

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH**

CRIMINAL PETITION Nos.6398 and 6399 OF 2016

Between:

V.D.Rajagopal

... Petitioner

And

The State of Telangana,
Represented by the Standing Counsel
for CBI Cases

... Respondent

JUDGMENT PRONOUNCED ON 16.11.2018

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

- 
1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? -
 2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes
 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? -

*** THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**
+ CRIMINAL PETITION Nos.6398 and 6399 of 2016

% 16.11.2018

V.D.Rajagopal

....Petitioner

v.

\$ The State of Telangana,
 Represented by the Standing Counsel
 for CBI Cases

.... Respondent

! Counsel for the Petitioner : Sri Dilip Kumar for Sri
 V.L.Surendera

Counsel for Respondent: Sri K.Surender, Special Public
 Prosecutor for C.B.I.

<Gist :

>Head Note:

? Cases referred:

1. AIR 1960 SC 866
2. AIR 1990 SC 494
3. 1992 Supp.(1) SCC 335
4. AIR 1970 SC 1661
5. 1955 (1) SCR 1177
6. (2016) 2 Supreme Court Cases 143
7. 1990 Cri. L.J 1869
8. 2017 (1) ALD (CrI) 842 (SC)
9. AIR 2016 SC 2082
10. AIR 2016 SC 1606
11. 1955(2) SCR 925
12. (1992) 1 SCC 217
13. (1979) 4 SCC 177
14. (1973) 2 SCC 701
15. 2001(6) SCC 704
16. AIR 1971 SC 885
17. (1996) 7 SCC 20
18. 1939 AIR FC 43
19. AIR 1955 SC 309

- 20.(2014) 16 SCC 807
- 21.(2009) 8 SCC 617
- 22.AIR 2014 SC 1674
- 23.AIR 1996 SC 901
- 24.AIR 1995 SC 1124
- 25.AIR 1984 SC 684
- 26.1995 Cr L J 2898 (Cal.)
- 27.(1955) CriLJ 254
- 28.(2012) 11 SCC 1
- 29.(2015) 1 SCC 1
- 30.AIR 1983 SC 150
- 31.1958 Cri L J 1558
- 32.(1991) 189 ITR 70
- 33.(1997) AIR (SCW) 1473
- 34.(1997) AIR (SCW) 2466
- 35.(1997) AIR (SCW) 701
- 36.(2004) AIR (SCW) 5842
- 37.AIR 1951 SC 128
- 38.(2011) 6 SCC 739
- 39.AIR 2001 SC 2472
- 40.[1957]1SCR488
- 41.[1966]3SCR275
- 42.AIR 2004 SC 2317
- 43.1998CriLJ4003
- 44.(1994) 5 SCC 593
- 45.AIR2016SC3548
- 46.AIR 1953 SC 394
- 47.AIR 1979 SC 602
- 48.1964CriLJ310
- 49.(1975) 2 SCC 840
- 50.(2015) 16 SCC 731
- 51.AIR 1994 SC 2623
- 52.2017 (3) ALT (CrI.) 178 (SC)
- 53.(1990) 1 SCC 445
- 54.AIR 1970 SC 1636
- 55.2012 (7) SCC 462
- 56.[1994] 1 AC 486 (HL)
- 57.AIR 1963 SC 1116
- 58.AIR2018SC3876
- 59.(1966) 1 All ER 524
- 60.(1894) 1 QB 725



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION Nos.6398 and 6399 of 2016****COMMON ORDER:**

The criminal petition No.6398 of 2016 is filed by the petitioner/accused No.5 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.25 of 2013 on the file of the Principal Special Judge for CBI Cases at Hyderabad, registered for the offences punishable under Sections 120-B and 420 of Indian Penal Code (for short "I.P.C.") and under Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act (for short "P.C.Act").

The criminal petition No.6399 of 2016 is filed by the petitioner/accused No.3 under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.01 of 2012 on the file of the Principal Special Judge for CBI Cases at Hyderabad, registered for the offences punishable under Sections 120-B, 379, 409, 411, 420, 427, 447 and 468 of I.P.C. and under Section 13 (2) read with Section 13 (1) (d) of P.C.Act.

As the petitioner/accused is one and the same in both the cases and the allegations made and point involved is also one and the same, I find that it is expedient to decide both the petitions by common order.

Sri P.Shankar Rao, MLA, Secunderabad, Cantonment and Sri Yerram Naidu, Ex.M.P. filed W.P.Nos.794 and 6604 of 2011 before this Court and this Court by order dated 10.08.2011 directed C.B.I. to register a crime against the petitioner and others in view of the magnitude of largesse granted in favour of other

accused by the petitioner/accused being the higher official in Mines and Minerals department including huge investments as part of *quid pro quo* arrangement for the largesse and the petitioner and others are benefited by the investors from the erstwhile State of Andhra Pradesh.

In pursuance of the directions issued by this Court, the respondent registered crime against the petitioner and others, investigated into and filed charge sheet before the Special Judge for trial of C.B.I. Cases, Hyderabad.

The main allegation made against the petitioner is that the petitioner is instrumental for granting mining lease to M/s. Raghuram Cements Ltd., (for short "RCL"), presently known as Bharathi Cement Corporation Pvt. Ltd., (BCCL) vide G.O.Ms.No.95 dated 27.03.2006 for limestone in Yerraguntla and Kamalapuram Mandals of Kadapa District in abuse of his official position as public servant by committing criminal misconduct conniving with S.Sankarnarayana (accused No.8), Y.S.Jagan Mohan Reddy (accused No.1) M/s RCL (accused No.3) and Sri J.J.Reddy (accused No.4) and thereby committed offence punishable under Section 120-B and 420 of I.P.C. and under Section 13 (2) read with Section 13 (1) (d) of P.C. Act.

The other allegations alleged are on rejection of the renewal application for grant of prospecting license filed by M/s.Gujarath Ambuja Cements Ltd. (GACL). The charge sheet is running into more than 160 pages. However, the gist of the charge sheet in C.C.No.25 of 2013 is that the petitioner is guilty of criminal misconduct in connivance with other accused while occupying

highest position in Mines and Mineral Department for unlawful benefit for himself and other accused including accused No.1 and others and invited investments as *quid pro quo* from various persons in erstwhile state of Andhra Pradesh.

The allegations in C.C.No.01 of 2012 are also identical. The then Government of Andhra Pradesh issued a notification under Section 6 of the Delhi Special Police Establishment Act, 1946 vide G.O.Ms.No.467 dated 17.11.2009 extending the powers and jurisdiction of the members of Delhi Special Police Establishment (CBI) for registration and investigation of criminal case related to the Boundary Disputes and illegal mining activities of M/s. Obulapuram Mining Company Private Limited (M/s. OMCPL) and M/s. Bellary Iron Ore Private Limited (M/s.BIOP) in the Bellary Reserve Forest of Anantapur.

Subsequent to registration of the case M/s Obulapuram Mining Company Private Limited (M/s. OMCPL) filed a writ petition No.27120 of 2009, obtained interim stay of investigation on 14.12.2009 and the said order was made absolute on 14.06.2010. Aggrieved by the said stay orders, CBI filed a writ appeal No.532 of 2010 and the Division Bench of this Court vacated the aforesaid stay on 16.12.2010. However, the Division Bench of this Court ordered the CBI to limit the investigation only to the illegal mining activity of the said firm and not to probe into the boundary disputes till the same is decided by the Committee so constituted on the orders of the Supreme Court of India.

The Charge sheet is running into nearly 100 pages. As the gist of the allegations made against the petitioner is identical to the

allegations made in other C.C., it is appropriate to state few allegations made in the charge sheet against the petitioner for deciding the real controversy between the parties.

The specific allegation made against the petitioner is that he conspired with accused Nos.1 and 2 and other public servants abused official position and extended pecuniary advantage by projecting M/s.OMCPL (accused No.4) as the only meritorious applicant for grant of mining lease and ensure that no one else would get the mining lease in violation of established procedure and Law and that the applicants namely M/s. SJK Steels, M/s.S.R. Minerals and M/s. Sathavahan-Ispat Limited confirmed that gross illegalities were committed by the officials while taking the decisions of allotting the mining lease to accused No.4 and that the petitioner/accused No.3 in furtherance or conspiracy and by abusing his official position as a public servant, had taken special interest in filing a Mining Lease application of M/s APMD, a State PSU with a malafide intention to stall the claim of M/s SR Minerals who had by then obtained Forest Clearance for a particular area in the notified area, and that the various applications and correspondence made by the other applicants regarding illegal encroachments by accused No.4 was not enquired into by the concerned officials including petitioner/accused No.3 (A3) and that the petitioner in furtherance of criminal conspiracy with Sri B.V. Sreenivasa Reddy (accused No.1) and Sri Gali Janardhan Reddy (accused No.2) verbally instructed and forced the then ADMG, Anantapur by exercising his official position, to issue permits to M/s OMCPL (accused No.4) without conducting any inspections and that he should not cause any hindrances to M/S OMCPL (A-4)

or to Sri B.V. Sreenivasa Reddy (accused No.1) and Sri Gali Janardhan Reddy (accused No.2) by inspecting the mining areas.

Thus, a perusal of the charge sheet revealed that the charges constitute two parts. Part one deals with illegal mining activity of accused No.4 and part two deals with alleged irregularities in grant of two mining leases to accused No.4, one in respect of 68.5 hectars and another in respect of 39.5 hectars vide G.O.Ms.No.151 dated 18.06.2007 and G.O.Ms.No 152 dated 18.06.2007.

The Specific allegations made against the petitioner in C.C.No.25 of 2013, which is the subject matter of CrI.P.No.6398 of 2016, are as follows:

“1) Sri V.D.Rajagopal (A-5) worked as Director, Mines and Geology from 01.08.2005 to till 20.03.2010 and retired on 30.06.2011.

2) During one of the meetings, the then Chief Minister Late Dr.Y.S.Rajashekara Reddy, instructed Sri V.D.Rajagopal (A-5), the then DM&G to advise his son Sri Y.S.Jagan Mohan Reddy (A-1), for locating suitable limestone area for setting up cement plant by his son Sri Y.S.Jagan Mohan Reddy (A-1) in Kadapa District. In that connection, one Sri J.J.Reddy (A-4) used to meet Sri V.D.Rajagopal (A-5).

3) In view of the said instruction, Sri V.D.Rajagopal (A-5) suggested Sri J.J.Reddy (A-4) to contact the District level/Regional level officials of M&G office i.e. ADMG/DDMG/JDMG etc.for guidance etc.

4) In pursuance of the criminal conspiracy entered among Sri Y.S Jagan Mohan Reddy (A-1), M/s RCL (A-3), Sri JJ Reddy (A-4), Sri V.D Rajgopal (A-5) and Sri B. Krupanandam (A-6) at the instance of Late YS Rajasekhar Reddy, the Government of AP, without considering their correspondence etc. has issued show-cause notice during Sept. 2005 regarding their proposal to cancel the PL for the said Lime Stone Reserve Area of T. Sunkesula village etc. In spite of the request of GACL, the Govt. has cancelled their PL vide Memo dated 31-10-05.

5) As part of pre hatched criminal conspiracy, the Government of AP has rejected the renewal application of M/s GACL by showing the lame excuses i.e. non-submission of prospecting report etc. and by circumventing the rules with the sole purpose of causing wrongful gain to Sri Y.S.Jagan Mohan Reddy (A-1) by way of illegal grant of Mining Lease of Lime Stone Reserve Area of T.Sunkesula village etc, since he happened to be the son of Late Y.S. Rajasekhara Reddy, the then Chief Minister of AP.

6) S/Shri Y. S. Jagan Mohan Reddy (A-1), J. J. Reddy (A-4), V.D. Rajagopal (A-5) and Shri B. Kripanandam, IAS, (A-7), in pursuance of criminal conspiracy and in abuse of their official position as Public Servant, dishonestly committed offences U/s 120-B, 420 IPC and Sec.13(2) r/w 13(1)(d) of P.C.Act, 1988.

7) Shri J. J. Reddy (A-4) in pursuance of the criminal conspiracy with Shri Y.S.Jagan Mohan Reddy (A-1), dishonestly has played his role both in M/s. Raghuram Cements Ltd (A-3) and M/s. Saraswathi Power Industries Ltd.

8) Sri JJ Reddy (A-4) in pursuance of criminal conspiracy, at the instance of Sri Y.S Jagan Mohan Reddy (A-1) in connivance with Sri V.D Rajgopal (A-5) and Sri S. Shankar Narayana (A-8) had submitted both the applications of M/s RCL (A-3) and M/S SIPL for Mining Lease of the said limestone reserve area though the notification is for Prospecting Licence only.

9) Sri J.J. Reddy (A-4) in pursuance of criminal conspiracy, at the instance of Sri Y.S.Jagan Mohan Reddy (A-1) in connivance with Sri V.D.Rajagopal (A-5) and Sri S. Shankar Narayana (A-8) in connection with ML application matter of T.Sunkesula area.

10) Sri JJ Reddy (A-4) in pursuance of criminal conspiracy with Sri Y.S Jagan Mohan Reddy (A1), at his instance submitted the application of M/s. SPIL which is nothing but dummy application.

