

2023:PHHC:042634

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1751-2018 (O&M)
Date of Decision:- 23.3.2023

Gurdev Singh and others ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Lamba and Mr. H.S. Deol, Advocates for the petitioners.

Mr. Luvinder Sofat, DAG, Punjab.

Mr. G.S. Gill and Ms. Pooja Dhingra, Advocates,
for the complainant.

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GURVINDER SINGH GILL, J.

1. The petitioners assail order dated 5.3.2018 passed by the Special Judge, Bathinda vide which the learned Court, while accepting an application under Section 319 Cr.P.C. filed by the complainant, ordered for summoning of the petitioners Gurdev Singh Bhalla (Inspector, Punjab Police), Janak Singh (DSP, Punjab Police), Head Constable Harjinder Singh and Head Constable Rajwant Singh so as to face trial as additional accused in a case arising out of FIR No. 11 dated 11.9.2013 registered under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 and Sections 166, 385 IPC at Police Station Vigilance Bureau, Bathinda.
2. A few facts relevant to notice are that one FIR i.e. FIR No.91 dated 18.12.2012 was registered at Police Station Phul, Bathinda under Sections

380, 406, 409, 420, 457 IPC and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act wherein Dev Raj Miglani (father of the present complainant) was implicated. Subsequently, Dev Raj Miglani’s son (present complainant) and daughter levelled allegations against police officials to the effect that they were demanding illegal gratification to spare their father, namely, Dev Raj Miglani from torture and to release him. Consequently, based on such allegations, the instant FIR No. 11 dated 11.9.2013 came to be registered. After completion of investigation, only one police official namely Head Constable Kikkar Singh was nominated as accused and is facing trial. Statement of the complainant namely Puneet Miglani was recorded before the trial Court as PW-1 and in which he specifically named the petitioners to be also involved in the matter. He specifically deposed that on 3.9.2013, the complainant alongwith his sister went to the office of DSP Janak Singh at Bathinda and wherein police officials/petitioners were present and whereupon father of the complainant namely Dev Raj Miglani was produced and a sum of Rs. 24 lacs was demanded as bribe to spare accused Dev Raj Miglani from torture and to release him.

3. The relevant facts, as the case proceeded further, are briefly stated herein-under chronologically :-

Date	Event
11.9.2013	FIR No. 11 dated 11.9.2013 registered under Sections 166, 385 IPC and Sections 7, 13(2) of the Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, Bathinda.
16.1.2014	Challan presented against Kikkar Singh (Annexure P-6)

10.4.2014	Charge framed against HC Kikkar Singh
26.5.2014	Statement of Puneet was recorded (PW-1)
29.9.2014	First application under Section 319 Cr.P.C. filed by Puneet Miglani.
8.9.2016	Aforesaid application under Section 319 Cr.P.C. filed by complainant Puneet Miglani dismissed
6.10.2016	Puneet filed CRR-3689-2016 before Hon'ble High Court challenging aforesaid order dated 8.9.2016
9.2.2017	Devraj was examined as PW-13 before Trial Court
16.2.2017	Second Application under Section 319 Cr.P.C. filed by Dev Raj Miglani (Annexure P-13).
4.3.2017	Aforesaid second Application under Section 319 Cr.P.C. filed by Dev Raj Miglani was also dismissed.
23.1.2018	CRR-3689-2016 was allowed by Hon'ble High Court and matter remanded back to trial Court for passing fresh order (Annexure P-1)
5.3.2018	Upon matter being remanded, the application under Section 319 Cr.P.C. was considered afresh and was allowed by learned trial Court and petitioners ordered to be summoned as additional accused (Impugned Order).

