

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 4070 of 2023

And Other Connected Cases

Reserved On: 19.05.2023

Pronounced On: 25.05.2023

Gurmeet Singh

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Tahaf Bains, Advocate
for the petitioner(s) (In CWP-4070-2023 and CWP-4026-2023).

Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Shiv Kumar Sharma, Advocate
Ms. Tejaswini, Advocate
for the petitioner(s) (In CWP-3816-2023 and CWP-2855-2023).

Mr. V.K.Jindal, Sr. Advocate, with
Mr. Vijayveer Singh, Advocate
for the petitioner(s) (In CWP-9565-2023).

Mr. I.S.Saggu, Advocate
for the petitioner(s) (In CWP-10431-2023).

Mr. J.S.Bhandohal, Advocate,
for the petitioner(s) (In CWP-3207-2023, CWP-3216-2023,
CWP-3247-2023, CWP-3720-2023, CWP-3861-2023, CWP-
3888-2023, CWP- 5138-2023, CWP-6562-2023).

Mr. A.P.Kaushal, Advocate,
for the petitioner(s) (In CWP-4395-2023).

Mr. H.R.Bhardwaj, Advocate, for
Mr. Munish Jolly, Advocate
for the petitioner(s) (In CWP-10594-2023).

Mr. H.K.Brinda, Advocate
for the petitioner(s) (In CWP-7097-2023).

Mr. Ramandeep, Advocate
for the petitioner(s) (In CWP-3335-2023).
Mr. Nakul harma, Advocate
for the petitioner(s) (In CWP-4914-2023 and CWP-9112-2022).

Mr. Manish Kumar Singla, Ms. Shikha Singla, Mr. Dinesh
Kumar and Ms. Sonika Mittal, Advocates,

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for the petitioner(s) (In CWP-1716-2023, CWP-2141-2023, CWP-3314-2023, CWP-2557-2023, CWP-2577-2023, CWP-4389-2023 and CWP-4788-2023).

Mr. Anshul Sharma, Advocate for
Mr. G.S.Madaan, Advocate
for the petitioner(s) (In CWP-1716-2023).

Mr. Amandeep Singh Sidhu and Mr. Baldev Singh Sidhu,
Advocates, for the petitioner(s) (In CWP-5559-2023 and CWP-11249-2023).

Mr. Rohit Sapehiya and Ms. Deepika Chauhan, Advocates,
for Mr. Rai Singh Chauhan, Advocate
for the petitioner(s) (In CWP-5187-2023 and CWP-5947-2023).

Mr. Kulbir Singh Saini, Advocate,
for Mr. Amandeep Saini, Advocate
for the petitioner(s).

Mr. Ish Puneet Singh, Advocate
for the petitioner(s) (In CWP-4751-2023).

Mr. C.L.Premy, Advocate and Ms. Raman Rekhi, Advocates
for the petitioner(s) (In CWP-5286-2023).

Mr. A.P.Kaushal, Advocate
for the petitioner(s) (In CWP-4395-2023).

Mr. Pawan Girdhar, Additional Advocate General, Haryana and
Mr. Jaspal Singh Pannu, Assistant Advocate General, Haryana.

Mr. Ferry Sofat, Additional Advocate General, Punjab.

Mr. Vijay Kumar Chaudhary, Advocate
for respondent No.3 (In CWP-23858-2022) and
for respondent No. 8 and 9 (In CWP-4751-2023).

Mr. Radhey Sham, Advocate, for
Mr. Rahul Jaswal, Advocate
for respondent No.9 (In CWP-5947-2023)
Mr. Saurabh Kaushik, Advocate
for respondent No.6 and 7 (In CWP-5138-2023)

Mr. Rajeshwar Singh Thakur, advocate
for respondent No.8 (In CWP-4395-2023).

Mr. Vishal Munjal, advocate
for respondent No.10 (In CWP-5187-2023).

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Ms. Gaganbir Kaur and Mr. Vipin Mahajan, Advocates
for respondent No.6 (In Cwp-8961-2023).

Mr. Aminder Singh, advocate
for respondent No.5 (In CWP-3314-2023).

Mr. Navkesh Singh Goraya, Advocate
for respondent No.5 (In CWP-4389-2023).