11) Shri S. Shankara Narayana (A-8) in pursuance of the criminal conspiracy with Shri J.J.Reddy (A-4) and Sri Y.S Jagan Mohan Reddy (A-1) dishonestly has accepted both the applications.

12) Shri S. Shankara Narayana (A-8) in pursuance of the criminal conspiracy, with Sri J.J.Reddy (A-4) and Sri Y.S Jagan Mohan Reddy (A-1) dishonestly followed the decision to grant M.L to Sri Y.S.J.M. Reddy (A-1) under any circumstance, as he happened to be the son of the then Chief Minister of Andhra

Pradesh, Late Y.S.Rajasekhara Reddy and wanted to grab the said Lime Stone Area.

13) Thereby Sri Y.S Jagan Mohan Reddy (A-1), M/s RCL (A-3), Sri J.J.Reddy (A-4), Sri V.D.Rajgopal (A-5) and S. Shankara Narayana (A-8) committed offences U/s 120-B, 420 IPC and Sec.13(2) 13(1) (d) of P.C.Act-1988.

14) Investigation further disclosed that Sri S. Shankar Narayana, ADMG (A-8), has fraudulently mentioned in the combined proposal that "The area applied for grant of mining lease prospected earlier.

15) Shri S. Shankara Narayana (A-8) ADMG, Yerraguntla in pursuance of criminal conspiracy with Sri YS Jagan Mohan Reddy (A-1), M/s RCL (A-3), Sri J.J.Reddy (A-4) and Sri V.D Rajgopal (A-5) dishonestly accepted the application of M/s RCL which has applied for ML, when the notification is for PL and though M/s RCL has not prospected the T. Sunkesula area prior to submission of their application for ML.

16) On the other hand Sri S.Shankar Narayana (A-8) has dishonestly mentioned that the area has been prospected earlier, in order to cause wrongful gain to M/s. RCL (A-3), Sri YS Jagan Mohan Reddy (A-1) and Sri JJ Reddy (A-4).

17) Thereby Sri Y.S Jagan Mohan Reddy (A-1), M/S RCL (A-3), J.J. Reddy (A-4), V.D Rajgopal (A-5) & S.Shankara Narayana (A-8) committed offences U/s 120-B, 420 IPC and Sec. 13(2) r/w 13(1)(d) of P.C.Act-1988.

18) Shri S. Shankara Narayana (A-8) in pursuance of criminal conspiracy with Sri Y.S. Jagan Mohan Reddy (A-1), M/s RCL (A-3), Sri JJ Reddy (A-4) and Sri V.D Rajgopal (A-5) dishonestly forwarded his recommendation for grant of ML in favour of M/s RCL by mentioning that the 2nd application of M/s Saraswati Power and Industries (P) Ltd., may be recommended for rejection as overlapping with that of earlier application. Sri S. Shankar Narayana (A-8) except giving serial nos. 2555 and 2556, the ADMG office has not maintained any difference. Sri S. Shankar Narayana (A-8) has not mentioned the time of receipt of applications.

19) Sri J.J.Reddy (A-4), in pursuance of the criminal conspiracy, has directly submitted both the applicants to the ADMG Sri Sankar Narayana (A-8) who has affixed his signatures on both the applications.

20) Since Shri S. Shankara Narayana (A-8) has received both the applications at a time, the question of overlapping does not arise.

21) Hence, the said pretext of Sri S. Shankar Narayana (A-8) is not correct as the overlapping aspect is not applicable in respect of the application of Saraswati Power, in the absence of the said gap or time mechanism.

22) The application of M/s Raghuram Cements should not be considered since M/s. RCL had blocked the Malepadu Limestone Reserve area, again submitted ML application for T. Sunkesula area even though their Malepadu area PL and ML applications are pending. Though M/s. RCL is not supposed to submit ML application when the area was specified for PL applications, it has not submitted Prospecting Report.

23) The Exploration Report of GACL was used by the RCL. It has submitted the RCL application without any date/time gap between the application of SIPL.

24) Thereby Sri Y.S Jagan Mohan Reddy (A-1), M/s RCL (A-3), J.J.Reddy (A-4), V.D Rajgopal (A-5) and S.Shankara Narayana (A-8) committed Offences U/s 120-B, 420 IPC & Sec.13(2) r/w (13(1)(d) of P.C.Act-1988.

25) M/S RCML/RCL was holding PL of the said Malepadu area and applied for ML on 28-042005, after the entry of Sri J.J. Reddy (A-4), at the instance of Sri Y.S. Jagan Mohan Reddy (A-1) only, it has applied for ML for T. Sunkesula area without prospecting and submitting the Prospective Report of the said T. Sunkesula etc area. In pursuance of the criminal conspiracy, Sri S. Shankar Narayana (A-8), V.D Rajgopal (A-5) and B. Krupanandam (A-7) hatched with Late Y.S. Rajasekhara Reddy at his instance, they connived with S/Sri Y.S Jagan Mohan Reddy (A1) and Sri JJ Reddy (A-4) have granted Mining Lease in favour of M/s RCL (A-3) vide GO No.95 dated 27-03-2006.

26) In pursuance of said criminal conspiracy, Sri B. Krupanandam (A-7) vide Memo dated 3110-2005 with criminal intention rejected the renewal application of M/s GACL, only in order to cause wrongful gain to M/s RCL (represented through Sri J.J. Reddy (A-4)) of Sri Y.S. Jagan Mohan Reddy (A-1), who is no other than the son of Late Y.S. Rajasekhara Reddy.

27) In respect of P.L matter of M/s GACL (File No.227) the PL application was not at all renewed, rather rejected by S/Sri V.D Rajgopal (A-5) and Sri B. Krupanandam (A-7).

28) Shri S. Shankara Narayana (A-8) dishonestly and fraudulently in pursuance of criminal conspiracy made false representation in the said report. Thereby S/Shri S. Shankara Narayana (A-8), ADMG, V.D.Rajagopal, the then D.M.G., (A-5) and B.Kripanandam, the then Secretary (A-7) representing ADMG,

DMG and I & C (M.III) departments respectively, in pursuance of criminal conspiracy with Sri Y.S.Jagan Mohan Reddy (A-1) and Sri JJ Reddy (A-4) have caused wrongful gain, in the said manner, in favour of M/s.RCL (A-3) represented by S/Shri Y.S.Jagan Mohan Reddy (A-1) and J.J.Reddy (A-4). They have violated the M.C.Rules-1960. They have followed double standards in respect of M/s.GACL and M/s.RCL.

29) Thereby Shri S. Shankara Narayana (A-8), V.D. Rajagopal (A-5), B. Kripananda and Shri J.J. Reddy (A-4) Y. S. Jagan Mohan Reddy (A-1), M/s. RCL (A-3) committed offences U/s 120-B, 420 IPC and Sec.13 (2) r/w 13(1) (d) of P.C.Act-1988. S/Sri V.D Rajagopal (A-5) and B. Krupanandam (A-7) has rejected PL renewal application of M/s. GACL on the ground that the company has not completed the prospecting work. Whereas, on the other hand the Government has accepted GACL report enclosed for RCL (A-3). It speaks of the double standards/fraudulent act of the Govt. Sri S. Shankar Narayana (A-8) ADMG, Yerraguntia, has not asked RCL (A-3) regarding their prospecting of the said area.

30) The RCL (A-3) has to obtain Prospecting Report either from the GSI or from any other private consulting agency.

31) In the instant case no such exercise was done by M/S RCL(A-3). However Shri S. Shankara Narayana (A-8) in pursuance of the criminal conspiracy dishonestly and fraudulently and as per the request of Shri J. J. Reddy (A-4) has enclosed the Exploration Report of M/s. GACL to the M.L. Application of M/s. RCL(A-3). The report of GACL was used for M/s RCL to cause wrongful gain to M/s RCL(A-3) in the matter of recommending mining lease.

32) Thereby S/Shri S.Shankara Narayana (A-8), V.D Rajgopal (A-5), B. Krupanandam (A-7), J.J. Reddy (A-4), Y.S Jagan Mohan Reddy (A-1) and M/s RCL (A-3) have committed the offence U/s 120B, 420 IPC and Sec.13(2) r/w 13(1) (d) of P.C.Act-1988.

33) Based on the recommendation of Sri V.D Rajgopal (A-5) for grant of ML for Limestone over an extent of 2037.52 acres in Sy.No.215 to 231" etc. The note was put up through the Assistant Secretary Deputy Secretary & Secretary (Sri B. Kripanandam, IAS(A-7) to the Minister. After approval Memo No.676 dated 15-02-2006 was issued by Sri B. Kripanandam (A-7), Secretary in favour of M/s Raghuram Cements Ltd (A-3), informing grant of Mining Lease for Limestone over an extent of 2037.52 acres. M/s RCL (A-3) was requested to submit the Plan

approved by the IBM through the DMG within period of 6 months from the date of this memo.

34) Based on the recommendation of Sri V.D Rajgopal (A-5) for grant of ML for Limestone over an extent of 2037.52 acres in Sy.No.215 to 231" etc. The note was put up through the Assistant Secretary, Deputy Secretary & Secretary (Sri B.Kripanandam, IAS (A-7) to the Minister. After approval Memo No.676 dated 15.02.2006 was issued by Sri B.Kripanandam (A-7), Secretary in favour of M/s. Raghuram Cements Ltd (A-3), informing grant of Mining Lease for Limestone over an extent of 2037.52 acres. M/s.RCL (A-3) was requested to submit the Mining Plan approved by the IBM through the DMG within period of 6 months from the date of receipt of this memo.

35) Investigation revealed that the Revisional Authority vide Letter dt.20-02-2006 has forwarded to the Secretary, Govt. of A.P and copy to M/S. GACL asking to send para wise comments.

36) Lr.No.2(2)2005-RC-II dt. 27-02-2006 was forwarded to the Secretary, Govt. of A.P. Hyderabad and copies to the parties concerned informing fixing of stay matter hearing to 13-03-2006 to hear to Stay Matter of G.A.C. Ltd.

37) Investigation disclosed that on 30-03-2006, the Revisional Authority i.e. Director (Mines) has conducted the stay matter hearing. The contention of the State Govt. was that "a notification was issued on 21-11-2005 for regrant of mining lease/prospecting license. The State Government has received two applications for mining lease". In view of the contention of the State Government, the Director (Mines) has passed the Interim Order vide signature dated 12-04-2006 (for the stay hearing dated 30-03-2006) to the effect that "State Government may process the applications received against the notification for grant of mining lease but execution of the mining lease may be kept pending till the pendency of Revision Application before the Tribunal".

38) Sri B. Krupanandam (A-7) was in receipt of letter dated 27-02-2006 of the Ministry of Mines regarding fixing of stay matter hearing date in the matters including M/S.GACL on 13th March 2006 in New Delhi.

39) On receipt of said letter, Sri V.D.Rajagopal (A-5) has addressed letters to the Secretary, GAD and I&C regarding accommodation and the attendance of Sri BRV Susheel Kumar, Joint Director to attend the hearing in New Delhi. There were also notings and also correspondence for the hearing dated 30-03-2006. S/Sri B. Krupanandam (A-7) and V.D Rajgopal (A-5) were

aware of both the stay matter hearing dates 13-03-2006 and 30-03-2006.

40) However, neither Shri B. Kripanandam (A-7) nor V.D.Rajagopal (A-5) has forwarded any comments with reference to the Revision Application (with reference to letter dated 20-02-2006) / Stay hearing matter to the Ministry of Mines prior to the stay hearing dated 30-03-2006.

41) The fact of Stay Matter Hearing Date is not mentioned in the GO file either by Sri B Krupanandam (A-7) or by Sri V.D Rajgopal (A-5).

42) On the other hand, there is misrepresentation and issuance of G.O No.95 by the Secretary Sri B. Kripanandam (A-7) without the approval of the Minister (Mines).

43) The Para-wise comments/Revisional Remarks of Sri V.D Rajgopal (A-5) claimed to have been forwarded to the Ministry on 06-04-2006 were also not prior to the hearing dated 30-03-2006.

44) The malafide intentions of S/Shri V.D. Rajagopal (A-5) and B.Kripananda, in cheating the Ministry with material contradictions were proved through oral and documentary evidence.

45) Sri V.D. Rajagopal (A-5), vide his letter dt. 27-05-2006 has mentioned that M/s Raghuram Cements Ltd (A-3) has executed the mining lease on 29-03-2006 which was prior to the Interim Orders issued by the Revisional Authority. Sri V.D Rajgopal (A-5) enclosed photocopies of GO-95 issued by Sri B. Kripanandam (A-7). Shri V. D. Rajagopal (A-5) vide letter dated 27.05 2006 has mentioned that "Ref: 1. Revision remarks submitted against M/S. Gujarat Ambuja Cements Limited on 10.04.2006." As such the said Revisional Remarks were submitted on 10.04.2006

46) In the Revision remarks also, there was no mention about the execution of the Mining Lease deed in favour of RCL on 29.03.2006. The difference between the revision remarks at P-121 to 124 and P-132 to 135 is that in the revision remarks (P-121 to 124) the signature of JDMG is not available. Whereas in the revision remarks (P-132 to 135) the signature of JDMG as attester is available.

