 is necessary. If the answer to the second question is in the affirmative it would be necessary to identify the sanctioning authority. The broad sweep of the argument was that the complainant in his complaint has alleged that the accused abused his office of Chief Minister and not his office, if any, as M.L.A. and therefore, even if on the date of taking cognizance of the offence the accused was M.L.A, nonetheless no sanction to prosecute him is necessary as envisaged by Section 6 of the 1947 Act. It was urged that as the allegation against the accused in the complaint is that he abused or misused his office as Chief Minister and as by the time the complaint was filed and cognizance was taken, he had ceased to hold the office of the Chief Minister no sanction under Section 6 was necessary to prosecute him for the offences alleged to have been committed by him when the accused was admittedly a public servant in his capacity as Chief Minister." (Emphasis supplied).

Therefore, it will be clear that the complainant's main argument was the abuse of the office of Chief Minister which the accused ceased to hold and hence no sanction was necessary. In that the complainant proceeded on the premise that the accused as the MLA was a public servant.

17. In paragraph 16 the contention of the accused is noted which suggests that he was a public servant within the contemplation of clauses (3) and (7) of Section 21 of IPC as also under section 21 (12) (a). In fact it was the argument of accused by way of the next claim that if the accused holds plurality of offices each of which confers the status of a public servant and even if it is alleged that he has abused or misused one office as a public servant notwithstanding the fact that there was no allegation of the abuse or misuse of other office held as public servant, the sanction of each authority competent to remove him from each of the offices would be a sine qua non under Section 6 before a valid prosecution can be launched against the accused. Therefore, the question of accused being a public servant was inextricably mixed with the question of the office which accused was alleged to have misused. There was no dichotomy between the two questions. Strangely enough, the accused claimed to be a public servant, unlike the present case and it was on that premise that the accused had raised a question that there would have to be the sanction qua each office that he continued to hold on the date when the cognizance was taken. In the present case, it is not disputed that the accused was a public servant. Undoubtedly they were public servants. By the subsequent judgment in P.V. Narsimha Rao Vs. State18 [1998 (4) SCC 626] it has been clearly held now that the Members of Legislative Assembly and the Members of Parliament are public servants. Therefore, the question which was addressed in that case by the accused claiming himself to be a public servant is an identical question which fell for consideration before the High Court as also before us. In paragraph 17, the Court formulated the questions to be decided precisely on the basis of the contention raised by the accused in that case. Following were those questions :

> "(a) What is the relevant date with reference to which a valid sanction is a pre-requisite for the prosecution of a public servant for offences enumerated in Section 6 of the 1947 Act?
>
> (b) If the accused holds plurality of offices occupying each of which makes him a public servant, is sanction of each one of the competent authorities entitled to remove him from each one of the offices held by him necessary and if anyone of the competent authorities fails or declines to grant

sanction, is the Court precluded or prohibited from taking cognizance of the offence with which the public servant is charged?

(c) Is it implicit in Section 6 of the 1947 Act that sanction of that competent authority alone is necessary, which is entitled to remove the public servant from the office which is alleged to have been abused for misused for corrupt motives?

(d) Is M.L.A. a public servant within the meaning of the expression in Section 21(12)(a) IPC?

(e) Is M.L.A. a public servant within the meaning of the expression, in Section 21(3) and Section 21(7) IPC?

(f) Is sanction as contemplated by Section 6 of the 1947 Act necessary for prosecution of M.L.A.?

(g) If the answer to (f) is in the affirmative, which is the Sanctioning Authority competent to remove M.L.A. from the office of Member of the Legislative Assembly?"

18. It will be seen from the nature of the questions that the whole controversy was covered by those questions particularly, the question raised in (b), (c), (d) and (e) were nothing but the result of the contentions raised by the parties which directly fell for consideration.

19. The Court answered the first question that the relevant date of sanction would be the date on which the cognizance was taken of the offence. Since in paragraph 23 to 26 the Court found that the accused in that case did not continue to hold the office that he had allegedly abused on the date of cognizance, there was no necessity of granting any sanction. The Court held so in paragraph 27 in the most unequivocal terms. The Court goes on to record "therefore, it is crystal clear that the complaint filed against the accused charged him with criminal abuse or misuse of only his office as Chief Minister. By the time, the court was called upon to take cognizance of the offences, so alleged in the complaint, the accused had ceased to hold the office of the Chief Minister. On this short ground, it can be held that no sanction to prosecute him was necessary as former Chief Minister of Maharashtra State. The appeal can succeed on this short ground." (Emphasis supplied).

20. However, subsequently, the question whether an MLA was a public servant was also canvassed at length. The Court then went on to examine the question in further paragraphs and came to the conclusion that MLA was not a public servant which law was, of course thereafter, upset in Narsimha Rao's case (cited supra). It cannot be said that the question decided by the Court regarding the abuse of a particular office and the effects of the accused not continuing with that office or holding an altogether different office was obiter. In fact it is on that very basis that the judgment of A.R.Antulay (cited supra) proceeded. The question of MLA not being a public servant was decided as a subsidiary question.

21. This finding of ours is buttressed by the decision reported in Balakrishnan Ravi Menon v. Union of India (cited supra) which decision came almost immediately after Prakash Singh Badal v. State of Punjab (cited supra) case. Whether the finding given in the judgment of Antulay's case (cited supra) was obiter was the question that directly fell for consideration in that case. This Court quoted paragraph 24 of the judgment in Antulay's case (cited supra) so also some portion of paragraph 25. It is on the basis of these two paragraphs that the Court unequivocally rejected the contention that the finding given in Antulay's case (cited supra) regarding the abuse of office of Chief Minister was obiter. Therefore, it would not be possible for us to hold that the finding given in Antualy's case (cited supra) was an obiter. We must point out at this juncture that in Antulay's case (cited supra) the Court first went on to decide the basic question that if the accused did not continue with the office that he had allegedly abused on the day cognizance was taken, then there was no requirement of sanction.

22. This finding was given as the complainant in that case had canvassed in the backdrop of the judgment of the trial Court discharging the accused holding him to be a public servant. The trial Court had held that in the absence of such sanction, the accused was entitled to be discharged. The complainant filed a writ petition against this order. This court had permitted to file a criminal revision against the order of learned Special Judge perhaps being of the opinion that the writ petition did not lie and ultimately this Court transferred the criminal revision against the trial Court's judgment here. The complainant, therefore, had specifically and basically raised the point that since the accused had ceased to hold the office of Chief Minister on the date of cognizance, there was no question of

any sanction and that was the main issue which was decided in Antulay's case (cited supra) as the basic issue by way of question No.(b)

23. We, therefore, do not think the finding given in Antulay's case (cited supra) was in any manner obiter and requires reconsideration. Learned Senior Counsel relied on the decision in Marta Silva & Ors. Vs. Piedade Cardazo & Ors.19 [AIR 1969 Goa 94], State of A.P. Vs. M.R. Apparao (cited supra], State of Haryana Vs. Ranbir alias Rana (cited supra], Division Controller, KSRTC Vs. Mahadeva Shetty & Anr. (cited supra), H.H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur Vs. Union of India (cited supra), State of Orissa Vs. Sudhansu Sekhar Misra (cited supra) and lastly ADM, Jabalpur etc. Vs. Shivkant Shukla (cited supra] and contended that the principles of obiter dicta in the aforementioned decisions would apply to Antulay's case (cited supra) also. We have already shown that the principles regarding the abuse of a particular office, decided in Antulay's case (cited supra), could not be termed as Obiter dicta. We have nothing to say about the principles in the aforementioned decisions. However, in the circumstances, which we have shown above, all these cases would be of no help to the appellants herein, particularly in the light of our conclusion that the principles arrived at in Antulay's case (cited supra) could not be termed as obiter dicta. We, therefore, reject the argument on that count.