Ms. Srishti Shukla and Mr. Kulwinder Singh, Advocates
for respondent No.6 (In CWP-5138-2023).

Mr. Vivek K.Thakur, Advocate
for respondent No.14 and 15 (In CWP-4751-2023).

Mr. Dinesh Kumar, Advocate
for the respondent (In CWP-4026-2023).

Anil Kshetarpal, J.

1. A batch of 48 connected civil writ petitions (the details whereof are given at the foot of the judgment) as agreed by the learned counsel representing the parties involving the identical issues is being disposed of by a common order.

2. In the considered opinion of this Court, after having heard, analysed and evaluated the arguments of the learned counsel representing the parties while going through, the paper book of the lead cases, the following question arises for adjudication:-

“Whether the protection under Section 17-A of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the 1988 Act”) against the initiation of enquiry or inquiry or investigation without the previous approval of the competent authority is omnibus, universal and absolute so as to take within its sweep all the offences triable under the 1988 Act?”

While invoking the extraordinary jurisdiction of the High Court

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under Article 226/227 of the Constitution of India, 1956 (hereinafter referred to as “the Constitution”), the petitioners call in question the action taken by the Vigilance Bureaus of the respective States of Punjab and Haryana against the officials of the Panchayat and Development Departments or the office bearer or former members of the Panchayat Institutions. Hence, the detailed facts are required to be noticed, however, to compete the narration, the facts are being taken from the Civil Writ Petition No. 4070 of 2023.

4. The petitioner, being a Panchayat Secretary, is working in the Department of Rural Development and Panchayats, Punjab. He prays for the issuance of the writ in the nature of certiorari to quash the notice (Annexure P4) issued by the Vigilance Bureau, Punjab, in the Vigilance Enquiry No. 6 of 2022 dated 25.08.2022, Patiala, to him, Jatinder Kumar, Sarpanch, Sawinder Singh, Block Development and Panchayat Officer, Moonak and Paramjit Kaur, Block Development and Panchayat Officer, District Sangrur, while calling upon them to come present on a specified date before the Deputy Superintendent of Police, Vigilance Bureau Unit, Sangrur.

5. Similarly, with respect to the State of Haryana, the facts are being noticed from the Civil Writ Petition No. 9565 of 2023. While praying for the issuance of the writ in the nature of certiorari, the petitioner, who is a former Sarpanch of the village Mathana, District Kurukshetra prays for the quashing of complaint dated 10.12.2021 sent by the Chief Secretary, Government of Haryana, to the Director General, State Vigilance Bureau, Haryana, against him, Panchayat Secretary and Junior Engineer with a request to conduct the enquiry regarding the alleged misappropriation and

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6. In the State of Punjab, there are inter departmental communications which provide that unless the enquiry under the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as “the 1994 Act”) the Vigilance Bureau should not initiate an action. In fact, a co-ordinate Bench of this Court in ***Charanjit Singh v. State of Punjab and Others (Criminal Misc. No. M-41977 of 2015, decided on 08.12.2016)*** has already declared that such communications are bad in law. After examining the contentions of the learned counsel representing the parties in the context of the observations made in ***Vineet Narayan v. Union of India 1998(1) SCC 226***, it was held that no prior sanction for the prosecution is necessary. The relevant discussion is as under:-

“An allied act done by a public servant during the exercise of official duty whereby he also commits an illegal act in the same transaction, not directly connected, resulting in misappropriation defalcation of public funds/property to the mind of this Court can never be termed to be in the discharge of public duties or in a public capacity, for which reliance is placed on ‘Siri Kishan v. State of Haryana’ 2000(4) RCR(Criminal) 383. Thus, it is emphatically clear that not every offence committed by a public servant requires sanction for prosecution and the present attribution is quite separable from the official duties of these respondents and does not calls for sanction for prosecution. Even in Vineet Narain’s case (ibid) stress has been laid down that it is not always necessary that a prior sanction should be there to prosecute the public servant. Thus, this Court is of the opinion that prior sanction for prosecution certainly is not necessary, sufficiently answers the arguments put forth by learned State counsel.