47) Sri V.D. Rajagopal,(A-5) vide letter dated 27.05.2006 has admitted that M/s. Raghuram Cements Limited had executed the Mining Lease deed before the Assistant Director of Mines and Geology, Yerraguntla on 29.03.2006.

48) Sri V.D Rajgopal (A-5) has not mentioned in the revision remarks about the execution of the Mining Lease Deed on 29.03.2006, when the same were purported to have been sent on 10.04.2006 as mentioned by him in his letter dated 27.05.2006.

49) Had Sri V.D Rajgopal (A-5) mentioned about the execution of the Mining Lease on 29.03.2006 itself, the Ministry of Mines would have noted the same in the interim order dated 12.04.2006.

50) The contention of the State Government regarding receipt of two applications for mining lease is misleading / misrepresenting since the Govt. had already granted mining lease in favour of M/s RCL (A-3), vide GO Ms. No.95 dt. 27-03-2006 and M/s RCL (A-3) executed the mining lease deed on 29-03-2006 which are prior to the stay matter hearing dated 30-03-2006.

51) Sri B.Kripanandam (A-7), Secretary of the State Govt. also has not informed the issuance of GO on 27-03-2006 nor execution of the lease deed on 29-03-2006, by the stay hearing dated 30-03-2006.

52, Thereby S/Sri V.D. Rajagopal (A-5) and B. Kripanandam-Secretary (A-7) of the State Govt. kept the Central Govt. groping in the dark by not revealing exact/correct position in the matter for deciding stay matter in this case. Sri V.D Rajgopal (A-5) and Sri B. Kripandam (A-7) in pursuance of the criminal conspiracy with Sri Y.S Jagan Mohan Reddy (A-1) and Sri J.J Reddy (A-4) and M/S RCL (A-3) had cheated the Revisioinal Authority of Ministry of Mines in the matter of execution of Mining Lease Deed by suppressing the material facts.

53) S/Sri B. Krupanandam (A-7), V.D Rajgopal (A-5) in pursuance of the criminal conspiracy with S/Sri Y.S Jagan Mohan Reddy (A-1), M/S RCL (A-3), Sri JJ Reddy (A-4) caused wrongful gain to M/S RCL (A-3) represented Sri Y.S Jagan Mohan Reddy (A-1) and Sri J.J Reddy (A-4)

54) Thereby S/Sri V.D Rajgopal (A-5) and Sri B. Kripanandam (A-7) Y.S Jagan Mohan Reddy (A-1) and Sri J.J Reddy (A-4) and M/S RCL (A-3) committed the offence U/s 120-B, 420 IPC and Section 13(2) r/w 13 (1) (d) of PC Act, 1988.

55) Sri J.J. Reddy (A-4) vide his letter dated 24-03-2006 has submitted the Approved Mining Plan along with letter dated 23-03-2006 of Sri V.M. Prabhushettar (A-6), RCOM & OIC(SZ) in the DMG office. Sri V.D Rajgopal (A-5) has approved the recommendation for grant of ML in favour of M/s RCL (A-3)

which was forwarded to the Secretariat (M.III, Dept.) and was received on 25-03-06.

56) The recommendation of Sri V.D Rajgopal (A-5) in F.No.00227 dt.25-03-2006 was dealt in the GO No.95 file and was put-up for orders for grant of M.L. The RA matter is not available in this file. (GO No. 95). No information is available in this file about the stay or otherwise matter of the above RA. Had the hearing dates of 13-03-2006 and 30-03-2006 mentioned in the note sheet instead of the matter that The GOI did not give any stay in the RA, the GO No.95 would not have been issued pending hearing of stay or otherwise matter by the Ministry of Mines, in c/w RA matter filed by M/s GACL." The noting is not true. It does not reflect the correct information since there is no mention about either stay or non-stay of the hearing matter. The said noting is very important one. Sri V.D.Rajgopal (A-5) was aware of the stay matter hearing scheduled to be held on 13-03-2006.

57) S/Shri V.D. Rajagopal (A-5) & B.Kripanandam (A-7) were aware of the Revision Application dated 27-01-2006 filed by M/S GACL in the Ministry since the Ministry of Mines Vide letter dated 20-02-2006 has asked the Secretary for para-wise comments of the State Govt. S/Shri V.D. Rajagopal (A-5) & B.Kripanandam (A-7) could have delayed in issuing GO in favour of M/s Raghuram Cements Ltd (A-3) in granting the ML for Limestone area of T. Sunkesula village etc, had they forwarded the para-wise comments or attended the hearing on 13-03-2006 S/Shri V.D. Rajagopal (A-5) & B.Kripanandam (A-7) would have issued instructions to the ASO and SO to mention about the stay hearing date matter in the note sheet. But they have not done so.

58) In view of the criminal conspiracy hatched among Late Y.S. Rajasekhara Reddy, Sri Rajagopal (A-5) and Sri B. Kripanandam (A-7) Secretary, Y.S.Jagan Mohan Reddy (A-1) J.J.Reddy (A-4) the aforesaid noting was made to be mentioned with criminal intention in order to escape from the enquiries regarding the issuance of Go, if any, in future.

59) The aforesaid noting dated 27-03-2006, was put up by the section vide date 27-03-2006 Sri B. Kripanandam, Secretary (A-7) has seen the said noting under his signatures dated 27-03-2006. Sri B. Kripanandam (A-7), issued GO No.95 dt. 27-03-06 granting Mining Lease for Limestone over an extent of 2037.52 acres in Sy.No.215 to 231 etc. of T. Sunkesula village etc. in favour of M/s Raghuram Cements Ltd (A-3). for a period of 30 years.

60) As per the Business Rules, the Minister of the concerned Department is responsible for disposal of the matter. In the subject case it is the Minister (Mines & Geology) (Smt. Sabita Indra Reddy), who is responsible for disposal of the matter i.e. giving approval for issuance of GO.

61) Whereas, in the subject case Sri B. Kripanandam (A-7), the then Secretary to Govt. has issued the GO No.95 dated 27-03-2006 without sending the same to the Minister for approval prior to its issuance.

62) The then Secretary Sri B. Kripanandam (A-7) should have obtained approval of the Minister on GO No.95 dt.27-03-2006 for granting Mining Lease for limestone over 2037.52 acres in favour of M/s. Raghuram Cements Ltd.

63) However, GO No. 95 was issued by Sri B. Kripanandam (A-7), the then Secretary under his signature in favour of M/s. RCL (A-3) without the approval of the then Minister.

64) Shri B. Kripanandam (A-7) should have waited and issued the G.O after the outcome of the Revision Application which was disposed of vide final order No:28/2006 dt. 8-9-2006.

65) Instead, Sri B. Kripanandam (A-7) issued the G.O prior to the disposal of R.A. Sri B. Kripanandam (A-7) (IAS), in pursuance of the criminal conspiracy with other accused persons, issued the conditional GO in favour of M/s RCL (A-3) by concealing the factual information and thereby caused wrongful gain by granting mining lease for limestone even though the stay hearing matter and disposal of Revision Application are pending before the Revisional Authority.

66) The cancellation of PL of GACL, issuance of Gazette Notification, acceptance of ML application of M/s RCL, issuance of Memo for grant of ML, obtaining of Approved Mining Plan and issuance of conditional GO during the pendency of Revision Application are against the rules. Thereby Sri V.D.Rajagopal (A-5) and Sri B.Kripanandam (A-7), Y.S.Jagan Mohan Reddy (A-1), M/s RCL (A-3) and J.J.Reddy (A-4) committed offences under Section 120-B, 420 IPC & Section 13 (2) read with 13 (1) (d) of P.C.Act – 1988.

67) The entire episode of obtaining of Mining Lease starting from issuance of memo dale 21-09-2005 proposing to reject the renewal application of PL of M/s GACL to execution of the Mining Lease Deed in favour of M/s RCL on 29-03-2006 and cheating the Ministry on 30-03-2006 in the matter of hearing on stay application, within a span of in 6 months was done so

hastily, against the rules. In the aforesaid chain of events, the only beneficiary is none other than Sri Y.S.Jagan Mohan Reddy (A-1), who has run the show through his Late Father Y.S. Rajasekhara Reddy and Sri J.J. Reddy (A-4). Late Y.S Rajasekhar Reddy has ensured implementation of the scheme of allotment of mining lease in favour of his son, through S/Shri V.D.Rajagopal (A-5) & B.Kripanandam(A-7).

68) Thereby S/Sri Y.S. Jagan Mohan Reddy (A-1), M/s. RCL (A-3) represented by Y.S. Jagan Mohan Reddy and J.J. Reddy (A-4), J.J. Reddy (A-4), V.D. Raja Gopal (A-5), V.M. Prabhushettar (A-6), B. Kripanandam (A-7) and S. Shankar Narayanan (A-8) have committed criminal misconduct in connection with the aforesaid matter. Thereby they committed offences punishable u/s 120-B, & 420 IPC and u/s 13(2) r/w 13(1) (d) of P.C. Act, 1988.”

The Specific allegations made against the petitioner in C.C.No.01 of 2012, which is the subject matter of CrI.P.No.6399 of 2016, are as follows:

“A note was initiated in the office of Sri V.D.Raja Gopal (A-3) on 02.11.2005 recommending the case of M/s OMCPL (A-4) for grant of mining lease in an area of 68.50 ha. only by considering the two applications viz. M/s OMCPL (A-4) and M/s.Vinayaka Mining Company in conspiracy with Sri B.V.Sreenivasa Reddy (A-1) and Sri Gali Janardhan Reddy (A-2) and thereby abused his official position to extend pecuniary advantage to M/s OMCPL (A-4). Sri D.Rajashekar was Director of M/s OMCPL (A-4) at that time and who was also brother-in-law of Sri V.D.Raja Gopal (A-3).

Sri V.D.Raja Gopal (A-3) who was also holding the charge as Vice Chairman and Managing Director (VC & MD) of M/s Andhra Pradesh Mineral Development Corporation (M/s APMDC) in furtherance of the criminal conspiracy with Sri B.V.Sreenivasa Reddy (A-1) and Sri Gali Janardhan Reddy (A-2) and filed a Mining Lease application on behalf of M/s APMDC on 27.10.2004 for an area of 25 ha. with an intention to scuttle the case of aforementioned M/s SR Minerals so that it can be subsequently allotted to M/s OMCPL (A-4).

Sri V.D.Raja Gopal (A3) in furtherance of criminal conspiracy with Sri B.V.Sreenivasa Reddy (A-1) and Sri Gali Janardhan Reddy (A-2) verbally instructed and forced the then ADMG, Ananthapur by exercising his official position, to issue permits to M/S OMCPL (A-4) without conducting any inspections and that he should not cause any hindrances to M/s OMCPL (A-

4) or to Sri B.V.Sreenivasa Reddy (A-1) and Sri Gali Janardhan Reddy (A-2) by inspecting the mining lease areas.

Investigation revealed that the accused persons Sri B.V.Sreenivasa Reddy (A-1), Sri Gali Janardhan Reddy (A-2) have entered into a criminal conspiracy with the public servants Sri V.D.Raja Gopal (A-3), Smt. Y.Srilakshmi and Late Sri R.Linga Reddy (A-5) and in furtherance of said conspiracy, the aforesaid public servants abused their official position to obtain mining leases in the area of 68.50 ha. and 39.50 ha. to Sri B.V.Sreenivasa Reddy (A-1), Sri Gali Janardhan Reddy (A-2) and M/s OMCPL (A-4).

Investigation revealed in furtherance of conspiracy that Sri V.D.Rajgopal (A-3) recommended for consideration of mining lease in favour of M/s OMCPL (A-4) in an area of 68.50 ha. in violation of the established law and procedure by abusing his official position with a view to extent pecuniary advantage to Sri B.V.Sreenivasa Reddy (A-1), Sri Gali Janardhan Reddy (A-2) and M/s OMCPL (A-4).

Therefore, it can be concluded that the accused Sri B.V.Sreenivasa Reddy (A-1) and Sri Gali Janardhan Reddy (A-2) entered into a criminal conspiracy and in furtherance of the said conspiracy with the public servants Late Sri R.Linga Reddy (A-5), Sri V.D.Raja Gopal (A-3), Smt.Y.Srilakshmi ensured that the Mining Lease for the Iron Ore on the areas of 68.50 ha and 39.50 ha are granted in favour of M/s OMCPL (A-4)

Sri V.D.Raja Gopal (A-3) superannuated from service and thereby ceased to be a public servant and hence no sanction for prosecution is required under Section 19 (1) (b) of PC Act, 1988.

The acts on the part of Sri V.D.Raja Gopal (A-3) in committing criminal conspiracy, extending pecuniary advantage, abuse of official power and cheating do not relate in discharge of official duty and there is no need for obtaining sanction under Section 197 of Cr.P.C. from the State Government.”