4. The learned counsel for the petitioners, while assailing impugned order dated 5.3.2018 passed by the Special Judge, Bathinda, mainly on legal issues, has submitted that the same cannot sustain inasmuch as the same has been passed without obtaining necessary sanction to prosecute the petitioners, which is mandated as per terms of Section 19 of the Prevention of Corruption Act, 1988 (hereinafter referred to as '*the Act*').
5. It has been submitted that even if it may be true that the petitioners had either retired or had been transferred from their offices subsequently, still the

Special Court would not be competent to take cognizance, particularly keeping in view the '*Explanation*' to provisions of Section 19(1) of the Act which has been added, by way of amendment, clarifying that sanction is necessary even in cases where a person may not be holding office i.e. on account of superannuation, transfer etc.

6. It has been submitted that the aforesaid newly inserted '*Explanation*', as inserted in the year 2018 by way of amendment, would have retrospective effect as the '*Explanation*' is merely in the nature of clarification of the contents of the principal Section 19 of the Act. It has further been submitted that since it is only recently i.e. on 12.7.2022 that the charges have been framed against the petitioners by the Special Judge, Bathinda, therefore, having regard to the settled position of law that the Court of Sessions/Special Court would take cognizance at the time of considering the question of framing of charges, it is the provisions as amended in the year 2018 which would be applicable at the time of considering the framing of charges on 12.7.2022 i.e. the stage when the cognizance was taken and since the amended provisions mandate the requirement of a sanction, the entire proceedings conducted by the Special Court are nonest and deserve to be quashed.

7. On the other hand, the learned State counsel has submitted that the petitioners cannot seek any protection of the amended provisions of Section 19(1) of the Act particularly as regards the '*Explanation*' to Sub-Section (1) of Section 19 of the Act inasmuch as the newly added '*Explanation*' cannot be treated to be merely explanatory to the provisions already existing in Section 19 of the Act but as a matter of fact, there has been amendment in the

basic provisions of Section 19 itself of the Act by way of substitution of the earlier existing words “*who is employed*” with the words, “*who is employed, or as the case may be, was at the time of commission of alleged offence employed*” in Section 19(1)(a) of the Act.

8. The learned State counsel has submitted that since there has been a substantial change by way of amendments in section 19 of the Act inasmuch as the scope of Section 19 of the Act has been considerably widened, post the amendments w.e.f. 26.7.2018, wherein the former employees i.e. employees who had previously held office, have also been brought within the scope of Section 19 of the Act and have been extended protection. It has been submitted that the said amended provisions certainly cannot be said to operate retrospectively in the absence of any specific provision to this effect in the amended provisions and have to operate prospectively. It has been submitted that while the offences in question had been committed in the year 2013, the trial Court can be said to have taken cognizance on 5.3.2018, i.e. at the stage of considering application under Section 319 Cr.P.C. i.e. prior the amendments which became effective w.e.f. 26.7.2018.
9. This Court has considered rival submissions addressed before this Court.
10. The respective submissions give rise to the following questions, which need to be answered :
 - (i) Whether the “*Explanation*” to sub-section (1) of Section 19 of the Act, inserted vide Prevention of Corruption (AMENDMENT) Act 2018 (w.e.f. 26.7.2018) would have retrospective effect, being merely explanatory to the principal Section 19 of the Act?
 - (ii) Whether a Court, which has summoned an additional accused with the aid of Section 319 Cr.P.C., so as to proceed against him for an

offence under the Prevention of Corruption Act, 1988, can be said to take 'cognizance' on the date when order under Section 319 Cr.P.C. is passed or subsequently on the date when charges are framed against such additional accused?

- (iii) Whether the Court was not competent to take cognizance for want of sanction to prosecute the petitioners?

11. The above framed questions are being examined individually herein-under:

12. **Question No. (i)**

- (i) Whether the "*Explanation*" to sub-section (1) of Section 19 of the Act, inserted vide Prevention of Corruption (AMENDMENT) Act 2018 (w.e.f. 26.6.2018) would have retrospective effect, being merely explanatory to the principal Section 19 of the Act?