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*The other contentious issue that has cropped up during the course of arguments primarily is aimed at to sabotage furtherance of action into the matter for politically motivated cause. Hon'ble the Supreme Court in '**Lalita Kumari v. Govt. of U.P. and others**' 2013(4) RCR (Criminal) 979 which has also been relied upon by learned State counsel as well as by learned Amicus Curiae who has assisted to a great extent this Court, wherein it was laid down the eventualities and the categories of cases where registration of an FIR is necessitated and one of the primary objects was to not only to set into motion criminal process but as well as to ensure transparency in the criminal justice delivery system which provides an efficient mode to check such political interferences which is reflective in abundance in the present case and rather has become a "MASCOT" for modern day governance. When it is own case in the reply submitted by the State that a written complaint was made to the Director, Vigilance Bureau and therefore, the Court ought to ensure that there is due compliance of Sections 154(1) and 157(1) of the Cr.P.C. and that too when the administrative authorities have finally reached at a conclusion as to this factum of embezzlement of public funds by the Sarpanch in connivance with the other official respondents, are matters which impinge the conscience of the Court that it was mandatory for registration of the FIR and the Vigilance Bureau was bound to register the same after having received the information in writing and that too upon intimation to them by the higher authorities of the Department of Panchayats, a conclusive finding on the administrative side holding the guilt of the respondent/Sarpanch and others, are matters which further strengthens the stand of the petitioner impelling this Court to hold that the reasons that are fraught with political interferences and thus, even the exercise of extraordinary powers by this Court, which otherwise ought to*

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be sparingly and consciously undertaken only in exceptional circumstances, needs to be put to use so as to bring about credibility and instill public confidence in the system, and to hammer home his point the learned Amicus Curiae has placed reliance upon ‘Dr. Subramanian Swamy v. Union of India’ 2014(2) RCR (Criminal) 822; ‘Lalita Kumari v. Govt. of U.P. and others’ 2013(4) RCR (Criminal) 979; ‘State of West Bengal & others v. Committee for Protection of Democratic Rights West Bengals & others’ 2010(2) RCR(Criminal) 141; ‘M.C. Mehta v. Union of India & others’ 2007(1) RCR (Criminal) 266; and ‘Manohar Lal Sharma v. The Principal Secretary & others’ 2014(1) RCR (Criminal) 370.

To enliven his arguments, Mr.Amit Singh Sethi, Additional Advocate General, Punjab has sought to place reliance on a judgment of the Division Bench of this Court in ‘Ashok Chaudary v. State of Punjab & others’ (CWP No.9256 of 2002 decided on 15.05.2006), where this Court in a collective decision in a number of civil writ petitions has too relied upon Vineet Narain’s case (ibid) to bring about the fact that under Article 162 of the Constitution of India though such fetters can be put upon Vigilance Bureau for seeking prior approval of the administrative committees, a condition precedent for the initiation of any action thereon which had already rendered a finding and not acting thereon and thus, thereby meaning to restrict the purview of provisions of Sections 154, 155, 156 and 157 of Cr.P.C.

It needs to be reminded here that the Vigilance Bureau has been empowered to inquire into the allegations against all public servants as defined under the provisions of Prevention of Corruption Act, 1988. Though it was initially restricted to Punjab Government employees and members of All India Services however, subsequently with new instructions had

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went on to the employees of autonomous and statutory bodies including Corporations and Improvement Trusts and thus, as on date has within its ambit all public servants with few exceptions.”

7. These instructions again came up for consideration before this Bench in *Ranjodh Singh and Another v. State of Punjab and Others (Civil Writ Petition No. 13623 of 2021, decided on 30.07.2021)*. After examining the police officer’s power to investigate the cognizable case in the context of Section 156 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”), it was held as under:-

“Still further, it is apparent from the careful reading of Annexure P-2, dated 22.02.1983, that the Government had only issued guidelines for improving the working of the Vigilance Bureau. The communication itself provides that the matter can be investigated through Home Department/CID. Thus, the Government has itself recognized that in criminal offences, the investigation is required to be carried out by the police officer in accordance with Section 156 Cr.P.C. and the same cannot be curtailed by issuing any instructions.

