

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl.M.C.2684/2008

% Date of reserve : 26.03.2009
Date of decision: 08.04.2009

DR. C. P. THAKUR ...Petitioner
Through: Mr.Arun Jaitley, Sr.Advocate,
Mr.Sidharth Luthra, Sr.Advocate with
Mr.Sanjay Abbot, Advocate

Versus

CENTRAL BUREAU OF INVESTIGATION ...Respondent
Through: Mr.Harish Gulati and Mr.Anindya
Malhotra, Advocates

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J.

1. By way of this petition filed under Section 482 Cr.P.C., the Petitioner is seeking quashing of final/closure report bearing No.4/2008 in FIR No.RC AC2 2004 A0004, ACU-II, CBI, New Delhi, dated 23.07.2004 under Section 120B IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, instituted against petitioner as well as the order dated 22.07.2008 passed by learned Special Judge, New Delhi, whereby instead of closing the case in terms of the closure report, the

Special Judge has taken cognizance of the matter after holding that there was no need of sanction in respect of the act/omissions alleged against the Petitioner, who at the relevant time was the President of Post Graduate Institute of Medical Research (hereinafter referred to as 'PGIMER'), in the report of CBI and has directed the Petitioner to face the trial in that case.

2. Briefly stating, the facts giving rise to the filing of the present case are as under:

(i) As per the PGI Act, 1966 and the rules framed thereunder, PGIMER is governed by the Central Government and the President of the Institute is nominated by the Central Government to act as its representative and to take decisions on its behalf. The Petitioner who was the Union Minister for Health and Family Welfare, in the Government of India, was nominated by the Central Government as the President of PGIMER. The Governing Body of PGIMER is constituted under Regulation 11 of the PGI Regulations and the President as representative of the Central Government acts as the Chairman of the Governing Body.

(ii) PGIMER has certain shops in its campus which are let out for rent through public auction. In 1972, Capt. Parminder Singh was allotted Shop No.21 at PTIMER after a public auction for Rs.360/- for an area of 133 sq.ft. This area later was merged and became 455 sq.ft. but the rent remained the same. Thereafter Capt. Singh was allowed to remain in the shop till 26.06.1997 by the then Governing Body of PGIMER. Eviction proceedings were initiated against Capt. Singh. However, on 6.09.200, Capt. Singh obtained a stay against eviction from the concerned court.

(iii) Thereafter the Petitioner as the President of PGIMER and Chairman of the Governing Body was apprised of the case of Capt. Singh. The Petitioner constituted a three-member Committee of senior officers to examine the case. The Committee gave its report to the Petitioner in June 2001.

(iv) The Petitioner after perusing the report of the three-member Committee, passed an order dated 26.07.2001 under Section 25 of the PGI Act wherein he showed his dissatisfaction as to why the PGI had been accepting rent from Capt. Singh at the rate of Rs.720/- per month till May 2001, and that there is no record of PGIMER asking for an increase in the rent or there being any complaint against Capt. Singh. He also observed that some foul play has occurred in the entire episode which needed to be investigated. However, since there were drugs worth lakhs of rupees seized by the PGIMER authorities, on sympathetic grounds, the Petitioner passed an order stating therein that:

- i. Capt. Singh be given back the possession of Shop No.2.
- ii. He shall pay the rent as the rate similar to the adjoining Shop No.3 of M/s Surgico (which was Rs.59,890/- per month) and would abide by the same terms and conditions.
- iii. Capt Singh would give an undertaking that he will not approach any court of law for redressal for any financial liability against the Institute.
- iv. After the expiry of lease deed of Shop No.3 (i.e., on 23.10.2001) further leasing of Shop No.2 and 3 would follow the procedure laid down by the Institute.
- v. An independent inquiry be ordered to fix responsibility for allowing Capt. Singh to continue

occupancy after 1979 without any lease deed and also for collection of rent from Capt. Singh even after his eviction.