It is the contention of the petitioner that he joined as Director of Mines and Geology on 01.08.2005. The department consists of 32 district/ sub district level offices headed by Asst. Director of Mines and Geology, 8 sub-regional level offices headed by Deputy Director of Mines and Geology and 4 regional level offices headed by Joint Director of Mines and Geology and 12

offices of Asst. Director of Mines and Geology vigilance. As per the powers delegated to various level officers the district/ sub-district level officers are responsible for day to day mineral regulatory activities in the district and entrusted with powers to issue permits and collect royalties. They are also entrusted with the powers to prosecute the offenders involved in the illegal mining activity. In this case Assistant Director of Mines and Geology, Anantapur is the officer in-charge to regulate the activity. As the head of the department the role of Petitioner/Accused is overall supervision of the entire department and authority to grant lease for minor minerals in respect of granite/ marble and forwarding of the proposals received from the district/regional level officers for grant of mineral concessions to the state government, besides attending to number of state level meetings, reviews conducted by the State Government. Therefore, the petitioner is not vested with any power to grant mining lease, but the Assistant Director alone is responsible to regulate the mining operations.

Though the petitioner raised several grounds, in view of the limited submissions made by Sri Dilip Kumar, learned counsel for the petitioner, I feel that the grounds urged in the argument alone are relevant to decide the present issue in both the petitions.

The first and foremost ground urged by the learned counsel for the petitioner is that the petitioner is Public Servant as defined under Section 2 (c) of P.C.Act and under Section 21 of I.P.C., but no sanction was obtained as required under Section 197 of Cr.P.C. Therefore, taking cognizance against the petitioner for various offences referred supra without obtaining prior sanction under Section 197 of Cr.P.C. is serious illegality, which vitiates the entire

proceedings. The allegation made against the petitioner is that he exercised such power or indulged in criminal conspiracy or cheating in connection with discharge of his official duties, therefore, sanction is required, which is precondition to take cognizance of offences against the petitioner.

The second ground urged before this Court is that the petitioner is a public servant as defined under Section 2 (c) of P.C. Act, sanction is required under Section 19 of P.C.Act to take cognizance against the petitioner for the offence punishable under Section 13 (2) read with Section 13 (1) (d) of P.C.Act. Therefore, without sanction as required under Section 19 of P.C. Act, taking cognizance against the petitioner for the offence under Section 13 (2) read with Section 13 (1) (d) of P.C.Act is a serious illegality. Therefore, prosecution against the petitioner is vitiated by illegality and liable to be quashed.

In addition to the above two grounds, in C.C.No.25 of 2013, raised additional ground that the C.B.I. did not take into consideration the report submitted by One-man commission appointed by the Court and non-consideration of the report of the Commission appointed by the Government for enquiring into the irregularities committed by the petitioner is a serious matter, thereby non-consideration of report of One man Commission is a ground to quash the proceedings against the petitioner and prayed to quash the proceedings in both the cases against the petitioner for various grounds referred supra.

During hearing, Sri Dilip Kumar, appearing for Sri V.L.Surendera, learned counsel for the petitioner, advanced new ground i.e. that the petitioner is entitled to claim benefit of

amended provisions of P.C.Act by Act 16 of 2018, which came into force with effect from 26.07.2018. According to explanation added to Section 19 by virtue of the amendment, sanction is required to prosecute the officer as defined under Section 2 (c) of P.C. Act even after retirement. Thus, sanction is required even to prosecute retired public servant and obtaining sanction is a procedure to be followed by the Government to prosecute the Government Servant. The main endeavour of the learned counsel for the petitioner is that when amendment was made to penal law, more particularly the provision dealing with procedural aspect, it has to be given retrospective effect, thereby the petitioner is entitled to claim benefit of explanation to sub-section (1) of Section 19 of P.C. Act as amended by the Act 16 of 2018, thereby the prosecution of the petitioner for the offence punishable under Section 13 (2) read with Section 13 (1) (d) of P.C.Act is liable to be quashed against the petitioner.

It is also contended that the alleged acts of the petitioner are connected to discharge of his official duties and he is a public servant as defined under Section 2 (c) of the P.C. Act and in the absence of any sanction from competent authority as required under Section 19 of the P.C.Act taking cognizance against the petitioner for the offences punishable under IPC is a serious illegality, therefore, the order taking cognizance for various offences under I.P.C. vitiates the entire proceedings against the petitioner, on this ground also the proceedings against the petitioner are liable to be quashed.

It is further contended in C.C.No.25 of 2013 that non-consideration of the report submitted by the One-Man Commission

is fatal to the case and requested to quash the proceedings against the petitioner in both the cases for various offences referred supra.

Per contra, Sri K.Surender, Special Public Prosecutor for C.B.I. contended that though the amendment to P.C.Act in 2018 to Section 19 of P.C.Act is procedural one and when no obligation was cast upon the investigating agency by the date of filing charge sheet, to obtain sanction from the competent authority, the law amended after five years from the date of filing charge sheet cannot be applied retrospectively as by the date of filing charge sheet no sanction was required to be obtained to prosecute the retired public servant and after amendment, the clock cannot be set back to run the time and when new obligation is imposed by the amended law, that cannot be given retrospective effect and it operates only prospectively. The legislative intention was not to defeat all pending prosecutions against the retired public servants under P.C.Act, but it is only to protect them from illegal prosecution from the date of such amendment, thereby amendment to Section 19 of P.C.Act cannot be given retrospective effect to quash the proceedings against the petitioner on that ground and prayed to dismiss the petitions.

Considering rival contentions and perusing the material on record, the points that arise for consideration are:

- (1) ***Whether failure to obtain sanction under Section 197 of Cr.P.C. to prosecute the petitioner for the offences punishable under the provisions of Indian Penal Code is sufficient to quash the proceedings against the petitioner?***

- (2) ***Whether explanation to sub-section (1) of Section 19 of Prevention of Corruption Act by Act 16 of 2018, which came into force on 26.07.2018 be given retrospective effect, if so, whether the investigating agency is obligated with the duty to obtain sanction under Section 19 of Prevention of Corruption Act after retirement and failure to do so is sufficient to quash the proceedings against the petitioner for the offence punishable under Section 13 (2) read with Section 13 (1) (d) of P.C.Act?***
- (3) ***Whether non-consideration of the report submitted by the One-Man Commission is sufficient to quash the proceedings in C.C.No.25 of 2013 on the file of Principal Special Judge for C.B.I.Cases, Hyderabad?***

P O I N T No.1:

Before deciding real controversy between the parties, I find that it is apposite to deal with scope of Section 482 of Cr.P.C.

Section 482 of Cr.P.C. dealing with the saving of inherent powers of High Court, has to be exercised only within the framework of the said section which also clearly demarcates the sphere within which the said discretion contemplated under this section can be exercised. Nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this

Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Time and again, the scope of powers of this Court under Section 482 of Cr.P.C. were highlighted by the Apex Court in long line of perspective pronouncements, which are as follows:

In “**R.P. Kapur v. State of Punjab**”¹, the Apex Court laid down the following principles:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
- (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it

¹ AIR 1960 SC 866

appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in ***“Mrs.Dhanalakshmi v. R.Prasanna Kumar²”***

In ***“State of Haryana v. Bhajan Lal³”*** the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

² AIR 1990 SC 494

³ 1992 Supp.(1) SCC 335

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Keeping in view the law declared by the Apex Court, I would like to deal with the contentions in detail.

The petitioner while working as Director of Mines and Geology being an I.A.S. officer allegedly committed offences punishable under Sections 120-B and 420 of I.P.C. and under Section 13 (2) read with Section 13 (1) (d) of P.C.Act in C.C.No.25 of 2013 and under Sections 120-B, 379, 409, 411, 420, 427, 447 and 468 of I.P.C. and under Section 13 (2) read with Section 13 (1) (d) of P.C.Act in C.C.No.01 of 2012.

According to the learned counsel for the petitioner, the petitioner allegedly committed those offences while discharging his duties as Government Servant as defined under Section 21 of I.P.C.

Section 21 of I.P.C. defined the word “public servant” as follows:

“21. "Public Servant":- The words "Public Servant" denote a person falling under any of the descriptions hereinafter following namely:-

First - Repealed by AO, 1950

Second-Every Commissioned Officer in the Military, Naval or Air Forces of India.

Third - Every Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth - Every Officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

Fifth- Every juryman, assessor, or member of a Panchayat assisting a Court of Justice or public servant;

Sixth- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth-Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth-Every officer whose duty it is, as such, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth-Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh-Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

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

(b) in the service of pay of local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (I of 1956)."

As the petitioner was appointed by the President of India, he can be removed by the President of India alone. Therefore, the petitioner would fall within the definition of Public Servant as defined under Section 21 of I.P.C. If there is any nexus between the commission of offence and discharging his duties, the investigating agency is bound to obtain sanction from the competent authority as required under Section 197 of Cr.P.C. to prosecute the petitioner.

The object and purpose underlying Section 197 Cr.P.C is to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of the efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance of injury may have been caused by their legitimate acts done in the discharge of their official duty. Section 197 Cr.P.C is designed to facilitate effective and

unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as condition precedent to the cognizance of the offence against them by Court. (vide **B.P. Srivastava v. N.D. Mishra**⁴)

To consider whether Section 197 Cr.P.C applies or not, the Court has to look into the allegations made in the complaint and ascertain their substance. It is not necessary for the Court to confine itself to the allegations in the complaint, it can take into account all the material on the record when the question is considered, it cannot be made to depend upon the case which the accused may put forward after the proceedings have been started. The special protection provided under Section 197 Cr.P.C should be strictly construed and until material is placed before the Court to justify, invoking of Section 197 Cr.P.C, ordinarily even if the accused be a police officer, he should not be given a special treatment. Section 197 Cr.P.C, if construed too narrowly can never be applied, for, of course, it is no part of an official's duty to commit an offence, and never can be. (vide **Shreekantiah Ramayya Munipalli v. The State of Bombay**⁵).

Thus, the Court must scrutinise the allegations in the charge sheet and find out whether those omissions or commissions allegedly committed by the petitioner while discharging his official duties based on nexus test. But, at what stage, such question can be considered is again difficult to decide, because of the law

⁴ AIR 1970 SC 1661

⁵ 1955 (1) SCR 1177

declared by the Apex Court in long line of perspective pronouncements.

Of course, the learned counsel for the petitioner placed reliance on the judgment of the Apex Court in **N.K. Ganguly v. Central Bureau of Investigation, New Delhi**⁶, wherein, the Division Bench of the Apex Court held thus:

“Therefore, the provision of Section 197 of Code of Criminal Procedure is squarely applicable to the facts of the case. Prior sanction of the Central Government was required to be taken by the Respondent before the learned Special Judge took cognizance of the offence once the final report was filed Under Section 173(2) of Code of Criminal Procedure”

(Emphasis supplied)

Taking advantage of the law declared by the Apex Court in **N.K. Ganguly v. Central Bureau of Investigation, New Delhi** (referred supra), learned counsel for the petitioner would contend that sanction under Section 197 Cr.P.C is mandatory.

Learned counsel for the petitioner has also drawn attention of this Court to the unreported judgment of this Court in **Busi Sam Bob v. The State of Telangana, rep by Special Public Prosecutor of CBI** (CRLP No.5167 of 2016 dated 11.08.2017), the petitioner therein is also an I.A.S. Officer allegedly faced similar allegations for the commission of offences punishable under Sections 120-B, 420, 409, 468, 471, 477-A IPC and under Sections 9, 11, 12, 13(2) r/w 13(1)(c) & (d) of the Act, and the learned Single Judge of this Court by placing reliance on **Niranjan Singh Karam**

⁶ (2016) 2 Supreme Court Cases 143

Singh Punjabi v. Jitendra Bhimraj Bijja and others⁷, ***State of Rajasthan v. Fatehkaran Mehdu***⁸ and ***Amal Kumar Jha v. State of Chattisgarh and another***⁹, held that sanction under Section 197 Cr.P.C is mandatory and the Court cannot take cognizance of the offence under the provisions of Indian Penal Code and in the absence of prior sanction, when the acts or omissions attributed to the petitioners in discharge of their public duty. In view of the decisions relied on by the learned counsel for the petitioner, the law declared by the Apex Court on this question is necessary for reference.

In ***Shreekantiah Ramayya Munipalli v. The State of Bombay***, (referred supra) the Supreme Court observed as follows:

"Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The Section has content and its language must be given meaning. What it says is -

when any public servant 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.....

We have therefore first to concentrate on the word 'offence'.

Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. Therefore, the act complained of, namely the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act

⁷ 1990 Cri. L.J 1869

⁸ 2017 (1) ALD (CrI) 842 (SC)

⁹ AIR 2016 SC 2082

was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.

The act of abetment alleged against him stands on the same footing, for his part in the abetment was to permit the disposal of the goods by the doing of an official act and thus "willfully suffer" another person to use them dishonestly: Section 405 of the Indian Penal Code. In both cases, the "offence" in his case would be incomplete without proving the official act.

We therefore hold that Section 197 of the Code of Criminal Procedure applies and that sanction was necessary, and as there was none the trial is vitiated from the start. We therefore quash the proceedings against the second accused as also his conviction and sentence."