The thrust of the argument on behalf of the petitioners is to the effect that the newly inserted '*Explanation*' to Section 19(1) of the Act, being just clarificatory in nature, would have retrospective effect and thus, the petitioners even though retired or transferred would also be covered under the extended protection of Section 19 of the Act, as per said '*Explanation*'. In other words, it is contended that even if the petitioners stood retired or transferred, sanction to prosecute them in terms of amended provisions of Section 19 of the Act was required and the same not having been taken by the prosecution, the entire proceedings need to be set at naught. The learned counsel, in order to hammer forth his aforesaid submission places reliance upon judgement of Hon'ble Supreme Court in Commissioner of Income Tax vs. Ram Kishan Dass 2019(15) SCC 554, wherein insertion of the expression "suo motu" inserted by way of amendment with effect from 1.4.2008 in

Section 142(2-C), of the Income Tax Act, 1961, was interpreted to have retrospective effect, as the amendment was held to be intended to remove an ambiguity and thus clarificatory in nature.

13. In order to appreciate the said contention, a reference to Section 142(2-C) of the Income Tax Act, 1961, and the amendments made therein in 2008 which were the subject matter in cited case, needs to be made. Section 142(2-A) of the Income Tax Act also needs reference, which reads as under:

“**142. (2-A)** If, at any stage of the proceedings before him, the assessing officer, having regard to the nature and complexity of the accounts of the assessee and the interests of the Revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or Commissioner, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of Section 288, nominated by the Chief Commissioner or Commissioner in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the assessing officer may require:

Provided that the assessing officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.”

14. Sub-section (2-C) of Section 142 of the Income Tax Act was, however, amended in 2008. The said provisions, before and after amendments, read as under:

Section 142(2C) Before Amendment	Section 142(2C) After Amendment
“ 142. (2-C) Every report under sub-section (2-A) shall be furnished by the assessee to the assessing officer within such period as may be specified by the assessing officer:	“ 142. (2-C) Every report under sub-section (2-A) shall be furnished by the assessee to the assessing officer within such period as may be specified by the assessing officer:

Provided that the assessing officer may, <u>on an application</u> made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2-A) is received by the assessee.”	Provided that the assessing officer may, <u>suo motu, or on an application</u> made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2-A) is received by the assessee.”
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15. The aforesaid comparison shows that it is the words “*suo moto or*” which have been inserted in the proviso. Said insertion, by literal interpretation would mean that the Assessing Officer has been vested with *suo-moto* powers also whereas earlier he could exercise the same only on an application being filed by the assessee. Hon’ble the Supreme Court in Ram Kishan Dass’s case(supra), while observing that the amendments pertain to the procedural aspect only, held the same to be clarificatory in nature and thus, retrospective. The relevant extracts from judgement rendered in Ram Kishan Dass’s case(supra) are reproduced hereinunder:

“22. In Justice G.P. Singh’s *Principles of Statutory Interpretation* the issue of whether a statutory provision is retrospective has been analysed thus:

“ 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 introduce 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” or “shall be deemed never to have included” 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 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. ...”

(emphasis supplied)

The above extract was cited by this Court (at SCC p. 630, para 19) in *CIT v. Gold Coin Health Food (P) Ltd.* A Constitution Bench of this Court also cited the above extract with approval in *CIT v. Vatika Township (P) Ltd.*”

23. x x x
24. Moreover, there exists a presumption of retrospective application in regard to amendments which are of a procedural nature. This position was stated in *Maxwell on The Interpretation of Statutes*:

“ The general principle, however, seems to be that alterations in procedure are retrospective, unless there be some good reason against it.”

