Prevention of Corruption Act, 1988 & Sanction for Prosecution

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1(A). Public Servant : The word 'Public Servant' has been defined u/s 2(c) of the Prevention Of Corruption Act, 1988.

1(B). Definition of "public servant" in Sec. 21 IPC not to apply to the definition of "public servant" given in Sec. 2(c) of the P.C. Act, 1988 : Definition of the word "public servant" given in Sec. 21 of the IPC and in Sec. 2(c) of the P.C. Act, 1988 are substantially different. Interpretation given to Sec. 21 of the IPC has no bearing while interpreting the definition of the word "public servant" given in Sec. 2(c) of the P.C. Act, 1988. See : **Manish Trivedi Vs State of Rajasthan, AIR 2014 SC 648.**

Note : *In the above case of Manish Trivedi, the councilors and Members of the Municipal Board of Banswara, Rajasthan were held to be public servant u/s 2(c) of the P.C. Act, 1988.*

2.1. Minister or Chief Minister to be Public Servant : A Chief Minister or a Minister are in the pay of the Government and are, therefore, public servants within the meaning of S. 21(12) of the I.P.C. See : **M. Karunanidhi Vs. Union of India, AIR 1979 SC 898 (Five-Judge Bench).**

2.2. Governor Competent to grant sanction for prosecution of Chief Minister or Ministers : Governor is competent to grant sanction for prosecution of Chief Minister or Ministers for offences committed under the P.C. Act, 1988 and in proper cases Governor may act independently of or contrary to the advice of his Council of Ministers in exercise of his discretionary powers under Article 163 of the constitution. See : **M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC 788 (Five-Judge Bench). compet**

2.2a. Speaker competent to grant sanction of prosecution of Member of Parliament: Speaker of Lok Sabha and Chairman of Rajya Sabha are competent to grant sanction of prosecution of Member of Parliament. See:

(i). P. V. Narsimha Rao Vs. State, CBI,(1998) 4 SCC 626(Constitution Bench).

2.3.1. Who can grant Sanction for prosecution u/s 19 of the PC Act, 1988 ? : As per Section 19(2) of the PC Act, 1988 : "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". See : **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** *(para 16)*

2.3.2. Higher/superior authority than the appointing authority can also grant sanction of prosecution : Higher/superior authority than the appointing authority can also grant sanction of prosecution for offences under the P.C. Act, 1947 and can remove the subordinate officer from office. See :

(i) Secretary, Min. of Defence and Ors. Vs. Prabhash Chandra Mirdha, AIR 2012 SC 2250 *(para 5).*

(ii) A. Sudhakar Vs. Postmaster-General, Hyderabad, (2006) 4 SCC 348.

(iii) Surjit Ghosh Vs. Chairman & Managing Director, United Commercial Bank, AIR 1995 SC 1053.

(iv) Balbir Chand Vs. FCI Ltd., AIR 1997 SC 2229.

(v) Sampuran Singh Vs. State of Punjab, AIR 1982 SC 1407 (Three-Judge Bench).

2.3 Sanction not required for prosecution of a Minister after his resignation : No sanction u/s 19 of the P.C. Act, 1988 for prosecution of a Minister, after his resignation, for offences committed by him during his tenure as Minister is required. See : **M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC788 (Five-Judge Bench).**

2.4.1. Deemed Sanction u/s 19 after three or four months time limit : The directions issued by the Hon'ble Supreme Court (*in para 56*) in Dr. Subramanaan Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185 are as under **:**

"(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 PC 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 charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit." **Kindly See :**

(i) Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185

(ii) Vineet Narain Vs. Union of India, (1998) 1 SCC 226 (Three-Judge Bench)

Note : *Vineet Narain's case has been followed in Dr. Subramanian Swamy*.

2.4.2. Deemed Sanction u/s 19 after three or four months time limit : *Whether trial court is competent to proceed with the case on the basis of deemed sanction to prosecute the accused, a prosecution sanction is not accorded by the competent authority/State within the period of four months in terms of the direction issued by the Apex Court in Vineet Narayan & Another Vs. Union of India & Another, (1998) 1 SCC 226---Three-Judge Bench ?* In the case noted below where CBI had submitted a charge-sheet to the competent authority in the food-grain scam of UP for grant of prosecution sanction u/s 19 of the P.C. Act, 1988 for offences u/s 409, 420, 467. 468., 120-B IPC and u/s 13(2) of the P.C. Act, 1988 but the sanction for the prosecution was not granted by the competent authority within a period of four months, then relying on two Supreme Court decisions reported in (i) Vineet Narayan & Another Vs. Union of India & Another, (1998) 1 SCC 226 and (ii) Dr. Subramanaan Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185, it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court

that since the State Government had not taken any decision in regard to sanction of prosecution of the accused on the charge-sheet submitted by the CBI and the four months period fixed for grant of sanction by the Apex Court had already expired, hence the trial court was right in presuming the "Deemed Sanction" and had rightly issued process to the accused persons by taking cognizance of the offences. See : **Shashikant Prasad Vs. State, 2013 (83) ACC 215 (All)(LB).**

The directions issued by the Hon'ble Supreme Court (in para 56) in **Dr. Subramanaan Swamy Vs. Dr. Manmohan Singh and another,** AIR 2012 SC 1185 are as under **:**

2.5 Relevant considerations for grant of Sanction & duty of Sanctioning Authority : 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. See. **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** *(para 31)*

2.5.01 Duty of prosecution and sanctioning authority : In the case noted below, the Hon'ble Supreme Court has summarized the role of the prosecution and the sanctioning authority before according sanction u/s 19 of the P.C. Act, 1988 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**.**

See : CBI Vs. Ashok Kumar Aggarwal, 2014 (84) ACC 252 (para 8)

2.5.02.Sanction u/s 19(1) for prosecution not to be granted if the prosecution is simply vexatious : Sanction u/s 19(1) of prosecution cannot be granted if the prosecution is simply vexatious nor the court can issue a positive direction to the sanctioning authority to give sanction for prosecution. See **: Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123.**

2.5.03.Sanction for prosecution when to be refused by the competent authority : If the prosecution is simply vexatious, sanction for prosecution is not to be granted. That is one of the main considerations to be borne in mind by the competent authority while considering whether the sanction is to be granted or not. See : **Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke, 2015 (89) ACC 309 (SC**)(para 18).

2.5(b).Power u/s 19 of the P.C. Act, 1988 of sanction to prosecute cannot be delegated by the competent authority : Power u/s 19 of the P.C. Act, 1988 of sanction to prosecute cannot be delegated by the competent authority. Sanction cannot be granted on the basis of report given by some other officer or authority. See : **Manish Trivedi Vs. State of Rajasthan, AIR 2014 SC 648.**

2.6 Satisfaction of the Sanctioning Authority should be based on material produced : 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 investing 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. See**. Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** *(para 27)*

2.6(a). Only prima facie satisfaction of sanctioning authority needed for grant of sanction u/s 19 (1) of the P.C. Act, 1988 : Grant of sanction u/s 19(1) of the P.C. Act, 1988 for prosecution is administrative function. Only prima facie satisfaction of the sanctioning authority is needed. See : **State of Maharashtra Vs Mahesh G. Jain, (2013) 8 SCC 199.**

2.7.1 Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988 : Relying upon its two earlier decisions reported in (i) State of UP Vs. Paras Nath Singh, (2009) 6 SCC 372 (Three-Judge Bench) and (ii) Army Headquarters Vs. CBI, (2012) 6 SCC 228 and (iii) Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64, it has been held by the Hon'ble Supreme Court that Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988. See :

(i) **Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(paras 17 to 22)*

(ii) **Lokesh Kumar Dwivedi Vs. State of UP, 2016 (93) ACC 818 (All).**

2.7.1(a).Tests to be applied whether prior sanction u/s 197 CrPC for prosecution of public servant was required ? : Protection u/s 197 CrPC is available only when alleged act done by public servant is reasonably connected with discharge of his official duty and is not merely a cloak for doing objectionable act--If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between act and performance of official duty, excess will not be a sufficient ground to deprive public servant of protection--Question is not as to nature of offence such as whether alleged offence contained element necessarily dependent upon offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in discharge of his official capacity. Before Section 197 CrPC can be invoked, it must be shown, that official concerned was accused of offence alleged to have been committed by him while acting or purporting to act in discharge of his official duties --It is not the duty which required examination so much as the act, because official act can be performed both in discharge of official duty as well as in dereliction of it --The act must fall within

the scope and range of official duties of public servant concerned. There cannot be any universal rule to determine whether there is a reasonable connection between act done and official duty, nor is it possible to lay down any such rule -- One safe and sure test in such regard, would be to consider if omission or neglect on part of public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty--This makes it clear, that concept of Section 197 does not get immediately attracted on institution of complaint case. See : **Amal Kumar Jha Vs. State of Chhattisgarh & Another, (2016) 6 SC 734.**

2.7.1(aa). Sanction u/s 197 CrPC not required for prosecution of public servant for offences u/s 120-B, 420, 467,468, 471 IPC: Sanction u/s 197 CrPC is not required for prosecution of public servant for offences u/s 120-B, 420, 467,468, 471 IPC. Such acts are not part of official duty of a public servant nor he is supposed to commit such acts in discharge of his official duty. See**: Prakash Singh Badal Vs. State of Punjab, (2007) 1 SCC 1.**

2.7.1(b). Preliminary enquiry necessary before lodging of FIR where a public servant is charged with acts of dishonesty amounting to serious misdemeanour or misconduct: The appellant P. Sirajuddin was a Chief Engineer of the Highways & Rural works, Madras. An FIR against him was lodged for the offences under the Prevention of Corruption Act, 1947. The Hon'ble Supreme Court ruled thus **:** "In our view the procedure adopted against the appellant before the laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. No doubt when allegations about dishonesty of a person of the appellant's rank were brought to the notice of the Chief Minister it was his duty to direct an enquiry into the matter. The Chief Minister in our view pursued the right course. The High Court was not impressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of a person who was going to benefit by the retirement of the appellant and who was said to be a relation of the Chief Minister. The High Court rightly held that the relationship between the said person and the Chief Minister, if any, was so distant that it could not possibly have influenced him and we are of the same view. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be

some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful-validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for someone in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge-sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be resorted to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report." See : **P. Sirajuddin Vs. State of Madras, AIR 1971 SC 520** *(para 17)*.