(Emphasis Supplied)

In **Devinder Singh and others v. State of Punjab through CBI**¹⁰ the Supreme Court discussed the judgment of **Matajog Dobey v. H.C. Bhari**¹¹ and held as follows:

"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 implies 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 determining 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

¹⁰ AIR 2016 SC 1606

¹¹ 1955(2) SCR 925

public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar Under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dubey v. H.C. Bhari: AIR 1956 SC 44 thus:

[T]he offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty ... there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

(Emphasis supplied)

In **K.M. Mathew v. State of Kerala and another**¹² the Apex Court had observed that even after issuance of process under Section 204 of the Code, if the accused appears before the Magistrate and establishes that the allegations in the complaint petition do not make out any offence for which process has been issued then the Magistrate will be fully within his powers to drop the proceeding or rescind the process and it is in that connection the Court had observed "if the complaint on the very face of it does not disclose any offence against the accused". The aforesaid observation made in the context of a case made out by the accused either for recall of process already issued or for quashing of the proceedings may not apply fully to a case where the sanction under Section 197(1) of the Code of Criminal Procedure is pleaded as a bar for taking cognizance. The legislative mandate engrafted in Sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are

¹² (1992) 1 SCC 217

alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings.

In “**Matajog Dobey v. H.C. Bhari**” (referred above) the Constitution Bench of Apex Court is of the consistent view that the complaint may not disclose all the facts to decide the question of applicability of Section 197, but facts subsequently coming either on police or judicial inquiry or even in the course of prosecution evidence may establish the necessity for sanction.

In **B.Saha & others v. M.S. Kochar**¹³ the Apex Court observed that instead of confining itself to the allegations in the complaint the Magistrate can take into account all the materials on

¹³ (1979) 4 SCC 177

the record at the time when the question is raised and falls for consideration.

In ***Pukhraj v. State of Rajasthan***¹⁴ the Apex Court observed that whether sanction is necessary or not may depend from stage to stage. In ***Matajog Dobey v. H.C. Bhari*** (referred supra), the Constitution Bench had further observed that the necessity for sanction ***may reveal itself in the course of the progress of the case and it would be open to the accused to place the material on record during the course of trial for showing what his duty was and also the acts complained of were so interrelated with his official duty so as to attract the protection afforded by Section 197 of the Code of Criminal Procedure.*** This being the position it would be unreasonable to hold that the accused even though might have really acted in discharge of his official duty for which the complaints have been lodged yet he will have to wait till the stage under Sub-section (4) Section 246 of the Code is reached or at least till he will be able to bring in relevant materials while cross-examining the prosecution witnesses. On the other hand, it would be logical to hold that the matter being one dealing with the jurisdiction of the court to take cognizance, the accused would be entitled to produce the relevant material documents which can be admitted into evidence without formal proof, for the limited consideration of the court whether the necessary ingredients to attract Section 197 of the Code have been established or not. The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognizance without a valid sanction is genetically different

¹⁴ (1973) 2 SCC 701

from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. In the aforesaid premises the Apex Court was of the considered opinion that an accused is not debarred from producing the relevant documentary material which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority. Further, the Supreme Court held that considering the facts and circumstances of the case, it prima facie appears that the alleged acts on the part of the Respondents were purported to be in the exercise of official duties. Therefore, a case of sanction under Section 197 Code of Criminal Procedure has been prima facie made out. Whether it was unjustified on the part of the Respondents to take recourse to the actions alleged in the complaint or the Respondents were guilty of excesses committed by them will be gone into in the trial after the required sanction is obtained on the basis of evidences adduced by the parties. At this stage, such questions are not required to be considered because the accused have not yet led evidence in support of their case on merits.

In ***P.K. Pradhan v. State of Sikkim represented by the Central Bureau of Investigation***¹⁵ the Apex Court considered the provisions contained in Section 197(1) of the Code of Criminal Procedure whether an offence committed "***while acting or purporting to act in the discharge of his official duty***" and

¹⁵ 2001(6) SCC 704

laid down that the test to determine the aforesaid is that the act complained of must be an offence and must be done in discharge of official duty. In any view of the matter there must be a reasonable connection between the act and the official duty. It does not matter that the act exceeds what is strictly necessary for the discharge of the official duty, since that question would arise only later when the trial proceeds.

Therefore, in view of the judgments in ***Matajog Dobey v. H.C. Bhari, K.M. Mathew v. State of Kerala and another, and P.K. Pradhan v. State of Sikkim represented by the Central Bureau of Investigation*** (referred supra), unless, the accused faces the trial, it is difficult to decide whether the act committed by the accused is in relation to discharge of official duties or not. Therefore, at the stage of appearance of the petitioner, the Court cannot quash the proceedings by exercising power under Section 482 Cr.P.C due to lack of sanction, as required under Section 197 Cr.P.C, since the law permits the petitioner to raise such contention at any stage and the Court has to decide whether the act done by the petitioner is in relation to his official duties or purported to have been done in relation to official duties only after adducing evidence, at the stage when the Trial is not commenced, the Court cannot conclude that the act done by the petitioner was in relation to or purported to have been done in discharge of official duty.

For instance, one of the offences allegedly committed by the petitioner is punishable under Section 120-B I.P.C i.e. criminal conspiracy. The term 'criminal conspiracy' is defined under Section

120-A I.P.C, as when two or more persons agree to do, or cause to be done:- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy, provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

The petitioner while discharging his duties as Director of Mines and Geology is not expected to conspire criminally with the other accused to commit such serious offences punishable under various provisions of Indian Penal Code. But, the proof of criminal conspiracy by direct evidence is arduous task in the prosecution. However, taking into consideration of various factors, the Court can infer that the petitioner committed the offence of criminal conspiracy.

The Apex Court in “**Noor Mohammad Mohd.Yusuf Momin v. The State of Maharashtra**”¹⁶, clearly drawn distinction between Section 34, Section 109 and Section 120-B I.P.C. The Apex Court held that Section 34, I.P.C embodies the principle of joint liability in the doing of a criminal act, the essence of that liability 'being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109, I.P.C. on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one

¹⁶ AIR 1971 SC 885

or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120-B, I.P.C. criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code.

Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other

offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, I.P.C. ***A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference, must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material.*** In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common

intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto.

As seen from the principle laid down by the Apex Court in the above judgment, there must be two or three persons to do an unlawful act by illegal means to constitute an offence punishable under Section 120-B I.P.C.

Since, the alleged conspiracy is committed by the petitioner along with the other accused during his tenure of employment, at this stage, it is difficult to conclude that commission of criminal conspiracy is in discharge of official duty or purported to be in discharge of official duty.

In ***Paramjit Kaur (Mrs) v. State of Punjab and Ors.***¹⁷, the Supreme Court directed the Director, CBI to appoint an investigation team headed by a responsible officer to conduct investigation in the kidnapping and whereabouts of the human rights activist and also to appoint a high-powered team to investigate into the alleged human rights violations, while considering scope of Section 197 of Cr.P.C.

The principles emerging from the aforesaid decisions are summarized hereunder:

1. *Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*
2. *Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide*

¹⁷ (1996) 7 SCC 20

construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Code of Criminal Procedure has to be construed narrowly and in a restricted manner.

- 3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection Under Section 197 Code of Criminal Procedure There cannot be a universal Rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.*
- 4. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary Under Section 197 Code of Criminal Procedure, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Code of Criminal Procedure would apply.*
- 5. In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.*
- 6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.*
- 7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.*
- 8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.*

9. *In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.*

In view of the guidelines, more particularly, guideline nos.7,8 & 9, the question of sanction can be raised at the time of framing charges and it can be decided *prima facie* on the basis of accusation. However, it is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage. Similarly, question of sanction may arise at any stage of proceedings and it may not be possible to decide the question effectively and finally without affording an opportunity to the defence to adduce evidence and the question of good faith or bad faith may be decided on conclusion of trial. If, the above principles are applied to the present facts of the case, at the stage of taking cognizance, without affording an opportunity to the parties to adduce evidence during trial, cannot quash the proceedings due to lack of prior sanction as required under Section 197 Cr.P.C, since the Court below took cognizance of the offences punishable Sections 120-B, 420, 409 IPC, against the petitioner before his retirement from service.

In view of the principle laid down by the Supreme Court in ***Devinder Singh and others v. State of Punjab through CBI*** (referred supra), it is difficult to accept the contention of the learned counsel for the petitioner based on the judgment of ***N.K. Ganguly v. Central Bureau of Investigation, New Delhi*** (referred supra), though the Presiding Judge of the Division Bench in both the cases is one and the same.

In **Busi Sam Bob v. The State of Telangana, rep by Special Public Prosecutor of CBI**, (referred supra) the learned Single Judge of this Court did not discuss anything about the nexus between commission of any offence by the petitioner therein in discharge of their official duty or purported to have done while discharging his official duties.

Learned counsel for the petitioner further relied on “**Dr.Hori Ram Singh v. Emperor**¹⁸”, wherein the Court had an occasion to deal with what is “official duty” and nexus between the official duty and act or omission committed by such public servant with reference to Section 197 of Cr.P.C.

In paragraph Nos.27 to 34, the Federal Court analyzed the words “**any act done or purporting to be done in the execution of his duty as a servant**” and held that “The main question for consideration is the interpretation of the words “any act done or purporting to be done in the execution of his duty as a servant. The Act being a recent one, no case turning on the interpretation of Section 270(1), other than the one under appeal, has been brought to the notice of Court. Besides the cases under Section 80, Civil P.C, there are a very large number of cases under Section 197, Criminal P.C., showing a considerable conflict of opinion among the Indian High Courts as to the applicability of that Section. The words of that Section are not exactly identical with those in the Section before the Court. There we have the words “while acting or purporting to act in the discharge of his official duty,” which have caused a divergence of opinion on the true significance of the

¹⁸ 1939 AIR FC 43

words 'while acting or purporting to act.' It is therefore best to focus attention on the words actually used in Section 270(1)" and concluded as follows:

" So far as Sub-section (1) is concerned, the question of good faith or bad faith cannot strictly arise, for the words used are not only "any act done in the execution of his duty" but also "any act purporting to be done in the execution of his duty." When an act is not done in the execution of his duty, but purports to have been done in the execution of his duty, it may very well be done in bad faith; and even an act which cannot at all be done in good faith may purport to be done in execution of duty if another is made to believe wrongly that it was being done in execution of duty. It is therefore not possible to restrict the applicability of the Section to only such cases where an act could possibly have been done both in good and bad faith. Of course, the question of good or bad faith cannot be gone into at the early stage at which objection may be taken. Making false entries in a register may well be an act purported to be done in execution of duty, which would be an offence, although it can never be done in good faith. It is Sub-section (2) only which introduces the element of good faith, which relieves the Court of its obligation to dismiss the proceedings. But that subsection relates to cases even previously instituted and in which there may not be a defect of want of consent, and is therefore quite distinct and separate, and not merely ancillary to Sub-section (1), as the learned Sessions Judge supposed. Having regard to the ordinary and natural meaning of the words "purporting to be done," it is difficult to say that it necessarily implies "purporting to be done in good faith," for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention.

Extent of the protection. Obviously the Section does not mean that the very Act which is the gravamen of the charge and constitutes the offence should be the official duty of the servant of the Crown. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The words as used in the Section are not "in respect of any official duty" but "in respect of any act done or purporting to be done in the execution of his duty." The two expressions are obviously not identical. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of the duty. The reference is obviously to an

offence committed in the course of an action, which is taken or purports to be taken in compliance with an official duty, and is in fact connected with it. The test appears to be not that the offence is capable of being committed only by a public servant and not by any one else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The Section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction. If the act complained of is an offence, it must necessarily be not an execution of duty, but a dereliction of it. What is necessary is that the offence must be in respect of an act done or purported to be done in execution of duty that is in the discharge of an official duty. It must purport to be done in the official capacity with which he pretends to be clothed at the time, that is to say under the cloak of an ostensibly official act, though of course, the offence would really amount to a breach of duty. An act cannot purport to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another, the impression that he is so acting.

The Section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the time. For instance, if a public servant accepts as a reward a bribe in his office while actually engaged in some official work, he is not accepting it even in his official capacity, much less in the execution of any official duty, although it is quite certain that he could never have been able to take the bribe unless he were the official in charge of some official work. He does not even pretend to the person who offers the bribe that he is acting in the discharge of his official duty, but merely uses his official position to obtain the illegal gratification.

In the said judgment, the Federal Court interpreted the words “any act done or purporting to be done in the execution of his duty as a servant”, but such question has to be decided only

during trial whether the petitioner acted in “good faith” or “bad faith”. As it is a disputed question of fact, that cannot be a ground to quash the proceedings for want of sanction under Section 197 of Cr.P.C. unless and until the nexus between the official duty and the act purported to be done by the petitioner is decided and the same has to be decided only during trial.

