

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

+ **CRL.M.C. 3659/2014 & CrI.M.A. 12607/2014**

Date of Decision : December 22nd, 2015

AKHAND PRATAP SINGH

..... Petitioner

Through

Mr.Salman Khurshid, Sr.Adv. with
Mr.V. Madhukar, Adv., Ms.Gargi
Srivastava, Adv., Ms.Shabeena
Anjum, Adv. & Mr.Sachin Dev
Sharma, Adv.

versus

C B I

..... Respondent

Through

Mr.Narender Mann, Spl.P.P. with
Mr.Manoj Pant, Adv. for CBI.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 Code of Criminal Procedure, 1973 (hereinafter mentioned as “Cr.P.C.”) has been filed by the petitioner for setting aside the impugned order dated 31.07.2014 and for quashing the proceedings emanating from RC/FIR No.2(A)/2005/CBI/SPE-ACU-V, pending in the Court of learned Special Judge, Saket Courts, Delhi.

2. Factual matrix, emerges from the record, is that the CBI registered a case against the petitioner under Section 13(2) read with

Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the “P.C. Act”) on 19.03.2005 with the allegations that during the period 01.01.1978 to 31.05.1991, the petitioner amassed the assets disproportionate to his known sources of income to the tune of Rs.21,45,872/- in the form of movable and immovable properties in his name and in the name of his family members and others. The petitioner being an IAS officer (UP Cadre), 1967 batch retired as Chief Secretary, Government of Uttar Pradesh in December, 2003. The specific allegations against the petitioner are that he had earned huge amount of money illegally during his service tenure and also suspected to have laundered the same in immovable assets in the name of his various family members. He is also alleged to own fleet of cars, leading an extravagant lifestyle and also spending huge money on education and marriage of his two daughters as well as acquisition of jewellery. During investigation it was revealed that petitioner has acquired substantive assets in his own name and in the name of his family members during the period 1982 to 1998 and therefore, the check period was fixed from 01.04.1982 to 31.03.1998. the investigation revealed that the petitioner was having immovable

and movable assets to the tune of Rs. 1,61,100/- in his name and in the name of his family members at the beginning of the check period i.e. 01.04.1982 and during the check period, petitioner and his wife namely, late Smt. Neelam Singh has an income of Rs. 54,53,638/-. The petitioner had also purchased and sold movable assets in the form of shares during the check period in different names. The investigation also revealed that the petitioner had also forged the Wills of Late Sh. UP Singh, his father, Late Sh. Anil Kumar Singh, his brother-in-law and Late Sh. Govind Mishra in respect of certain properties and he also operated/used several bank accounts in the name of different persons which he used not only in the acquisition of the immovable assets but also for acquiring movable assets like shares. In the chargesheet, it has been alleged that the family members of the petitioner had actively and intentionally aided the petitioner in acquisition of immovable and movable assets in their name.

3. Investigation into the allegations was investigated by the CBI and a charge-sheet was filed before the Court against 12 accused persons including the petitioner. The Trial Court vide order dated 31.07.2014, ordered to frame charge under Section 13(1)(e) read with

Section 13(2) of the P.C. Act and Sections 468 and 471 of the Indian Penal Code, 1908 (hereinafter referred to as 'IPC'). Co-accused Juhie Singh and Java Singh were also held liable under Section 109 IPC read with Section 13(1)(e) read with Section 13(2) of the P.C. Act.

4. Feeling aggrieved by the passing of the order dated 31.07.2014 and the proceedings emanating from the case, the present petition for quashing the same has been filed by the petitioner.

5. Arguments advanced by the learned Senior Counsel for the petitioner and learned Special Public Prosecutor for the CBI have been heard.

6. Arguments advanced by the learned Senior Counsel for the petitioner are of two limbs.

First limb of argument advanced by the learned counsel is that the petitioner is having protection of Section 6 of the Delhi Special Police Establishment Act (DSPE Act). It is submitted that the petitioner was an officer of the Indian Administrative Service of the Uttar Pradesh Cadre and at the time of his superannuation, he was the Chief Secretary to the State of Uttar Pradesh. It is further argued that the proviso to the notification dated 15.06.1989 issued by the State

Government and Notification dated 23.08.1990 issued by the Government of India provides protection to public servants of the State Government to the effect that no investigation of the specified offences can be conducted without the prior permission of the State Government. The cognizance taken by the trial court in the present case is bad in law as the CBI has failed to obtain sanction under Section 6 of the DSPE Act for prosecution of the petitioner as he happened to be a public servant of the State of Uttar Pradesh.