25. X X X
26. X X X

27. For the reasons we have adduced, we have come to the conclusion that the provisions of Section 142(2-C) of the Income Tax Act, 1961, as they stood prior to the amendment which was enacted with effect from 1-4-2008 by the Finance Act, 2008 did not preclude the exercise of jurisdiction and authority by the assessing officer to extend time for the submission of the audit report directed under sub-section (2-A), without an application by the assessee. We hold and declare that the amendment was intended to remove an ambiguity and is clarificatory in nature.
16. Thus it is apparent that Hon'ble the Supreme Court in Ram Kishan Dass's case(supra), while observing that the amendment was intended to remove an ambiguity and is clarificatory in nature, held the same to be retrospective.
17. It is well settled as a general principle that any amendment as carried out would be prospective in nature unless specifically made applicable retrospectively. Section 5 of the General Clauses Act, 1897 (in short the 'General Clauses Act') also throws considerable light on the controversy. Section 5 of the General Clauses Act reads as follows :
- "5. *Coming into operation of enactments.* –
- (1) Where any Central Act is not expressed to come into operation on particular day, then it shall come into operation on the day on which it receives the assent, -
- (a) In the case of a Central Act made before the commencement of the Constitution of the Governor-General and
- (b) In the case of an Act of Parliament of the President.
- (c) Unless the contrary is expressed a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."
18. Hon'ble Apex Court in Anil Kumar Goel Vs. Kishan Chand Kaura 2008(1)RCR(Criminal) 290 : (2007)13 SCC 492 , while discussing the issue of retrospective operation of amendments, held as under :

- “8. All laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations, unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous, effect will have to be given to the provision is question in accordance with its tenor. If the language is not clear then the court has to decide whether, in the light of the surrounding circumstances, retrospective effect should be given to it or not. (See : M/s Punjab Tin Supply Co., Chandigarh etc. etc. v. Central Government and Ors., 1984(1) RCR (Rent) 168.)”
9. There is nothing in the amendment made to Section 142(b) by the Act 55 of 2002 that the same was intended to operate retrospectively. In fact that was not even the stand of the respondent. Obviously, when the complaint was filed on 28.11.1998, the respondent could not have foreseen that in future any amendment providing for extending the period of limitation on sufficient cause being shown would be enacted.”
19. It is well settled that the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary implication. However, a clarificatory amendment might operate retrospectively. The issue as to whether the amendment which has been brought about by the legislature is intended to be clarificatory or to remove an ambiguity in the law must depend upon the context.
20. Thus, the question as regards retrospectivity of newly inserted ‘*Explanation*’ to section 19(1) of the Act is required to be examined bearing the aforesaid broad principles in mind.

21. As per scheme of the Prevention of Corruption Act, no Court can take cognizance of an offence in respect of offences punishable under Sections 7, 11, 13 and 15 committed by a public servant except with the previous sanction of the competent authorities. Section 19 of the Act, which prescribes the said requirement, has undergone several changes on account of amendments carried out by way of Prevention of Corruption (AMENDMENT) Act, 2018 (w.e.f. 26.7.2018). Some of the changes may be noticed while comparing the unamended as well as the amended provisions of Section 19(1)(a)(b) and (c) of the Act :-

UNAMENDED	AMENDED
19. Previous sanction necessary for prosecution.— (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,— (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government; (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office.	19. Previous sanction necessary for prosecution.— (1) No court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 — (a) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government; (b) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office. <i>(emphasis supplied)</i>

22. The aforesaid comparison would indicate that there has been a substantial change in Section 19 of the Act by way of amendment inasmuch as the requirement of a previous sanction has been prescribed even for prosecuting a public servant who may not be holding office on the date when he is sought to be prosecuted though he was holding such office when the offence was committed. The words, “*was at the time of commission of alleged offence employed in connection with.....*” as inserted in provisions of section 19(1)(a) and 19(1)(b) of the amended act are very significant in this regard.
23. An ‘*Explanation*’ was inserted in Section 19(1) of the Act by way of the said amendments in the year 2018, clarifying the widened scope of expression ‘*public servant*’, in context of amended provisions of Sub-section 19(1) of the Act. The ‘*Explanation*’ reads as under :-

“*Explanation.*--For the purposes of sub- section (1), the expression "public servant" includes such person--

- (a) who has ceased to hold the office during which the offence is alleged to have been committed; or
- (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."

