IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1068 of 2020

Arvind Kumar Singh & Ors.

Vs

The State of West Bengal & Anr.

For the Petitioners	:	Mr. Sekhar Kumar Basu, Sr. Adv., Mr. Rajdeep Mazumder, Mr. Moyukh Mukherjee, Mr. Pritam Roy, Mr. Soewel Bhattacharjee.
For the State	:	Mr. Sudip Ghosh, Mr. Bitasok Banerjee.
For the Opposite Party No. 2	:	None.
Hearing concluded on	:	22.02.2024
Judgment on	:	18.04.2024

<u>Shampa Dutt (Paul), J.:</u>

1. The present revision has been preferred praying for quashing of the proceedings being ACB Police Station Case No. 4/2020 dated 05.03.2020 under Section 7(c) of the Prevention of Corruption Act, 1988 as amended vide Prevention of Corruption (Amendment) Act, 2018 and Sections 409/120B of the Indian Penal Code now pending before the Court of the Learned Additional District and Sessions Judge, Bench II, City Sessions Court, Calcutta (Corresponding to Special Case No. 5 of 2020).

2. The petitioners' no. 2 and 3 herein are the directors of a company named and styled as "Shiv Shakti Sponge Iron Pvt. Ltd.". The petitioner no.1 is an erstwhile director of the said company, which has its office at 238-B, AJC Bose Road, 3rd Floor, Kolkata – 700 020. The said company is involved in the business of manufacturing of sponge iron and trading of iron and steel products.

3. The genesis of the present imbroglio and enmeshment is that:-

> *On 22.09.2012 one Purushottam Prashar, being the Chief Financial Officer of Amit Group of Companies, sent an email dated 22.09.2012 to a company named and styled as "Godrej and Boyce Manufacturing Company Ltd.", a requesting to appoint the said company, namely M/s Shiv Shakti Sponge Iron Ltd. as the authorized sales representative of the brand "Godrej", in accordance to the discussions which took place by and between the parties. On the self-same date, the company named and styled as "Godrej and Boyce Manufacturing Company Ltd.", authorized the said company for supply of almirahs and storage racks of the brand "Godrej" to Sarba Siksha Mission, Nadia District. The Sarba Sikhsha Mission,*

> *was initiated for the purpose of setting up infrastructure of school libraries etc., for the government schools. The aforesaid company named and styled as "Godrej and Boyce Manufacturing Company Ltd.", through its erstwhile authorized representative, had intended to obtain the tender for supply of school racks and almirahs of the brand "Godrej", in the government schools of Nadia District as per the aforesaid mission. Initially the said company namely, "Godrej and Boyce Manufacturing Company Ltd." had made an offer to the District Project Director, SSM, Nadia District, for the tender of the above-mentioned work.*

4. On 24.09.2012, the said company named and styled as "Godrej and Boyce Manufacturing Company Ltd.", sent a letter addressed to the District Project Director, of Sarba Shiksha Mission, stating therein that their offer (which had a validity period of 30 days) has expired and also informed the District Project Director, to contact the said company with regard to any further requirement.

5. The District Project Manager, SSM, Nadia (being the District Magistrate) thereafter issued a letter dated 18.10.2012 to the said company, wherein the said company was required to furnish the rates of 2602 numbers of "Godrej multiflex rack (open type)" and 541 numbers of "Godrej KD plain Almirah".

6. In compliance with the aforesaid letter, the said company through its authorized representative sent an offer letter dated 19.10.2012, to the District Project Director, SSM, Nadia for supply of the aforesaid requirements. The price quoted by the said company was to the tune of Rs. 3,45,15,343.28/-. It is germane to highlight that duty of the said company (being the authorized dealer of Godrej projects), is to procure the aforesaid numbers of racks and almirah of “Godrej” brand, and supply the same to the said schools.

7. The offer made by the said company was accepted and vide Memo no. 1714/SSM dated 31.10.2012, the District Project Director, SSM, Nadia, issued a work order for delivery of 2602 numbers of Godrej multiflex Rack (Open type) and 541 numbers of Godrej KD plain Almirah, to 37 numbers of CLRC constituting of various primary and upper primary schools within. The quantity of the aforesaid items which was supposed to be delivered to each of the said 37 numbers of CLRC consisting of primary and upper primary schools was subsequently modified by the District Project Director, SSM, Nadia, which was informed to the said company vide letter dated 04.01.2013.

8. Soon after obtaining the work order, the said company on the selfsame date, that is 31.10.2012, placed a purchase order with the said company named “Godrej and Boyce Manufacturing Company Ltd.”, for supply of 2602 numbers of Godrej multiflex Rack (Open Type) and 541 numbers of Godrej KD plain Almirah.

9. Vide letter dated 09.01.2013, the said company “Godrej and Boyce Manufacturing Company Ltd.” certified that the said company could supply storage systems of the brand “Godrej” in the State of West Bengal.