2.7.2(a).Sanction for prosecution of public servant for offences u/s 420, 409, 467, 468, 471 IPC not required : Sanction for prosecution of public servant for offences u/s 420, 409, 467, 468, 471 IPC not required. See : **Chandan Kumar Basu Vs. State of Bihar, 2014 (86) ACC 856 (SC).**

2.7.2. Plea of sanction u/s 197 CrPC or u/s 19 of the P.C. Act can be raised and considered at any stage of the proceedings --- Interpreting the provisions u/s 196, 197, 156, 196(1-A) CrPC, it has been held by the Supreme Court that the plea of sanction can be raised at the time of taking cognizance of the offence or any time thereafter. But the plea of

sanction cannot be raised or Sec. 197 CrPC is not attracted at the stage of registration of FIR, investigation, arrest, remand of the accused u/s. 167 CrPC or submission of the police report u/s. 173(2) CrPC. When a case is under IPC and PC Act, 1947, question as to need of sanction u/s. 197 CrPC not necessarily to be raised as soon as the complaint is lodged. It can be raised at any stage and from stage to stage. If the cognizance of the offence has been taken without sanction, the plea of want of sanction can be raised by the accused after the commitment of the case and when the accused are called upon to address the court u/s 227 and 228 CrPC See---

1a. D. Devaraja Vs. Owais Sabbeer Hussain, (2020) 7 SCC 695

1. Prof. N.K. Ganguly Vs. CBI, New Delhi, 2016 (92) ACC 470 (SC)
2. State of Karnataka vs. Pastor P. Raju, AIR 2006 SC 2825
3. K. Kalimuthu vs. State by DSP, 2005 (3) SCJ 682
4. Birendra K. Singh v. State of Bihar, 2000 (4) ACC 653 (SC)

2.7.3. Court may when defer to decide the question of sanction u/s 197 CrPC at a later stage of the case ? ---In a case where ex facie no order of sanction has been issued when it is admittedly a prerequisite for taking cognizance of the offences or where such an order apparently has been passed by the authority not competent therefor, the court may take note thereof at the outset. But where the validity or otherwise of an order of sanction is required to be considered having regard to the facts and circumstances of the case and furthermore when a contention has to be gone into as to whether the act alleged against the accused has any direct nexus with the discharge of his official act, it may be permissible in a given situation for the court to examine the said question at a later stage. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294** (para 38).

2.7.4. Stage of necessity of sanction in complaint case : In the case noted below, the accused, a police officer, had conducted a search without warrant and Magistrate had taken cognizance against him of the offences u/s 342, 389, 469, 471, 120-B IPC without sanction for prosecution u/s 197 CrPC. The Hon'ble Supreme Court held that in the above case, sanction u/s 197 CrPC for prosecution of the police officer was necessary. Protection of Section 197 CrPC is available to a public servant when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable Act. Therefore, the concept of Section 197 CrPC does not get immediately attracted on institution of the complaint case. The test to

determine whether omission or neglect to do that act would have brought on the charge of dereliction of his official duty. See :

(i) Rakesh Kumar Mishra Vs. State of Bihar (2006) 1 SCC 557 *(paras 6 & 13)*

(ii) Center for Public Interest Litigation Vs. Union of India, AIR 2005 SC 4413.

2.7.5. Question of sanction u/s 197 CrPC not to be necessarily considered as soon as the complaint is filed: Question relating to the need of sanction u/s 197 CrPC 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 proceedings. The question whether sanction is required or not may have to be determined from stage to stage. See:**Prakash Singh Badal Vs. State of Punjab, (2007) 1 SCC 1.**

2.8 Public servant & sanction--- A public servant cannot be prosecuted for acts done in connection with his official duty. See--- **Jaya Singh vs. K.K. Velayutham, 2006 (55) ACC 805 (SC).**

2.9 Special Judge under P.C. Act, 1988 competent to pass order upon application u/s. 156(3) Cr.P.C.---A Special Judge for Prevention of Corruption is deemed to be a Magistrate under Section 5(4) of the Prevention of Corruption Act, 1988 and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options : he may take cognizance of the offence under Section 190 CrPC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) CrPC. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) CrPC. See : **Anil Kumar & Others Vs. M.K. Aiyappa and Another, (2013) 10 SCC 705** *(para 16).*

2.10 Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988 : Relying upon its two earlier decisions reported in (i) State of UP Vs. Paras Nath Singh, (2009) 6 SCC 372 (Three-Judge Bench) and (ii) Army Headquarters

Vs. CBI, (2012) 6 SCC 228 and (iii) Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64, it has been held by the Hon'ble Supreme Court that Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988. See : **Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(paras 17 to 22).*

2.11 Special Judge under P.C. Act, 1988 can order registration of FIR and investigation thereof u/s 156(3) CrPC : Special Judge under P.C. Act, 1988 is empowered to grant an application u/s. 156(3) CrPC involving offences under the P.C. Act, 1988 and under IPC. He can also take cognizance on a complaint by private person. See--- **Mahipal vs. State of U.P., 2008 (63) ACC 692 (All).**

2.12 Special Judge under P.C. Act, 1988 competent to pass order upon application u/s. 156(3) CrPC ---A Special Judge for Prevention of Corruption is deemed to be a Magistrate under Section 5(4) of the Prevention of Corruption Act, 1988 and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options : he may take cognizance of the offence under Section 190 CrPC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) CrPC. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) CrPC. See : **Anil Kumar & Others Vs. M.K. Aiyappa and Another, (2013) 10 SCC 705** *(para 16).*

2.13 Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988.---Relying upon its two earlier decisions reported in (i) State of UP Vs. Paras Nath Singh, (2009) 6 SCC 372 (Three-Judge Bench) and (ii) Army Headquarters Vs. CBI, (2012) 6 SCC 228 and (iii) Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64, it has been held by the Hon'ble Supreme Court that Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988. See : **Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(paras 17 to 22).*

2.14 Special Judge or Magistrate to apply his mind before ordering registration of FIR u/s 156(3) CrPC : *"The Scope of Section 156(3) CrPC came up for consideration before*

this Court in several cases. This Court in Masksud Saiyad Case (Maksud Saiyad Vs. State of Gujarat, (2008) 5 SCC 668) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation." **See : Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(para 11).*

2.15 Power u/s 156(3) to be sparingly exercised--- Power u/s. 156(3) CrPC should be exercised sparingly when there is something unusual and extra ordinary like miscarriage of justice. See---

1. **Nathulal Gangwar vs. State of U.P., 2008 (61) ACC 792 (All)**
2. **Sukhwasi vs. State of U.P., 2007 (59) ACC 739 (All—D.B.)**

2.16.1.Sanction u/s 197 CrPC not required when sanction u/s 19 of the PC Act, 1988 has already been granted : A Full Bench of the Hon'ble Allahabad High Court has held as under :

(i) For prosecution under PC Act, 1988, once sanction u/s 19 of the said Act is granted, there is no necessity for obtaining further sanction u/s 197 of the CrPC.

(ii) Where a public servant is sought to be prosecuted under the PC Act, 1988 read with Section 120-B IPC and sanction u/s 19 of the PC Act, 1988 has been granted, it is not at all required to obtain sanction u/s 197 CrPC from the State Government or any other authority merely because the public servant is also charged u/s 120-B IPC

(iii) The offences under the PC Act, 1988 as well as charge of criminal conspiracy cannot be said to constitute "acts in discharge of official duty". See….**Full Bench Judgment dated 25.01.2006 of the Hon'ble Allahabad High Court delivered in Criminal Revision No. 22882/2004, Smt. Neera Yadav Vs. CBI (Bharat Sangh).**

2.16.2.Authority competent to grant sanction u/s 19 of the P.C. Act, 1988 can also grant sanction u/s 197 CrPC : Sanction required under Section 197 CrPC and sanction required under the 1988 Act stand on different footings. Whereas sanction under the Penal Code in terms of the Code of Criminal Procedure is required to be granted by the State; under the 1988 Act it can be granted also by the authorities specified in Section 19 thereof. It is not in dispute that the Deputy Inspector General of Police was the competent authority for grant of sanction as against the respondent R in terms of the provisions of the 1988 Act. The State, thus, could not have interfered with that part of the said order whereby requisite sanction had been granted under the 1988 Act. The contention to the effect that the order of sanction passed by the Deputy Inspector General of Police was a composite one and, thus, the State could cancel the same, is unacceptable. Offences under the Penal Code and offences under the 1988 Act are different and distinct. On the face of the allegations made against R, they do not have any immediate or proximate connection. The test which is required to be applied in such a case is as to whether the offences for one reason or the other punishable under the Penal Code are also required to be proved in relation to offences punishable under the 1988 Act. If the answer to the said question is rendered in the negative, the same test can be applied in relation to a matter of sanction. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294** *(paras 11 & 12).*

2.16.3.Test for necessity of composite sanction u/s 19 of the P.C. Act, 1988 and u/s 197 CrPC also : Test to determine for sanction order to amount to a composite order, there must be an immediate or proximate connection between the P.C. Act and the IPC offences for which accused is charged. The test to be applied in such a case would be whether the offences under IPC are also required to be prove in relation to the offences under the P.C. Act, 1988. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294.**

2.17. Section 197 CrPC when attracted ? : The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal

proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for any thing done by them in the discharge of their official duties without rescannable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. But before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. See : **Center for Public Interest Litigation & Another Vs. Union of India & Another, AIR 2005 SC 4413 (Three-Judge Bench).**

2.18. Sanction u/s 197 CrPC required only when the offence committed is attributable to or has direct nexus with the official duty of the public servant : Whereas an order of sanction in terms of Section 197 CrPC is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined.