(emphasis supplied)

24. Evidently, a significant and substantial change has been brought about by the amended provisions of section 19 of the Act inasmuch as the requirement of a previous sanction for prosecuting a public servant has been made applicable even to former or retired ‘public servants’ and also to those who no longer hold the office which they were holding when offences in question were committed, though such officer may still be in service holding some

other assignment. The significant widened scope of expression '*public servant*', has extended a protective umbrella to an additional category of persons.

25. This Court, somehow, is unable to agree with the contention of the petitioners that the newly inserted '*Explanation*' is merely a clarification of the principal section. As a matter of fact, the principal section itself has undergone a sea change vide amendments of the year 2018 inasmuch as the words, "*who is employed.....*" as existing in Section 19(1) of the Act have been replaced with "*who is employed, or as the case may be, was at the time of commission of alleged offence employed.....*". It is by virtue of the amendments in the principal section 19(1) that one class of public servants i.e. former or retired public servants and also those who no longer hold such office which they were holding when offence was committed but otherwise are still in service in a different capacity, have been extended the protection of immunity from being prosecuted unless there is prior sanction to prosecute them. Thus, it cannot be said that insertion of '*Explanation*' to section 19(1) of the Act is merely explanatory or clarificatory. There was no ambiguity either in the unamended provisions of Section 19(1) of the Act and or is there in the amended provisions.

26. In the cited case i.e. Ram Kishan Dass's case (supra), the amendment in the Income Tax Act as regards obtaining Audit Report at the instance of Assessing Officer also in addition to such report being filed by assessee, was certainly as regards procedural aspect only. Thus, the petitioner cannot take advantage of the amendments in Section 142(2-C) of the Income Tax Act having been held to have retrospective effect in Ram Kishan Dass's case

(supra). In the present case, it is the amended provisions of section 19(1) of the Act which itself have widened the scope of the application of section 19(1) of the Act so as to bring under protective umbrella a class of public servants who were not earlier extended such protection. In the absence of any specific provision of retrospective operation in the amended legislation, the amendment in Section 19(1) of the Act including the 'Explanation' would have prospective effect only i.e. w.e.f. 26.7.2018. Question No. (i) is decided accordingly.

27. **Question No. (ii)**

- (ii) Whether a Court, which has summoned an additional accused with the aid of Section 319 Cr.P.C., so as to proceed against him for an offence under the Prevention of Corruption Act, 1988, can be said to take 'cognizance' on the date when order under Section 319 Cr.P.C. is passed or on the date when charges are framed against such additional accused?

Since the term 'cognizance' has not specifically been defined anywhere in Code of Criminal Procedure, therefore, based on the import of some relevant Sections of the Code and conclusions drawn in various pronouncements, the term "cognizance", may be understood to broadly mean the act of application of mind by the Court for the first time so as to take judicial notice of the suspected commission of offence. Hon'ble Supreme Court, in 2008(2)SCC 492 S.K. Sinha, Chief Enforcement Officer VS. Videocon International Ltd., defined the term "cognizance" in the following words:

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It

merely means - 'become aware of' and when used with reference to a Court or a Judge, it connotes 'to take notice of - judicially'. It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. 'Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a *sine qua non* or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

28. Hon'ble Apex Court in Mrs. Sarah Mathews vs. The Institute of Cardio Vascular Diseases 2014(1) RCR(Criminal) 590, while relying a catena of judgements held as under:

"25. Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons."

29. A Magistrate would take cognizance in terms of Section 190 Cr.P.C under three contingencies viz. (a) upon receiving a complaint of facts which

constitute such offence, or (b) on the basis of police report stating such facts which constitute an offence or upon information received from any person other than police officer, or (c) suo moto when Magistrate acquires that such an offence has been committed. As far as the matter pertaining to cognizance by the Court of Sessions is concerned, Section 193 Cr.P.C. prescribes that unless otherwise provided, a Court of Sessions would take cognizance of any offence only upon the case being committed to it by a Magistrate.