10. The said company fulfilled its obligation and executed the work which was allotted by way of the aforesaid work order dated 31.10.2012 issued by the District Project Director. The said company received a majority of the payments for the aforesaid work allotted to them. However, the outstanding amount has till date not been cleared.

11. All of a sudden the authorized representative of the said company, namely, Purushottam Prashar received a notice dated 23.07.2013 from one Amit Biswas, being the Inspector of Police, Anti Corruption Branch, West Bengal, therein directing said Purushottam Prashar to appear on 25.07.2013 at about 11.00 hrs. for the purpose of enquiry in respect of ACB Police Station Preliminary Enquiry number 06/2013 dated 25.06.2013. Purushottam Prashar complied with the said directions.

12. In connection with the aforesaid preliminary enquiry, another notice dated 30.09.2013 was issued by Amit Biswas, being the Inspector of Police, Anti Corruption Branch, West Bengal to the petitioners herein, therein directing them to appear on 03.10.2013. Accordingly, the petitioner no. 3 complied with the directions of the said notice and appeared on 03.10.2013, as well as rendered his cooperation and provided necessary information, which was asked during the course of preliminary enquiry.

13. It was after a gap of almost seven years, that a notice dated 15.06.2020 under Section 91 of the Code of Criminal Procedure was sent by one R.N. Paul, being the Inspector of Police, Anti Corruption Branch Police Station, West Bengal (Investigating Officer) addressed to the “Director of M/s Shiv Shakti Sponge Iron Ltd.”, in respect of ACB PS Case No. 4/20 dated 05.03.2020 under Section 7(c) of the Prevention of Corruption Act, 1988 as amended vide Prevention of Corruption (Amendment) Act, 2018 and Sections 409/120B of the Indian Penal Code, therein directing that a competent official should produce certain documents (as specified in the said notice) on 24.06.2020 at 12.00 hrs.

14. The instant case being ACB PS Case No. 4/20 dated 05.03.2020 under Section 7 (c) of the Prevention of Corruption Act, 1988 as amended vide Prevention of Corruption (Amendment) Act, 2018 and Sections 409/120B of the Indian Penal Code, was lodged on the basis of a written complaint dated 05.03.2020 of one Anujit Biswas, Deputy Superintendent of Police (Law cell), addressed to the Deputy Inspector General of Police, Directorate of Anti Corruption Branch, West Bengal, wherein it was alleged that:-

> *“On 26.04.2013, the Audit Officer submitted his report in respect of unauthorized purchase of Almirah and racks reflecting that the entire process of conferring supply order to the said company was pre-planned game. It was alleged that on the basis of such audit report, the PE No. 06.2013 was registered. It was alleged that the first quotation of procurement of racks and almirah was given by M/s Godrej and Boyce Co. Ltd. on 19.11.2011 through their authorized dealer M/s Garai Enterprise @ Rs 2990/- for racks and Rs. 9990/- for almirah. It was also alleged that thereafter M/s Godrej and Boyce Mfg. Co. Ltd., submitted another quotation on 07.08.2012 through their dealer M/s Eastman at the rate of Rs 5406.51/- for racks and Rs. 12,725.60/- for almirah. It was alleged that the then SSM committee conspired with the said company and purchased the said items at an exorbitant rates (that is racks at the rate of Rs. 8,558.71 and almirah @ Rs 23,635.06 in October , 2012), without following the norms of tenders and it was*

> *allegedly in conspiracy with the directors of M/s Shiv Shakti Sponge Iron Ltd. It was alleged that the SSM, Nadia spent Rs. 3,15,50,697/- to procure Almirah and racks diverting the fund under the head of "Project Management" for the year 2012-2013 without any prior permission from Principle Secretary, School Education Department. It was also alleged that 90 percent of the total expense was made in advance to the said company without keeping any provision of 5 percent of contract price as security deposit. It was thus alleged that the committee violated rule 115.15 of Manual of Financial Management and Procurement, MHRD, Govt. of India. It was also alleged that the Government has been defrauded by over Rs. 2.08 crores by the deliberate action of the said SSM, Nadia in connivance with the directors of M/s Shiv Shakti Sponge Iron Ltd. through alleged criminal conspiracy and criminal breach of trust in the procurement of 541 steel almirah and 2602 steel racks giving pecuniary benefit to M/s Shive Shakti Sponge Iron Ltd."*

15. On the basis of the aforesaid written complaint, the instant case, that is, ACB PS Case No. 4/20 dated 05.03.2020 under Section 7 (c) of the Prevention of Corruption Act, 1988 as amended vide Prevention of Corruption (Amendment) Act, 2018 and Sections 409/120B of the Indian Penal Code, was registered for investigation against one Abhinav Chandra, IAS, Secretary, Planning and Statistics Department, Government of West Bengal, the then DM and DPD, SSM Nadia, one Ashok Kr. Saha, WBCS (Exe.), OSD WBSEDCL, the then ADM(ZP) Nadia, one Asim Kr. Bala being the then DPO, SSM, Nadia and the petitioners herein, who were described as the directors of M/s Shiv Shakti Sponge Iron Ltd.