See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294** *(para 33).*

3. **Corporators not public servant**:- Councilors of Municipal Corporation and Members of Municipal Council are not public servants for purposes of P.C. Act, 1947. See

(i) **State of Tamil Nadu V. T. Thulasingam and other, AIR 1995 S.C. 1314.**
(ii) Ramesh Balkrishna Kulkarni V. State of Maharashtra, AIR 1985 SC 1655

4. **P.C. Act, 1947 to apply to Supreme Court and High Court Judges…..** The Judges are also covered within the expression "Public Servant" u/s 2(c) (iv) of the P.C. Act 1988 and the Act is applicable to them also. See **K. Veeraswami V. Union of India and others, (1991) 3 SCC 655 (Five Judge Bench)**

5. **Meaning of "Gratification" …….** Interpreting the provisions of S. 7 and 20(1) of the P.C. Act, 1988, it has been held by the Supreme Court that the word "gratification" must be understood to m1ean any payment for giving satisfaction to the public servant who receives it and not reward. The fact that the public servant is found in possession of currency notes smeared with **phenolphthalein** is sufficient to draw legal presumption u/s 7 & 20(1) of the P.C. Act, 1988 and the prosecution need not further prove that money was paid to public servant. See **Madhukar Bhaskarrao Joshi V. State of Maharashtra, AIR 2001 S.C. 147.**

6. **Stage of presumption u/s 4 of P.C. Act, 1947 :** It cannot be said that the presumption under S. 4 of the Prevention of Corruption Act 1947 applies only after a charge is framed against an accused. The presumption is applicable also at the stage when the court is considering the question whether a charge should be framed or not. When the Court is considering under S. 245(1) of the CrPC whether any case has been made out against the accused which if unrebutted would warrant his conviction, it cannot brush aside the presumption under S. 4 of the Prevention of Corruption Act, 1947. See **R.S. Nayak V. A.R. Antulay, AIR 1986 S. C. 2045.**

7. **Presumption u/s 4 & 5 of the P.C. Act, 1947 is rebuttable:** In case of offence of accepting bribe , presumption against the accused u/s 4&5(1)(d) and (2) of the P.C. Act 1947 is rebuttable. See **M. Sundermoorty v. State of Tamil Nadu AIR1990 S.C.1269**

8. **Burden on prosecution to prove charge of corruption under P.C. Act, 1947:-** An analysis of Section 5 (1)(e) of the Act, 1947 which corresponds to S. 13 (1)(e) of the new Act of 1988 shows that it is not the mere acquisition of property that constitutes an

offence under the provisions of the Act but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law. See **M. Krishna Reddy V. State Deputy Superintendent of Police, Hyderabad, AIR 1993 S.C. 313.**

9. **Ingredients to be proved for conviction u/s 13(1)(e) of the P.C. Act, 1988 :** To substantiate a charge u/s 13(1)(e) of the P.C. Act 1988, the prosecution must prove the following ingredients ……

(i) the prosecution must prove that the accused is a public servant;
(ii) the nature and extent of the pecuniary resources or property which are found in his possession;
(iii) it must be proved as to what were his known sources of income i.e. known to the prosecution;
(iv) it must prove quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income. See : **M. Krishna Reddy Vs. State, Deputy Superintendent of Police, Hyderabad, AIR 1993 SC 313.**

10(A).Mere recovery of tainted money not sufficient to record conviction : Mere recovery of tainted money is not sufficient to record conviction for offence u/s 7 of the P.C. Act, 1988 unless there is evidence that bribe was demanded or money was paid voluntarily as bribe. Mere recovery of tainted money divorced from the circumstances under which such money and other articles were found are not sufficient to convict the accused when the substantive evidence in the case is not there and there is unexplained delay in conducting the phenolphthalein test. In the absence of any evidence of demand and acceptance of amount as illegal gratification recovery would not alone be a ground to convict accused. See :

(i). N.Vijayakumar Vs. State of T.N., (2021)3 SCC 687 (Three-Judge Bench)

(ii).Vinod Kumar Vs. State of Punjab. (2015) 3 SCC 220.

10(B).Burden of proving innocence on trapped accused in case of recovery:- Where a Sub-Inspector of Excise was trapped taking gratification and Rs. 50,000/- was recovered from his possession, it has been held by the Supreme Court that the burden to prove his innocence lay on the accused himself u/s 161 of the I.P.C. and u/s 5(1)(d) r/w Section 5(2) of the P.C. Act. See **B. Hanumantha Rao V. State of A.P., 1992(1) Crimes 1278 (SC).**

11. **Trap witness not necessarily to be independent:-** Where the accused/Government Doctor was convicted for demanding and accepting illegal gratification u/s 5(1)(d) of the P.C. Act

1947 on the basis of oral evidence corroborated by circumstantial evidence consistent with the guilt of the accused and not with his innocence, it has been held by the Supreme Court that the fact that the witnesses of trap where not independent is immaterial. See **State of U.P. V. Dr. G.K. Ghosh, AIR 1984 S.C. 1453 (Three Judge Bench).**

12. Trap without sanction illegal …… Where a lineman of Electricity Board had demanded illicit money from consumer and trap was laid by Police Inspector on earlier two occasions with prior permission of Judicial Magistrate but the accused did not turn up and then the trap laid down on third occasion by the Police Inspector was without prior permission of the Judicial Magistrate, the same was held illegal. See **Vishnu Kondaji Jadhav V. State of Maharashtra, AIR 1994 SC 1670.**

13(A). No Stay of trial under P.C. Act, 1988:- Trial of public servant for corruption charges under P.C. Act 1988 cannot be stayed by High Court by use of any power including inherent jurisdiction u/s 482 CrPC See : **Satya Narayan Sharma V. State of Rajasthan, AIR 2001 S.C. 2856.**

13(B). Stay of proceedings and summoning of record by revisional court (High Court) from special judge (anti corruption) not to be ordered : Only if there is error, omission or irregularity in sanction granted by prosecution resulting in failure of justice, an stay order staying the proceeding of the Trial Judge should be passed and record should be summoned and not otherwise. Section 19(3)(c) of the P.C. Act must be given restricted interpretation. A conjoint reading of sub-clause (b) and sub-clause (c) of Section 19(3) of the P.C. Act makes it is clear that a stay of proceedings could be granted only and only if there is an error, omission or irregularity in sanction granted for a prosecution and that error, omission or irregularity has resulted in a failure of justice. There is no other situation that is contemplated for grant of a stay of proceedings under the Prevention of Corruption Act on any other ground whatsoever, even if there is a failure of justice. Clause (e) additionally mandates a prohibition on the exercise of revisional jurisdiction in respect of any interlocutory order passed in any trial such as those that Supreme Court already referred to. Thus, provisions of clauses (b) and (c) of Section 19(3) read together are quite clear and do not admit of any ambiguity or need for any further interpretation. By adding proviso to Section 397(1) CrPC. Parliament has made it clear that it would be appropriate not to call for records of case before Special Judge even when High Court

exercises its revision jurisdiction. The reason is that once records are called for, Special Judge cannot proceed with trial. With a view to ensure that accused who has invoked revision jurisdiction of High Court is not prejudiced and at the same time trial is not indirectly stayed or otherwise impeded. Parliament has made it clear that examination of record of Special Judge may also be made on basis of certified copies of record. Quite clearly, intention of Parliament is that there should not be any impediment in trial of a case under the Prevention of Corruption Act. An allegation of 'failure of justice' is a very strong allegation and use of an equally strong expression and cannot be equated with a miscarriage of justice or a violation of law or an irregularity in procedure--it is much more. If expression is to be understood as in common parlance, result would be that seldom would a trial reach a conclusion since an irregularity could take place at any stage, in admissible evidence could be erroneously admitted, an adjournment wrongly declined etc. To conclude, therefore, Section 19(3)(c) of Act must be given a very restricted interpretation and over broad interpretation cannot be accepted. See : **Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620 (Three-Judge Bench)**

14(A-1).Sanction against retired public servant not required : If the public servant has ceased to be a public servant on the date of cognizance of the offence by the court, sanction for his prosecution is not required. See. **R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench).**

14(A-2). Three Judge Bench Decision of the Supreme Court reported in Times of India, Lucknow Edition, Dated 07.12.2019.

SC: No nod is needed to probe retired officer for graft

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New Delhi: The Supreme Court has ruled out the need to seek sanction to prosecute a retired government employee in a corruption case.

Such protection was available only to a serving public servant, a bench of Justices U U Lalit, Indu Malhotra and Krishna Murari said on Thursday, adding there was no bar to initiate post-recruitment prosecution for an offence committed during one's service under the Prevention of Corruption Act.

The apex court ruled this while quashing a verdict of the Karnataka high court verdict which had discharged an assistant general manager of Vijaya Bank in a corruption case for lack of sanction to probe him after his retirement. The bench said the HC erred in its decision. "There was no occasion or reason to entertain any application seeking discharge in respect of offences punishable under the Act, on the ground of absence of any sanction under Section 19 of the Act." it said.

14(B). Sanction for prosecution of retired public servant not required:- If the alleged act of corruption was committed by the Minister during his tenure as such Minister, sanction u/s 19 of the P.C. Act 1947 for his prosecution after he ceased to be a Minister was not required. See---

(i) M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC788 (Five-Judge Bench)

(ii) **Habibulla Khan Vs. State of Orissa, AIR 1995 SC 1123.**

14(C). Prior Sanction for prosecution of retired public servant not necessary : See : The observations of the Hon'ble Supreme Court (in para 16) in **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** are thus : "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, been 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 Ship-yard Ltd. Hence, there is no question of obtaining any previous sanction of the Central Government."

(i) Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185 *(para 16)*

(ii) R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench)

(iii) Balakrishnanan Ravi Menon Vs. Union of India, (2007) 1 SCC 45.

(iv) Prakash Singh Badal Vs. State of Punjab, AIR 2007 SC 1274

(v) Habibullsa Khan Vs. State of Orissa, AIR 1995 SC 1124

(vi) State of H.P. Vs. M.P. Gupta, AIR 2004 SC 730

Note : Cases noted at (ii) to (vi) have been relied on in Dr. Subramanian Swamy's case.

14(D).Sanction not required for prosecution of a Minister after his resignation : No sanction u/s 19 of the P.C. Act, 1988 for prosecution of a Minister, after his resignation, for offences committed by him during his tenure as Minister is required. See.... **M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC788 (Five-Judge Bench)**

14(E).Sanction for prosecution of a retired public servant is essential u/s 197 CrPC but not for offences under P.C. Act, 1947 or P.C. Act, 1988 : Necessity of obtaining sanction u/s 197 CrPC for prosecution of a retire public servant is must. But an accused facing prosecution for offences under the P.C. Act, 1947 or the P.C. Act, 1988 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. The correct legal position, therefore, is that an accused facing prosecution for offences under the old P.C. Act, 1947 or the new P.C. Act, 1988 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 CrPC has application. See : **Rakesh Kumar Mishra Vs. State of Bihar, (2006) 1 SCC 557** *(paras 16, 17, 18 & 21)*

14(F). Sanction u/s 19 of P.C Act when not required? ..... Where the public servants in the State of U.P were found to have committed offenses in a planned, deliberate and intentional manner to usurp public fund for their own vested interests in relation to foodgrains scam, it has been held that such indulgence in corrupt practice by public servants is their private conducts and for that they can not claim protection u/s 19 of the P.C Act, 1988 and no sanction for their prosecution is required. See : **Vishwa Nath Chaturvedi Vs. Union of India & Others, 2011 (2) ALJ 370 (All)(Lucknow Bench)(DB).**

15(A). Error in sanction when not material --- In the absence of anything to show that the error or irregularity in sanction u/s 19 of the P.C Act, 1988 has caused failure of justice and once cognizance has been taken, it can not be said that cognizance has been taken on invalid police report. See.... **Ashok Tshering Bhutia Vs. State of Sikkim, 2011 CrLJ 1770 (SC)**