24. There is one more reason, though not a major one, for not disturbing the law settled in Antulay's case (cited supra). That decision has stood the test of time for last over 25 years and it is trite that going as per the maxim stare decisis et non quieta movere, it would be better to stand by that decision and not to disturb what is settled. This rule of interpretation was approved of by Lord Coke who suggested - "those things which have been so often adjudged ought to rest in peace". This Court in Shanker Raju Vs. Union of India20 [2011 (2) SCC 132], confirmed this view while relying on the decision in Tiverton Estates Ltd. Vs. Wearwell Ltd.21 [1974 (1) WLR 176] and more particularly, the observations of Scarman, L.J., while not agreeing with the view of Lord Denning, M.R. about desirability of not accepting previous decisions. The observations are to the following effect:-

> "I decline to accept his lead only because I think it damaging to the law to the long term - though it would undoubtedly do justice in the present case. To some it will appear that justice is being denied by a timid, conservative adherence to judicial precedent. They would be wrong. Consistency is necessary to certainty - one of the great objectives of law." The Court also referred to the following other cases:-
>
> Waman Rao Vs. Union of India22 [1981 (2) SCC 362], Manganese Ore (India) Ltd. Vs. CST23 [1976 (4) SCC 124], Ganga Sugar Corpn. Vs. State of U.P.24 [1980 (1) SCC 223], Union of India Vs. Raguhbir Singh25 [1989 (2) SCC 754], Krishena Kumar Vs. Union of India26 [1990 (4) SCC 207], Union of India Vs. Paras Laminates (P) Ltd.27 [1990(4) SCC 453] and lastly, Hari Singh Vs. State of Haryana28 [1993 (3) SCC 114].

We respectfully agree with the law laid down in Shanker Raju Vs. Union of India (cited supra) and acting on that decision, desist from disturbing the settled law in Antulay's case (cited supra). We have in the earlier part of the judgment, pointed out as to how the decision in Antulay's case (cited supra) has been followed right up to the decision in Prakash Singh Badal v. State of Punjab (cited supra) and even thereafter.

25. This leaves us with the other contention raised by learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants. The learned senior counsel contended that the decision in Antulay's case (cited supra) is hit by the doctrine of per incuriam. The learned senior counsel heavily relied on the decision in Punjab Land Development Reclamation Corporation Ltd. Vs. Presiding Officer29 [1990 (3) SCC 682] and Nirmal Jeet Kaur Vs. State of M.P.30 [2004 (7) SCC 558] to explain the doctrine of per incuriam. We have absolutely no quarrel with the principles laid down in those two cases. However, we feel that the resultant argument on the part of the learned senior counsel is not correct. In support of their argument, the learned senior counsel contended that in Antulay's case (cited supra), Section 6(2) of the Act, as it therein existed, was ignored. In short, the argument was that Section 6(2) which is parimateria with Section 19(2) of the Act provides that in case of doubt as to which authority should give the sanction, the time when the offence is alleged to have been committed is relevant. The argument further goes on to suggest that if that is so, then the Act expressly contemplates that a public servant may be holding office in a different capacity from the one that he was holding when the offence is alleged to have been committed at the time when cognizance is taken so as to cause doubt about the sanctioning authority. Thus, there would be necessity of a sanction on the date of cognizance and, therefore, in ignoring this

aspect, the decision in Antulay's case (cited supra) has suffered an illegality. Same is the argument in the present case.

26. This argument is basically incorrect. In Antulay's case (cited supra), it is not as if Section 6(2) of the Act as it then existed, was ignored or was not referred to, but the Constitution Bench had very specifically made a reference to and had interpreted Section 6 as a whole. Therefore, it cannot be said that the Constitution Bench had totally ignored the provisions of Section 6 and more particularly, Section 6(2). Once the Court had held that if the public servant had abused a particular office and was not holding that office on the date of taking cognizance, there would be no necessity to obtain sanction. It was obvious that it was not necessary for the Court to go up to Section 6(2) as in that case, there would be no question of doubt about the sanctioning authority. In our opinion also, Section 6(2) of the Act, which is parimateria to Section 19(2), does not contemplate a situation as is tried to be argued by the learned senior counsel. We do not agree with the proposition that the Act expressly contemplates that a public servant may be holding office in a different capacity from the one that he was holding when the offence is alleged to have been committed at the time when cognizance is taken. That is not, in our opinion, the eventuality contemplated in Section 6(2) or Section 19(2), as the case may be. In Antulay's case (cited supra), the Court went on to hold that where a public servant holds a different capacity altogether from the one which he is alleged to have abused, there would be no necessity of sanction at all. This view was taken on the specific interpretation of Section 6 generally and more particularly, Section 6(1)(c), which is parimateria to Section 19(1)(c) of the Act. Once it was held that there was no necessity of sanction at all, there would be no question of there being any doubt arising about the sanctioning authority. The doubt expressed in Section 19(2), in our opinion, is not a pointer to suggest that a public servant may have abused any particular office, but when he occupies any other office subsequently, then the sanction is a must. That will be the incorrect reading of the Section. The Section simply contemplates a situation where there is a genuine doubt as to whether sanctioning authority should be the Central Government or the State Government or any authority competent to remove him. The words in Section 19(2) are to be read in conjunction with Sections 19(1)(a), 19(1)(b) and 19(1)(c). These clauses only fix the sanctioning authority to be the authority which is capable of "removing a public servant". Therefore, in our opinion, the argument based on the language of Section 6(2) or as the case may be, Section 19(2), is not correct. This eventuality has been considered, though not directly, in paragraph 24 in the judgment in Antulay's case (cited supra), in the following manner:-

> "24 .... 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 in contrary to all canons of construction and leads to an absurd and 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 rougue's charter". (emphasis supplied)

27. It is in the light of this that the Court did not have to specify as to under what circumstances would a duty arise for locating the authority to give sanction. The doubt could arise in more manners than one and in more situations than one, but to base the interpretation of Section 19(1) of the Act on the basis of Section 19(2) would be putting the cart before the horse. The two Sections would have to be interpreted in a rational manner. Once the interpretation is that the prosecution of a public servant holding a different capacity than the one which he is alleged to have abused, there is no question of going to Section 6(2) / 19(2) at all in which case there will be no question of any doubt. It will be seen that this interpretation of Section 6(1) or, as the case may be, Section 19(1), is on the basis of the expression "office" in three sub-clauses of Section 6(1), or the case may be, Section 19(1). For all these reasons, therefore, we are not persuaded to accept the contention that Antulay's case (cited supra) was decided per incuriam of Section 6(2). In our opinion, the decision in K. Veeraswami Vs. Union of India (cited supra) or, as the case may be, P.V. Narsimha Rao's case (cited supra) are not apposite nor do they support the contention raised by the learned senior counsel as regards Antulay's case (cited supra) being per incuriam of Section 6(2).