3. It appears that this act was complained, which led to registration of the FIR by the CBI. After carrying out the investigations, the CBI reported that:

(a) The order dated 26.07.2001 (supra) was arbitrary and in gross abuse of his official position. First of all, as President of PGIMER he had no powers to issue such orders. Secondly, no public interest was involved in this issue. Thirdly, Shop No.3 was much smaller than Shop No.2 with which its rent was compared. Finally, the directions for enquiry was meaningless since Dr. C.P. Thakur himself was perpetuating an irregularity which was continuing since 1979 and had been rectified by PGIMER authorities.

(b) That formal orders were issued by PGIMER on 14.08.2001 resetting Capt Singh in Shop No.2 citing orders dated 26.07.2001 of Dr. C.P. Thakur and the rent for the shop was fixed on par with the adjoining Shop No.3 at Rs.59,890/- per month. In the aforesaid order of Dr. C.P. Thakur dated 26.07.2001, one of the conditions was that allotment of Shop No.2 will continue till the lease of adjoining Shop No.3 expires. The lease of Shop No.3 was expiring on 23.10.2001. In view of this, Capt. Parminder Singh seems to have submitted an application to Dr. C.P. Thakur dated 17.08.2001. Consequent to this application, it was communicated to PGIMER Authorities by Dr. H.R. Keshav Murthy, OSD to Dr. C.P. Thakur to examine whether the licence period could be extended upto 23.10.2002 (i.e., a further extension of one year) in case of both Shop Nos.3 and 2. Accordingly, further extension of one year was granted to Capt. Parminder Singh for Shop No.2 at an

enhanced rent of Rs.65,880/-.

(c) That consequent to two separate writ petitions filed in the Punjab & Haryana High Court against the said action of PGIMER in resettling Capt. Singh in Shop No.2, the said Court vide orders dated 3.04.2002 issued directions for vacation of unauthorized possession of the said shop by Capt. Parminder Singh. The High Court also passed severe strictures against Dr. C.P. Thakur. The High Court also ordered for open auction of the said shop. Consequent to the open auction, Shop No.2 was rent out to the highest bidder at a rent of Rs.4,20,000/-.

(d) That the aforesaid facts disclosed that Dr. C.P. Thakur in his individual capacity as President, PGIMER, did not have any powers in estate related matters. Such powers were vested only with the Governing Body. However, in spite of this, he abused his official position in conspiracy with Capt. Parminder Singh and in spite of numerous adverse recommendations by Director, PGIMER, Dr. S.K. Sharma, Dr. C.P. Thakur ordered resettlement of Capt. Parminder Singh in Shop No.2 from which he had been evicted as per procedure established by law. In fact, Dr. C.P. Thakur arbitrarily played the role of an appellate court in the eviction matter. As a result, Capt. Parminder Singh was under illegal occupation of the said shop during the period 14.08.2001 to 27.04.2002, when he was finally evicted under the orders of High Court of Punjab & Haryana. During the said period, he paid a maximum rent of only Rs.65,880/- per month (initially Rs.59,890/-) whereas, it was clearly brought to the knowledge of Dr. C.P. Thakur by Director, PGIMER that an alternate offer for Rs.1,40,000/- had been received from another party for the said shop. Further, consequent to fresh tenders for this shop, it was auctioned at a rent of Rs.4,20,000/- per month. Accordingly, substantial wrongful pecuniary loss was caused to the PGIMER by the action of Dr. C.P. Thakur

in abusing his official authority on conspiracy with Capt. Parminder Singh.

4. It was submitted that the aforesaid facts and circumstances disclosed commission of offence punishable under Section 120B IPC read with 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 by Dr. C.P. Thakur and Capt. Parminder Singh.