7. Second limb of the argument advance by the learned Senior Counsel for the petitioner is that the there was malafide on the part of the CBI in filing the charge sheet against the petitioner. It is submitted that the CBI applied for sanction for prosecution of the petitioner twice with the Government of Uttar Pradesh, but the same was not accorded. The malafide of the CBI is apparent from the fact that the FIR was registered and the charge sheet was filed after the superannuation of the petitioner with a view to bypass the due process of law of obtaining the requisite sanction.

8. In support of the contentions raised, learned counsel for the petitioner has relied upon judgment in case of *Louis Peter Surin v.*

State of Jharkhand (2010) 12 SCC 497 in which the facts were that the investigating agencies moved the State of Bihar for sanction to prosecute the appellant but the same was declined by the Governor on the premise that no prima facie case was made out against any of the accused. A review of the order of the Governor was again sought which too was rejected for the same reason and thereafter the appellant superannuated from service. It was found that the appellant had superannuated in the year 1997 and the cognizance had been taken by the Special Judge four years thereafter in a matter arising out of an FIR registered in April 1984 even though the request for sanction had been rejected by the State Government on two occasions. It was observed that the initiation of proceedings against the appellant was not justified where the sanction had been rejected by the State Government on two occasions. However, it was clarified that the judgment should not be read to mean that sanction would be required in a case where an employee has in the meanwhile superannuated.

9. Next judgment relied upon is in the case of *Chittaranjan Das v. State of Orissa (2011) 7 SCC 176* wherein it was found that while the appellant was in service sanction sought for his prosecution was

declined by the State Government. Vigilance Department did not challenge the same and allowed the appellant to retire from service. After the retirement, Vigilance Department requested the State Government to reconsider its decision, which was refused. It was observed by the Hon'ble Apex Court that in a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of public servant. It was further observed that situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility.

On similar point, judgment in the case of ***Mahesh Kumar Thapar v. State of Jharkhand (Crl.L.A. 1599/2009 decided by Hon'ble Supreme Court on 23.05.2014)*** has been relied upon.

10. The bone of contention of the arguments advanced by the learned counsel for the petitioner is that the notification dated 15.06.1989 (Annexure-6) issued by the Government of Uttar Pradesh

provides that the provisions of Section 6 of the DSPE Act were extended to the whole of the State of Uttar Pradesh subject to the condition that no such investigation shall be taken up in cases relating to the public servants, under the control of the State Government except with the prior permission of the State Government. It has been vehemently argued that since the permission to accord sanction had been declined twice by the State Government, the investigation conducted by the CBI in the present case is in violation of the notification dated 15.06.1989.

11. For the sake of convenience, Section 6 of the DSPE Act is reproduced as under :

6. Consent of State Government to exercise of powers and jurisdiction

Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State not being a Union Territory or railways area, Without the consent of the Government of that State.

To deal with the contentions raised by the learned counsel for the petitioner, it would be relevant to quote Notification dated 15.06.1989, issued by the Government of Uttar Pradesh. It reads :

“In pursuance of the provisions of section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946) the Governor of the State of Uttar Pradesh is pleased to accord consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in whole of the State of Uttar Pradesh, for investigation of offences punishable under the Prevention of Corruption Act, 1988 (49 of 1988), and attempts, abetments and conspiracies in relation to all or any of the offence or offences mentioned above and any other offence or offences committed in the course of the transaction and arising out of the same facts, subject however to the condition that no such investigation shall be taken up in cases relating to the public servant, under the control of the State Government except with the prior permission of the State Government.”