28. The learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants, in support of their argument that Antulay's case (cited supra) require reconsideration, urged that that interpretation deprives the entire class of public servants covered by the clear words of Section 6(1)/19(1) of a valuable protection. It was further urged that such interpretation would have a disastrous effect on the careers of the public servants and the object of law to insulate a public servant from false, frivolous, malicious and motivated complaints of wrong doing would be defeated. It was also urged that such interpretation would amount to re-writing of Section 19(1) and as if a proviso would be added to Section 19(1) to the following effect:-

> "Provided that nothing in this sub-Section shall apply to a case where at the time of cognizance, the public servant is holding a different post with a different removing authority from the one in which the offence is alleged to have been committed. Lastly, it was urged that such an interpretation would negate the very foundation of criminal law, which requires a strict interpretation in favour of the accused. Most of these questions are already answered, firstly, in Antulay's case (cited supra) and secondly, in Prakash Singh Badal v. State of Punjab (cited supra). Therefore, we need not dilate on them. We specifically reject these arguments on the basis of Antulay's case (cited supra) itself which has been relied upon in Prakash Singh Badal v. State of Punjab (cited supra). The argument regarding the addition of the proviso must also fall as the language of the suggested proviso contemplates a different "post" and not the "office", which are entirely different concepts. That is apart from the fact that the interpretation regarding the abuse of a particular office and there being a direct relationship between a public servant and the office that he has abused, has already been approved of in Antulay's case (cited supra) and the other cases following Antulay's case (cited supra) including Prakash Singh Badal v. State of Punjab (cited supra). We, therefore, reject all these arguments.

29 .It was also urged that a literal interpretation is a must, particularly, to sub-Section (1) of Section 19. That argument also must fall as sub-Section (1) of Section 19 has to be read with in tune with and in light of sub-Sections (a), (b) and (c) thereof. We, therefore, reject the theory of litera regis while interpreting Section 19(1). On the same lines, we reject the argument based on the word "is" in sub-Sections (a), (b) and (c). It is true that the Section operates in praesenti; however, the Section contemplates a person who continues to be a public servant on the date of taking cognizance. However, as per the interpretation, it excludes a person who has abused some other office than the one which he is holding on the date of taking cognizance, by necessary implication. Once that is clear, the necessity of the literal interpretation would not be there in the present case. Therefore, while we agree with the principles laid down in Robert Wigram Crawford Vs. Richard Spooner31 [4 MIA 179], Re Bedia Vs. Genreal Accident, Fir and Life Assurance Corporation Ltd.32 [1948 (2) All ER 995] and Bourne (Inspector of Taxes) Vs. Norwich Crematorium Ltd.33 [1967 (2) All ER 576], we specifically hold that giving the literal interpretation to the Section would lead to absurdity and some unwanted results, as had already been pointed out in Antulay's case (cited supra) (see the emphasis supplied to para 24 of Antulay's judgment).

30. Another novel argument was advanced basing on the language of Sections 19(1) and (2). It was pointed out that two different terms were used in the whole Section, one term being "public servant" and the other being "a person". It was, therefore, urged that since the two different terms were used by the Legislature, they could not

connote the same meaning and they had to be read differently. The precise argument was that the term "public servant" in relation to the commission of an offence connotes the time period of the past whereas the term "a person" in relation to the sanction connotes the time period of the present. Therefore, it was urged that since the two terms are not synonymous and convey different meanings in respect of time/status of the office, the term "public servant" should mean the "past office" while "person" should mean the "present status/present office". While we do agree that the different terms used in one provision would have to be given different meaning, we do not accept the argument that by accepting the interpretation of Section 19(1) in Antulay's case, the two terms referred to above get the same meaning. We also do not see how this argument helps the present accused. The term "public servant" is used in Section 19(1) as Sections 7, 10, 1 and 13 which are essentially the offences to be committed by public servants only. Section 15 is the attempt by a public servant to commit offence referred to in Section 13(1)(c) or 13(1)(d). Section 19(1) speaks about the cognizance of an offence committed by a public servant. It is not a cognizance of the public servant. The Court takes cognizance of the offence, and not the accused, meaning, the Court decides to consider the fact of somebody having committed that offence. In case of this Act, such accused is only a public servant. Then comes the next stage that such cognizance cannot be taken unless there is a previous sanction given. The sanction is in respect of the accused who essentially is a public servant. The use of the term "a person" in sub-Sections (a), (b) and (c) only denotes an "accused". An "accused" means who is employed either with the State Government or with the Central Government or in case of any other person, who is a public servant but not employed with either the State Government or the Central Government. It is only "a person" who is employed or it is only "a person" who is prosecuted. His capacity as a "public servant" may be different but he is essentially "a person" - an accused person, because the Section operates essentially qua an accused person. It is not a "public servant" who is employed; it is essentially "a person" and after being employed, he becomes a "public servant" because of his position. It is, therefore, that the term "a person" is used in clauses (a), (b) and (c). The key words in these three clauses are "not removable from his office save by or with the sanction of It will be again seen that the offences under Sections 7, 10, 11 and 13 are essentially committed by those persons who are "public servants". Again, when it comes to the removal, it is not a removal of his role as a "public servant", it is removal of "a person" himself who is acting as a "public servant". Once the Section is read in this manner, then there is no question of assigning the same meaning to two different terms in the Section. We reject this argument.

31. Another novel argument was raised on the basis of the definition of "public servant" as given in Section 2(c) of the Act. The argument is based more particularly on clause 2(c)(vi) which provides that an arbitrator, on account of his position as such, is public servant. The argument is that some persons, as contemplated in Sections 2(c)(vii), (viii), (ix) and (x), may adorn the character of a public servant only for a limited time and if after renouncing that character of a public servant on account of lapse of time or non-continuation of their office they are to be tried for the abuse on their part of the offices that they held, then it would be a very hazardous situation. We do not think so. If the person concerned at the time when he is to be tried is not a public servant, then there will be no necessity of a sanction at all. Section 19(1) is very clear on that issue. We do not see how it will cause any hazardous situation. Similarly, it is tried to be argued that a Vice-Chancellor who is a public servant and is given a temporary assignment of checking the papers or conducting examination or being invigilator by virtue of which he is a public servant in an entirely different capacity as from that of a Professor or a Vice-Chancellor, commits an offence in the temporary capacity, then he would not be entitled to the protection and that will be causing violence to such public servant and, therefore, such could not have been the intention of the Legislature. We feel that the example is wholly irrelevant in the light of the clearest possible dictum in Antulay's case (cited supra) and in Prakash Singh Badal v. State of Punjab (cited supra). If the concerned person continues to be a Vice-Chancellor and if he has abused his office as Vice-Chancellor, there would be no doubt that his prosecution would require a sanction. So, it will be a question of examining as to whether such person has abused his position as a Vice-Chancellor and whether he continues to be a Vice-Chancellor on the date of taking of the cognizance. If, however, he has not abused his position as Vice-Chancellor but has committed some other offence which could be covered by the sub-Sections of Section 19, then there would be no necessity of any sanction.