5. It was also stated that sanction for prosecution under Section 19 of Prevention of Corruption Act, 1988 is not required against Dr. C.P. Thakur since he has ceased to be a public servant. However, sanction under Section 197 Cr.P.C. to prosecute Dr. C.P. Thakur under Section 120B IPC was required because he was a public servant at the relevant time and CBI requested from the Central Government. However, the Competent Authority declined to grant sanction for prosecution against Dr. C.P. Thakur. Hence, the final report was filed without sanction which is a legal requirement for taking cognizance of this case. In view of the circumstances, it was prayed that the case may be ordered to be closed and permission to return the documents seized during investigation may be granted.

6. However, the learned Special Judge instead of accepting the closure report, vide impugned order dated 22.07.2008 held,

(i) The order dated 26.07.2001 passed by the Petitioner was arbitrary and beyond his powers. No public interest was involved in the aforesaid directives. The rent fixed for the shop was much less

than rent prevalent at that time. Petitioner was not having powers to resettle Capt. Parminder Singh in the shop, after his eviction and that too on lower rent. Thus, it is evident that in pursuance of the conspiracy entered into between Capt. Parminder Singh and Dr. C.P. Thakur, the latter abused his position as President of PGIMER, obtained pecuniary advantage in favour of Capt. Parminder Singh and committed offences punishable under Section 120B of the Penal Code and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

(ii) Closure report was filed by the CBI on 27.12.2007, on which date Dr. C.P. Thakur was neither Union Minister for Health and Family Welfare, Government of India, nor President of PGIMER, Chandigarh. Thus, it was evident that he was not a public servant on the date when present closure report was filed. No sanction for offence punishable under Section 13(2) read with Section 13(1)(d) of the Act was required on that date. Despite that fact, the investigating office came to a conclusion that offence under the Act was made out, he opted to file a closure report.

(iii) On filing of closure report, he sought refuge in the action of Government of India, whereby sanction to prosecute Dr. C.P. Thakur for offence punishable under Section 120B of the Penal Code was refused. It is evident that investigating officer concludes that offences of criminal conspiracy and criminal misconduct were made out against Dr. C.P. Thakur, then Union Minister for Health and Family Welfare, Government of India, New Delhi.

(iv) In *Ronald Woo Mathemas* (AIR 1954 SC 455), the Apex Court had an occasion to deal with the

proposition as to whether proceedings would be bad for want of sanction under Section 197 of the Code of Criminal Procedure, 1973, which was instituted on the charges of conspiracy and on bribery. Relying precedents in *HHB Gill* (AIR 1948 PC 128) and *Phenander Chandra Neogi* (AIR 1949 PC 117), it was ruled that no sanction was needed for institution of proceedings on the charges of conspiracy and bribery. In *Sheekantiah Ramayya Munipalli & Another* (AIR 1955 SC 287) and *Amrik Singh* (AIR 1955 SC 309), it was ruled that it is not every offence committed by a public servant, which requires sanction for prosecution under Section 197 of the Code, nor even every act done, while he is actually engaged in performance of his official duty. Same proposition was reiterated in *Hari Har Prasad* [(1972) 3 SCC 89] wherein it was ruled that as far as offence of criminal conspiracy punishable under Section 120B read with Section 409 IPC is concerned and also Section 5(2) of the Prevention of Corruption Act, 1947 are concerned, they cannot be said to be the nature mentioned in Section 197 of the Code of Criminal Procedure.

7. It was further observed that in view of the aforesaid discussion, it was evident that for offence of criminal conspiracy committed by Dr. C.P. Thakur, no sanction was needed under Section 197 of the Code. Therefore, the Special Judge took cognizance of the offences punishable under Section 120B of the Penal Code and 13(2) read with Section 13(1)(d) of the Act against accused Dr. C.P. Thakur and Capt. Parminder Singh.