14(F). Retired Public Servant & Sec. 197 CrPC---If the accused public servant had ceased to be a public servant on the date when the court took cognizance of the offences under the P.C. Act, Section 197 CrPC is not attracted. See

(i) **State of Orissa V. Ganesh Chandra Jew, (2004) 8 SCC 40.**
(ii) State of Himachal Pradesh V. M.P. Gupta (2004) 2 SCC 349
(iii) S.K. Zutshi V. Sri Bimal Debnath, 2004 (50) ACC 198 (SC)

14(G).Sanction when public servant holding more than one public office : Where the public servant was holding more than one public office and the question of sanction for misusing or abusing one of his public offices arose, it has been held by the Hon'ble Supreme Court that sanction of authority competent to remove him from office allegedly misused or abused alone is necessary and not of all competent authorities. See : **R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench).**

15(A-1) Stage of sanction u/s 197 CrPC : In a case of trial of accused for offences u/s 18 (a) (i) read with Sec. 27, 27-A, 17-C of the Drugs & Cosmetics Act, 1940, it has been held by the Supreme Court that the question of sanction u/s 197 Cr PC for prosecution should be left open to be decided by the trial judge at the end of the trial. See--- **State of Maharashtra Vs. Deva Hari Deva Singh, 2009 (64) ACC 117 (SC).**

15(A-2) Stage of sanction u/s 197 CrPC : Question of validity of Sanction u/s 19 of the P.C. Act, 1988 can be raised at an earlier stage of proceedings. After the order of remand passed by the High Court, the Special Judge acted upon and entertained the matter. See **: CBI Vs. Ashok Kumar Aggarwal, 2014 (84) ACC 252 (SC).**

15(B). Stage of sanction u/s 19 of the PC Act, 1988 : Necessity of grant of sanction u/s 19 of the PC Act, 1988 is required not only at the stage of taking cognizance of the offence under the Act but also at the stages before it. See : Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185 *(paras 19, 40 & 43)*

16(A).Sanction of Prosecution without application of mind….. Where the accused public servant/Pharmacist was prosecuted and convicted for offences u/s 161 I.P.C. and Sec. 5/2 of the P.C. Act 1947 but there was no application of mind by the sanctioning authority, the conviction was set aside on the ground of non-application of mind before according sanction by the sanctioning authority. Order granting sanction should be demonstrative of

fact of proper application of mind. The sanctioning authority must judge whether the public servant should receive the protection under the P.C. Act 1988 or not. See--

(i) **State of Karnataka V. Ameer Jan, 2007 (59) ACC 811 (SC)**
(ii) **Bishambhar Dayal Srivastava V. State of U.P., 1994(1) Crimes, 712 (All)**
(iii) **Ramesh Lal Jain v. Naginder Singh Rana,(2006)1 SCC 294**
(iv) **State of H.P. vs. Nishant Sareen, 2011 (72) ACC 423 (SC).**

16(B).Defective sanction u/s 19 of the P.C. Act: A mere error, omission or irregularity in sanction cannot be considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the P.C. Act, 1988 is a matter of procedure and does not go to the root of the jurisdiction. Once the cognizance has been taken by the court under the CrPC, it cannot be said that an invalid police report is the foundation of the jurisdiction of the court to take cognizance and for that matter the trial. A defect or irregularity in investigation however serious would have no direct bearing on the competence or procedure relating to cognizance or trial. See:

(i). Vinod Kumar Garg Vs. State NCT of Delhi, (2020) 2 SCC 88

(ii). Ashok Tshersing Bhutia Vs. State of Sikkim, (2011) 4 SCC 402

16(C). Question of validity of Sanction order can be raised during trial : In a case of trial of accuse under PC Act, 1988, it has been held by the Hon'ble Supreme Court that the question of validity of sanction order passed by the sanctioning authority u/s 19 of the PC Act, 1988 can be raised during the trial of the case. See….**Dinesh Kumar Vs. Chairman, Airport Authority of India & another, AIR 2012 SC 858.**

17. Sanction subsequent to discharge of accused…. If the accused was discharged for want of sanction (under POTA), court can proceed subsequent to obtaining sanction. See **Balbir Singh V. State of Delhi, 2007 (59) ACC 267 (SC).**

18. Sanction by incompetent authority…. Sanction granted by an officer not competent to do so is a nullity. If the officer granting sanction was not conferred the delegated powers of the sanctioning authority, the same is nullity. Sanction must be granted by an officer competent to remove the accused from office. See **State Inspector of Police V. Surya Sankaram Karri, 2006 (46) AIC 716 (SC).**

19. Permission for investigation ……. Where on three occasions there was demand of money and each constituted an offence by itself to investigate for which permission for investigation was necessary under section17 and on the third occasion the Inspector had failed to take the permission under section17 which is mandatory before investigation is launched,

the accused appellant is entitled to succeed. See **Vishnu Kondaji Jadhav v. State of Maharashtra, AIR 1994 SC 1670.**

20. Sanction order to be speaking …. When the sanction order for prosecution of the accused under the P.C. Act is eloquent and speaks for itself, it is valid. See **C.S. Krishnamurthy V. State of Karnataka, 2005(3) SCJ 660**

21. Abetment of Offence under P.C. Act, 1988 also punishable…. Where the co-accused had played significant role in negotiating on the figure of amount and having notes exchanged at the dictate of the accused Sub-Inspector of Police for terminating the criminal proceedings during the investigation, it has been held by the Supreme Court that the co-accused had substantially abetted the crime under the P.C. Act, 1988 and he was also liable for conviction and sentence along with the guilty public servant/Sub-Inspector of Police. See **Rambhau and another V. State of Maharashtra, AIR 2001 SC 2120.**

22. No sanction required for offence u/s. 12 of the P.C. Act, 1988--- Abetment of any offence punishable u/s. 7 or 11 is in itself a distinct offence. Sec. 19 of the P.C. Act, 1988 specifically omits Sec. 12 from its purview. Courts do not take cognizance of an offence punishable u/s. 7, 10, 11, 13, 15 alleged to have been committed by a public servant except with the previous sanction of the government. No such sanction is required in cases of offence punishable u/s. 12 of the P.C. Act, 1988. See--- **State Through CBI vs. Parmeshwaran Subramani, 2009 (67) ACC 310 (SC)**

23. Relevant date for sanction of prosecution …. The relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Sec. 6 of the P.C. Act 1947 is the date on which the Court is called upon to take cognizance of the offence of which he is accused. See **R.S. Nayak V. A.R. Antulay, AIR 1984 S.C. 684. (Five Judge Bench)**

24. Court of Special Judge constituted u/s 3 & 4 of the P.C. Act 1988 alone to try the cases…. A special court constituted under the P.C. Act 1988 alone is competent to try the

offence under the Act. See **R.S. Nayak V. A.R. Antulay, AIR 1984 S.C. 684. (Five Judge Bench)**

25. Fake T.A. Bill and prosecution therefor…… Travelling allowance is not a source of income to the Government Servant but only a compensation to meet his expenses. However, it is open to the Government Servant to lead evidence to show that he had in fact saved something out of TA. The question of automatically considering entire TA as a source of income does not arise; See **R. Janakiram V. State, represented by Inspector of Police, CBI, SPE, Madras, (2006) 1 SCC 697.**

26. No leniency in sentence to corrupt public servants ….. There can be no leniency in awarding penalty to corrupt public servants. The corruption by public servants has become gigantic problem. Large scale corruption retards the nation building activities and every one has to suffer on that court. The efficiency in public service would improve only when the public servant does his duty truthfully and honestly. **State of Madhya Pradesh V. Shambhu Dayal Nagar, (2006) 8 SCC 693.**

27. No leniency in sentence on ground of long pendency of case …. The fact that the case is pending before Court since long time cannot be a special ground for reducing the minimum sentence awardable under the P.C. Act 1988. See **Madhukar Bhaskarrao V. State of Maharashtra, AIR 2001 SC 147.**

28. Sec. 409 IPC & PC Act--- By virtue of Sec. 23 of the General Clauses Act, 1897, the accused can be convicted and punished for the offence u/s. 5(2) of the PC Act despite acquittal for the offence u/s. 409 IPC even if the accused was prosecuted in the same trial for the two offences named above. See--- **State of M.P. vs. Veereshwar Rao Agnihotri, AIR 1957 SC 592**

29. Departmental enquiry & criminal trial can go on simultaneously--- Where a public servant was being tried for offence u/s. 13 of the P.C. Act, 1988 and a departmental enquiry was also going on against him in respect of the same act, it has been held by the Supreme Court that the departmental enquiry and the criminal trial can go on simultaneously except

where departmental enquiry would seriously prejudice the delinquent in his defence at the criminal trial and no strait-jacket formula can be laid down in this behalf as each case has to be decided on its facts. See---- **Hindustan Petroleum Corporation Ltd. vs. Sarvesh Berry, AIR 2005 SC 1406**

30. Sec 7 of the PC Act 1988 when attracted ? .... Mere recovery of currency notes itself does not constitute offense u/s 7 of the PC Act,1988 unless it is proved beyond all reasonable doubts that accused voluntarily accepted money knowing it to be bribe. Demand of illegal gratification is sine qua non to constitute offense under this Act. See... **C.M Sharma v. State of A.P, AIR 2011 SC 608.**

31. Investigation by officer not authorised in writing not fatal ..... Where investigation of offenses under P.C Act, 1988 was done by an officer not authorised in writing, it has been held that trial does not stand viciated as the investigation done was not found to be unfair. See..... **Ashok Tshering Bhutia Vs. State of Sikkim, 2011 CrLJ 1770 (SC)**

32(A). Nature of Order of Sanction 'Administrative' : In the cases of **(i) State of Bihar etc. Vs. P.P. Sharma, IAS and another, AIR 1991 SC 1260 (ii) State of Maharashtra & others Vs. Ishwar Piraji Kalpatri, AIR 1996 SC 722** and **(iii) State of Punjab & another Vs. Mohammed Iqbal Bhatti, (2009) 17 SCC 92,** it has been held by the Hon'ble Supreme Court that the order of sanction passed under Section 197 CrPC and/or under Section 19 of **the Prevention of Corruption Act, 1988** is only an administrative act and not a quasi-judicial one.