32. Same argument was tried to be raised on the question of plurality of the offices held by the public servant and the doubt arising as to who would be the sanctioning authority in such case. In the earlier part of the judgment, we have already explained the concept of doubt which is contemplated in the Act, more particularly in Section 19(2). The law is very clear in that respect. The concept of 'doubt' or 'plurality of office' cannot be used to arrive

at a conclusion that on that basis, the interpretation of Section 19(1) would be different from that given in Antulay's case (cited supra) or Prakash Singh Badal v. State of Punjab (cited supra). We have already explained the situation that merely because a concept of doubt is contemplated in Section 19(2), it cannot mean that the public servant who has abused some other office than the one he is holding could not be tried without a sanction. The learned senior counsel tried to support their argument on the basis of the theory of "legal fiction". We do not see as to how the theory of "legal fiction" can work in this case. It may be that the appellants in this case held more than one offices during the check period which they are alleged to have abused; however, there will be no question of any doubt if on the date when the cognizance is taken, they are not continuing to hold that very office. The relevant time, as held in S.A. Venkataraman Vs. State (cited supra), is the date on which the cognizance is taken. If on that date, the appellant is not a public servant, there will be no question of any sanction. If he continues to be a public servant but in a different capacity or holding a different office than the one which is alleged to have been abused, still there will be no question of sanction and in that case, there will also be no question of any doubt arising because the doubt can arise only when the sanction is necessary. In case of the present appellants, there was no question of there being any doubt because basically there was no question of the appellants' getting any protection by a sanction.

33. We do not, therefore, agree with learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants, that the decision in Antulay's case (cited supra) and the subsequent decisions require any reconsideration for the reasons argued before us. Even on merits, there is no necessity of reconsidering the relevant ratio laid down in Antulay's case (cited supra).

34. Thus, we are of the clear view that the High Court was absolutely right in relying on the decision in Prakash Singh Badal v. State of Punjab (cited supra) to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19 of the Act as held in K. Karunakaran v. State of Kerala (cited supra) and the later decision in Prakash Singh Badal v. State of Punjab (cited supra). The appeals are without any merit and are dismissed.

❑❑❑

STATE OF MADHYA PRADESH VERSUS JIYALA

SUPREME COURT OF INDIA

CRIMINAL APPEAL NO.1386 of 2009

[Arising out of Special Leave Petition (Crl.) No. 3276 of 2008]

(2009) 15 SCC 72

State of Madhya Pradesh
Versus
Jiyala

Coram : Hon'ble Chief Justice Mr. K.g. Balakrishnan & Honourable Mr. Justice P. Sathasivam

Decided on : 31-07-2009

In the present case, the Ld. Single Judge of the High Court had opined that the District Magistrate (the appropriate authority in this case) who had granted the sanction order in question had not applied his mind. It was held that since the sanction order did not enumerate reasons, it had been given mechanically and was hence illegal. It was further stated that the said sanction order had not been proved because the District magistrate who passed the order had not been subsequently examined as a witness by the prosecution in order to prove the same.

In the absence of a finding showing that serious injustice has been caused to the accused by way of granting the sanction (even if there has been an error, omission or irregularity in passing the sanction order), it is not correct for the High Court to set aside the conviction and sentence given by the Special Judge.

Held

- *High Court was not justified in interfering with the "finding, sentence or order passed by a Special Judge" under the Act. As per Section 19 (3) (a) of the Act "no finding, sentence or order passed by a Special Judge shall be reverted or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned.*
- *In the case before us, even if it were to be accepted that there has been an "error, omission or irregularity" in the passing of the sanction order, the Ld. Single Judge of the High Court has not made a finding which shows that a serious failure of justice had been caused to the respondent. In the absence of such finding it was not correct for the High Court to set aside the conviction and sentence given by the Special Judge.*

No requirement for the sanctioning authority to be examined as a witness by the prosecution- It is though open to the respondent to question the genuineness or validity of the sanction order before the Special Judge.

Held

- *It was also not justified for the Learned Single Judge to hold that the District Magistrate who had passed the sanction order should have been subsequently examined as a witness by the prosecution in order to prove the same. The sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in the bona fide manner. It was of course open to the respondent to question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution.*

JUDGMENT

1. Leave granted.

2. Application for exemption from filing O.T. is allowed.

3. The State of Madhya Pradesh had filed a petition seeking special leave to appeal against a judgment given by a single judge at the Jabalpur Bench of the High Court of Madhya Pradesh (in Criminal Appeal No. 1539 of 1995). Prior to the impugned judgment of the High Court, a Special Judge at Balaghat, Madhya Pradesh had

convicted the Respondent for offences under Section 7 and Section 13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988

[hereinafter referred to as 'the Act]. In pursuance of the findings of the Special Judge, the Respondent had been sentenced to undergo imprisonment for a period of one year and a fine of Rs. 200/- had also been imposed on him. Aggrieved by this result, the Respondent had filed an appeal before the High Court.

4. The learned single judge of the High Court set aside the conviction and the sentence mainly on the ground that the requisite sanction order had not been obtained properly. Under the scheme of the Act, a sanction order from an appropriate authority is required before proceeding with a prosecution under the same Act. The rationale for requiring such a sanction order is to discourage frivolous prosecutions under the Act. In the present case, the learned single judge of the High Court had opined that the District Magistrate (the appropriate authority in this case) who had granted the sanction order in question had not applied his mind. It was held that since the sanction order did not enumerate reasons, it had been given mechanically and was hence illegal. It was further stated that the said sanction order (Exhibit -P/6 in the proceedings before the Special Judge) had not been proved because the District Magistrate who passed the order had not been subsequently examined as a witness by the prosecution in order to prove the same.

5. In our opinion, both of the above-mentioned findings of the learned single judge of the High Court are not correct. Therefore, the High Court was not justified in interfering with the 'finding, sentence or order passed by a Special Judge under the Act. As per Section 19(3)(a) of the Act 'no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned.

6. The relevant portion of the Act reads as follows :-

> "Section 19. Previous sanction necessary for prosecution (1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-
>
> .(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> .(c) in the case of any other person, of the authority competent to remove him from his office.
>
> .(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.
>
> .(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-
>
> .(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
>
> .(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

.(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

.(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

.(a) error includes competency of the authority to grant sanction;

.(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature." Explanation.-For the purposes of this section,-

7. In the case before us, even if it were to be accepted that there has been an 'error, omission or irregularity in the passing of the sanction order, the learned single judge of the High Court has not made a finding which shows that a serious failure of justice had been caused to the Respondent. In the absence of such a finding it was not correct for the High Court to set aside the conviction and sentence given by the Special Judge.