Notification dated 23.08.1990, issued by the Government of

India reads as follows:

S.O..... in supersession to Department of Personnel and Training order No.228/40/88-AVD II dt. 6.7.89 and in exercise of the powers conferred by sub section (1) of sec. 5 read with sec. 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh (vide consent order No. Home (Police) sec.1 No.3442/VIII-1-84/88 dated 15.6.89) hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Uttar Pradesh for investigation of offences as mentioned here under :-

(a) Offences under Prevention of Corruption Act, 1988 (Act No.49/88)

(b) Attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above, and any other offence or offences committed in the course of the same transaction arising out of the same facts.

Provided that this notification will not be applicable to the cases relating to the public servants under the control of the State Government except with the prior permission of the State Government.

12. A bare perusal of Section 6 of the DSPE Act shows that no member of the Establishment can exercise the powers and jurisdiction in any area in a State without the consent of the State Government, meaning thereby the power and jurisdiction of the members of the Establishment cannot be exercised within the territorial area of the State Government without the consent of the concerned State Government. To make applicable the provisions of this Act within the territorial jurisdiction of the State Government, the Central Government is required to issue a notification in this regard after obtaining consent of the concerned State Government in terms of Section 6 of the DSPE Act.

13. In the present case, the notification dated 15.06.1989 was issued by the Government of Uttar Pradesh giving consent for the extension of powers and jurisdiction of the members of the Establishment for investigation of certain offences within the State of Uttar Pradesh. Thereafter, the Government of India vide notification dated 23.08.1990 extended the powers and jurisdiction of the members of Establishment to the whole of the State of Uttar Pradesh to investigate the offences under the Prevention of Corruption Act, 1988 and also for offences of attempts, abetments and conspiracies in relation to or in connection with one or more of the offences under the P.C. Act, and any other offence or offences committed in the course of the same transaction arising out of the same facts.

14. The contention of the petitioner that he was having protection of Section 6 of the DSPE Act as there was proviso in the notification dated 23.08.1990 issued by the Government of India to the effect that notification will not be applicable to the cases relating to the public servants under the control of the State Government except with the prior permission of the State Government. The case of the petitioner is not covered by the proviso to the said notification for the reasons

that at the time of registration of FIR of the present case and filing of the charge sheet in the Court, the petitioner was not in service or control of the State Government.

15. The FIR in the present case was registered on 19.03.2005 and the charge sheet was filed thereafter, whereas as per admitted case of the petitioner himself, he superannuated from the services of the State Government on 04.12.2003. Thus, on the date of registration of the FIR and filing of the charge sheet, the petitioner was no more in service of the State Government what to say under the control of the State Government.

18. Per contra, the Hon'ble Apex Court in ***R.S. Nayak v. A.R. Antulay, 1984 (2) SCC 183*** held as under :

“The accused tendered resignation of his office as Chief Minister and ceased to hold the office of Chief Minister with effect from January 20, 1982. The complaint from which the present appeal arises and which was registered as Criminal Case No. 24/82 appears to have been filed on August 9, 1982 and the cognizance was taken by the learned Magistrate on the same day. It unquestionably transpires that long before the date on which the cognizance was taken by the learned special Judge, the accused had ceased to hold the office of the Chief Minister and as such had ceased to be a public servant. In other words, he was not public servant in his capacity

as Chief Minister on August 9, 1982 when the court took cognizance of the offence against him. A fortiori no sanction as contemplated by Sec. 6 was necessary before cognizance of the offence could be taken against the accused for offences alleged to have been committed in his former capacity as public servant. Re: (b) and (c): It was strenuously contended that if the accused has held or holds a plurality of offices occupying each one of which makes him a public servant, sanction of each one of the competent authorities entitled to remove him from each one of the offices held by him, would be necessary and if anyone of the competent authorities fails or declines to grant sanction, the court is precluded or prohibited from taking cognizance of the offence with the public servant is charged. This submission was sought to be repelled urging that it is implicit in Sec. 6 that sanction of that authority alone is necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motives. Sec. 6(1)(c) is the only provision relied upon on behalf of the accused to contend that as M.L.A. he was a public servant on the date of taking cognizance of the offences, and therefore, sanction of that authority competent to remove him from that office is a *since qua non* for taking cognizance of offences. Sec. 6 (1)(c) bars taking cognizance of an offence alleged to have been committed by public servant except with the previous sanction of the authority competent to remove him from his office.”