32(B).Lokayukta acts as quasi-judicial authority : Explaining the provisions of the Karnataka Lokayukta Act and the Haryana Lokayukta Act, 2002, it has been held by a Three-Judge Bench of the Supreme Court that the "Lokayukta and Up-Lokayukta does function as an adjudicating authority but the Act places him short of a judicial authority. He is much more "judicial" than an investigator or an inquisitorial authority largely exercising administrative or executive functions and powers. Under the circumstances, taking an overall view of the provisions of the Act and the law laid down, my conclusion is that the Upa-Lokayukta is a quasi-judicial authority or in any event an authority exercising

functions, powers, duties and responsibilities conferred by the Act as a sui generis quasi-judicial authority."See :

(i) **Ram Kishan Fauji Vs. State of Haryana & Others, (2017) 5 SCC 533 (Three-Judge Bench)** *(para 12)***.**

(ii) Chandrashekharaiah Vs. Janekere C. Krishna, (2013) 3 SCC 117.

32(C).Review of previous order granting or refusing sanction when possible? : In the case of **State of Punjab & another Vs. Mohammed Iqbal Bhatti, (2009) 17 SCC 92,** a question had arisen for consideration of the Hon'ble Supreme Court as to whether the sanctioning authority has power of review in the matter of grant of sanction u/s 197 of the CrPC and under Section 19 of the Prevention of Corruption Act, 1988. The facts of the above case were that the accused Mohammed Iqbal Bhatti was posted and working as Block Development and Panchayat Officer in the State of Punjab and on an FIR being lodged and completion of investigation thereof, a charge-sheet was prepared against him by the investigating agency i.e. the Vigilance Department for commission of offences u/s 7 and 13(2) of the **Prevention of Corruption Act, 1988**. Governor of the State of Punjab was the appointing authority of the public servant/accused named above. By an order dated 15.12.2003, sanction for prosecution was refused. The matter was, however, after change of government placed before the competent authority once again without any fresh/new material and on 14.09.2004, sanction to prosecute the public servant/accused named above was granted. Questioning the validity of the aforesaid order dated 14.09.2004 granting sanction for prosecution, the public servant/accused named above filed a Writ Petition before the Hon'ble Punjab & Haryana High Court and the same was allowed by observing that "the State had no power of review and in any event, the impugned order could not have been passed as the State while passing its earlier order dated 15.12.2003 had exhausted its jurisdiction." The State of Punjab then challenged the aforesaid order of the Hon'ble Punjab & Haryana High Court by filing an appeal before the Hon'ble Supreme Court. Dismissing the appeal, the Hon'ble Supreme Court observed as under:

"The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration

or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise..... The legality and/or validity of the order granting sanction would be subject to review by criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts….. the source of power of an authority passing an order of sanction must also be considered…..although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction under Section 197 CrPC, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. "

32(D). Administrative review of previous administrative order permissible : In the case of **R.R. Verma & others Vs. Union of India & others, AIR 1980 SC 1461**, the Hon'ble Supreme Court has ruled that "it is not correct to say that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration, they cannot be hide-bound by the rules and restrictions of judicial procedure though off course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Again, if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a court." It is, therefore, clear that administrative review of an administrative order is legally possible provided there is any fresh or new material necessitating such review. Since the nature of the order granting or refusing sanction for prosecution is administrative, therefore, review of an earlier order granting or refusing sanction is permissible under law if the same is required on the basis of new material/evidence produced before the authority concerned.

32(E).Review of previous Sanction order permissible only on fresh material : Sanction to prosecute on review of previous order (u/s 7 of Explosive Substances Act, 1908) can be

considered only when fresh materials have been collected. See…**Deepak Khinchi Vs. State of Rajasthan, 2012 (77) ACC 919 (SC).**

32(F).Previous order refusing sanction can be reviewed on production of fresh material : A Division Bench of the Hon'ble Himachal Pradesh High Court in the case of **Omkar Sharma Vs. State of HP & others, 2003 CrLJ 1024** has held that once sanction for prosecution of public servant was refused by competent authority, the same cannot be revised or reviewed on same materials.

32(G). Review of previous order refusing sanction not permissible : In the case of **Naresh Chandra Gupta Vs. the Chief Engineer, Hydel and others, 2010 (6) ALJ 380 (Allahabad High Court….D.B.),** a Junior Engineer of UP Power Corporation was apprehended taking bribe of Rs. 70/- in the year 1979 and his prosecution for offences under Section 161, 162, 120-B of the IPC and under Section 5(2) of the Prevention of Corruption Act, 1947 was proposed. Sanction for his prosecution was refused by the Chief Engineer on the ground that the trap laid on the accused Junior Engineer had legal defects. The successor Chief Engineer found that his predecessor had travelled beyond his powers in refusing the sanction for prosecution of the accused Junior Engineer and granted sanction to prosecute him for the said offences. Quashing the order of sanction passed by the successor Chief Engineer, a **Division Bench of the Hon'ble Allahabad High Court has (in para 23)** held that ***"The principles of res judicata are not applicable in the case of the orders passed by executive authorities. In administrative decisions, however, the power of review or recall is not to be presumed, until it is conferred by statute. The concession of the powers of review or recall in administrative matters, unless expressly conferred by the Statute, or where the order is vitiated on misrepresentation and fraud, will lead to frequent change of orders and uncertainty in governance. If the Chief Engineer (Hydel), Lucknow was not satisfied with the order passed by his predecessor refusing sanction to prosecute the petitioner on the grounds that he was not entitled to look into the evidence or the opinion of the Investigating officer, the matter could have been referred by him to the State Government."***

32(H).Only purely administrative and/or legislative act to be reviewed under Section 21 of the General Clauses Act, 1897 : Interpreting **Section 21 of the General Clauses Act, 1897**, in the case of **Indian National Congress (I) Vs. Institute of Social Welfare &**

others, (2002) 5 SCC 685, it has been ruled by the Hon'ble Supreme Court that order which can be modified or rescinded or varied or amended etc cannot be a quasi-judicial order but the same has to be either executive or legislative in nature. Section 21 (wrongly quoted as Section 31 by the applicants in their representation dated 21.05.2012) of the said Act thus applies to administrative orders and, therefore, the power of review of an earlier order granting or refusing sanction for prosecution is available to a competent authority. But as has been discussed in the preceding sub-paragraphs of para 4, there must be some fresh material necessitating review of earlier order of refusal or grant of sanction for prosecution**.**

32(I). Quasi-Judicial order or act cannot be reviewed u/s 21 of the General Clauses Act, 1897: **Only purely administrative and/or legislative act to be reviewed under Section 21 of the General Clauses Act, 1897** : Interpreting **Section 21 of the General Clauses Act, 1897**, in the case of **Indian National Congress (I) Vs. Institute of Social Welfare & others, (2002) 5 SCC 685**, it has been ruled by the Hon'ble Supreme Court that order which can be modified or rescinded or varied or amended etc cannot be a quasi-judicial order but the same has to be either executive or legislative in nature. Section 21 (wrongly quoted as Section 31 by the applicants in their representation dated 21.05.2012) of the said Act thus applies to administrative orders and, therefore, the power of review of an earlier order granting or refusing sanction for prosecution is available to a competent authority. But as has been discussed in the preceding sub-paragraphs of para 4, there must be some fresh material necessitating review of earlier order of refusal or grant of sanction for prosecution**.**

33(A). SANCTION FOR PROSECUTION AS REQUIRED U/S. 197 CRPC & U/S. 19 OF THE P.C. ACT, 1988 & Stage of raising plea of sanction--- Interpreting the provisions u/s. 196, 197, 156, 196(1-A) Cr.P.C., it has been held by the Supreme Court that the plea of sanction can be raised at the time of taking cognizance of the offence or any time thereafter. But the plea of sanction cannot be raised or Sec. 197 CrPC is not attracted at the stage of registration of FIR, investigation, arrest, remand of the accused u/s. 167 CrPC or submission of the police report u/s. 173(2) CrPC When a case is under IPC and PC Act, 1947, question as to need of sanction u/s. 197 CrPC not necessarily to be raised as soon as the complaint is lodged. It can be raised at any stage and from stage to stage. If the cognizance of the offence has been taken without sanction, the plea of want of

sanction can be raised by the accused after the commitment of the case and when the accused are called upon to address the court u/s. 227 and 228 CrPC See---

1. **State of Karnataka vs. Pastor P. Raju, AIR 2006 SC 2825**
2. **K. Kalimuthu vs. State by DSP, 2005 (3) SCJ 682**
3. **Birendra K. Singh v. State of Bihar, 2000 (4) ACC 653 (SC)**

33(B).Public servant & sanction--- A public servant cannot be prosecuted for acts done in connection with his official duty. See--- **Jaya Singh vs. K.K. Velayutham, 2006 (55) ACC 805 (SC)**

33(C).Special Judge under P.C. Act, 1988 competent to order registration of FIR and investigation thereof u/s. 156(3) Cr.P.C.--- Special Judge under P.C. Act, 1988 is empowered to grant an application u/s. 156(3) CrPC involving offences under the P.C. Act, 1988 and under IPC. He can also take cognizance on a complaint by private person. See--- **Mahipal vs. State of U.P., 2008 (63) ACC 692 (All)**

33(D).Power u/s. 156(3) to be sparingly exercised--- Power u/s. 156(3) CrPC should be exercised sparingly when there is something unusual and extra ordinary like miscarriage of justice. See---

1. **Nathulal Gangwar vs. State of U.P., 2008 (61) ACC 792 (All)**
2. **Sukhwasi vs. State of U.P., 2007 (59) ACC 739 (All—D.B.)**

33(E).Sanction u/s 197 CrPC not required when sanction u/s 19 of the PC Act, 1988 has already been granted : A Full Bench of the Hon'ble Allahabad High Court has held as under :

(i) For prosecution under PC Act, 1988, once sanction u/s 19 of the said Act is granted, there is no necessity for obtaining further sanction u/s 197 of the CrPC.

(ii) Where a public servant is sought to be prosecuted under the PC Act, 1988 read with Section 120-B IPC and sanction u/s 19 of the PC Act, 1988 has been granted, it is not at all required to obtain sanction u/s 197 CrPC from the State Government or any other authority merely because the public servant is also charged u/s 120-B IPC

(iii) The offences under the PC Act, 1988 as well as charge of criminal conspiracy cannot be said to constitute "acts in discharge of official duty". See….**Full Bench Judgment dated**

25.01.2006 of the Hon'ble Allahabad High Court delivered in Criminal Revision No. 22882/2004, Smt. Neera Yadav Vs. CBI (Bharat Sangh).