Still further, the petitioners have not been called upon to provide any information. The Inspector of Police, Vigilance Bureau, Punjab, has only directed the Block Development and Panchayat Officer to depute the Panchayat Secretary with the required information. In such circumstances, this Bench does not find it appropriate to exercise its extraordinary jurisdiction to issue a writ in the nature of certiorari, at this stage. The writ petition is pre-mature.

Still further, Section 216 of the Punjab Panchayati Raj Act, 1994, deals with the civil liability. On a careful reading of Section 216 of the Act, it is apparent that whenever a member

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of the Panchayat is found to have caused loss, waste or misapplication of the funds belonging to the Gram Panchayat, then he shall be liable to refund the amount along with interest. Section 216 of the Act does not deal with criminal offences. Still further, Section 222 of the Act, no doubt, starts with a non-obstante provision, however, it cannot be read in a manner suggested by the learned counsel representing the petitioners. The aforesaid provision has to be read in a manner which will advance the cause of justice. It is further apparent that the provisions of the Act do not deal with criminal offences. Section 222 of the Act does not provide for exclusion of prosecution of the members of the Panchayat for criminal offences as the same falls within the exclusive domain of the criminal law which is independent and simultaneous with remedies under civil law.

The learned counsel further relies upon an instruction dated 02.01.1995. These instructions have been issued by the Rural Development and Panchayat Department under the signatures of its Director. These instructions cannot override the statutory enabling power of investigation granted to a police officer as per Chapter-XII of the Code of Criminal Procedure, 1973.

As regards the judgments relied upon by the learned counsel, it may be noted that the Additional Advocate General had conceded before the Bench and therefore, the writ petitions were dismissed as infructuous. The aforesaid orders cannot be said to be declaring any law to the fact that the Vigilance Bureau is de-barred from investigating a criminal offence against a Sarpanch. Still further, the instructions dated 22.02.1982, Annexure P-2, refers to Sarpanches, Panches and Municipal CouncilOTHERS The petitioners, at present, are not Sarpanches. No doubt, they are Ex. Sarpanches. In the instructions, it is nowhere provided that the Vigilance Bureau

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cannot inquire the complaint against an Ex. Sarpanch. Still further, no FIR has been registered as yet. Hence, investigation, if any, would start thereafter.”

8. First of all, it is necessary to understand the meaning and scope of the enforceable instructions issued by the government. An order which is not issued and published in accordance with the law cannot be considered as a government order to have the force of law. The internal communications and the office notes do not constitute the orders issued by the competent authority. Reference in this regard is placed on the judgment rendered by the Supreme Court in *Union of India and Another v. Kartick Chandra Mondal and Another* (2010)2 SCC 422). In *Shanti Sports Club v. Union of India* (2009) 15 SCC 705 it was declared that unless an order is expressed in the name of the President or Governor and is authenticated in the manner prescribed by the rules made by the President or the Governor, as the case may be, the same cannot be treated as an order on behalf of the government. Moreover, in *Syndicate Bank v. Ramachandran Pillai and Others* (2011) 15 SCC 398, the Supreme Court held that if any executive instructions are to have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Government or any other authority by some Statute or the Constitution. The guidelines and executive instructions which are of non-statutory character are not “laws” and compliance therewith cannot be enforced through Courts. In fact, the police officer’s power under Section 156 of the Cr.P.C. is plenary power unhindered by any executive instructions. The Privy Council in *King*

Emperor v. Khawaja Nazir Ahmad AIR 1945 PC 18, held as under:-

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“In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under S. 491 of the C.P.C. to give directions in the nature of habeas corpus. In such a case as the present, however, the Courts functions begin when a charge is preferred before it and not until then. ...”

Following the same, the Supreme Court in ***M.C. Abraham and Another v. State of Maharashtra and Others (2003) 2 SCC 649***, held as under:-

“13. This Court held in the case of J.A.C. Saldanha that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. ...”

9. In ***S.N.Sharma v. Bipin Kumar Tiwari and Others (1971) SCC 653***, the Supreme Court held that under Section 156(3) of the Cr.P.C., the

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under 190 of the Cr.P.C. is to order an investigation. However, there is no mention of any power to stop the investigation by the police. It was further held that though the Cr.P.C. gives unfettered powers to the police to investigate all the cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek remedy by invoking the power of the High Court under Article 226 of the Constitution of India. On being convinced that the power of investigation has been exercised by a police officer mala fide, the Court can always issue a writ of mandamus.