8. The Special Judge also observed that though the

investigating officer mentioned in the charge-sheet that offence punishable under Section 120B of the Penal Code and 13(2) read with Section 13(1)(d) are made out against Dr. C.P. Thakur and Capt. Parminder Singh, yet he opted to file closure report on the count that sanction, as contemplated by Section 197 of the Code was not accorded by the Central Government. He was well aware that for prosecution for an offence punishable under Section 13(2) read with Section 13(1)(d) of the Act that no sanction was needed, since Dr. C.P. Thakur ceased to be a public servant. Therefore, it is evident that closure report was filed by Inspector S.S. Yadav, CBI, ACU-II, New Delhi, with malafide intention to favour accused persons. Consequently, Director, CBI is called upon to initiate a departmental action against the investigating officer under intimation to this court. The Special Judge held that sufficient grounds exist to proceed against the accused persons. Consequently, it is ordered that documents relied, list of witnesses and address of the accused persons be filed within a period of one week and thereafter summons be issued against the accused persons for 2.09.2008.

9. It is this order which has been challenged before this court by way of the present petition which has been filed under Section 482 of Criminal Procedure Code.

10. It has been urged by the Petitioner that the order dated 22.07.2008 passed by the Special Judge is illegal, improper and

incorrect. It has been further submitted that in view of Section 6A of Delhi Special Police Establishment Act, when an offence is stated to have been committed under the Prevention of Corruption Act and the allegations inter alia relate to an employee of the Central Government of the level of Joint Secretary and above, the CBI cannot conduct an enquiry or investigation into such alleged offences except with the previous approval of the Central Government. Thus, no investigation could have been conducted in this case without the previous approval of the Central Government.

11. It has also been submitted that at the relevant time, the Petitioner was the Union Minister of Health and Family Welfare and the Institute under the PGI Act has a Governing Body with an executive head titled as Director whose powers are enumerated in Schedule-I of the PGI Act. The President is a representative of the Central Government as also the Chairman of the Governing Body. Since the Institute is under the control of the Central Government, the Petitioner in his capacity as the President, acts on behalf of the Central Government and exercises the powers under Section 25 of the PGI Act and hence, it cannot be said that the Petitioner has acted in excess or abuse of his official duty.

12. It was further submitted that the Petitioner as President of the Institute, Chairman of the Governing Body and the representative of the Central Government, had full right to act as

the Appellate Authority while deciding the appeal of Capt. Singh. Moreover, in the present case once the closure report was filed on behalf of the CBI, the learned Single Judge was bound to have accepted the same. It is also submitted that the learned Special Judge failed to appreciate that at the time of the alleged incident, the Petitioner was a public servant and, therefore, the cognizance to be taken by the learned Special Judge was barred in view of Section 197 Cr.P.C.

13. Hence, it is submitted that either on facts or on account of lack of sanction, the learned Special Judge ought not to have proceeded ahead by taking cognizance of offence against the Petitioner on the basis of the report filed by CBI which was, in fact, a closure report due to lack of sanction which was refused by the Central Government.

14. It is submitted that the view formed by the Trial Court that it was a case of conspiracy and therefore no sanction was required is in utter disregard to the facts of the case inasmuch as the basic act which is the subject matter of challenge was extension of time granted to Capt. Singh in retaining the premises in question for a period of three months, that also in the interest of the Institute, as that much time would have been taken in issuing fresh tenders for allotment of the premises in question. Hence, even if the impugned act of the Minister was a discretion exercised in favour of Capt. Parminder Singh in his capacity as

the President of the Institute, the said act also was in performance of his duties as the President of the Institute as a representative of the Central Government and thus he being an employee of the Central Government, would not have been prosecuted except with the sanction of the Central Government in that regard. The factum of his no longer being a Minister when the report was filed, makes no difference because the act in question pertains to the period in which the Petitioner was very much the Minister.

15. CBI filed a reply wherein it has been clearly admitted that on the date when the alleged offence was committed, Dr. C.P. Thakur was very much a Minister in the Central Government and it was in that capacity that he was the President of the Institute and as per the legal advice received by the CBI, after examining the matter on various levels, it was decided to prosecute Dr. C.P. Thakur, under Sections 120B IPC read with 13(2) read with 13(1)(d) of Prevention of Corruption Act, sanction under Section 197 Cr.P.C. was necessary. However, the same was refused by the competent authority and therefore a closure report was filed but the learned Special Judge took cognizance against the Petitioner in absence of sanction for prosecution and also passed adverse remarks against the IO for filing closure report. The order of the Special Judge is based upon certain pronouncements which have been noticed in the impugned order and, therefore,

does not call for any interference.