In *Parkash Singh Badal v. Govt. Of Punjab, 2007 (1) SCC 1* it

was observed that the correct legal position is that an accused facing

prosecution for offences under the Old Act or New Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application. It was held that:

“27. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. So far as the question about the non application of mind in the sanction or absence of sanction is concerned, this has been answered in the first question i.e. where the public servant has ceased to be a public servant since he has ceased to hold the office where the alleged offence is supposed to have been taken place, the other questions really become academic.....”

The Court further relied upon the judgment in the case of **S.A. Venkataraman v. The State, AIR 1958 SC 107** in which it was observed:

“When the provisions of s. 6 of the Act are examined, it is manifest that two conditions must be fulfilled before its provisions become applicable. One is that the offences mentioned therein must be committed by a public servant

and the other is that that person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government or is a public servant who is removable from his office by and other competent authority. Both these conditions must be present to prevent a court from taking cognizance of an offence mentioned in the section without the previous sanction of the Central Government or the State Government or the authority competent to remove the public servant from his office. If either of these conditions is lacking, the essential requirements of the section are wanting and the provisions of the section do not stand in the way of a court taking cognizance without a previous sanction. An offence under s. 161 of the Indian Penal Code can be committed by a public servant or by a person expecting to be a public servant, but s. 6 of the Act refers only to an offence committed by a public servant under that section. If, therefore, at the time a court was asked to take cognizance of an offence under s. 161 of the Indian Penal Code, the accused is a public servant but was not so at the time that the offence was committed, but at which time he was merely expecting to be a public servant, a previous sanction would be unnecessary before a court could take cognizance, as the provisions of the section would be inapplicable. Conversely, if an offence under s. 161 of the Indian Penal Code was committed by a public servant, but, at the time a court was asked to take cognizance of the offence, that person had ceased to be a public servant one of the two requirements to make s. 6 of the Act applicable would be lacking and a previous sanction would be unnecessary. The

words in s. 6(1) of the Act are clear enough and they must be given effect to. There is nothing in the words used in s. 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed. It was suggested that clause (c) in s. 6(1) refers to persons other than those mentioned in cls. (a) and (b). The words "is employed" are absent in this clause which would, therefore, apply to a person who had ceased to be a public servant though he was so at the time of the commission of the offence. Clause (c) cannot be construed in this way. the expressions "in the case of a person" and "in the case of any other person" must refer to a public servant having regard to the first paragraph of the sub-section. Clauses (a) and (b), therefore, would cover the case of a public servant who is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government and clause (c) would cover the case of any other public servant whom a competent authority could remove from his office. The more important words in clause (c) are "of the authority competent to remove him from his office". A public servant who has ceased to be a public servant is not a person removable from any office by a competent authority. Section 2 of the Act states that a public servant, for the purpose of the Act, means a public servant as defined in s. [21](#) of the Indian Penal Code. Under clause (c), therefore, any one who is a public servant at the

time a court was asked to take cognizance, it does not come within the description of a public servant under cls. (a) and (b), is accused on an offence committed by him as a public servant as specified in s. 6 would be entitled to rely on the provisions of that section and object to the taking of cognizance without a previous sanction. To read clause (c) in the way suggested on behalf of the appellants, would be to give a meaning to this clause which is not justified by the words employed therein. It was further suggested that the provisions of the sub-s. (2) of s. 6 indicate that it was the status of the accused at the time of the commission of the offence which was relevant rather than his status at the time a court was asked to take cognizance. This sub-section was inserted into the Act by the Prevention of Corruption (Second Amendment) Act, 1952, and it purported to finally settle any doubts which may arise as to which authority should grant the sanction in the case of a public servant who had committed an offence mentioned in s. 6(1) and who at the time the court was asked to take cognizance is still a public servant. For example, it is not difficult to imagine cases where a public servant employed by a State Government is subsequently employed by the Central Government and a question arises as to which of the two Governments is to grant the sanction for his prosecution. This sub-section resolves the difficulty by directing that where a doubt arises, the authority which was to grant the sanction was the one which was competent to remove him from his office at the time of the commission of the offence. cognizance of the offence under s. 161 of the Indian Penal Code and under s. 5(2) of the Act without a previous

sanction. The withdrawal of the case at that stage meant no more than this that the appellant was discharged. A withdrawal of a case resulting merely in a discharge does not prevent the prosecution being recommenced on a fresh complaint. On 11 February 1954, when the fresh complaint was filed the appellant was not a public servant and therefore the court could take cognizance without a previous sanction.”