10. If we now examine the instructions issued by the government from time to time, it becomes evident that these guidelines/instructions are in the form of intra communications between the officers of the various departments. First reference is to the instructions dated 22.02.1983 and 24.03.1984 written by the Deputy Secretary Vigilance, Department of Vigilance, Punjab, while issuing the guidelines for improving the working of the Vigilance Bureau, Punjab, wherein it has been provided that the complaints against the Sarpanches, Panches and the Municipal Commissioners shall not be looked into by the Vigilance Department/Vigilance Bureau and these will be passed on to the concerned Administrative Department for appropriate action. Thereafter, there is a letter dated 02.01.1995 written by the Director-cum-Additional Secretary, Department of Rural Development and Panchayats, Punjab, to the Additional Director, Panchayat Department, expressing the concern that not only the complaints results in unnecessary harassment, but also hampers the

development work in the village, hence, the government has decided that the

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complaints against the Panches and Sarpanches will be conducted only from one agency i.e. Director, Panchayat. Thereafter, there are the references to the instructions issued by the government in the context of the compliance of the provisions of Section 17A of the 1988 Act as amended by the Act of 2018. As already noticed, in *Charanjit Singh's case (supra)*, these instructions were declared to be bad in law. In fact, on the careful reading of the Constitutional Bench judgment of the Supreme Court in *Vineet Narayan's case (supra)*, it becomes evident that the similar executive instructions issued by the Central Bureau of Investigation were declared bad in law. A Division Bench in *H.C.Arora, Advocate v. State of Punjab and Others (Civil Writ Petition No. 22426 of 2016, decided on 14.12.2016)* while disposing of the writ petition noticed that such instructions were declared bad in law in the judgment passed in *Charanjit Singh's case (supra)*.

11. Keeping in view the aforesaid settled position of law, no further discussion on the instructions is found necessary.

12. Before analyzing the arguments of the learned counsel representing the parties in the context of Section 17-A of the 1988 Act inserted by the Act No.16 of 2018 w.e.f. 26.07.2018, it becomes necessary to examine the same, which reads as under:-

***“17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—
No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is***

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relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.”

13. It is the argument of the learned counsel representing the petitioners in the various writ petitions that the Statute has used all the possible terms to explain the scope of the provision like enquiry or inquiry or investigation. It is contended that no police officer is competent to conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant without previous approval of the

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Rattan Sidhu, Senior Advocate, by referring to the judgment passed in *Yashwant Sinha and Others v. Central Bureau of Investigation Through its Director and Another (2020)2 SCC 338* contends that Section 17-A of the 1988 Act takes within its sweep all the offences covered by the 1988 Act, hence, no police officer is permitted to conduct any enquiry without the previous approval of the competent authority. He also refers to the following judgments:-

- i) *Shri Bani Prasad Chansoriya v. State of M.P. & Others (Criminal Revision No. 1629 of 2022, decided on 09.12.2022);*
- ii) *Kailash Chander Agarwal and Another v. Chota Ram and Another (S.B. Criminal Misc. (Pet.) No. 159 of 2018, decided on 07.04.2020);*
- iii) *C.V.Balan and Others v. State of Kerala (OP (Crl.) No. 510 of 2022, decided on 17.02.2023);*
- iv) *Himanshu Yadav v. State of Rajasthan and Others 2022 SCC Online Raj. 1303.*

14. Mr. V.K.Jindal, Senior Advocate, learned counsel representing the petitioners in the lead case arising from the State of Haryana, relies upon *Sri Hemant Nimbalkar v. State of Karnataka and Others 2021 (2) AIR Karnataka Reporter 629* and *Bhayabhai Gigabhai Sutreja v. State of Gujarat (R/Criminal Misc. Application No. 15407 of 2020, decided on 04.12.2020)* and *State of Rajasthan v. Tejmal Choudhary 2022(2) RCR (Criminal) 200.*

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made an attempt to distinguish the judgment passed in *Ranjodh Singh's case (supra)* while contending that the necessity of protecting the officials of the department and the office bearers is of utmost necessity in order to permit them to carry out the development works in the Panchayats. They made a passionate appeal to this Court, not to permit the officials of the Vigilance Bureau to hold an enquiry or investigate into the offences in the absence of the findings in the departmental enquiry by the Panchayat Department.