16. As observed earlier, the issues which require consideration are:

1. What is the nature of the impugned act done by Dr. C.P. Thakur, the Petitioner?
2. What is the time when such act / offence has been committed?
3. Whether such an act is not part of his official functions?
4. Whether it requires sanction under Section 197 of the Cr.P.C.?
5. Whether the petitioner who was not the Minister and ceased to be a Government employee when the challan was filed, can he be prosecuted without sanction for acts/omissions done in official capacity while being the Minister/President of the Institute.?

17. To appreciate the legal position, it would be appropriate to take note of pronouncements made by the Hon'ble Supreme Court in the case of R. Balakrishna Pillai vs State of Kerala (1996) 1 SCC 478 wherein the Apex Court has taken into account the 41st Report of the Law Commission where in para 15.123 while dealing with Section 197, as it then stood, observed:

- 4.** 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 harbouring 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 prosecutions. 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.

18. In the same judgment, reference was also made to the Constitution Bench judgment of the Apex Court delivered in the case of *M. Karunanidhi vs. Union of India*, (1979) 3 SCC 431 where the Bench was required to consider whether the Chief Minister was a public servant within the meaning of Section 21 of the IPC and Section 197 Cr.P.C. In this regard, after referring to the decision of the High Court of Bombay in *Namdeo Kashinath Aher vs H.G. Vartak* (AIR 1970 Bom 385), it was held:

“5. A Constitution Bench of this Court in *M. Karunanidhi v. Union of India* was required to consider whether a Chief Minister was a public servant within the meaning of Section 21 of the Indian Penal Code and Section 197 of the Code. This Court referred to the decision of the High Court of Bombay in *Namdeo Kashinath Aher v. H.G. Vartak*² and extracted the following passage therefrom:

“Whatever be the practical and actual position, the fact remains that it is the Governor who can accept the resignation of the Ministry or Minister and it is the Governor again who can dismiss or remove the Minister from office. Under Section 3(60) of the General Clauses Act, 1897, the word ‘State Government’ has been defined. Clause (c) of Section 3(60) is applicable to the present case and therefore the State Government is to mean the Governor for the purpose of the present case. The result therefore is that Accused 1 is a public servant who can be said to be removable only by the State Government, meaning thereby the Governor, and I do not find any difficulty in coming to the conclusion that the second requirement of Section 197, CrPC also is fully satisfied as far as Accused 1 is concerned.”

Taking note of the provisions of Article 167 (Article 164 for

Ministers), it was pointed out that the Chief Minister is paid from public exchequer for performing a public duty and is, therefore, a public servant within the meaning of Section 197 of the Code. So also a Minister of a State is paid from its public exchequer. He is paid for doing the duty entrusted to him as a  Minister and, therefore, on the analogy of the observations relating to the Chief Minister, the Minister must also be held to be a public servant. Since he is appointed or dismissed by the Governor, he would fall within the expression "a public servant not removable from his office save by or with the sanction of the Government". In the instant case, as pointed out earlier, by virtue of the provisions in the General Clauses Act, 1897 the expression 'Government' used in Section 197 would mean the Governor in the case of a Chief Minister or a Minister. That being so, we are of the opinion that a Minister would be entitled to the protection of Section 197(1) of the Code."

19. In this case, the Hon'ble Supreme Court also dealt with the timing of the act which was the basis of contemplated prosecution of the Chief Minister, to find out as to whether the act had been committed while acting or purporting to act in the discharge of his official duty and observed as under:

6..... The question whether the acts complained of had a direct nexus or relation with the discharge of official duties by the public servant concerned would depend on the facts of each case. There can be no general proposition that whenever there is a charge of criminal conspiracy levelled against a public servant in or out of office the bar of Section 197(1) of the Code would have no application. Such a view would render Section 197(1) of the Code specious. Therefore, the question would have to be examined in the facts of each case....."