Learned counsel for the petitioner further relied on “**Amrik Singh v. State of Pepsu**¹⁹” and “**State of Punjab v. Labh Singh**²⁰”, wherein the Apex Court held that when the accused was Chief Secretary in the Government and prosecution was launched against him, the position, therefore, is that the prosecution has resulted in the conviction of the appellant/accused and it was initiated without any sanction under Section 197 of Cr.P.C. If sanction is necessary, then entire proceedings including the conviction must be quashed. As the prosecution launched without obtaining any sanction, the same is vitiated by illegality and the accused is entitled to protective shield being a public servant under Section 197 of Cr.P.C.

In “**State of Madhya Pradesh v. Sheetla Sahai**²¹” “**State of Bihar v. Rajmangal Ram**²²” “**R.Balakrishna Pillai v. State of Kerala**²³” the Apex Court discussed the scope of applicability of Section 197 of Cr.P.C., but all the judgments are of Division Bench or Full Bench, but in view of judgment of Apex Court in “**Matajog Dobey v. H.C. Bhari**” (referred supra), criminal prosecution against the petitioner for want of sanction under Section 197

¹⁹ AIR 1955 SC 309

²⁰ (2014) 16 SCC 807

²¹ (2009) 8 SCC 617

²² AIR 2014 SC 1674

²³ AIR 1996 SC 901

cannot be quashed, but it is open to him to raise such contention at appropriate stage. In “**Matajog Dobey v. H.C. Bhari**” (referred supra) the Apex Court gave liberty to raise such contention during trial in view of the language used in Section 197 of Cr.P.C.

Therefore, on the ground for want of sanction under Section 197 of Cr.P.C. without establishing the nexus between the act or omission done by the petitioner and the duty purporting to be discharged by the petitioner as public servant, it is difficult to quash the proceedings. However, it is left open to the petitioner to raise such contention during trial in view of the principle laid down in **Matajog Dobey v. H.C. Bhari** (referred supra). Accordingly, the point is answered in favour of the prosecution and against the petitioner.

P O I N T No.2:

The core issue before this Court is that in view of the explanation added to Section 19 (1) of P.C. Act by amended Act 16 of 2018 with effect from 26.07.2018, the petitioner was a public servant as defined under Section 2 (c) of P.C.Act is entitled to protection akin to Section 197 of Cr.P.C. Though, the petitioner retired from service, taking cognizance against the petitioner for various offences, he is entitled to benefit of explanation to Section 19 (1) of P.C.Act and the Section 19 is though part of penal legislation i.e. P.C.Act, it purely deals with procedural aspect and the amended procedural law must be given retrospective effect. Learned counsel for the petitioner, in support of his contentions, placed reliance on umpteen number of decisions, which will be referred at appropriate stage.

Learned Special Public Prosecutor for C.B.I. contended that by the date of filing charge sheet and taking cognizance of the offence punishable under Section 13 (2) read with Section 13 (1) (d) of P.C.Act the petitioner has retired from service, thereby as per the law prevailing on that day, no sanction was required to be obtained under Section 19 (1) of P.C. Act and when charge sheet is already filed and on account of filing petitions and obtaining interim orders, the disposal of the case was delayed; at this stage no law states that clock can be set back to gain advantage of amended provisions for failure to obtain sanction as referred under Section 19 (1) of the P.C.Act. Moreover, the Act itself is clear that it came into force with effect from 26.07.2018 and when the public servants though retired on or before date of amendment i.e. 26.07.2018 have to be prosecuted for the offences committed under the P.C.Act and the amended provision is not applicable to the prosecutions launched prior to the commencement of amended Act 16 of 2018 and that it was never the legislative intention to defeat all prosecutions under the P.C. Act pending against the retired public servants as defined under Section 2 (c) of P.C. Act. The explicit intention of the legislation is to give benefit like Section 197 of Cr.P.C. to the retired Government servants and the prosecution has to obtain sanction under Section 19 (1) of P.C. Act from the date of commencement of the amended Act 16 of 2018. In normal course of events, *ex post facto* law cannot be given retrospective effect, it imposes new obligation on the prosecution while extending benefit to the accused, thereby obtaining sanction under Section 19 (1) of the P.C.Act is the duty or obligation on the prosecution to prosecute the Government Servant and when no

such obligation was cast upon the prosecution as on the date of filing charge sheet i.e. in the year 2011, imposition of such obligation almost after 7 years is nothing but defeating the prosecutions pending against the retired Government Servants and it will never be the intention of legislature, if such is the intention, it will have devastating effect on the pending prosecutions and all the pending proceedings against the retired Government Servants under P.C.Act are liable to be terminated even without trial. Therefore, such provision, which imposes new obligation on the prosecution, cannot be given retrospective effect. In support of his contentions, he also relied on law laid down by the Apex Court and those decisions will be referred at appropriate stage.

Prior to the amendment by Act 16 of 2018, no sanction was required to prosecute the public servant under Section 19 of P.C. Act. In catena of decisions, the Supreme Court held that no sanction is required to prosecute the retired government servant to take cognizance of offence punishable under P.C.Act.

In “**Habibulla Khan v. State of Orissa**”²⁴ the Supreme Court relying on “**R.S.Nayak v. A.R.Antulay**”²⁵ held that although the appellants continued to be members of the Legislature, the offence complained of was during their tenure as Ministers, no sanction was required for their prosecution under Section 6 (1) of the P.C.Act. The prosecution was under the Orissa Special Courts Act, 1990, which came into force on 27.07.1992. Section 2 (d) of that Act defines “offence” to mean an offence of criminal misconduct within the meaning of clause (e) of sub-section (1) of

²⁴ AIR 1995 SC 1124

²⁵ AIR 1984 SC 684

Section 13 of the Prevention of Corruption Act, 1988. But the Supreme Court declined to accept the contention while holding that no sanction is required to prosecute ex-public servants. Same view was expressed in another judgment in “**Satpal v. Inspector of Police**²⁶”. Though there are many judgments on this aspect, to abridge the judgment, it is unnecessary to refer those judgments.

The amended provisions of P.C.Act, 1988 came into force with effect from 26.07.2018 vide Notification No.S.O.3664 (E) dated 26.07.2018. Therefore, on the face of the notification, the amended provisions will have prospective effect, but based on the date of commencement of the Act, the Court cannot conclude that the amended provisions will have prospective operation. The prime contention of the counsel for the petitioner is that when a provision dealing with procedure is amended, it must be given retrospective effect and if the explanation to Section 19 (1) of P.C. Act is given retrospective effect, to prosecute the petitioner, who retired from service on the date of filing charge sheet, sanction is mandatory and in the absence of sanction, the proceedings against the petitioner for the offences punishable under P.C.Act are liable to be quashed.

Learned counsel for the petitioner relied on the judgment of Apex Court rendered in “**State of Punjab v. Mohar Singh**²⁷” wherein the Apex Court had an occasion to deal with application of principle of repeal and held that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different

²⁶ 1995 Cr L J 2898 (Cal.)

²⁷ (1955) CriLJ 254

intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. **“The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them.”** The Court cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material.

In view of the law declared by the Apex Court in the said judgment, it is apposite to extract the Section 19 (1) of P.C. Act prior to amendment and after amendment, and extracted hereunder.

Section 19 (1) of P.C. Act prior to amendment	Section 19 (1) of P.C. Act after to amendment by Act 16 of 2018.
19. Previous sanction necessary for prosecution (1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,- (a) in the case of a person who is employed in connection with the affairs of the Union and is not	Section 19 : Previous sanction necessary for prosecution (1) No court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013],— (a) in the case of a person [who is

removable from his office save by or with the sanction of the Central Government, of that Government; (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office.	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 and is not removable from his office save by or with the sanction of the Central Government, of that Government; (b) in the case of a person [who is employed, 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 and is not removable from his office save by or with the sanction of the State Government, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office. <i>[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless--</i> <i>(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and</i> <i>(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding;</i> <i>Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:</i> <i>Provided also that the appropriate Government or any competent authority shall, after the</i>
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	<i>receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:</i> <i>Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:</i> <i>Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.</i> <i>Explanation.-- For the purposes of sub-section (1), the expression "public servant" includes such person--</i> <i>(a) who has ceased to hold the office during which the offence is alleged to have been committed; or</i> <i>(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]</i>
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The sentences referred in bold italics in column No.2 of the table indicate the amended provision by Act 16 of 2018.

By Act 16 of 2018, the legislature amended several provisions of P.C.Act including addition of part of 19 (1) of P.C.Act shown in the table in bold italics. If the amended part of Section 19 (1) of P.C. Act along with pre-amended provision is read conjointly, the explanation added to Section (1) of Section 19 is clarificatory or explanatory in nature, it is only intended to add what is missing in the original provision. Therefore, explanation to Section 19 (1) of P.C.Act is explanatory in nature and it has to be given

retrospective effect notwithstanding the effect of Section 6 of General Clauses Act, if it does not impose new obligation or duty on prosecution or accused.

Normally, any amendment of law will be given prospective effect, but in certain circumstances the Courts by interpretation of amended provisions of the Act concluded that such amendments be given retrospective effect if the amended provision deals with procedure to be followed for prosecuting the accused. There are two views under Interpretation of Statutes. One is “the law looks forward, not backward” based on the maxim “***Lex Prospicit non respicit***”, which means that laws are generally deemed or presumed not to have retroactive. Similarly, there is another maxim i.e. “***Lex De Futuro, Judex De Praeterito***”, that means the law provides for the future.

Therefore, Ex Post Facto Law, which deals with substantive rights of the parties have to be given prospective effect, but in case of procedural laws, there are conflicting views. Another legal maxim “***Nova Constitution futuris formam imponere debet non praeteritis***”, which means new law ought to regulate what is to follow, not the past. The same view point has been taken in “***Monnet Ispat and Energy Limited v. Union of India and others***²⁸”, where the Supreme Court held that this principle operates until and unless there is an express provision in the statute stating/indicating retrospective applicability of the statutes.

²⁸ (2012) 11 SCC 1

In the recent judgment of constitutional bench in **“Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited²⁹”** the Supreme Court held that if a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In such cases, retrospectively is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.

Here, on account of amendment to Section 19 (1) of the P.C.Act, new duty is cast upon the prosecution to obtain sanction to prosecute retired Government Servant and a disability attached to the prosecution to prosecute the petitioner, who has retired from service, such law has to be treated as prospective unless the legislative intention is clear to give enactment a retrospective effect. The amendment by Act 16 of 2018, which came into force with effect from 26.07.2018 would not give retrospective effect

²⁹ (2015) 1 SCC 1

in clear terms. On account of judicial interpretation, the petitioner is claiming that he is entitled to the benefit of amended provision, but in view of new obligation or duty imposed by amended Act, for the acts done long ago, such amendment cannot be given retrospective effect and it has to be given prospective effect only, though, the amendment is declaratory/explanatory one.

In “**Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited**” (referred supra) the Apex Court held as follows:

“Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labeled as "declaratory statutes". The circumstances under which a provision can be termed as "declaratory statutes" is explained by Justice G.P. Singh in the following manner:

Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court: "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'. But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to

supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.

Learned counsel for the petitioner would draw the attention of this Court to the judgment of the Apex Court rendered in “**T.Barai v. Henry Ah Hoe**”³⁰, wherein the Apex Court discussed the scope of Section 6 of Prevention of Food Adulteration Act, 1954 and held that the Proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the

³⁰ AIR 1983 SC 150

procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1). The applicability of section 6 of the General Clauses Act, 1897 is not ruled out when there is a repeal of an enactment followed by fresh legislation. But the Parliament having enacted the law relating to the same offence under Section 16 (1) (a) of the Act and provided for altered procedure and also provided a reduced sentence, the accused must be tried according to the new procedure provided by Section 16A of the Act and must also have the benefit of the reduced punishment.

Learned counsel for the petitioner mainly contended that Section 19 of the P.C.Act deals with procedure to be followed to prosecute the petitioner, which is mandatory in nature and obtaining sanction is a procedural one in nature and such procedural amendment to the existing Act can be given retrospective effect. In support of his contention, he placed reliance on the judgment of Apex Court rendered in “**Kapur Chand Pokhraj v. The State of Bombay**”³¹. In the facts of the above judgment, when the repealing Act did not make any change either in the offence or “**in the procedure prescribed to prosecute for that offence and expressly saved the offence**” committed under the repealed Act, the intention can be legitimately imputed to the Legislature that the procedure prescribed under the new Act should be followed, even in respect of offences committed under the repealed Act. If so, it follows that, as sanction pertains to the domain of procedure, the sanction given by the Additional Collector appointed by the State as Collector of Sales Tax was valid. The

³¹ 1958 Cri L J 1558

question before the Apex Court was “whether the sanction was required to prosecute the accused for various offences under Sales Tax Act when the Act was amended and whether sanction is a procedural one or not?”. But the Apex Court made it clear that obtaining sanction is within the domain of procedure. If this principle is applied to the present facts of the case, in view of added explanation to Section 19 (1) of the P.C. Act, which is explanatory in nature, must be given retrospective effect.

What is explanatory in nature depends upon the nature of amendment. But in the present case, the P.C.Act was not repealed, but added certain paragraphs to Section 19 (1) of P.C.Act including explanation at the end to sub-section (1) of Section 19 of P.C.Act. When the law is wholly not repealed, whether such additional provision or explanation to the existing provision can be treated as explanatory/clarificatory in nature or not is a question?