8. It was also not justified for the learned single judge to hold that the District Magistrate who had passed the sanction order should have been subsequently examined as a witness by the prosecution in order to prove the same. The sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the Respondent to question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution.

9. It is apparent that the High Court has not considered the appeal on merits to decide whether a failure of justice had been occasioned in the present case. Therefore, we set aside the judgment of the learned single judge of the High Court and direct that the appeal filed by the Respondent before the High Court be considered on merits and disposed of accordingly.

10. The appeal is disposed of accordingly.

❑❑❑

STATE OF KARNATAKA THROUGH CBI VERSUS C. NAGARAJASWAMY

Supreme Court of India
(From Karnataka High Court)

Criminal Appeal No. 1279 of 2002 With Criminal Appeal No. 137 of 2003
(2005) 8 SCC 370

State of Karnataka through CBI —Appellant
Versus
C. Nagarajaswamy —Respondent

Coram : S.B. Sinha & R.V. Raveendran, JJ.

Decided on 7-10-2005

(In the instant case, respondent herein was working as a Junior Telecom officer and he was charged under PC Act. SpeciaL Judge opined that the sanction for prosecution accorded by PW 11 was iLLegaL and thus, directed the accused to be discharged from the proceedings. Later, a fresh charge-sheet was filed after obtaining an order of sanction which came to be chaLLenged before the High Court by the respondent in an application filed under Section 482 of the Code. Now, interpretation of Section 300 of Cr.P.C. is in question before the Hon'bLe Supreme Court.)

Whether the proper sanction was accorded or not is to be determined at the stage of taking cognizance.

HeLd

- *Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which shouLd be deaLt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of finaL arguments after triaL, the same way have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who couLd remove him from service.*

Grant of proper sanction- sine qua non for taking cognizance of the offence.

HeLd

- *Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirabLe that the question as regards sanction may be determined at an earLy stage.*
- *But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court.*

Essential conditions for invoking the bar under Section 300 Cr.P.C.

Held

- *It is true that in terms of clause (2) of Article 20 of the Constitution no person can be prosecuted and punished for the same offence more than once. Section 300 of the Code was enacted having regard to the said provision.*
- *The essential conditions for invoking the bar under the said provision are:*
  - *i) the court had requisite jurisdiction to take cognizance and tried the accused; and*
  - *ii) the court has recorded an order of conviction or acquittal, and such conviction/acquittal remains in force.*
- *It is not possible to agree with the decision of the High Court that the trial court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed herein-before that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking*

the provisions of Section 300 of the Code as, even then, it would be held to have been rendered illegally and without jurisdiction.

JUDGMENT

S.B. Sinha, J.—

Interpretation of Section 300 of the Code of Criminal Procedure (for short "the Code") is in question in these appeals which arise out of judgments and orders dated 9.1.2002 and 10.4.2002 in Criminal Petition Nos. 330 of 2000 and 4007 of 2001 respectively passed by the High Court of Karnataka at Bangalore.

2. We will notice the fact of both the appeals separately. Criminal Appeal No. 1279 of 2002

3. The Respondent herein was working as a Junior Telecom Officer in Shankarapuram Telecom Exchange. One R. Veera Prathap made a complaint that he had demanded an illegal gratification for showing official favour whereupon a case in Crime No. R.C. 34A/1994 was registered. A charge sheet was filed therein and the Special Judge for CBI cases, Bangalore by an order dated 16.7.1999 took cognizance of an offence under Section 7 of the Prevention of Corruption Act, 1988 (for short "the Act"). In the trial, 12 witnesses were examined. The statement of Respondent under Section 313 of the Code was also recorded.

4. The learned Special Judge formulated two points for his determination:

> "1. Whether the prosecution has proved that the sanction accorded for the prosecution of the accused in this case is a valid sanction?
>
> 2. Whether the prosecution has further proved beyond any reasonable doubt that the accused has committed the offences punishable under S. 7 and under S. 13(1)(d) R/w. S 13(2) of the Prevention of Corruption Act, 1988?"

5. In regard to point No. 1, the learned Special Judge was of the opinion that the sanction for prosecution accorded by PW11 was illegal and in that view of the matter, the same was determined in favour of the Respondent. In view of his findings as regard point No. 1, the learned Special Judge did not record any finding on point No. 2 and directed as under:

"Accused C. Nagarajaswamy is hereby discharged from the proceedings and his bail bonds stand cancelled."

6. A fresh charge sheet was filed after obtaining an order of sanction which came to be challenged before the High Court by the Respondent in an application filed under Section 482 of the Code. Criminal Appeal No. 137 of 2003

7. The Respondent herein was working as a Manager in State Bank of Mysore, 4th Block, Rajajinagar, Bangalore. She had dominion and control over the management of the accounts of the Bank. She allegedly misappropriated a sum of Rs. 40,000/- wherefor a chargesheet was filed on 27.12.1984. While the criminal proceedings were pending, she was dismissed from service by an order dated 1.6.1985. She faced a full-fledged trial. She was examined under Section 313 of the Code and also laid defence evidence. The question as regard sanction accorded by the Managing Director of the Bank was raised by the Respondent herein before the learned XXI Addl. City Civil and Sessions and Special Judge, Bangalore, contending that only the Board of Directors was the competent authority therefor. By a judgment and order dated 14.11.1991, the learned XXI Addl. City Civil and Sessions and Special Judge while accepting the said plea directed:

> "The sanction order (Ex. P28) is invalid. The sanctioning authority was not competent to issue the said sanction order. Further proceedings of the case is stopped and the accused is released. The Bail bond of the accused is cancelled"

8. A second chargesheet was filed after years on 18.8.1995 on the ground that as the Respondent has been dismissed from the service, no sanction was required for her prosecution. Cognizance was taken by an order dated 31.8.2001. The Respondent herein filed an application under Section 482 of the Code for quashing the criminal proceedings as also the said order dated 31.8.2001.

9. The High Court allowed the first application under Section 482 of the Code filed by the Respondent herein on the ground that when an accused faces a full-fledged trial, having regard to the provisions of the Code, the Trial

Court must either record a judgment of conviction or acquittal and the accused cannot be discharged in terms of Section 227 of the Code after a full-fledged trial. In the second matter, the High Court was of the opinion that no fresh trial is permissible in law.

10. Mr. A. Sharan, learned Additional Solicitor General appearing on behalf of the Appellant would contend that the High Court committed a manifest error in passing the impugned orders insofar as it failed to take into consideration the ingredients of the provisions of Section 300 of the Code.