In *Abhay Singh Chautala v. CBI*, (2011)7SCC141, it was held

as under :

“32. Same argument was tried to be raised on the question of plurality of the offices held by the public servant and the doubt arising as to who would be the sanctioning authority in such case. In the earlier part of the judgment, we have already explained the concept of doubt which is contemplated in the Act, more particularly in Section 19(2). The law is very clear in that respect. The concept of ‘doubt’ or ‘plurality of office’ cannot be used to arrive at a conclusion that on that basis, the interpretation of Section 19(1) would be different from that given in Antulay's case (cited supra) or Prakash Singh Badal v. State of Punjab (cited supra). We have already explained the situation that merely because a concept of doubt is contemplated in Section 19(2), it cannot mean that the public servant who has abused some other office than the one he is holding could not be tried without a sanction. The learned senior counsel tried to support their argument on the basis of the theory of “legal fiction”. We do not see as to how the

theory of "legal fiction" can work in this case. It may be that the appellants in this case held more than one offices during the check period which they are alleged to have abused; however, there will be no question of any doubt if on the date when the cognizance is taken, they are not continuing to hold that very office. The relevant time, as held in *S.A. Venkataraman Vs. State* (cited supra), is the date on which the cognizance is taken. If on that date, the appellant is not a public servant, there will be no question of any sanction. If he continues to be a public servant but in a different capacity or holding a different office than the one which is alleged to have been abused, still there will be no question of sanction and in that case, there will also be no question of any doubt arising because the doubt can arise only when the sanction is necessary. In case of the present appellants, there was no question of there being any doubt because basically there was no question of the appellants' getting any protection by a sanction.

33. We do not, therefore, agree with learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants, that the decision in *Antulay's case* (cited supra) and the subsequent decisions require any reconsideration for the reasons argued before us. Even on merits, there is no necessity of reconsidering the relevant ratio laid down in *Antulay's case* (cited supra).

34. Thus, we are of the clear view that the High Court was absolutely right in relying on the decision in *Prakash Singh Badal v. State of Punjab* (cited supra) to hold that the appellants

in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19 of the Act as held in K. Karunakaran v. State of Kerala (cited supra) and the later decision in Prakash Singh Badal v. State of Punjab (cited supra). The appeals are without any merit and are dismissed.”

19. In view of the catena of ratio of judgments, it is concluded that when a public servant ceases to be in office, no sanction for his prosecution is necessary. Now it is a settled law that a public servant cannot be removed from his office without the prior sanction of the competent authority only when he holds the office, but once he retires or superannuates or ceases to be in his office, then no sanction of the competent authority is required to prosecute him for the offences committed by him under the colour of his office. In the present case, the FIR was registered on 19.03.2005 and charge sheet was filed in 2013. Admittedly, the petitioner superannuated on 31.10.2003 and after extension of service, he resigned on 04.12.2003. It is apparent that when the FIR was registered against him and charge sheet was filed, the petitioner ceased to be in office, so, there was no question of

obtaining any sanction from the competent authority for the prosecution of the petitioner. Neither was the FIR registered nor was the charge sheet filed when the petitioner was in service. Thus, the petitioner cannot get any help from the proviso to the notification dated 23.08.1990 issued by the Government of India inasmuch as there was no need to obtain sanction for his prosecution as already ceased to be in office when the FIR was registered. The petitioner cannot get any assistance from the judgments relied upon in the cases of *Louis Peter Surin* (supra), *Chittaranjan Das* (supra) and *Mahesh Kumar Thapar* (supra) in view of the law laid down by the Hon'ble Apex Court to the effect that no sanction is required where the public servant ceases his office as held in cases of *R.S. Nayak* (supra), *Parkash Singh Badal* (supra), *S.A. Venkataraman* (supra) and *Abhay Singh Chautala* (supra).