20. In the case of *R.N. Goel vs Nirmal Goel & another* reported as 2008 (4) JCC 2356, which is also a case relied upon by the Petitioner and which is a decision given by the learned Single Judge of the High Court of Delhi, it has been observed:

"13. The next issue to be considered by this court is whether after coming to the conclusion that the Petitioner was discharging his public duties being a public servant when he wrote letter dated 24.03.2006, whether the complaint filed by the respondent without seeking permission under Section 197 Cr.P.C. is maintainable or not.

14. Section 197 is an embargo on the court to take

cognizance of an offence allegedly committed by a public servant who is not removable from his office save by or with the sanction of the Government, 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 except with the previous sanction of the government and in the case of a person who was employed at the time of commission of an alleged offence in connection with the affairs of the Union, except with the previous sanction of the Central Government. The scope of Section 197 Cr.P.C. has been widened by extending protection even to those acts or omissions which are done in purported exercise of official duties that is in the colour of office held by such public servant. Section 197 Cr.P.C. reads as follows:-

“Section 197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge of Magistrate or a public servant not removable from his office save by or with the sanction of the Government 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 no court shall take cognizance of such offence except with the previous sanction-

(a) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of a State, of the State Government.

15. In *State of Orissa & Ors. Vs. Ganesh Chandra Jew* 2004(2) JCC 735 : AIR 2004 Supreme Court 2179, while interpreting Section 197 Cr.P.C. the Supreme Court observed:-

“It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implied that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determined its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while

discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated.”

21. Relying upon the aforesaid judgments, the Petitioner has contended that the Petitioner was empowered under Section 25 of the PTI Act to take cognizance on behalf of the Central Government as he was the representative of the Central Government and whilst exercising the same powers, the Petitioner passed the order dated 26.07.2001. The said order was directly concerned with the official duties of the Petitioner. It has been held by the Hon’ble Supreme Court in *Amrik Singh vs State of Pepsu* reported in AIR 1955 SC 309 that if the act complained of is directly concerned with official duties of a public servant, so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary and that would be so, irrespective of whether it was, in fact, a proper discharge of the duties of the public servant concerned.

22. The Petitioner has also relied upon the judgment of the Hon’ble Supreme Court in the case of *State of Himachal Pradesh vs M.P. Gupta* reported in (2004) 2 SCC 349. It has been submitted that in so far as public servants are concerned, the cognizance of any offence by any court is barred by Section 197 Cr.P.C., unless sanction is obtained from the appropriate authority, if the offence alleged to have been committed, was in discharge of official duty. The use of words ‘no’ and ‘shall’ makes

it abundantly clear that the bar on exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance of the offence by the court is barred.

23. It is also submitted that once this sanction has been refused by the Central Government sought for by the prosecution, there is no reason as to why the court ought to have taken cognizance despite the bar created under Section 197 Cr.P.C.

24. It may also be observed here that in the present case, the shops in question used to be allotted by the Governing Body of the Institute. The Petitioner was the President of the Institute and, as such, Chairman of the Governing Body. After coming to know about the irregularities committed earlier in respect of continuance of the allotment of the shop in question to Capt. Parminder Singh, what the Petitioner has done was only to permit to continue in the said shop for another period of three months and that also on the basis of payment of higher rent which was being paid by the occupant of the adjacent shop taking into consideration that some time was likely to be taken in floating tenders of the said shops. No such orders would have been passed by the Petitioner unless and until he would have been the President of the Institute and Chairman of the Governing Body as an employee of the Central Government being the nominee of the Central Government in his capacity as the Minister. Thus, he would have no authority to pass the impugned order unless and

until he was occupying the position in question.