17. On the other hand, Mr. Pawan Girdher, learned Additional Advocate General, Haryana, has submitted that protection under Section 17-A of the 1988 Act is confined to the alleged offences which are relateable to any recommendation made or any decision taken by such public servant in discharge of his official functions or duties. He submits that Section 17-A of the 1988 Act is not universal to take in its sweep all the offences triable under the 1988 Act.

18. Similarly, the learned State counsel appearing for the State of Punjab, has also drawn the attention of the Court to the various judgments passed by the High Courts from time to time while interpreting Section 17-A of the 1988 Act to support the argument of the learned State counsel appearing for the State of Haryana.

19. Now, the stage is set to make an endeavour to interpret Section 17-A of the 1988 Act. Before analyzing Section 17-A of the 1988 Act, a few rules of interpretation of the Statutes are required to be kept in mind. Firstly, the Statute must be read as a whole and each word used by the legislature is required to be assigned a meaning so as to give a meaningful definition.

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Secondly, the words in a Statute are used precisely and not loosely. Thirdly, the intention of the legislation ordinarily predominates while interpreting the Statute. The express mention of one thing implies the exclusion of another and express enactments shut the door for further implications. The general words in a Statute must receive the general construction and effort must be made to avoid absurdity. The penal Statutes should be strictly construed/interpreted.

20. Now, applying the first rule, it is evident that Chapter-III of the 1988 Act provides for the punishment relating to the various offence falling in the broader offence of corruption including demand or acceptance of bribe, the payment of bribe taking undue advantage of influence public servant by corrupt or illegal means or by exercise of the personal influence, dishonestly or fraudulently misinterpreting the property entrusted to the public servant and wherever the public servant intentionally enriches himself illicitly during the period of his office, he is guilty of offence.

21. After comprehensive reading and carefully analyzing Section 17-A of the 1988 Act which has been added in Chapter-IV relating to investigation into the cases under the 1988 Act, it is evident that the protection provided to the public servants is with respect to the alleged offences relating to any recommendation made or decision taken by them in discharge of their official functions or duties. The exact phrase used in Section 17-A of the 1988 Act reads “is relatable to any recommendations made or the decision taken by such public servant in discharge of his official functions/duties”. Pre-existence of these two conditions is pivotal to the

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cases, specifically called upon the learned counsel representing the petitioners at the time of hearing to bring their case within the aforesaid expression, however, none of them even made an attempt to bring their case within the four corners of Section 17-A of the 1988 Act. Pre-dominantly, in these cases, the allegations are misappropriation of the public funds dishonestly and intentional enrichment during the period of office in *Shankara Bhat and Others v. State of Kerala and Others 2021(4) Ker L.J. 212*, after analyzing Section 17-A of the 1988 Act, it has been held that the above extracted part of the Section is its most crucial part. The Special Leave Petition against the aforesaid judgment was dismissed by the Supreme Court. Similarly, by a very detailed judgment passed by the Patna High Court in *Rajendra Prasad alias Dr. Rajendra Prasad v. The State of Bihar and Others 2022(2) PLJR 854*, again it has been held that in the absence of the cases of corruption falling within the four corners of Section 17-A of the 1988 Act, the protection available therein shall not be available. Even the Madras High Court in *Dhandapani v. The Vigilance Commissioner, Tamil Nadu Vigilance Commission and Others 2021 (2) LW 638*, the same view was taken. In *Devender Kumar v. Central Bureau of Investigation and Others 2019(1) RCR (Criminal) 791*, the Delhi High Court held that the purpose of Section 17-A of the 1988 Act can be read only to provide protection to the officers/public servants who discharge their official functions and/or duties with diligence, fairly, in an unbiased manner and to the best of their ability and judgment. Moreover, it was further held that before protecting an accused under Section 17-A of the 1988 Act, the

accused is required to prove that his case is covered by the same.