20. The second limb of arguments advanced by the learned counsel for the petitioner is that the investigation conducted by the CBI was with malafide intention inasmuch as the FIR was registered and charge sheet was filed malafidely by the CBI after the superannuation of the petitioner just to avoid/bypass the seeking of the required

sanction from the competent authority.

21. The petitioner has alleged the malafide on the part of the CBI which initiated the proceedings after the retirement of the petitioner. The term malafide is derived from the connotation “*malice*” which is always against the person and cannot be alleged against an institution. Admittedly, the petitioner was an IAS Officer. The FIR in the present case was registered in the year 2005 after the superannuation of the petitioner in the year 2003 and there was no bar in the initiation of proceedings against a retired public servant.

22. As defined under the Black’s Law Dictionary, the word “*malice*” in criminal law does not simply mean ill will against a person, but signifies a wrongful act done intentionally, without just cause or excuse. In short, malice can be defined as the conscious intent to do harm. Thus, to constitute malice, two elements are of utmost importance i.e. firstly, ill will against the person and secondly, an act done with wrong intention to cause harm to the other person. In the present case, the CBI officers had cogent evidences against the petitioner. It was only after the superannuation of the petitioner, the FIR of the present case was registered and thereafter,

after having a thorough investigation, charge sheet was filed in the Court. As observed above, CBI was not required to seek sanction after the petitioner superannuated from the service. This chain of events simply and clearly shows that the CBI officers had no malice against the petitioner as they followed the due process of law and then only initiated the process of investigation against the petitioner. Both the elements of constituting malice in the present case are not fulfilled as neither the CBI had any ill will against the petitioner nor did they act in any way to cause intentional harm to the petitioner. The CBI officers were simply doing their duty by investigating against a public servant who was allegedly a corrupt public servant. Nobody should put obstacles in the way of the CBI conducting its duty and responsibility by simply casting aspersions of malafide conduct on them. Even otherwise, it is a matter of fact which is to be decided on by the trial court on merits. Thus, this limb of the argument advanced by the counsel for the petitioner also is unacceptable.

23. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon'ble Apex Court in the case of *State of Maharashtra through CBI v. Vikram*

Anatrai Doshi and Ors. MANU/SC/0842/ 2014 and in the case of *Inder Singh Goswami v. State of Uttaranchal MANU/SC/0808/2009* has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution.

24. In the case of *Rajib Ranjan & Ors. v. R. Vijaykumar [Criminal Appeal No(S). 729-732 of 2010]*, the Hon'ble Supreme Court observed as under:

Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then they would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution.

25. So far as invoking of inherent power under Section 482 Cr.P.C.

is concerned, it is a settled law that the same can be exercised only when there is abuse to the process of law and to secure the ends of justice. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

26. *This Court is of the considered opinion that 'Corruption by public servants' has become a gigantic problem. It has spread everywhere and no facet of public activity has been left unaffected by the sting of corruption. It has deep and pervasive impact on the functioning of the entire country and large scale corruption retards the national building activities and everyone has to suffer on that*

count. Corruption is corroding like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralizing the honest officers. Wide spread corruption amongst the public servants has to be curbed with a strong hand by all concerned including Courts of law, inasmuch as corruption affects not only the moral fibre of the society but the economic stability and progress of country as well. Corruption in a civilized society is a disease like cancer. If it is not detected in time, it is sure to malignise the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in the jungle. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence – shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

27. In view of the above discussion, this Court is of the considered opinion that the petitioner has failed to make out his case under

Section 482 Cr.P.C. for setting aside the order dated 31.07.2014 and to quash the proceedings of RC/FIR No.2(A)/2005/CBI/SPE-ACU-V, pending before the Trial Court.

28. The present petition is accordingly dismissed.

29. The application CrI.M.C. 12607/2014 is also disposed of.

(P.S.TEJI)
JUDGE

DECEMBER 22, 2015
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