11. Relying on the decisions of this Court in Baij Nath Prasad Tripathi Vs. the State of Bhopal [(1957) SCR 650] and Mohammad Safi Vs. The State of West Bengal [AIR 1966 SC 69], Mr. Sharan would submit that in a case where a proper order of sanction was not passed, the court will have no jurisdiction to take cognizance thereof and as such a judgment passed therein shall be illegal and of no effect and in that view of the matter, subsequent trial with proper sanction is not barred.

12. Mr. Basava Prabhu S. Patil, learned counsel appearing on behalf of the Respondents would submit that Chapter XVIII of the Code does not envisage an order of discharge or dropping of the proceedings after a charge has been framed, witnesses are examined, the statement of the accused under Section 313 of the Code is taken and defence witnesses are examined.

13. Chapter XIX of the Code provides for trial of warrant-cases by Magistrates. An accused can be discharged in the cases instituted under Section 173 in terms of Section 239 of the Code in the event, the Magistrate considers the charge against the accused to be groundless wherefor reasons are required to be recorded. However, if charge is framed whereto the accused pleads not guilty, the prosecution and defence may lead their respective evidence. Section 248 provides for recording of a judgment of acquittal or conviction.

14. The Appellant was proceeded against the Respondents under the Act. Section 5 of the Act provides for the procedure and powers of the Special Judge. Section 19 of the Act mandates that no court shall take cognizance of offence punishable under the provisions specified therein except with the previous sanction by the authorities specified therein.

15. Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

16. Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage. [See Ashok Sahu Vs. Gokul Saikia and Another, 1990 (Supp) SCC 41 and Birendra K. Singh Vs. State of Bihar, JT 2000(8) SC 248]

17. But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court. [See B. Saha and Others Vs. M.S. Kochar, (1979) 4 SCC 177, para 13 and K. Kalimuthu Vs. State by DSP, (2005) 4 SCC 512]

18. It is true that in terms of Clause (2) of Article 20 of the Constitution of India no person can be prosecuted and punished for the same offence more than once. Section 300 of the Code was enacted having regard to the said provision. Sub-section (1) of Section 300 of the Code reads as under:

> "Persons once convicted or acquitted not to be tried for same offence—(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof."

19. The essential conditions for invoking the bar under said provision are:

(i) the court had requisite jurisdiction to take cognizance and tried the accused; and

(ii) the court has recorded an order of conviction or acquittal, and such conviction/acquittal remains in force.

20. The question came up for consideration before the Federal Court in Basdeo Agarwalla Vs. King Emperor [(1945) F.C.R. 93] wherein it was held that if a proceeding is initiated without sanction, the same would be null and void.

21. In Yusofalli Mulla Noorbhoy Vs. the King [AIR 1949 Privy Council 264], it was held: "16....A court cannot be competent to hear and determine a prosecution the institution of which is prohibited by law and S. 14 prohibits the institution of a prosecution in the absence of a proper sanction. The learned Magistrate was no doubt competent to decide whether he had jurisdiction to entertain the prosecution and for that purpose to determine whether a valid sanction had been given, but as soon as he decided that no valid sanction had been given the Court became incompetent to proceed with the matter. Their Lordships agree with the view expressed by the Federal Court in Agarwalla's case: (AIR (32) 1945 F.C. 16 : Cr. L.J. 510) that a prosecution launched without a valid sanction is a nullity."

22. The matter came up before this Court in Budha Mal Vs. The State of Delhi [Criminal Appeal No. 17 of 1952] disposed of on 3rd October, 1952 wherein a trial of the Appellant therein for alleged commission of an offence under Section 161 of the Indian Penal Code resulted in conviction but an appeal therefrom was accepted on the ground that no sanction for the prosecution of the Appellant was accorded therefor. The police prosecuted the Appellant again after obtaining fresh sanction whereupon a plea of bar thereto in terms of Section 403 of the Code was raised. Mahajan, J. speaking for a Division Bench opined:

> "We are satisfied that the learned Sessions Judge was right in the view he took. Section 403, Cr.P.C. applies to cases where the acquittal order has been made by a court of competent jurisdiction but it does not bar a retrial of the accused in cases where such an order has been made by a court which had no jurisdiction to take cognizance of the case. It is quite apparent on this record that in the absence of a valid sanction the trial of the appellant in the first instance was by a magistrate who had no jurisdiction to try him."

23. The aforementioned cases were noticed by a Constitution Bench of this Court in Baij Nath Prasad Tripathi (supra) wherein a similar plea was repelled stating:

> "The Privy Council decision is directly in point, and it was there held that the whole basisof Section 403(1) was that the first trial should have been before a court competent to hear and determine the case and to record a verdict of conviction or acquittal; if the court was not so competent, as for example where the required sanction for the prosecution was not obtained, it was irrelevant that it was competent to try other cases of the same class or indeed the case against the particular accused in different circumstances, for example if a sanction had been obtained."

24. In Mohammad Safi (supra), this Court held:

> "6. It is true that Mr. Ganguly could properly take cognizance of the offence and, therefore, the proceedings before him were in fact not vitiated by reason of lack of jurisdiction. But we cannot close our eyes to the fact that Mr. Ganguly was himself of the opinion — and indeed he had no option in the matter because he was bound by the decisions of the High Court — that he could not take cognizance of the offence and consequently was incompetent to try the appellant. Where a court comes to such a conclusion, albeit erroneously, it is difficult to appreciate how that court can absolve the person arraigned before it completely of the offence alleged against him. Where a person has done something which is made punishable by law he is liable to face a trial and this liability cannot come to an end merely because the court before which he was placed for trial forms an opinion that it has no jurisdiction to try him or that it has no jurisdiction to take cognizance of the offence alleged against him. Where, therefore, a court says, though erroneously, that it was not competent to take cognizance of the offence it has no power to acquit that person of the offence. An order of acquittal made by it is in fact a nullity.

25. Relying upon Yusofalli Mulla Noorbhoy (supra), it was held :

> "The principle upon which the decision of the Privy Council is based must apply equally to a case like the present in which the court which made the order of acquittal was itself of the opinion that it had no jurisdiction to proceed with the case and therefore the accused was not in jeopardy."

[See also State of Goa vs. Babu Thomas - (2005) 7 SCALE 659]

26. In view of the aforementioned authoritative pronouncements, it is not possible to agree with the decision of the High Court that the Trial Court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Code as even then, it would be held to have been rendered illegally and without jurisdiction.