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22. The learned counsel representing the petitioners have placed heavy reliance on the judgment in *Yashwant Sinha's case (supra)* which was passed while deciding the review application. On its careful reading, it is evident that the scope of Section 17-A of the 1988 Act was neither the issue nor debated and hence, not adjudicated. In these circumstances, with greatest respect, the *Yashwant Sinha's case (supra)* does not help the petitioners.

23. The next judgment relied upon is in *Shri Bani Prasad Chansoriya's case (supra)*. While deciding a revision petition against the judgment passed by the Special Judge rejecting an application filed under Section 156(3) of the Cr.P.C., the Court held that the direction under Section 156(3). can also not be issued without prior approval from the competent authority. However, the scope of Section 17-A of the 1988 Act was not the subject matter of consideration before the Court.

24. The next judgment in *Kailash Chander Agarwal's case (supra)* is by the Jodhpur Bench of the Rajasthan High Court. In that case, the Court found that the land, which was the subject matter in dispute, was sold and transferred by the public servants in discharge of their official functions and duties, hence, the protection under Section 17-A of the 1988 Act was available.

25. The next judgment in *C.V.Balan's case (supra)* is not relating to interpretation of Section 17-A of the 1988 Act. The order passed by the Inquiry Commissioner and the Special Judge forwarding the private complaints for investigation under Section 156(3) of the Cr.P.C. were

challenged before the Court.

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26. The next judgment in *Himanshu Yadav's case (supra)* is a case where the Chief Executive Officer, Zila Parishad granted sanction for prosecution in FIR No. 10 of 2020 lodged against the petitioner under Section 7 of the 1988 Act. The Court found that the allegation of demanding illegal gratification relates to the discharge of the official duties of the petitioner, hence, the prior approval was necessary.

27. The next judgment relied upon is in *Sri Hemant Nimbalkar's case (supra)*. In that case, the Court found that the alleged offence fell within the scope of Section 17-A of the 1988 Act.

28. Similarly, in *Bhayabhai Gigabhai Sutreja's case (surpa)*, the Court was considering a prayer for the grant of bail. After *prima facie* finding that the case was covered by Section 17-A of the 1988 Act, the Court granted bail.

29. In *Tejmal Choudhary's case (supra)*, the Supreme Court held that Section 17-A of the 1988 Act is not retrospective. It is evident from the careful reading of the judgment that the scope of Section 17-A of the 1988 Act was not the issue arising in that case.

30. On the careful reading of the judgment passed by the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh and Others (2014) 2 SCC 1*, it is evident that the Supreme Court permits preliminary enquiry in the cases involving the offences of corruption. Rather the Court held that such certain enquiry at pre-FIR stage is not only permissible but desirable.

31. It is pertinent to note here that the Panchayti Institutions are the institutions of democracy and self government at the grass-root level. By the

73rd Amendment of the Constitution, Part-IX, was inserted. Under Article 243(D) of the Constitution, “Panchayat” means “an institution of self-government constituted under Article 243(B) for rural areas”. Lately, there have been consistent efforts of the State to develop the villages. For that purpose, sufficient amount of fund under the various schemes is provided to the gram panchayats which is required to be spent under the overall guidance of the officials of the Rural Panchayat and Development Department. In order to ensure that the funds are spent on the development and growth of the village, it is necessary to provide proper checks and balances. Undoubtedly, the office bearers who are covered by the definition of the public servants are required to be protected from the false complaints, however, at the same time, there is a requirement to bring transparency in use of the public funds. In these circumstances, such public servants cannot be given a special privilege unless so intended by the Statute.

32. Keeping in view the aforesaid discussion, the result is inevitable. All the writ petitions are dismissed with the liberty to the petitioners to take all the objections before the Vigilance Bureau or before the trial Court. Since a larger issue has been decided, hence, there is no requirement to note the facts of each case.

