

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION NO.9044 OF 2018**

**ORDER:**

This criminal petition is filed by the petitioner/accused No.1 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.05 of 2017 on the file of the Special Court for Trial of SPE and ACB Cases, Kurnool registered for the offence punishable under Section 13 (1) (e) read with 13 (2) of Prevention of Corruption Act, 1988 (for short "P.C.Act") and under Section 201 of Indian Penal Code (for short "I.P.C.").

The petitioner joined in Government Service as Junior Assistant in the year 1985 and promoted as Senior Assistant in 1989, later promoted as Deputy Tahsildar in the year 2008 and worked in different capacities with unblemished record for the last 28 years. The petitioner has worked in non-focal points during entire service as public servant. But while working as Deputy Tahsildar in the year 2013, a case was registered against the petitioner under Section 13 (1) (e) of P.C.Act on the ground that he had amassed assets disproportionate to his income. Based on registration of the crime, investigation was taken up by A.C.B. officials. During investigation, investigating officer examined 81 witnesses and seized several properties i.e. both movable properties and immovable properties, which are shown in annexure I to III. The details of immovable properties acquired in the name of the petitioners and other close relatives shown in annexure I, which are 8 in number, worth Rs.2,53,76,460/- and the movable properties worth Rs.3,10,92,886/-. The source of income is shown in annexure II, which are 6 in number, worth

Rs.49,32,946/- and expenditure is shown in annexure III as Rs.68,09,948/-. Based on the evidence collected during investigation, investigating officer concluded that the petitioner possessed assets disproportionate to his known source of income to a tune of Rs.3,29,69,888/-.

The petitioner has retired from service on 30.06.2016 and after retirement, charge sheet was filed against the petitioner for the offence referred supra and registered the same as C.C.No.05 of 2017 and took cognizance against the petitioner

The main grievance of the petitioner is that the petitioner maintained high standard of integrity beyond doubt and discharged his duties with unblemished record. The Prevention of Corruption Act, 1988 was amended by Act 16 of 2018, which came into force with effect from 26.07.2018 and in view of the amendment, the P.C.Act undergone substantial changes, including Section 19 of the P.C.Act. According to the explanation to Section 19 (1) of the P.C. Act, even to prosecute the retired Government Servant as defined under Section 2 (c) of the P.C.Act, sanction is required to be obtained, otherwise the prosecution vitiates. The legislative amendment is intended to provide necessary protection based on select committee report, recommendations of the Parliament and the petitioner though retired from service long prior to filing of the charge sheet, the Court took cognizance of the offences punishable under Section referred supra. No sanction was obtained as required under Section 19 (1) of the P.C.Act, though the charge sheet was filed prior to amendment to P.C.Act, time gap is little, such amendment which is beneficial to the accused shall be given retrospective effect and if such provision is given

retrospective effect, the prosecution against him is vitiated by illegality for want of sanction as required under Section 19 (1) of the P.C.Act.

Sri Ponavolu Sukdhakar Reddy, learned counsel for the petitioner, reiterated the contentions urged in the petition and relied on several decisions, which will be referred at appropriate stage.

Sri P.Udaya Bhaskara Rao, learned Standing Counsel – cum – Special Public Prosecutor for A.C.B., 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 filing charge sheet and taking cognizance, cannot be applied retrospectively as by the date of filing charge sheet and taking cognizance, 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 petition.

As the learned counsel for the petitioner confined his argument only to the aspect of giving retrospective effect to the amended provisions of P.C.Act by Act 16 of 2018, this Court is required to decide the affect of amendment to P.C.Act by Act 16 of 2018 only, without touching other grounds urged in the petition.

Considering rival contentions and perusing the material on record, the point that arises for consideration is:

***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 (1) (e) read with Section 13 (2) of Prevention of Corruption Act?***

**P O I N T:**

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**<sup>1</sup>”, 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

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<sup>1</sup> AIR 1960 SC 866

in conviction or not. The complaint has to be read as a whole. If it 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 Kumar<sup>2</sup>”***

In ***“State of Haryana v. Bhajan Lal<sup>3</sup>”*** 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.

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<sup>2</sup> AIR 1990 SC 494

<sup>3</sup> 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 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 Standing Counsel for ACB 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. 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**”<sup>4</sup> the Supreme Court relying on “**R.S.Nayak v. A.R.Antulay**”<sup>5</sup> 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

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<sup>4</sup> AIR 1995 SC 1124

<sup>5</sup> AIR 1984 SC 684

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 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**<sup>6</sup>”. 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.

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<sup>6</sup> 1995 Cr L J 2898 (Cal.)

Learned counsel for the petitioner relied on the judgment of Apex Court rendered in “**State of Punjab v. Mohar Singh**”<sup>7</sup> 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 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.

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<sup>7</sup> (1955) CriLJ 254

| 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p>19. Previous sanction necessary for prosecution</p> <p>(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,-</p> <p>(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;</p> <p>(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;</p> <p>(c) in the case of any other person, of the authority competent to remove him from his office.</p> | <p>Section 19 : Previous sanction necessary for prosecution</p> <p>(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],—</p> <p>(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;</p> <p>(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;</p> <p>(c) in the case of any other person, of the authority competent to remove him from his office.</p> <p><b><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></b></p> <p><b><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></b></p> <p><b><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></b></p> <p><b><i>Provided further that in the case of request from the person other than a police officer or an</i></b></p> |

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|  | <p><b><i>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></b></p> <p><b><i>Provided also that the appropriate Government or any competent authority shall, after the 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></b></p> <p><b><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></b></p> <p><b><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></b></p> <p><b><i>Explanation.-- For the purposes of sub-section (1), the expression "public servant" includes such person--</i></b></p> <p><b><i>(a) who has ceased to hold the office during which the offence is alleged to have been committed; or</i></b></p> <p><b><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></b></p> |
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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 Statues. 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**<sup>8</sup>”, 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.