27. The learned counsel for the Respondent next contended that having regard to the fact that the Respondents herein have faced ordeal of trial for a long time, it would not be in the interest of justice to put them on trial once over. In this behalf he relied on the decision of this Court in State of Madhya Pradesh Vs. Bhooraji and Ors. [JT 2001(7) SC 55] wherein it is observed that fresh trial should be ordered only in exceptional cases of 'failure of justice'. In Bhooraji (supra), the specified court being a Sessions Court took cognizance of the offence under the SC & ST (Prevention of Atrocities) Act without the case being committed to it. It convicted and sentenced the accused. During pendency of appeal by the accused before High Court, this court took the view that committal proceedings are necessary for a specified court, to take cognizance of offences to be tried under the Act. The High Court, therefore, quashed the entire proceedings and directed trial de novo. In that context this Court held that ordering de novo trial was not justified and as the trial was conducted by a 'competent court', the same cannot be erased merely on account of a procedural lapse. We may notice that in a case where the trial was conducted by a court of competent jurisdiction ending in conviction or acquittal, a retrial may not be directed. Interpreting Section 465 of the Code, this Court in Bhooraji (supra) held:

"22. The bar against taking cognizance of certain offences or by certain courts cannot govern the question whether the court concerned is "a court of competent jurisdiction", e.g. courts are debarred from taking cognizance of certain offences without sanction of certain authorities. If a court took cognizance of such offences, which were later found to be without valid sanction, it would not become the test or standard for deciding whether that court was "a court of competent jurisdiction". It is now well settled that if the question of sanction was not raised at the earliest opportunity the proceedings would remain unaffected on account of want of sanction. This is another example to show that the condition precedent for taking cognizance is not the standard to determine whether the court concerned is "a court of competent jurisdiction".

28. However, the learned counsel appearing on behalf of the Respondents may be right in his submissions as regards the right of an accused for a speedy trial having regard to the provisions contained in Article 21 of the Constitution of India that a person's fate may not be kept hanging for a long time.

29. In Mahendra Lal Das Vs. State of Bihar and Others [(2002) 1 SCC 149], this Court opined: "5. It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. This Court in Abdul Rehman Antulay v. R.S. Nayak while interpreting the scope of Article 21 of the Constitution held that every citizen has a right to speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and retrial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice."

30. In that case, however, the prosecution had miserably failed to explain the delay of more than 13 years in granting the sanction for prosecution of the Appellant therein of possessing disproportionate wealth of about Rs. 50,600/-. The State was also not satisfied about the merit of the case and the authorities were convinced that despite granting of sanction the trial would be a mere formality and an exercise in futility.

31. Yet again in P. Ramachandra Rao Vs. State of Karnataka [(2002) 4 SCC 578] this Court while categorically holding that no period of limitation can be prescribed on which the trial of a criminal case or criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused observed:

> "(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused."

32. Keeping in view of the aforementioned principles and having regard to the facts and circumstances of this case, however, we are of the opinion that the interest of justice shall be sub¬served if while allowing these appeals and setting aside the judgments of the High Court, the trial court is requested to dispose of the matters at an early date preferably within six months from the date of communication of this order, subject, of course, to rendition of all cooperation of the Respondents herein. In the event, the trial is not completed within the aforementioned period, it would be open to the Respondents to approach the High Court again. These appeals are disposed of with the aforementioned directions. No costs.

Appeal allowed.

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STATE OF KERALA VS. J. JAYLALITA

(2017) 6 SCC 263

Landmark Judgment on disproportionate assets case

Prosecution of known public servants under PC Act, 1988 in case of charge of abatement and conspiracy to illegally acquire or possess any property by a public servant is permissible-

Reiterating the ratio of law settled by the Supreme Court in **P. Nallammal (1999)6 SCC 559** it is held that while dealing with defence plea that a known public servant could not be prosecuted for the offence under section 109 IPC in a trial constituted under the Act the court has come to the conclusion that the accusation and possession of any property by a public servant is capable of being abated and that there is neither and express nor implied exclusion in the 1988 Act to deal with such a situation. The Trial Court rightly had that under section 3 of the 1988 Act, the special judge had the power to try not only offence punishable under the said statute but also one for conspiracy to commit or attempted to commit or abatement of any offence there under. Ii is held that private individuals could be prosecuted by the Special Court under the Act on the ground that they have conspired with or abated the act of Criminal misconduct committed by a public servant within the meaning of section 13 (1) (e) of the 1988 Act.

Statement of objects and reasons section 3 to 5 and 6 to 13 of PC Act 1988 –

This Act has been enacted to consolidated and reinforce integration laws. It is expanded the notion of public servant to include within its sweep, not only public servants but also those who abate and conspire with them. It has ordained constitution of court of special Judge to try offences there under and also charge of conspiracy or abatement or attempted in commission thereof. Thus an exclusive autonomous adjudicative regime has been put in place. Section 7 to 12 corresponds to section 161 to 165 A IPC thus integrating offences to be tried by special Judge but with enhanced penalty. As a consequences of the integration of the offences contained in chapter 9 of the Penal Code deal with criminal misconduct of a public servant and the offence of abatement thereof.

The provisions of Cr.P.C. has been made applicable subject to modifications contemplated and the special judge in particular, trying an offence punishable under the Act has been authorized to exercise all powers and functions invocable by a District Judge not under this Act only (S. 4) but also under the Criminal Law amendment ordinance, 1944 [S. 5 (6)].

Once the power has been exercised by the special Judge under section 4 (3) of the P. C. Act to proceed against non PC offence along with PC offences, the mere fact that sole public servant dies after exercise of powers under section 4 (3) will not divest the jurisdiction of the special Judge or vitiate the proceeding pending before him. Therefore, it is held that even after the sole public servant has died and the appeal against her has abated the other appellants are liable to be convicted and sentenced in the manner as has been held by the Trial Court.

Confiscation and forfeiture of property attached after conviction under PC Act – Section 5 (6), 22, 28 and Section 13 (1) (e) r/w Section 13 (2) and Section 7 to 12 – proper forum for disposal of such property -

Special judge under PC Act is competent to dispose of property attached under section 452 Cr.P.C.. Section 5 (6) authorizes special Judge to exercise all powers and functions of a District Judge under Criminal law amendment ordinance 1944. Order of confiscation and forfeiture of attached properties by special Judge presiding over the Trial Court is therefore unexceptionable, and thus, restored.

Presumption against public servant

Lawfulness of service of income expansion to section 13 (1) (e) makes it limpid that the known source of income of the public servant, to satisfactorily account the pecuniary resources or the property otherwise alleged to be disproportionate thereto has to be from a lawful source and further that the receipt thereof had been intimated in accordance with the provisions of any law, rule or order for the time being applicable to him. A significant addition to section 13 (1) (e) is the expansion appended thereto which exposits the expression known source of income to be the income received from any lawful source the receipt whereof has been intimated in accordance with the provisions of the law, rules or order to a public servant. The word 'satisfactorily' livies the burden on the accused not only to offer a plausible expansion as to how he came to his owe large wealth but also to satisfy the court that the explanation was worthy of acceptance. Thus

the explanation offered by the accused to be exceptional, has to be one not only plausible in nature and contended but also worthy of acceptance.

Laying down a rule of evidence, enabling to court to raise a presumption of guilt – certain circumstance – A rule which is incomplete departure from the established principle of criminal Jurisprudence that burden always lays on the prosecution to prove the ingredients of the offence and never shifts on to the accused known source of income must have reference to **sources known to the prosecution** on a thorough investigation of the case and it **cannot be the resources known to the accused**. The affairs of an accused person would be a **matter within his knowledge in terms of section 106 of the evidence Act** and the source of income of a particular individual would depend upon his possession in life, with particular reference to its occupation or avocation in life and in case of government servants, the prosecution would naturally infer of his known source of income would be the salary earned by him during the active service. It was, however, recognized that the burden of the accused was not so onerous as that of the prosecution and could be discharged by proof of balance of probabilities. Once the prosecution proved that the public servant possessed asset disproportionate to his known source of income, the offence of criminal conduct is attributed to him but it is open to him to satisfactorily account for such disproportionately by proving the source of income or the means by which he had acquired the assets.