33(F).Sanctions u/s 197 CrPC & u/s 19 of PC Act, 1988 are different : Sanction contemplated in Section 197 CrPC 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 Prevention of Corruption Act, 1988 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 CrPC. See : **Kalicharan Mahapatra Vs. State of Orissa, AIR 1998 SC 2595** *(para 13)*

33(FF).Sanctions u/s 197 CrPC & u/s 19 of PC Act, 1988 are different : Sanction contemplated in Section 197 CrPC 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 Prevention of Corruption Act, 1988 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 CrPC. Section 197 of the CrPC & Section 19 of the PC Act operate in conceptually different fields. See :

(i) **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** *(paras 37 & 38)*

(ii) **Lalu Prasad Vs. State of Bihar, 2007 (1) SCC 49** *(para 9)*

(iii) **Kalicharan Mahapatra Vs. State of Orissa, AIR 1998 SC 2595** *(para 13)*

34. Three or four Months time limit for grant of Sanction & Deemed Sanction u/s 19 of the P.C. Act, 1988 : The directions issued by the Hon'ble Supreme Court (in para 56) in Dr. Subramanaan Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185 are as under **:**

"(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 PC 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 charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit."

(i) Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185

(ii) Vineet Narain Vs. Union of India, (1998) 1 SCC 226 (Three-Judge Bench)

Note : *Vineet Narain's case has been followed in Dr. Subramanian Swamy*.

35. Private complainant competent to file complaint against the public servant for offences under PC Act, 1988 : Relying upon a Constitution Bench decision of the Supreme Court rendered in the case of **A.R. Antulay Vs. Ramdas Sriniwas Nayak, AIR 1984 SC 718**, it has been held by the Hon'ble Supreme Court that there is no provision either in the PC Act, 1988 or in the CrPC which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence….. a private complainant has the right to file a complaint for prosecution of a public servant in respect of the offences allegedly committed by him under the PC Act, 1988…. it therefore, follows that the Special Judge can take cognizance of offences committed by the public servants under the PC Act, 1988 upon receiving a complaint of facts constituting such offences. See.… **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** *(paras 18 & 19).*

36. Special Judge under P.C. Act, 1988 can summon a person not included as accused in charge-sheet : An addl. accused not included in the charge-sheet can be summoned by the Special Judge under the P.C. Act, 1988 for trial. Special Judge may take cognizance

of offence without accused being committed to him for trial and the court of Special Judge shall be deemed to be a court of session. See : **R.N. Agarwal Vs. R.C. Bansal, (2015) 1 SCC 48.**

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COGNIZANCE of OFFENCES

(With Special Reference to P.C. Act,1988 as Amended in 2018)

Lecture Delivered to Special Judges/ Addl. Sessions Judges

on 16.05.2021 at Jharkhand Judicial Academy).

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1.1.Cognizance: Meaning of ?: Taking cognizance of an offence is not the same thing as issuance of process. 'Cognizance' means when the Magistrate or the court applies his/its judicial mind to the facts mentioned in a complaint or a police report or upon information received from any person that an offence has been committed. See: **State of Karnataka Vs. Pastor P. Raju, (2006) 6 SCC 728.**

1.2.'**Cognizance': Meaning of ?** : Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence. Once the Magistrate applies his mind to the offence alleged and decides to initiate proceeding against the alleged offender, it can be stated that he has taken cognizance of the offence and cognizance is in regard to the offence and not the offender. Cognizance would take place at a point when a Magistrate first takes judicial notice of the offence either on a complaint or on a police report or upon information of a person other than the police officer taking judicial notice is nothing but perusing the report of the police officer,

proceeding further on that report by opening the file and thereafter taking further steps to ensure the presence of the accused and all other consequential steps including at a later stage and depending upon the nature of offence alleged to pass a necessary order of committal to a court of session. See : **Prasad Shrikant Purohit Vs. State of Maharashtra, (2015) 7 SCC 440.**

1.3. Meaning of " Cognizance": The word "cognizance" is not defined in the Code of Criminal Procedure. But the word "cognizance" is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it cannot ' take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.See: **S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd., (2008) 2 SCC 492(Para 19)**

1.4. **Cognizance of offences by Special Judge under P.C.Act,1988 as amended in 2018:** Section 5 of the Prevention of Corruption Act , 1988 empowers the Special Judge to take cognizance of the offences under the said Act directly without the case being committed to him by the Magistrate. In trying the offences under the said Act, the Special Judge shall follow the procedure prescribed by the CrPC for trial of the warrant cases by Magistrate.

2.1.Recording of reasons by courts in support of conclusion arrived at in their judgments and orders mandatory : Recording of reasons in support of the conclusions arrived at in a judgment or order by the Courts in our judicial system has been recognized since the very inception of the system. Right to know the reasons for the decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of the words or the language of a provision in an order or judgment without any mention of the relevant facts and the evidence available thereon has always been treated by the superior courts as an order incapable of withstanding the test of an order passed judicially. Ours is a judicial system

inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play as has been declared by the Apex Court in the matter of Andhra Bank v. Official Liquidator, 2005 (3) SCJ 762. For a qualitative decision arrived at judicially by the courts, it is immaterial in how many pages a judgment or order has been written by the Judge as has been declared by the Apex Court in the matter of **Union of India v. Essel Mining & Industries Ltd., (2005) 6 SCC 675.**

2.2.Meaning of " speaking and reasoned order" passed by application of mind ?: An order can be said to be speaking, reasoned and passed after application of mind when it discloses:

(i). facts constituting the offence alleged in the complaint or FIR/ case of the prosecution

(ii). discussion of evidence led in support of such offence,

(iii) discussion of the ingredients constituting particular offences

(iv) conclusion arrived at by the court

2.1.Long judgments not necessarily great : Brevity in judgment writing has not lost its virtue. All long judgments or orders are not great nor are brief orders always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves. See : **Board of Trustees of Martyrs Memorial Trust and Another Vs. Union of India and Others, (2012) 10 SCC 734 (Para 22)**

2.2.Passing lengthy orders should be avoided: The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial courts would further be slowed down. It can be appreciated if such a

detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. See: **Kanti Bhadra Shah Vs. State of West Bengal, 2000 CrLJ 746 (SC)**

2.3.Number of pages covered in a judgment not material: : Writing unnecessarily lengthy judgments than required should be avoided. It is not the number of pages in a judgment but sufficiency of reasons in support of the conclusions arrived at by the judge that is relevant. Judgments or orders must be reasoned and speaking to justify the conclusion. See : **Union of India vs. Essel Mining & Industries Ltd., 2005 (6) SCC 675**

2.3.Laboured judgment: Writing unnecessarily lengthy judgments than required should be avoided. It is not the number of pages in a judgment but sufficiency of reasons in support of the conclusions arrived at by the judge that is relevant. Judgments or orders must be reasoned and speaking to justify the conclusion. See : **Union of India vs. Essel Mining & Industries Ltd., 2005 (6) SCC 675**

2.4.Brief judgment when valid?: Where a finding is arrived at cursorily, the judgment based on such a finding is not vitiated if the finding is supported by evidence. See: **Satya Pal Vs. Ved Prakash, AIR 1980 All 268.**

2.5.Brief judgment when invalid?: A judgment may be brief, but not so brief as not to disclose the points for determination or to discuss the evidence led thereon . See: **Kuldip Oil Industries Vs. Pratap Singh, AIR 1959 All 505.**

2.6.Summoning order passed by Magistrate must be reasoned : Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put

questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. See:**Pepsi Foods Ltd. vs. Special Judicial Magistrate, 1998 SCC (Criminal) 1400.**

2.7.Passing detailed order by giving detailed reasons not necessary for taking cognizance: It is not necessary to pass a detail order giving detailed reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind. If the Magistrate after going through the complaint petition and the statements of the witnesses or after going through the FIR, case diary and charge sheet or the complaint, as the case may be, comes to a conclusion that the offence is made out, he is bound to take cognizance of the offence. The order should reflect application of judicial mind to the extent that from the FIR, the case diary or complaint, offence is made out. See: **S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd., (2008) 2 SCC 492**

2.8.Court not required to give detailed reasons for passing an order summoning the accused: Where the court took cognizance of the offences u/s 120-B, 420, 467, 468, 471 IPC and u/s 13(2)(d) of the Prevention of Corruption Act, 1988 on the basis of the charge-sheet submitted by the investigating officer, it has been held that the court is not required to give detailed reasons for passing an order summoning the accused. See:

(i) **Deputy Chief Controller Vs. Roshanlal, 2003 (36) ACC 686 (SC)**

(ii) **Diwakar Singh Vs. CBI, Lucknow, 2008 (61) ACC 755 (Allahabad)**

3.1.Magistrate not bound by the report of the police: Magistrate is not bound by the report or opinion of the police. Inspite of contrary report from the police, the Magistrate can, on the basis of material contained in the case diary as compiled by the investigating officer during investigation, take cognizance of the offence. See:

(i).**ChittaranjanMirdha Vs. Dulal Ghosh, 2010 (70) ACC 365 (SC)**

(ii).Arshad Vs. State of UP, 2008 (61) ACC 863 (Allahabad)

(iii).MinuKumari Vs. State of Bihar, AIR 2006 SC 1937

(v).HemandDhasmana Vs. CBI, AIR 2001 SC 2721

(iv).M/S India Carat Pvt. Ltd. Vs. State of Karnataka, AIR 1989 SC 885

(vi).H.S. Bains Vs. State, AIR 1980 SC 1883

(vii).AbhinandanJha Vs. Dinesh Mishra, AIR 1968 SC 11

(viii).India Carat Pvt. Ltd. Vs. State of Karnataka, AIR 1989 SC 885.

3.2.**Mere mention by Magistrate in the order that he went through the FIR, documents and statements of witnesses in the case diary not sufficient**: Reason or an opinion to proceed further against the accused is to be stated in the order itself. Hon'ble Supreme Court while dealing with the scope of Section 156(3) CrPC has held that the application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though detailed reasons need not to be given. The proper satisfaction should be recorded by the Judge. See:

(i**) Anil Kumar Vs. M.K. Aiyappa, (2013) 10 SCC 705**(Para 11)

(ii). Sunil Bharti Mittal Vs. CBI, (2015) 4 SCC 609

(iii). Amresh Kumar Dhiraj Vs. State of Jharkhand , 2019 SCC OnLine Jhar 2775, (Paras 10, 14 &22).

(iv). Judgment dated 08.03.2021 of Jharkhand High Court passed in Cr. M. P. No. 2275 of 2020,Mithilesh Prasad Singh Vs. The State of Jharkhand through A.C.B.

4.1.**Only prima facie case has to be seen at the stage of cognizance:** Before taking cognizance, the court has to be satisfied that there is a prima facie evidence which means the evidence that is sufficient to establish a fact or to raise a presumption of truth of facts unless controverted. At the stage of taking cognizance only prima facie case is to be seen. Cognizance is taken of the offence and not of the accused. See: Kishun Singh Vs. State of Bihar, (1993) 2 SCC 16.