25. It may not be out of place to mention that in a judgment delivered by another Single Judge of this Court in the case of *Sushil Modi Vs. Mohan Guruswamy* reported in 2008 Cri.L.J. 541, it has been held that sanction is needed in respect of any person who is a public servant within the definition of Section 21 which includes Judges, Magistrates and public servants not removable save by or with the sanction of the Government. While dealing with the aforesaid provision, it has been further observed that:

23. The Constitution Bench expressly excluded MLAs from the category of public servant under the IPC, inter alia, on the ground that they are not paid by the Executive Government for any duty at its behest. The Court did not buy the argument that MLAs have other obligations under the Constitution or to electorate which could make their duty within the meaning of Section 21 (12) IPC. The argument that MLAs get remuneration also did not cut ice with the Constitution Bench, which opined that remuneration within the meaning of Section 21 (12)(a) IPC must be the remuneration by the Executive Government for duties carried out at its behest and direction and the MLAs get their salary under an Act of the Legislature as MPs do under an Act of Parliament. In the process the Court also held that the legislature is not "Government" within the meaning of Section 20(12) IPC. Payment of salaries to MLAs or even the Ministers, under a Law passed and grant voted by the legislature is payment at the legislature's command and not payment by the Executive Government, who may be the disbursing authority. In respect of Ministers, they were held to be public servants not because of the mode of their payment but because they discharge duties prescribed by the State Government's Rules of Business allocated by the Governor to whom they report and, therefore, they are treated to be in the service of the Government. For this, the Court referred to the earlier Constitution Bench judgment in *M. Karunanidhi v. Union of India*, AIR 1979 SC 898 : (1979 Cri LJ 773) wherein it was held :-

"57. Three facts, therefore, have been proved beyond doubt:

1. That a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and

status of his constitutional functions.

2. That a Chief Minister or a Minister gets salary for the public work done or the public duty performed by him.

3. That the said salary is paid to the Chief Minister or the Minister from the Government funds. It is thus incontrovertible, that the holder of a public office such as the Chief Minister is a public servant in respect of whom the Constitution provides that he will get his salary from the Government Treasury so long he holds his office on account of the public service that he discharges. The salary given to the Chief Minister is co-terminus with his office and is not paid like other constitutional functionaries such as the President and the Speaker. These facts, therefore, point to one and only one conclusion and that is that the Chief Minister is in the pay of the Government and is, therefore, a public servant within the meaning of Section 21 (12) of the Penal Code.""

26. Thus, in the present case the petitioner being a Minister in the Central Government and in that capacity being the President of PGIMER act as a nominee of the Central Government and was a Central Government employee and as such, protected by Section 197 Cr.P.C. in respect of any act done by him in performance of his duties.

27. In these circumstances, taking into consideration the law on the subject, it cannot be said that the Petitioner had not acted at the relevant time except in discharge of his official duties and thus it cannot be said that no sanction was required as discussed above, whether challan was filed at the time when he was the Minister or thereafter, the fact remains that the act subject matter of the alleged offence was an act committed at the time when the Petitioner was the President of the Institute as an employee of the Central Government. Once the sanction was refused, there was no occasion for the learned Special Judge to

have interpreted the acts of the Petitioner as if they were not done in pursuance of the powers vested in him. At the most, it can be that the discretion which has been exercised was in excess of the authority vested in him, yet the act having done in discharge of his duties as the President and the Chairman of the Government Body of the Institute as nominee of the Central Government and as an employee of the Central Government, thus, the impugned order passed by the Special Judge cannot be sustained. These are the questions posed in Para 15 (supra) and answered against the respondents.

28. Accordingly, the order passed by the Special Judge dated 22.07.2008 taking cognizance of the offence under Section 120B IPC r/w Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 against the petitioner is set aside. Bail bonds of the petitioner would stand discharged. Thus, the petition is allowed.

MOOL CHAND GARG, J.

APRIL 08, 2009