30. As stated above, a Court is said to take cognizance when it applies mind to the case. Upon a case being committed to the Court of Sessions, the Court may simply adjourn the matter to consider framing of charges and as such, it cannot be said that the Court of Sessions has applied mind. However, when the Court actually considers the question regarding framing of charges, it would apprise itself about the facts of the case and also the material that may have been collected by the investigating agency and which is part of the report under Section 173 Cr.P.C. and then take a decision as to whether the same is sufficient to frame charges against the accused or not. Such an exercise would qualify to be termed as application of mind and thus, it can be said that the Court of Sessions takes cognizance when it considers the question of framing of charges.

31. At this juncture, it is also apposite to refer to a very fine distinction regarding the word *cognizance* as existing in Cr.P.C. and also as existing in Section 19 of the Prevention of Corruption Act. While under the Cr.P.C. the cognizance is taken of an offence, the word *cognizance* as used in Section 19 of the Act specifically refers to an offence committed by a public servant. Hon'ble

Apex Court in Dilawar Singh v. Parvinder Singh alias Iqbal Singh and another, 2005(4) RCR (Criminal) 855 (SC), held as under:

“8. The contention raised by learned counsel for the respondent that a Court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence under Section 190 Criminal Procedure Code. The observations made by this Court in Raghubans Dubey v. State of Bihar (supra) were also made in that context. The Prevention of Corruption Act is a special statute and as the preamble shows this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim *Generalia specialibus non derogant* would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See *Venkateshwar Rao v. Govt. of Andhra Pradesh, AIR 1966 Supreme Court 828, State of Bihar v. Yogendra Singh, AIR 1982 Supreme Court 882* and *Maharashtra State Board of Secondary Education v. Paritosh Bhupesh Kumar Sheth, AIR 1984 Supreme Court 1543*). Therefore, the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 Criminal Procedure Code. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 Criminal Procedure Code if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is *sine qua non* for taking cognizance of the offence qua that person.”

32. In the present case, the investigating agency upon conclusion of investigation presented report under Section 173 Cr.P.C. against one accused only namely Head Constable Kikkar Singh and against whom the trial Court framed charges on 10.4.2014, pursuant to framing of charges statement of the complainant Puneet Miglani (PW-1) was recorded and thereafter an application under Section 319 Cr.P.C. was filed. Though, the first as well as the second applications under Cr.P.C. were dismissed by the Special Court but subsequently, the matter was considered afresh in compliance of order

dated 23.1.2018 passed by this Court in CRR 3689-2016 and it was then that the impugned order dated 5.3.2018 came to be passed ordering for summoning of the petitioners so as to face trial as additional accused. Needless to mention, the exercise conducted by the trial Court under Section 319 Cr.P.C. is a conscious exercise wherein the entire facts of the case i.e. the allegations as well as the evidence that may have been led by the prosecution are examined and weighed so as to consider the question as to whether any more accused has also participated in the commission of offence so as to be summoned as an additional accused to face trial. Such order is a speaking order as would also be evident from perusal of the impugned order. It goes without saying that such an order is passed only upon application of mind and is not an order which is passed in a routine or a mechanical manner. Thus, it can safely be said that the Court takes cognizance against an accused when it chooses to summon such person as an additional accused with the aid of Section 319 Cr.P.C. had applied its mind to the facts of the case. Hon'ble Supreme Court in Dilawar Singh's case (supra), held that in the absence of a valid sanction by a competent authority, the Special Judge cannot summon an additional accused under Section 319 Cr.P.C. If obtaining prior sanction has been held to be necessary at the stage of Section 319 Cr.P.C., an analogy can safely be drawn that the Court takes cognizance at the stage of summoning under Section 319 Cr.P.C. Needless to mention that even where an accused is summoned with the aid of Section 319 Cr.P.C. for an offence under the Prevention of Corruption Act, the Court would again be applying its mind at the stage of considering framing of charges against such accused, but the stage of considering Section 319 Cr.P.C. application being earlier in point of time and being the first instance when Court applied its

mind qua such accused, it is the said stage of Section 319 Cr.P.C. when the Court would take cognizance qua such accused. *Question No. (ii)* is answered accordingly.