In the recent judgment of constitutional bench in **“Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited**<sup>9</sup>” 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

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<sup>8</sup> (2012) 11 SCC 1

<sup>9</sup> (2015) 1 SCC 1

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 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.

In “***T.Barai v. Henry Ah Hoe***<sup>10</sup>”, 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

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<sup>10</sup> AIR 1983 SC 150

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 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**”<sup>11</sup>. 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

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<sup>11</sup> 1958 Cri L J 1558

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 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 this Court rendered in **“Transmission Corporation of Andhra Pradesh Limited (A.P.TRANSCO) v. Equipment Conductors and Cables Limited<sup>12</sup>”** and judgments of Apex Court rendered in **“Commissioner of**

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<sup>12</sup> 2017 (4) ALD 140

***Income Tax-I, Ahmedabad v. Gold Coin Health Food Pvt.Ltd.***<sup>13</sup>”  
***“S.B.Bharracharjee v. S.D.Majumdar***<sup>14</sup>” ***“S.Sundaram Pillai  
and others v. R.Pattabiraman and others***<sup>15</sup>” ***“Commissioner of  
Income Tax, Bombay v. M/s.Podar Cement Pvt. Ltd.***<sup>16</sup>” ***“Zile  
Singh v. State of Haryana***<sup>17</sup>” and ***“Union of India v. Sukumar  
Pyne***<sup>18</sup>”. 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 in nature 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 Standing Counsel for ACB 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***

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<sup>13</sup> (2008) 9 SCC 622

<sup>14</sup> AIR 2007 SC 2102

<sup>15</sup> AIR 1985 SC 582

<sup>16</sup> (1997) AIR (SCW) 2466

<sup>17</sup> (2004) AIR (SCW) 5842

<sup>18</sup> AIR 1966 Supreme Court 1206

**Madhava Menon v. State of Bombay**<sup>19</sup> 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 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.

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<sup>19</sup> AIR 1951 SC 128

Similarly, in “**Thirumalai Chemicals Limited v. Union of India**<sup>20</sup>” 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 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.

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<sup>20</sup> (2011) 6 SCC 739

The Apex Court in “**Shyam Sundar v. Ram Kumar**<sup>21</sup>” 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 thus - 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.' 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."*

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<sup>21</sup> AIR 2001 SC 2472

In “**Garikapati Veeraya v. N. Subbiah Choudhury**<sup>22</sup>” 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**<sup>23</sup>”, 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 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

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<sup>22</sup> [1957]1SCR488

<sup>23</sup> [1966]3SCR275

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**”<sup>24</sup> 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 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**”<sup>25</sup> 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."

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<sup>24</sup> AIR 2004 SC 2317<sup>25</sup> 1998CriLJ4003

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**<sup>26</sup>” considered the scope of amendment and laid down certain guidelines to be 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**<sup>27</sup>” 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

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<sup>26</sup> (1994) 5 SCC 593

<sup>27</sup> AIR2016SC3548

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.

In “**Rao Shiv Bahadur Singh v. The State of Vindhya Pradesh**<sup>28</sup>” 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

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<sup>28</sup> AIR 1953 SC 394

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 31<sup>st</sup> December, 1948, was restored on 3<sup>rd</sup> May, 1949, before the trial in the case commenced with retrospective operation, i.e., as from the date of the prior Ordinance, i.e., 31<sup>st</sup> December, 1948. The law relating to the 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)**<sup>29</sup>” 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**<sup>30</sup>” held that the subsection 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

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<sup>29</sup> AIR 1979 SC 602

<sup>30</sup> 1964CriLJ310

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 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**”<sup>31</sup> 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

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<sup>31</sup> (1975) 2 SCC 840

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**<sup>32</sup>” 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 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**<sup>33</sup>” 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.**

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<sup>32</sup> (2015) 16 SCC 731

<sup>33</sup> AIR 1994 SC 2623

***(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.”***

When an identical question came up before the Apex Court in “**Securities and Exchange Board of India v. Classic Credit Ltd.**”<sup>34</sup>, 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

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<sup>34</sup> 2017 (3) ALT (Crl.) 178 (SC)

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.

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.

Learned counsel for petitioner relied on the judgment of the Apex Court rendered in “**Gurbachan Singh v. Satpal Singh**”<sup>35</sup> 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 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**”<sup>36</sup> 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.**”<sup>37</sup> 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

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<sup>35</sup> (1990) 1 SCC 445

<sup>36</sup> AIR 1970 SC 1636

<sup>37</sup> 2012 (7) SCC 462

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 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.*”<sup>38</sup> 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.

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<sup>38</sup> [1994] 1 AC 486 (HL)

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 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 Kerala*<sup>39</sup>”**)

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

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<sup>39</sup> AIR 1963 SC 1116

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 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.Ramakrishnan**”<sup>40</sup>, 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

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<sup>40</sup> AIR2018SC3876

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.

In “**Blyth v Blyth**<sup>41</sup>” 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**<sup>42</sup>” 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

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<sup>41</sup> (1966) 1 All ER 524

<sup>42</sup> (1894) 1 QB 725

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 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.

In view of my foregoing discussion, I find no ground to quash the proceedings in C.C.No.5 of 2017 on the file of the Special Court for Trial of SPE and ACB Cases, Kurnool. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

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

**JUSTICE M. SATYANARAYANA MURTHY**

16.11.2018  
Ksp