4.2.Filling in blanks and passing mechanical and cryptic summoning order deprecated: Whenever any police report or complaint is filed before the magistrate, he has to apply his mind to the facts stated in the report or complaint before taking cognizance. If after applying his mind to the facts of the case, the magistrate come to the conclusion that there is sufficient material to proceed with the matter, he may take cognizance. Judicial orders cannot be allowed to be passed in a mechanical manner either by filling in blank on a printed proforma or by affixing a readymade seal etc. of the order on a plain paper. Such tendency must be deprecated and cannot be allowed to perpetuate. This reflects not only lack of application of mind to the facts of the case but is also against the settled judicial norms. Therefore this practice must be stopped forthwith.

See:**Order dated 06.9.2010 passed by Allahabad High Court in Criminal Misc. Application No.7279/2006, Abdul Rasheed Vs. State of UP & Circulated amongst the judicial officers of the state of UP vide High Court's Letter.No 19096/2010 dated 30.11.2010**

5.1.Summoning of accused for additional offence not mentioned in charge-sheet: In the cases noted below where a charge-sheet was submitted by the investigating officer for some offences mentioned in the FIR but had not included in the charge-sheet the offence u/s 395 IPC and upon the application of the complainant Magistrate found that the offence of Section 395 IPC was also made out and committed the case to the Sessions, the Supreme Court upheld the order of the Magistrate. See:

(i) Rajendra Prasad Vs. Bashir, (2002) SCC Criminal 21

(ii) Rakesh Prasad Singh Vs. State of UP, 2010 (71) ACC 438 (Allahabad).

5.2.**Cognizance by Magistrate on receiving final report from police u/s 173 CrPC** : The Magistrate has a role to play while committing the case to the court of sessions upon taking cognizance on the police report submitted before him u/s 173(3) CrPC. In the event the Magistrate disagrees with the police report he has two choices. He may act on the basis of a Protest Petition that may be filed or he may while disagreeing with the police report issue process and summon the accused but he would have to proceed on the basis of the police report itself and either enquire into the matter or commit it to the court or session if the same was found to be triable by the sessions court. **Dharam Pal Vs. State of Haryana, AIR 2013 SC 3018(Five-Judge Bench).**

5.3.Duty of Magistrate when cognizance on police report received under 173(2) CrPC already taken but on further investigation u/s 173(8) CrPC police submits final report : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

Note *: The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii) supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time*

*cognizance of the offences on receipt of supplementary police report u/s 173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences***.**

5.4. Defence evidence or defence argument not to be considered by Magistrate at the time of cognizance and summoning: At the stage of summoning the accused, Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. See: **Sonu Gupta Vs. Deepak Gupta & Others, (2015) 3 SCC (424) (Para 8).**

6.Hearing accused before ordering further investigation u/s 173(8) CrPC not necessary: There is no inhibition for court to direct further investigation u/s 173(8) CrPC. Hearing of accused or co-accused before ordering further investigation u/s 173(8) CrPC is not necessary. **See: Satishkumar Nyalchand Shah Vs. State of Gujarat, (2020) 4 SCC 22**

7.1. Primary police report u/s 173(2) and supplementary police report u/s 173(8) to be read conjointly : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

7.2.Two case diaries submitted by two different investigating agencies after two investigations to be read conjointly : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the

offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

Note : *The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii) supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time cognizance of the offences on receipt of supplementary police report u/s 173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences***.**

7.3.Second time cognizance of offences under added Sections in supplementary charge-sheet submitted u/s 173(8) CrPC : Where supplementary charge-sheet was filed u/s 173(8) CrPC for offences other than those in the main charge-sheet, it has been held by the Hon'ble Allahabad High Court that the same does not require re-cognizance of matter as cognizance had already been taken and if re-cognizance is taken regarding added sections, then at the most, it may be called irregularity but it is not such irregularity which may vitiate trial and is very well covered by the provisions of Section 460(c) of the CrPC. See : **Nawal Kishore Vs. the State of UP & Another, 2015 CrLJ (NOC) 95 (Allahabad)**.

8.1.A person not charge sheeted can be summoned at the stage of taking cognizance: A person not charge sheeted can be summoned as accused at the stage of taking cognizance of the offences u/s 190 (1)(b) CrPC. The question of applicability of Section 319 CrPC does not arise at this stage. See: Swil Limited Vs. State of Delhi, AIR 2001 SC 2747.

8.2.Magistrate can take cognizance of offences against a person not charge sheeted by police: Once cognizance has been taken by the Magistrate, he takes cognizance of the offence and not of the offenders. Once he takes such cognizance, it becomes his duty to find out who the offenders really are. If he comes to the conclusion that apart from the persons sent up by the police some other persons are also involved, it is his duty to proceed against those persons. Therefore, when a Magistrate takes cognizance of offences u/s 190(1)(b) CrPC upon police report, he is not restricted to issue process only to the persons challaned by the police. See: Hareram Vs. Cikaram, AIR 1978 SC 1568.

8.3.A person though named in FIR but not charge sheeted cannot be summoned by Magistrate at the stage of taking cognizance of the offence: Magistrate cannot issue process against those persons who may have been named in the FIR as accused persons but not charge sheeted in the charge sheet submitted by the police u/s 173 CrPC. Such persons can be arrayed as accused persons in the exercise of powers u/s 319 CrPC on the basis of material or evidence brought on record in the course of trial. See: Kishori Singh Vs. State of Bihar, 2001 Criminal Law Journal 123 (SC).

8.4. Magistrate can summon some other person as accused not named in FIR or charge-sheeted u/s 173(2) CrPC : Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under S. 190. Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer. See : **Sunil Bharti Mittal Vs. CBI, AIR 2015 SC 923 (Three-Judge Bench)**

9.Cognizance by Magistrate u/s 190 CrPC in a sessions tribal case can be taken only once : Cognizance by Magistrate u/s 190 CrPC in a sessions tribal case can be taken only once. After commitment of the case u/s 209 CrPC to the sessions, the sessions court can take cognizance of further offences in exercise of its powers u/s 193 CrPC. See : **Balveer Singh Vs. State of Rajasthan, (2016) 6 SCC 680.**

10.1.Prosecution of a person on complaint case, a serious matter: In the case not below,the Director of a company who had not issued the cheque and had resigned from the company much before the date of issue of the cheque but even then he was prosecuted by the complainant for offences u/s 138 read with 141 of the Negotiable Instruments Act, 1881 by filing a complaint before the magistrate, quashing the criminal proceedings initiated against the Director/ accused, the Hon'ble Supreme Court has held that criminal prosecution is a serious matter. It affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case.See: **Harshendra Kumar D. Vs. Rebatilata Koley, 2011 CrLJ 1626 (SC).**

10.2.Duty of Magistrate in passing summoning order in complaint cases : In the case noted below, the duty of Magistrate while passing summoning order in a complaint case has been clarified by the Hon'ble Supreme Court thus : "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect

that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."See: **Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749**

10.3. Duty of Magistrate while issuing summons to accused u/s 204 CrPC : While issuing summons to accused u/s 204 CrPC, Magistrate has only to see whether allegations made in complaint or prima facie sufficient to proceed against the accused. Magistrate need not enquire into merits or demerits of case. See : **Fiona Shrikhande Vs. State of Maharashtra, AIR 2014 SC 957.**

10.4. Applying mind to the accusations in the FIR and material in the case diary mandatory before taking cognizance: it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender. Bearing in mind the above legal position, we are convinced that the High Court was not justified in dismissing the petition on the aforestated ground. In our opinion, in order to arrive at a conclusion, whether or not the appellant had made out a case for quashing of the charge-sheet against him, the High Court ought to have taken into consideration the material which was placed before the Magistrate. For dismissal of the petition, the High Court had to record a finding that the uncontroverted allegations, as made, establish a prima facie case against the appellant. In

our judgment, the decision of the High Court dismissing the petition filed by the appellant on the ground that it is not permissible for it to look into the materials placed before the Magistrate is not in consonance with the broad parameters, enumerated in a series of decisions of this Court and as briefly noted above to be applied while dealing with a petition under Section 482 of the CrPC for discharge and, therefore, the impugned order is unsustainable.See:

(i) **Fakhruddin Ahmad Vs. State of Uttaranchal , (2008) 17 SCC 157 (Paras 17 & 21).**

(ii)Judgment dated 08.03.2021 of the Jharkhand High Court passed in Cr. M.P. No.2755 of 2020, Mithilesh Prasad Singh Vs. The State of Jharkhand through A.C.B., High Court of Jharkhand at Ranchi.

10.5.Summoning order passed by Magistrate in complaint case must reflect application of mind : Summoning order passed by Magistrate in complaint case must reflect application of mind. **See: M/S GHCL Employees Stock Option Trust Vs. M/S India Infoline Ltd., AIR 2013 SC 1433.**

10.6. **Recording of reasons by Magistrate in summoning order u/s 204 CrPC mandatory otherwise order to be set aside :** Recording of reasons by Magistrate in summoning order u/s 204 CrPC is mandatory otherwise the summoning order would be set aside. See **: Sunil Bharti Mittal Vs. CBI, AIR 2015 SC 923 (Three-Judge Bench).**

10.7.Assigning reasons must even when complaint is dismissed in part in respect of some of many accused or in respect of some of many offences: In the cases of while dismissing complaint u/s 203 Cr PC, Magistrate is required to assign reasons even when the dismissal is in part in respect of some of many accused or in respect of some of many offences.See:

(i). Dr. Mathew Abraham Vs. V. Gopal Krishnan, 2008 CrLJ 2686 (Kerala)

(ii). Prakasan Vijaya Nivas Vs. State of Kerala, 2008 CrLJ 1272 (Kerala)

10.8. Truth of allegations in complaint not to be gone into at the stage of cognizance: At the stage of taking cognizance of offences in a complaint case, it is impermissible to go into the truthfulness or otherwise of the allegations made in the complaint and one has to proceed on a footing that the allegations made are true. See.. **Gambhirsinh R.Dekare Vs. Fhalgunbhai Chimanbhai Patel, AIR 2013 SC 1590.**

(***In this case Editor of the news paper and the journalist both were held guilty in complaint case for publishing defamatory matter and provisions of Press and Registration of Books Act, 1867 were involved therein***).