33. **Question No. (iii)**

Having answered question (i) to the effect that the amendments in Section 19 of the Act cannot be said to be retrospective and that the Court takes cognizance at the stage when it summons an additional accused with the aid of Section 319 Cr.P.C., the relevant date as regards application of Section 19 of the Prevention of Corruption Act would be the date when application under Section 319 Cr.P.C. was decided by the Special Court. It is on 5.3.2018 that the application under Section 319 Cr.P.C. was decided. As on the said date, Section 19 of the Act had not been amended which was amended subsequently w.e.f. 26.7.2018. The scope of Section 19 of the Act as regards requirement of sanction stood widened only after the amendment w.e.f. 26.7.2018. Prior to 26.7.2018, there was no requirement of obtaining a prior sanction to initiate prosecution of a public servant who was no longer holding the office in respect of which offence had been committed. As on 5.3.2018, all the petitioners either stood retired or transferred from the offices in respect of which the offences in question were committed.

34. In this context, a reference may be made to judgment of the Apex Court, in *L. Narayana Swamy Vs. State of Karnataka and others* 2016 (4) R.C.R. (Criminal) 315, wherein one of the specific issues formulated for examination was to the following effect:

“Whether a public servant who is not on the same post and is transferred (whether by way of promotion or otherwise to another post) loses the protection under Section 19 (1) of the

PC Act, although he continues to be a public servant, albeit on a different post?”

Upon considering the judgments rendered in Abhay Singh Chautala vs. CBI 2011(7) SCC 141 and in Parkash Singh Badal and another Vs. State of Punjab and others 2007 (1) SCC 1 it was observed as follows:

“It is also made clear that where the public servant had abused the office which he held in the check up period, but had ceased to hold 'that office' or was holding a different office, then sanction would not be necessary. Likewise, where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction. However, one discerning factor which is to be noted is that in both these cases the accused persons were public servants in the capacity of Member of Legislative Assembly/ by virtue of political office. They were not public servants as Government employees. However, detailed discussion contained in these judgments would indicate that the principle laid down therein would encompass and cover the cases of all public servants, including Government employees who may otherwise be having constitutional protection under the provisions of Article 309 and 311 of the Constitution.”

35. In the present case, while Janak Singh, DSP who superannuated on 30.4.2016 was transferred vide order No. 8677-93/Con. SA-6 dated 17.9.2014 from Vigilance Bureau, Punjab to Maur, Inspector Gurdev Singh Bhalla was transferred vide order No. 7487-90/E-1(1) dated 19.7.2016 from Vigilance Bureau to Bathinda Range and Head Constables Harjinder Singh and Rajwant Singh stood transferred/repatriated from Vigilance Bureau, Bathinda to their parent department vide order No.36937-43/VB/S-1 dated 12.9.2013.

In other words, none of the petitioners was holding office in respect of which the offences were committed. Thus, sanction to prosecute them was not required as on 5.3.2018, when they were summoned with the aid of Section 319 Cr.P.C. and cognizance was taken. Consequently, *Question No. (iii)* is, thus, answered accordingly.

36. Thus, having held that there was no necessity to obtain a sanction in terms of Section 19 of the Act to prosecute the accused in the present case, the impugned order dated 5.3.2018 and also the subsequent proceedings cannot be said to be suffering from any infirmity, particularly when the impugned order is the detailed order passed by the trial Court wherein while noticing the allegations and while considering the evidence led by the prosecution, it has reached to a conclusion that the petitioners also deserve to be proceeded against as additional accused having participated in commission of the offences in question. This Court does not find any infirmity in the impugned order and the same is hereby upheld.
37. The petition is sans merit and is hereby dismissed.

23.3.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No