Gift to the public servant need not necessarily by a lawful source of income

Gift could not be expected to be genuine merely because it has come through banking channels, unless, relationship of doner with donee and the occasion is proved. A gift could not be accepted as such to be genuine merely because the amount has come by way of check and draft through banking channels unless the identity of the doner, his credit worthiness, relationship with the doner and the action was proved. Unless the recipient proved the genuineness of the transaction, the same could be very well treated as an accommodation entry of the assesses own money which was not disclosed for the purpose of taxation.

Evidentiary value of Income tax returns/Orders in disproportionate assets case

Income tax order and returns, no doubt are admissible but these are not proved as to whether assets and income concerned are from lawful sources as contemplated under expansion to section 13 (1) (e) PC Act. Income tax assessment proceeding is directed only to quantify taxable income and orders passed therein and the same do not authenticate source as lawful and therefore are not relevant for proving a chage under section 13 (1) (e) PC Act. Preference is to be given to direct evidence of the transaction in question, whether they relate to alleged illegally acquisition/possession of assets concern/expenditure incurred or to purportedly lawful source of income in respect of income tax orders/returns relating thereto.

Property in name of assesses cannot be a ground to believe that it actually belong to assessee, otherwise corrupt public servant would amass wealth in names of known persons and pay income tax and then escape from law. Even otherwise, finding in one set of proceedings cannot be held to be binding on another set of proceedings and both have to be decided on the basis of evidence adduced therein.

Criminal Conspiracy and abatement to divert black money amassed by public servant to corporate sector – Need of minute analysis of evidence and lifting of corporate vail is stressed- Court should lift the corporate veil of such companies not only to unravel tax evasion but also to do justice to properties, to protect public interest and same depends upon fact of each case and statutory provisions involved.

Calculation of legitimate income/income from lawful source – in a Disproportionate asset case advances received from other firms towards sell of property as well as ability of the resources of companies concerned to make such use of transfers has rightly been rejected in addition of the said income as the same are not proved.

Calculation of legitimate income/income from lawful source – in a Disproportionate asset case trial court has rightly **rejected agricultural income purported to be received from lease deed where neither lesser nor person carrying on agriculture are examined**.

Calculation of legitimate income/income from lawful source – in a Disproportionate asset case **earning shown from partnership firm which did not file tax returns to authenticate extent of their business has rightly been declared sham transaction which could not be relied upon.**

Calculation of legitimate income/income from lawful source – in a Disproportionate asset case **income from**

capital induction in the firm cannot be accepted when transfer is between different firms of the accused himself.

Similarly i**ncome from companies cannot be accepted even if** use and frequent exchanges on firms, revenue is between the accused persons and their firms and such exchanges were through banking transactions, it could not be regarded as income from lawful source without proper proof and convincing evidence.

Income from loan availed by private firm is rightly left out from consideration as the firm was not involved in the case.

Income from loan repayment from the accused persons cannot be accepted because balance sheet of debtor firm has been prepared belatedly making its authenticity doubtful.

As regards the **income from loans, only actual disbursement amount are to be added and not total sanction amount**.

In absence of any regular book of account only on the basis of computerized copy of the account available income from private firms could not be accepted.

Similarly in absence of reliable evidence only on the basis of belated balance sheet income from sale of capital assets cannot be accepted.

In absence of proper proof of rental income as well as absence of any proof of either loan or repayment of loan or proof of cultivation of land substantive claim of agricultural income has rightly been rejected.

Rajeev Kumar Vs. State of UP (2017) 8 SCC 791

Criminal misconduct in P.C. Act, 1988

The principles behind **constitution of offence of Criminal misconduct** a perusal to section 13 (1) (D) (i), (ii) & (iii) PC Act 1988 makes it clear that if the **elements of the any of the three sub clauses are met, the same would be sufficient of constitute an offence of criminal misconduct**. Undoubtedly; all the three wings of clause (d) of section 13 (1) are independent, alternative and disjunctive. Thus under section 13 (1) (D) (i) PC Act, obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to Criminal misconduct. On the same reasoning under section 13 (1) (D) (ii) PC Act obtaining of valuable thing or pecuniary advantage by abusing his official position as a public servant, either for himself or for any other persons would amount to criminal misconduct.

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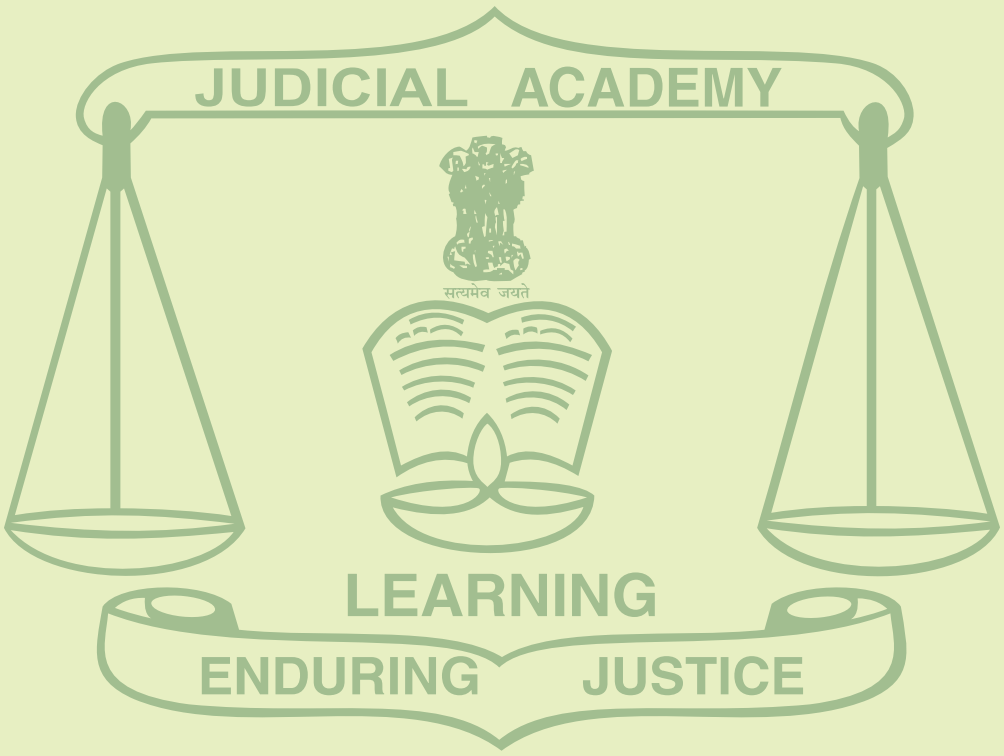

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