May 25, 2023
“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No

Sr. No.	Case No.	Party’s Name
1.	CWP-4070-2023	Gurmeet Singh Vs. State Of Punjab And Others
2.	CWP-11050-2018	Nirmal Singh Vs. State Of Punjab And Others

Sr. No.	Case No.	Party’s Name
3.	CWP-11249-2020	Amandeep Singh Vs. State Of Punjab And Others
4.	CWP-15953-2018	Tehal Singh Vs. State Of Punjab & Others
5.	CWP-1716-2023	Priyanka Vs. State Of Punjab And Others
6.	CWP-5947-2023	Krishan Pal Singh Vs. State Of Punjab And Others
7.	CWP-6707-2023	Mohinder Singh Vs. State Of Punjab And Others
8.	CWP-6711-2023	Jagtar Singh Vs. State Of Punjab And Others
9.	CWP-7097-2023	Sunil Kumar Vs. State Of Punjab And Others
10.	CWP-8951-2023	Jagjit Singh Vs. State Of Punjab And Others
11.	CWP-8961-2023	Harwinder Singh Vs. State Of Punjab And Others
12.	CWP-17389-2018	Sukhpal Kaur Vs. State Of Punjab And Others
13.	CWP-2141-2023	Baljit Kaur Vs. State Of Punjab And Others
14.	CWP-2455-2023	Manjinder Singh Vs. The State Of Punjab And Others
15.	CWP-2557-2023	Gurmit Kaur And Anr. Vs. State Of Punjab And Others
16.	CWP-2577-2023	Mewa Ram Vs. State Of Punjab And Others
17.	CWP-2646-2023	Mandeep Singh Vs. State Of Punjab And Others
18.	CWP-27097-2021	Kulwant Singh Vs. State Of Punjab And Others
19.	CWP-219-2022	Karnail Singh Vs. State Of Punjab And Others
20.	CWP-2885-2023	Kashmir Singh Vs. State Of Punjab And Others
21.	CWP-30822-2018	Mukhtiar Singh Vs. State Of Punjab And Others
22.	CWP-3207-2023	Swaran Singh Vs. State Of Punjab And Others
23.	CWP-3216-2023	Kuldeep Kaur Vs. State Of Punjab And Others
24.	CWP-3247-2023	Parwinder Kaur Vs. State Of Punjab And Others
25.	CWP-32719-2018	Gurmeet Singh Vs. State Of Punjab And Others
26.	CWP-3314-2023	Mamta Rani Vs. State Of Punjab And Others
27.	CWP-3335-2023	Komal Manjit Singh Vs. State Of Punjab And Others
28.	CWP-36901-2019	Roshan Lal Vs. State Of Punjab And Others
29.	CWP-3720-2023	Surinder Singh Vs. State Of Punjab And Others
30.	CWP-3816-2023	Munshi Ram Vs. State Of Punjab And Others
31.	CWP-3861-2023	Manpreet Kaur Vs. State Of Punjab And Others
32.	CWP-3888-2023	Papi @ Pappi Devi Vs. State Of Punjab And Others
33.	CWP-4026-2023	Jatinder Singh Vs. State Of Punjab And Others
34.	CWP-4389-2023	Malik Singh Vs. State Of Punjab And Others
35.	CWP-4395-2023	Jasvir Kaur Vs. State Of Punjab And Others
36.	CWP-4751-2023	Gurdeep Singh Vs. State Of Punjab And Others
37.	CWP-4788-2023	Kamaljit Kaur Vs. State Of Punjab And Others
38.	CWP-4914-2023	Kulwinder Kaur Vs. State Of Punjab And Others
39.	CWP-5138-2023	Vinod Kumar Vs. State Of Punjab And Others
40.	CWP-5187-2023	Kamlesh Kumari Vs. State Of Punjab And Others
41.	CWP-5286-2023	Ninder Singh Vs. State Of Punjab And Others
42.	CWP-5559-2023	Jaswinder Singh And Another Vs. State Of Punjab And Others
43.	CWP-9112-2022	Rakesh Rani And Others Vs. State Of Punjab And Others

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Sr. No.	Case No.	Party’s Name
44.	CWP-17142-2018	Dharam Singh Vs. State Of Punjab And Others
45.	CWP-6562-2023	Baljeet Singh Vs. State Of Punjab And Others
46.	CWP-9565-2023	Kiran Bala Vs. State Of Haryana And Others
47.	CWP-24875-2018	Mukhtiar Singh Vs. State Of Punjab And Others
48.	CWP-10594-2023	Parkash Kaur And Another Vs. State Of Punjab And Others

(Anil Kshetarpal)
Judge

May 25, 2023
“DK”