Learned Counsel for the petitioner mainly contended that the amended provision is clarificatory/explanatory in nature, and the same has to be given retrospective effect and it is beneficial to the accused. In support of his contention, he has drawn the attention of this Court to the judgment of Patna High Court rendered in “**Jamshedpur Motor Accessories Stores v. Union of India**”³² and judgments of Apex Court rendered in “**Allied Motors (P.) Ltd. v. Commissioner of Income Tax**”³³ “**Commissioner of Income Tax, Bombay v. M/s.Podar Cement Pvt. Ltd.**”³⁴ “**Brij Mohan Das**

³² (1991) 189 ITR 70

³³ (1997) AIR (SCW) 1473

³⁴ (1997) AIR (SCW) 2466

Laxman Das v. Commissioner of Income Tax³⁵ “***Zile Singh v. State of Haryana***³⁶”. In all the judgments, the Apex Court is of the view that amendment, which is clarificatory in nature shall be given retrospective effect. Therefore, explanation added to Section 19 (1) of the P.C. Act is in the nature of clarificatory/explanatory, which can be given retrospective effect provided that it does not impose any new obligation on the prosecution or on the accused.

When there is a dispute with regard to applicability of Act, whether retrospective or prospective, and when the provision is explanatory or clarificatory in nature, the Court shall make an endeavour to interpret the provision keeping in mind the internal aids for construction/interpretation of any law or provision which brought into existence.

Learned Special Public Prosecutor for C.B.I. contended that the explanation added to Section 19 (1) of P.C.Act cannot be given retrospective effect though it is clarificatory or explanatory. He placed reliance on the judgment of Apex Court in “***Monnet Ispat and Energy Limited v. Union of India***” (referred supra). In the said judgment, the Apex Court with the approval of “***Keshavan Madhava Menon v. State of Bombay***³⁷” concluded that the cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only. In Principles of

³⁵ (1997) AIR (SCW) 701

³⁶ (2004) AIR (SCW) 5842

³⁷ AIR 1951 SC 128

Statutory Interpretation (Seventh Edition, 1999) by Justice G.P. Singh, the statement of Lord Blanesburg in Colonial Sugar Refining Company v. Irving (1905) AC 369 and the observations of Lopes, L.J. in Pulborough Parish School Board Election, Bourke v. Nutt (1894) 1 QB 725, p. 737 have been noted as follows:

"In the words of Lord Blanesburg, 'provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.' 'Every statute, it has been said', observed Lopes, L.J., 'which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect.'"

The issue that arises before the Court whether a statute is prospective or retrospective, the Court has to keep in mind presumption of prospectivity articulated in legal maxim ***"nova constitutio futuris formam imponere debet non praeteritis"***, i.e., 'a new law ought to regulate what is to follow, not the past'. The presumption of prospectivity operates unless shown to the contrary by express provision in the statute or is otherwise discernible by necessary implication.

Similarly, in ***"Thirumalai Chemicals Limited v. Union of India"***³⁸ the Apex Court has drawn the distinction between the substantive law and procedural law. Substantive law refers to body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by

³⁸ (2011) 6 SCC 739

necessary implication. Procedural law establishes a mechanism for determining those rights and liabilities and machinery for enforcing them. Right of appeal being a substantive right always acts prospectively. It is trite law that every statute prospective unless it is expressly or by necessary implication made to have retrospective operation. In the said judgment, the Court has drawn the distinction between substantive and procedural law, but the question was with regard to maintainability of the appeal in view of subsequent change of substantive law since the right of appeal is a substantive right.

It is not in dispute that Section 19 (1) of the P.C.Act deals with procedure to be followed by the prosecution to prosecute a public servant under the provisions of P.C.Act. Therefore, the judgment of Apex Court is of no assistance to the case of the prosecution to conclude that explanation to Section 19 (1) of the P.C.Act is only prospective in operation.

The Apex Court in “**Shyam Sundar v. Ram Kumar**”³⁹ referred to Maxwell Interpretation of Statutes and Francis Bennion’s Statutory interpretation, held as follows:

“In Maxwell on the Interpretation of Statutes, 12th Edn. the statement of law in this regard is stated thus:

"Perhaps no rule of construction is more firmly established than this - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

³⁹ AIR 2001 SC 2472

The rule has, in fact, two aspects, for its, "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."

In Francis Bennion's Statutory Interpretation. 2nd Edn, the statement of law is stated as follows:

"The essential idea of a legal system is that current law should govern corrupt activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex post factor law is enshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that lex prospect non respect (law looks forward not back). As Willes, J. said retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.'"

In "**Garikapati Veeraya v. N. Subbiah Choudhury**⁴⁰" the Apex Court observed as thus:

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

In "**Smt. Dayawati v. Inderjit**⁴¹", the Apex Court held as follows:

"Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law., brought into existence after the judgment appealed from has been

⁴⁰ [1957]1SCR488

⁴¹ [1966]3SCR275

rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke whose maxim - a new law ought to be prospective, not retrospective in its operation - is off-quoted, courts have looked with disfavour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance."

Based on the principles laid down in the above judgment and other principles of interpretation, the Apex Court concluded that the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. Therefore, the Apex Court is of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. The principle laid down by the Apex Court in the said judgment is almost identical to the principle laid down in "**Thirumalai Chemicals Limited v. Union of India**" (referred supra). In "**N.Bhargavan Pillai (dead) by L.Rs. v. State of Kerala**"⁴² while dealing with the case filed under P.C. Act with reference to Section 19 i.e. Sanction for prosecution of public servant and other offences under I.P.C. held that when the newly-worded Section 197 appeared in the Code with the words "when

⁴² AIR 2004 SC 2317

any person who is or was a public servant" (as against the truncated expression in the corresponding provision of the old Code of Criminal Procedure, 1898), a contention was raised before the Apex Court in "**Kalicharan Mahapatra v. State of Orissa**⁴³" that the legal position must be treated as changed even in regard to offences under the Old Act and New Act also. The said contention was, however, repelled by the Apex Court wherein a two-Judge Bench is of the clear view that "a public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction."

The Apex Court further made it clear that the correct legal position, therefore, is that an accused facing prosecution for offences under the Old Act or New Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application.

The law laid down by the Apex Court is of no assistance to the present facts of the case.

In "**K.S.Paripoornan v. State of Kerala**⁴⁴" considered the scope of amendment and laid down certain guidelines to be

⁴³ 1998CriLJ4003

⁴⁴ (1994) 5 SCC 593

followed for interpretation of statute, which came into force during pendency of the proceedings. The benefit that accrued due to subsequent change of law available in all cases pending before the reference Court even though acquisition started in 1982, but this contention was not accepted by the Apex Court while holding that such provision cannot be given retrospective effect.

Similarly in the other judgment of Apex Court in “**Sukh Ram v. State of Himachal Pradesh**”⁴⁵ the dispute was with regard to insertion of Section 311 A of Cr.P.C., but the Court concluded that cannot be given retrospective effect. But this principle is contrary to the principles laid down by the Apex Court in various judgments referred supra.

The law which enacted subsequent to commission of offence can be said to be Ex post Facto Law, that means law which enacted after the act. An ex post facto law or retroactive law is a law that retroactively changes the legal consequences of acts committed or the legal status of facts and relationships that existed prior to the enactment of the law. Such laws can be given prospective or retrospective effect is the question to be decided by the Court and the same depending upon the intention of law and language used in the newly enacted law.

There are three direct judgments with regard to repeal or restoration of provisions in P.C. Act.

⁴⁵ AIR2016SC3548

In “**Rao Shiv Bahadur Singh v. The State of Vindhya Pradesh**⁴⁶” the Apex Court had an occasion to considered the charge under the Vindhya Pradesh Ordinance of 1949 and trial under Vindhya Pradesh Criminal Law Amendment (Special Courts) Ordinance (V of 1949) and held that once the Special Court is to be deemed a Court of Session the normal right of appeal provided by section 410 or section 417 as the case may be, must be taken to have been expressly provided by reference and not as arising by mere implication. The Apex Court further held that “as regards the amendments in the Criminal Procedure Code brought about by Ordinances Nos. XV of 1948 dated the 31st December, 1948, and XXVII of 1949 dated the 3rd May, 1949, no detailed consideration is necessary in view of what has been held at the outset that the Constitutional objection under Article 20 does not apply to a change in procedure or change of court. Items 62 and 63 of Section 2 of Ordinance No. XV of 1948 would seem to indicate that the jurisdiction which the criminal courts of Vindhya Pradesh previously had to try extra-territorial offences was probably lost thereby. If so, that jurisdiction was restored under Ordinance XXVII of 1949 by the amendment thereby of the said items 62 and 63 thus bringing it into line with Section 188, Criminal Procedure Code, with the requisite adaptations. Hence the power of the Vindhya Pradesh courts to hold trials for extra-territorial offences which was probably interrupted from 31st December, 1948, was restored on 3rd May, 1949, before the trial in the case commenced with retrospective operation, i.e., as from the date of the prior Ordinance, i.e., 31st December, 1948. The law relating to the

⁴⁶ AIR 1953 SC 394

offence committed by the first appellant outside the State of Vindhya Pradesh (at New Delhi) was perfectly within the competence of the appropriate legislative authority at the relevant time.”

In “**Nayyar (G.P.) v. State (Delhi Administration)**⁴⁷” the question that arises is what is the effect of repeal of the provision under Section 5(3)? By Act 40 of 1964, Section 5(3) was repealed prospectively. The statute does not say that the section shall be deemed not to have been in force at all. The Apex Court relying on “**Sajjan Singh v. The State of Punjab**⁴⁸” held that the sub-section provided an additional mode of proving an offence punishable under Sub-section 5(2) for which an accused person is being tried. The Court negated the contention that Section 5(3) created a new kind of offence of criminal misconduct by a public servant in the discharge of his official duty. The Apex Court further held that Section 6 provides that the repeal shall not affect the previous operation of any enactment so repealed unless a different intention appears. The operation of all the provisions of the Prevention of Corruption Act would continue in so far as the offences that were committed when Section 5(3) was in force. The offences that were committed after the date of the repeal will not come under the provisions of Section 6(b) of the General Clauses Act. Section 6(c) also preserves all legal proceedings and consequences of such proceedings as if the repealing Act had not been passed. The Apex Court also relied on “**Keshavan Madhava Menon v. State of Bombay**” (referred supra) similar question was

⁴⁷ AIR 1979 SC 602

⁴⁸ 1964CriLJ310

considered. Finally, the Apex Court concluded that the old procedure is revived and no new procedure is given retrospective effect. The procedure given effect to is not of such a nature as to result in creation of a new offence.

Thus, the principle laid down in the above judgment directly indicates that the procedure law, which was repealed and restored will have retrospective application.

In “***New India Insurance Co.Ltd. v. Smt.Shanti Misra, Adult***⁴⁹” the Full Bench of Apex Court considered the effect of amendment based on principle of limitation and held that the change in law was merely a change of forum i. e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum and the person will have a vested right of action but not a vested right of forum.

In “***Securities and Exchange Board of India v. Alliance Finstock Limited***⁵⁰” the Apex Court held as follows:

“We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the

⁴⁹ (1975) 2 SCC 840

⁵⁰ (2015) 16 SCC 731

justification to treat procedural provisions as retrospective. In “Govt. of India v. Indian Tobacco Assn. (2005) 7 SCC 396” the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in “Vijay v. State of Maharashtra (2006) 6 SCC 289.” It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature.”

(Emphasis supplied)

In “***Hitendra Vishnu Thakur v. State of Maharashtra***⁵¹”

the Apex Court laid down certain guidelines with regard to interpretation of laws, which are as follows:

“(i) A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a Statute which merely affects procedure, unless such a construction is texturally impossible, is presumed to be retrospective in its application, should not be given an extended meaning, and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature.

(iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law.

(iv) A procedural Statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished.

(v) A Statute which not only changes the procedure but also creates a new rights and liabilities, shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

⁵¹ AIR 1994 SC 2623

When an identical question came up before the Apex Court in “**Securities and Exchange Board of India v. Classic Credit Ltd.**”⁵², the Apex Court held that procedural amendments are presumed to be retrospective in nature, unless provides otherwise. Therefore, the law laid down by the Apex Court in catena of perspective pronouncements is clear that an amendment to existing Act which deals with procedure shall be given retrospective effect in view of the presumption that the procedural laws are retrospective in nature.

No doubt, the intention of the legislature is to provide necessary protection to the officers to discharge their duties without fear or favour being the public servants. As per the law declared by the Apex Court in the judgments referred supra, even after retirement they are entitled to claim such protection in view of the addition of explanation to Section 19 (1) of the P.C.Act. If language used in explanation to Section 19 (1) of the P.C.Act is unambiguous, the intent of the legislature is to provide protection to the retired employees. Basing on the protective shield provided to retired Government employees, who ceased to be public servants as on the date of taking cognizance, the petitioner is claiming protection that unless sanction was obtained, the petitioner cannot be prosecuted for the offence. The law referred above is in his favour to some extent since Section 19 (1) of the P.C. Act deals with procedure to prosecute the Government Servant for various offences under the P.C.Act.