10.9.Extent of scrutiny of evidence at the stage of passing summoning order in complaint cases: At the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the magistrate to enter into a detailed discussion of the merits or the de_merits of the case. In other words, the scope of enquiry u/s 202 is limited to finding out the truth or false hood of the complaint in order to determine the question of the issue of the process. The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint i.e. for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does no say that a regular trial for adjudging the guilt or otherwise, of the person complained against should take place at the stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. It will be clear from the above that the scope of enquiry u/s 202 of the Cr PC is extremely limited—limited only to the ascertainment of the truth of falsehood of the allegations made complaint_(i) on the material placed by the complaint before the court, (ii) for the limited purpose of finding out whether prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complaint without at all adverting to any defence that the accused may have. In fact is well settled that in proceeding u/s 202 the accused has got absolutely no locus-standi and is not entitled to be heard on the question whether the process should be issued against him or not. Therefore at the stage of Sec. Cr PC as the accused has no locus-standi the magistrate has absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused, who may be present only to watch the proceedings and not to participate in them. Indeed, if the documents or the evidence produced by the accused are allowed to be taken by the magistrate, then an inquiry u/s 202 convert into a full dress trial defeating the very object for which this section has been engrafted. See--- **Nagawwa Vs. Veeranna Shivalingappa Nonjalgi, 1976 SCCr R 313 (SC)**

10.10.No meticulous evaluation of evidence by Magistrate at the time of passing summoning order in complaint case-- At the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the magistrate to enter into a detailed discussion of the merits or the de_merits of the case. In other words, the scope of enquiry u/s 202 is limited to finding out the truth or false hood of the complaint in order to determine the question of the issue of the process. The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint i.e. for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does no say that a regular trial for adjudging the guilt or otherwise, of the person complained against should take place at the stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. It will be clear from the above that the scope of enquiry u/s 202 of the Cr PC is extremely limited—limited only to the ascertainment of the truth of falsehood of the allegations made complaint_(i) on the material placed by the complaint before the court, (ii) for the limited purpose of finding out whether prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complaint without at all adverting to any defence that the accused may have. In fact is well settled that in proceeding u/s 202 the accused has got absolutely no locus-standi and is not entitled to be heard on the question whether the process should be issued against him or not. Therefore at the stage of Sec. Cr PC as the accused has no locus-standi the magistrate has absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused, who may be present only to watch the proceedings and not to participate in them. Indeed, if the documents or the evidence produced by the accused are allowed to be taken by the magistrate, then an inquiry u/s 202 convert into a full dress trial defeating the very object for which this section has been engrafted. See--- **Nagawwa Vs. Veeranna Shivalingappa Nonjalgi, 1976 SCCr R 313 (SC)**

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6(a). Sanction Case of Shri Rang Nath Mishra, Ex-Minister, UP : Relying upon its Constitution Bench decisions rendered in the cases of **M. Karunanidhi Vs. Union of India, AIR 1979 SC 898** and **M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC 788,** the Hon'ble Supreme Court in the case of **R. Balakrishna Pillai Vs. State of Kerala, AIR 1996 SC 901 (***para 5***)** has held that a Minister is covered within the definition of the words "public servant" as defined by Section 2(c) of the Prevention of Corruption Act, 1988 and the Governor, being the appointing and removing authority of a Minister of the State from his office under Article 164 of the Constitution, is competent to grant sanction u/s 19 of the Prevention of Corruption Act, 1988 for prosecution of such Minister for an offence u/s 13 of the said Act.

6(b). Shri Rang Nath Mishra is now not a "Public Servant" as he has already demitted his office of Minister of Intermediate Education of UP much earlier as is disclosed from the case diary. The question, therefore, arises whether the necessity of sanction u/s 19 of the said Act for prosecution of a public servant remains even when such public servant has already retired or completed his term of office and no more remains a public servant**?** The observations in this regard of the Hon'ble Supreme Court in **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh & Another, AIR 2012 SC 1185** *(para 16)* are thus : *"Clauses (a) and (b) of sub-section (1) of Section 19 of the Prevention of Corruption Act, 1988 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, been 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 Ship-yard Ltd. Hence, there is no question of obtaining any previous sanction of the Central Government." Similarly, in the cases noted below, it has been repeatedly ruled by the Hon'ble Supreme Court that sanction against a retired public servant u/s 19 of the P.C. Act, 1988 or u/s 197 of the CrPC on the date of filing of the charge-sheet before the Court for taking cognizance of the offences and for his prosecution under the P.C. Act, 1988 and the IPC is not required. Kindly see :

(i) M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC 788 (Five-Judge Bench)
(ii) R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench)
(iii) Balakrishnanan Ravi Menon Vs. Union of India, (2007) 1 SCC 45
(iv) Prakash Singh Badal Vs. State of Punjab, AIR 2007 SC 1274
(v) Habibulla Khan Vs. State of Orissa, AIR 1995 SC 1124

6(c). But there are conflicting laws in different decisions of the Hon'ble Supreme Court regarding the necessity of sanction for prosecution of a retired public servant. In one such case reported in **State of Himachal Pradesh Vs. M.P. Gupta, AIR 2004 SC 730** ***(para 19)*** the Hon'ble Supreme Court has observed thus : *"We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed "it appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harboring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious*

prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant." It was in pursuance of this observation that the expression 'was' came to be employed after the expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted."

7. In the present case of ex-Minister of UP Shri Rang Nath Mishra, sanction u/s 19 of the said Act has been sought for his prosecution for offences u/s 13(1)(e)/13(2) of the said Act. In the case reported in **M. Krishna Reddy Vs. State, Deputy Superintendent of Police, Hyderabad, AIR 1993 SC 313,** the Hon'ble Supreme Court has enumerated following ingredients of an offence u/s 13(1)(e) of the said Act :

(i) that the accused is a public servant;
(ii) the nature and extent of the pecuniary resources or property which are found in the possession of the accused.
(iii) what were his known sources of income i.e. known to the prosecution
(iv) it must be shown quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income.

8(a). As regards the duty of the sanctioning authority while considering the question of grant or refusal of sanction for prosecution u/s 197 of the CrPC and/or u/s 19 of the Prevention of Corruption Act, 1988, the Hon'ble Supreme Court, in the cases reported in **Dr. Subramaniam Swamy Vs. Dr. Manmohan Singh & Another, AIR 2012 SC 1185** *(para 27)* and **State of Maharashtra Vs. Mahesh G. Jain, (2013) 8 SCC 119 (***paras 14 & 18***)** has ruled thus : "*Grant of sanction for prosecution by the sanctioning authority is not mere an empty formality. The same requires application of mind to the material collected by the sanctioning authority before reaching his satisfaction as to whether any case (prima facie) is made out for the grant or refusal of sanction. 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 investing 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."*

8(b). Truthfulness of the contents of documents collected and the statements of the witnesses recorded by the investigating officer against the accused u/s 161 of the CrPC as contained in the police report u/s 173(2) of the CrPC/case diary cannot be questioned at the stage of grant or refusal of sanction by the sanctioning authority and also by the court at the stages of remand, bail, cognizance and framing of charges etc. Such an opportunity to the accused person would be available only during the trial when he would have right to put questions to the prosecution witness in terms of Sections 145 or 157 of the Evidence Act to contradict or corroborate him with reference to his previous statement made by him to the investigating officer during investigation and by producing his defence witnesses/documents u/s 233 of the CrPC in rebuttal of the testimony of prosecution witnesses and its documents. In the case of State of Maharashtra Vs. Mahesh G. Jain, (2013) 8 SCC 119, the Hon'ble Supreme Court has ruled thus : *"Only prima facie satisfaction of sanctioning authority is needed for granting sanction u/s 19(1) of the P.C. Act, 1988 and/or u/s 197 of the CrPC. 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. 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. 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."* No detailed or in-depth enquiry and assessment of the material contained in the police report/case diary has to be made at the said stages of the proceedings. Kindly see :

(i) Palwinder Singh vs. Balwinder Singh, 2009(65) ACC 399 (SC)
(ii) State of Delhi v. Gyan Devi & others, 2001 (42) ACC 39 (SC)
(iii) **Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunja, AIR 1980 SC 52**
(iv) State of Orissa vs. Debendra Nath Padhi, 2005 (51) ACC 209 (Supreme Court– Three-Judge Bench)
(v) Sajjan Kumar Vs. CBI, (2010) 9 SCC 368
(vi) Liyaqat vs. State of U.P., 2008 (62) ACC 453 (Allahabad)
(vii) Para 12 of State of Maharashtra vs. Salman Salim Khan, 2004 Cr.L.J. 920 (SC)

8(c). Defence plea or defence evidence of the accused cannot be considered by the sanctioning authority at the stage of passing sanction order and the merits of the case and the culpability of the accused cannot be looked into at that stage as has been ruled by two different Division Benches in the cases reported in **(i) Pancham Lal Vs. State of UP, 1999 CrLJ 4111 (Allahabad) (DB)** and **(ii) Yogendra Kumar Jain Vs. State of UP, 2007 CrLJ 198 (Allahabad) (DB).** Any plea or statement of defence made by the accused to the investigating officer during investigation cannot be given primacy over the statements of the prosecution witnesses and the documents collected by the investigating officer during investigation showing involvement of the accused in the commission of the offences.

8(d). As has already been discussed in detail in the comments dated 26.09.2013 of the undersigned (from pages 1 to 8 of the file), there is sufficient material in the case diary submitted by the investigating officer which constitutes a prima facie case for offences u/s 13(1)(e) of the Prevention of Corruption Act, 1988 and as such there are sufficient grounds for grant of sanction u/s 19 of the said Act for prosecution of the accused Shri Rang Nath Mishra for the said offence.

8(e). The matter of investment/expenditure to the tune of nearly Rs. 2.5 crores by the said accused towards purchasing land for the society and construction of building of school and the ultimate probative value of the documents like receipts etc concerning the said transactions can be tested only during the trial before the court and not at the present stage of grant or refusal of sanction for prosecution of the said accused. The investigating agency has concluded that the total value of unexplained and unaccounted for properties acquired by Shri Rang Nath Mishra & his family during the relevant period is worth Rs. 5,92,04,597/- and as such even if the statement made by Shri Rang Nath Mishra to the investigating agency that he had received approximately Rs. 2.5 crores from different donors for raising his school run by a Society and also for raising other constructions, is accepted even then the remaining disproportionate property worth Rs. 5,92,04,597---2,50,00,000 = Rs. 3,42,04,597/- remains unaccounted for and, therefore, an offence u/s 13(1)(e) of the said Act is still constituted. The point raised in the said query dated 27.09.2013 regarding the said investment/expenditure of approximately Rs. 2.5 crores, therefore, does not make any difference as regards the question of grant of sanction against the said accused as already concluded by the undersigned at pages 7 and 8 of the file.

(S.S. Upadhyay)
28.09.2013

Principal Secretary