⁵² 2017 (3) ALT (Cr.) 178 (SC)

In the present facts of the case, the offence was allegedly committed in 2011 i.e. long prior to amendment of the P.C.Act. But because of the additions, the petitioner wanted to take advantage of situation in view of amendment of Section 19 (1) of the P.C.Act and contending that in the absence of any sanction as required under Section 19 (1) of the P.C.Act as amended by Act 16 of 2018, the prosecution shall not be continued against him. Directly, it amounts to setting clock back to the date prior to taking cognizance, but such procedure which creates or imposes new obligation or duty on either of the parties to the criminal proceedings can be given retrospective effect is a question required to be considered by this Court.

The Apex Court in “**Hitendra Vishnu Thakur v. State of Maharashtra**” (referred supra) laid down certain guidelines. As per guideline Nos. (iv) and (v), the amended provision, which creates new right or imposes new obligation on any of the parties to the criminal prosecution, such amendment cannot be given retrospective effect.

In “**Gurbachan Singh v. Satpal Singh**”⁵³ the Apex Court expressed similar view as regards the element of retrospectivity. The English courts also laid that the Rule that an Act of Parliament is not to be given retrospective effect applies only to statutes which affect the vested rights; it does not apply to statutes which alter the form of procedure or the admissibility of evidence, or the effect which the courts give to evidence; if the new Act affects matters of procedure only, then, prima facie, it applies to all actions pending

⁵³ (1990) 1 SCC 445

as well as future. The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.

In “**Nani Gopal Mitra v. State of Bihar**⁵⁴” the Apex Court laid down certain guidelines for interpretation of procedural provisions of any enactment in the lines of “**Hitendra Vishnu Thakur v. State of Maharashtra**” (referred supra).

In “**Purbanchal Cables and Conductors Pvt. Ltd. and Ors. v. Assam State Electricity Board and Ors.**⁵⁵” the Apex Court held that “there is no doubt about the fact that the Act is a substantive law as vested rights of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in procedure. In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates or imposes a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the

⁵⁴ AIR 1970 SC 1636

⁵⁵ 2012 (7) SCC 462

Act, the same can only said to accrue for sale agreements after the date of commencement of the Act.”

In “*L'Office Cherifien des Phosphates v. Yamashita-Shinnih on Steamship Company Ltd.*”⁵⁶ it is clarified that the legislations which modified accrued rights or ***which impose obligations or impose new duties or attach a new disability have to be treated as prospective*** unless the legislative intent is clearly to give the enactment a retrospective effect.

Turning to the facts of the present case, the respondent's contention is that on account of amendment by Act 16 of 2018, a new obligation or duty was imposed on the prosecution to obtain sanction even after retirement of the petitioner from service as a public servant. It is not the intention of the legislation to defeat all prosecutions pending against the retired Government servants. The Act itself is clear that it was not intended to defeat all pending prosecutions against retired Government servants on account of such imposition of new obligation or duty upon the prosecution.

As the Act is enacted as a measure conceived in public interest, it should be construed so as to bring about the desired object to prevent corruption among public servants and to prevent harassment of honest among them. “The preamble indicates that the Act was passed as it was expedient to make more effective provisions for the prevention of bribery and Corruption. The long title as well as the preamble indicate that the Act was passed to put down the said social evil i.e. bribery and corruption by public servant. Bribery is form of corruption. The fact that in addition to

⁵⁶ [1994] 1 AC 486 (HL)

the word "Bribery" 'the word "corruption" is used shows that the legislation was intended to combat also other evil in addition to bribery. The existing law i.e. Penal Code was found insufficient to eradicate or even to control the growing evil of bribery and corruption corroding the public service of our country. The provisions broadly include the existing offences under Sections 161 and 165 of the Indian Penal Code committed by public servants and enact a new rule of presumptive evidence against the accused. The Act also creates a new offence of criminal misconduct by public servants though to some extent it overlaps on the pre-existing offences and enacts a rebuttable presumption contrary to the well known principles of Criminal Jurisprudence. It also aims to protect honest public servants from harassment by prescribing that the investigation against them could be made only by police officials of particular status and by making the sanction of the Government or other appropriate officer a pre-condition for their prosecution. As it is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object, i.e. to prevent corruption among public servants and to prevent harassment of the honest among them. A decision of the Judicial Committee in *Dyke v. Elliott, The Gauntlet* (1872-4 A.C. 184) cited by the Learned Counsel as an aid for construction neatly states the principle and therefore may be extracted: Lord Justice James speaking for the Board observes at page 191 as follows:

No-doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain

the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed like any other instrument, according to the fair commonsense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument.” (Vide **“M.Narayanan Nambiar v. State of Kerala⁵⁷”**)

The legislature intended to provide such protection to the officer, who ceased to be the Government Servant after commission of offence or on the date of taking cognizance as contended by the learned counsel for the petitioner, but the same is not intended to give any undue benefit to the person who committed such offence since bribery became a menace to the society at large.

If such interpretation is given to sneak out the retired Government Servants on account of disability or duty imposed by amended provision on the prosecuting agency, it amounts to causing violence to the intendment of the legislature, if such is the situation, it will have devastating effect on the pending prosecutions throughout the country against the retired Government servants in view of amendment to explanation to

⁵⁷ AIR 1963 SC 1116

Section 19 (1) of the P.C.Act. Therefore, such amended provision which created or imposed new obligation on the prosecution to obtain sanction to prosecute the retired Government Servant after taking cognizance or before taking cognizance, depending upon the stage of the proceedings, and the same cannot be given retrospective effect and it shall be given prospective effect in view of the law declared by the constitutional bench of the Apex Court in **“Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited”** (referred supra).

Learned counsel for the petitioner relied on the judgment of Apex Court rendered in **“State Bank of India v. V.Ramakrishnan⁵⁸”**, wherein the Apex Court referred the principle laid down in **“Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited”** (referred supra) and held that Section 14 (3) of Insolvency and Bankruptcy Code substituted by ordinance dated 06.06.2018, which provides for a moratorium for the limited period mentioned in the Code, on admission of an insolvency petition, would apply to a personal guarantor or a corporate debtor and the amended provision will have retrospective effect. But it was not the case that the amended provision imposed new obligation or duty on any of the parties to the proceedings pending before the Court by virtue of amended provision and concluded that Section 14 (3) of the Insolvency and Bankruptcy Code, 2016 has got retrospective effect.

⁵⁸ AIR2018SC3876

In “**Blyth v Blyth**⁵⁹” it was held that "the rule that an Act of Parliament is not to be given retrospective effect applies only to statutes which affect vested rights."

Further, Lopes L.J. in “**Re, Pulborough Parish School Board Election, Bourke V. Nutt**⁶⁰” observed that "every Statute, it has been said which takes away or impair vested rights acquired under existing law, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect".

The facts of the case are distinguishable as the petitioner claiming immunity from the prosecution on the ground of failure to obtain sanction for prosecuting him taking advantage of explanation by Act 16 of 2018, which came into force with effect from 26.07.2018, but such amendment created/imposed new obligation or duty on the prosecution to obtain sanction to prosecute even retired government servant. Earlier sanction is required only to prosecute the public servant, and when a person retired from service, no sanction is required. On account of change of law due to addition of explanation to Section 19 (1) of the P.C.Act, now sanction is required even to prosecute retired government servant. If this provision is given retrospective effect, all retired government servants, against whom prosecutions are pending will sneak out from the prosecutions, it is nothing but accommodating retired Government Servant to escape from pending prosecution under the P.C.Act irrespective of seriousness

⁵⁹ (1966) 1 All ER 524

⁶⁰ (1894) 1 QB 725

of offence. The intention of the legislature is to prevent bribery among the public servants, which is a serious threat to the society now and increasing day by day. Therefore, amendment to Section 19 (1) of the P.C. Act though deals with procedure, which cannot be given retrospective effect as it created or imposed new obligation or duty on the prosecution to obtain sanction after more than 7 years from the date of filing charge sheet and taking cognizance against the petitioner. Therefore, I find that such interpretation as sought for by the learned counsel for the petitioner is against the intendment of the Statute.

Coming to the present facts of the case, Section 19 (1) of the P.C.Act relates to procedure to be followed for prosecuting a public servant. When such amendment imposes new obligation or creating disability, in the absence of any provision giving retrospective effect, the same cannot be given retrospective effect to defeat all pending prosecutions against the retired Government Servants. If such interpretation is given to explanation to Section 19 (1) of P.C.Act by Act 16 of 2018, it will have devastating effect on the pending prosecutions and it amounts to paving path to the accused persons, who are retired public servants to sneak away from prosecutions though they committed serious offences, and such interpretation is against the intendment of the Act itself as observed in “**M.Narayanan Nambiar v. State of Kerala**” (referred supra). Therefore, it is difficult to accept the contention of the learned counsel for petitioner to give retrospective effect to the amended provision i.e. Section 19 (1) of the P.C.Act, which permits the petitioner to escape from the prosecution. The point is held against the petitioner and in favour of the respondent.

P O I N T No.3:

One of the grounds urged in the criminal petition No.6398 of 2016 is that One Man Commission is appointed by the Government of Andhra Pradesh vide G.O.Ms.No.648 Revenue (Assin.IV) Department dated 14.05.2007 constituted the commission under the Commissions of Inquiry Act, 1952 appointing Justice Sri Rama KrishnamaRaju, retired Judge of High Court of Andhra Pradesh to inquire into the irregularities;

In the said G.O., following direction was issued to inquire:

“Whether the issuance of G.O.Ms.No.95, Industries and Commerce (M.III) Department dated 27.03.2006 by Government of Andhra Pradesh granting mining lease to M/s Raghuram Cements Ltd., for establishing their proposed cement factory in Kadapa District was inconformity with the established norms, procedure, and provisions if law”

After elaborate inquiry, the One Man Commission submitted its report on 29.08.2007 and held that the grant of mining lease vide G.O.Ms.No.95 dated 27.03.2006 as under:

“I have called for the files from the Office of the Secretary, Industries and Commerce Department, Government of Andhra Pradesh, Secretariat, Hyderabad, to verify the origin and issuance of G.O.Ms.No.95, Industries and Commerce (M.III) Department, dated 27.03.2007, as well as from the office of the Director of Mines and Geology, Hyderabad. Both Officers furnished their respective files and records leading to the issuance of the said G.O. After careful perusal of the said files I have no doubt the State Government has followed the procedure indicated above following the Mines and Minerals (Development and Regulation) Act, 1957 and Mineral Concession Rules, 1960. I have perused the entire procedure followed for the issue of G.O.Ms.No.95 Industries and Commerce (M-III) Department, Dt.27.03.2006. I do not find any infraction in following the established norms, procedure or the provision of law.”

The report of the One Man Commission submitted by the retired Judge of High Court of Andhra Pradesh was not looked into by the investigating agency. This itself is enough to conclude that the investigation was biased and once it is biased, the said findings are void ab initio and requested to quash the proceedings on this ground alone.

As per G.O.Ms.No.648 Revenue (Assin.IV) Department dated 14.05.2007 the inquiry was limited to issue of mining lease to M/s Raghuram Cements Limited vide G.O.Ms.NO.95, Industries and Commerce (M.III) Department dated 27.03.2006 but not other mining leases granted by the petitioner to various companies including M/s. Obulapuram Mining Company Private Limited. The acts done by the petitioner in conspiring with the other accused pertain to mining leases granted in favour of various companies. Therefore, the report submitted by One Man Commission after conducting necessary enquiry about the illegalities or irregularities committed in issuance of G.O.Ms.No.95 Industries and Commerce (M.III) Department dated 27.03.2006 will have no direct bearing on the issue involved in this matter. The report of the One Man Commission is relevant to decide the illegalities committed by the petitioner in granting mining lease to M/s.Raghuram Cements Limited not other than that. Here, the petitioner committed several irregularities and the role of the petitioner is specifically pointed at page Nos.158 to 167 of the charge sheet (refereed above).

Therefore, on the ground that the C.B.I. did not consider the report of One Man Commission, which was submitted after conducting inquiry with regard to granting mining lease, the

proceedings against the petitioner cannot be quashed. Accordingly, the point is answered.

The learned counsel for the petitioner though raised several grounds regarding so many provisions of Mines and Minerals (Development and Regulation) Act, 1957 and decisions of the Apex Court in various paragraphs of the petitions, confined his submission only to the points referred above and requested this Court only to decide above issues. Therefore, in view of the limited submissions of the learned counsel for the petitioner, this Court decided the above points only.

In view of my foregoing discussion and findings recorded on point Nos.1 to 3, I find no ground to quash the proceedings in C.C.No.25 of 2013 and C.C.No.01 of 2012 on the file of the Principal Special Judge for CBI Cases at Hyderabad. Consequently, the petitions are liable to be dismissed.

In the result, the criminal petitions are dismissed.

The miscellaneous petitions pending in the petitions, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

16.11.2018

Note: L.R. copy to be marked

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