16. It is stated by the petitioners that, on a bare reading of the first information report, it transpires that, as the instant case has the been registered post 2018, that is on 05.03.2020, it is because of such reason, that the First Information Report discloses that the instant case has been registered as per the amended provisions of the Prevention of Corruption (Amendment) Act, 2018. In this regard it is relevant to state that on the 26th of July, 2018 by way of Prevention of Corruption (Amendment) Act No. 16 of 2018, certain crucial amendments were made to the Prevention of Corruption Act, 1988, as well as certain important sections were also introduced in this regard. Furthermore, the instant case has been registered against the public servants as well as the petitioners herein.

17. It is further submitted that there is a specific bar of any Police Officer to conduct an enquiry or inquiry or investigation without the prior approval from the appropriate authorities, if the allegations fell within the ambit of recommendation made or decision taken by a public servant in discharge of his official duties.

18. It is thus stated that the allegations of the instant case depicts, a decision alleged to have been taken by the public servants in discharge of their official duties, associated with the Sarba Sikhsha Mission. Thus the allegations squarely falls within the purview of the instant section, however, the first information report as well as the written complaint is benefit of any averment, which indicates that the prior approval as enumerated under Section 17A of the Prevention of Corruption Act has been obtained.

19. The petitioners have relied upon the Judgment of the Supreme Court in ***Yashwant Sinha and others vs Central Bureau of Investigation reported in (2020) 2 Supreme Court Cases 338, (Paragraph 116-118).***

20. The petitioners state that Section 7 of the Prevention of Corruption Act has also been amended by way of the Prevention of Corruption (Amendment) Act No. 16 of 2018. It is inexplicable as to how Section 7(c) of the Prevention of Corruption Act is attracted in the instant case, as far as the petitioners herein are concerned.

21. Section 7 of the Prevention of Corruption Act reads as follows:-

> *"7. Any public servant who:–*
> *(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*
> *(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*
> *(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years nut which any extend to seven years and shall also be liable to fine."*

22. Thus on reading of said section 7(c) of the Prevention of Corruption Act, it becomes evident that the said section envisages a scenario where an offence would be committed if any public servant who performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear of such duty in anticipation of or in consequence of accepting an undue advantage.

23. The Written Complaint in this case is dated 05.03.2020 wherein it has been stated that a specific case against (i) Sri Abhinav Chandra, IAS, Secretary. Planning & Statistics Department. Govt. of West Bengal, the then DM and DPD, SSM, Nadia, (ii) Sri Ashok Kr. Saha, WBCS (Exe.), O.S.D., WBSEDCL, the then ADM (ZP), Nadia and (iii) Sri Asim Kr. Bala, WBCS (Exe.), O.S.D., Mass Education Department, Uttarkanya, the then DPO, SSM, Nadia and M/s Shiv Shakti Sponge Iron Ltd. 238B, A.J.C. Bose Road, Kolkata – 700 007 of which Directors are (i) Shri Amit Kumar Singh, (ii) Arjun Singh & (iii) Arvind Kumar Singh may be registered U/s 7(c) of the Prevention of Corruption Act, 1988 as amended vide Prevention of Corruption (Amendment) Act, 2018 & 409/120B of IPC.

24. Written arguments with judgments relied upon has been filed by the petitioners and the State.

25. It is the contention of the petitioners that:-

The registration of the instant first information report being ACB PS Case No. 4/20 dated 05.03.2020 under Section 7(c) of the Prevention of Corruption Act, 1988 as amended vide Prevention of Corruption (Amendment) Act, 2018 and Sections 409/120B of the Indian Penal Code, is untenable in the eyes of law, in view of the requirement envisaged under Section 17A of the Prevention of Corruption Act, introduced by way of the Prevention of Corruption (Amendment) Act, No. 16 of 2018, on the 26th of July, 2018.

26. It is submitted that any enquiry or inquiry or investigation into offences alleged to have been committed by a public servant, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, cannot be undertaken by a police officer without the previous approval.

27. The allegations of the instant case depicts, a decision alleged to have been taken by the public servants in discharge of their official duties, associated with the Sarba Sikhsha Mission. Thus the allegations squarely falls within the purview of the instant section, however, the first information report as well as the written complaint is bereft of any averment which indicated that the prior approval as enumerated under Section 17A of the Prevention of Corruption Act has been obtained, and it is pursuant to such that the case has been registered. In this context it becomes palpable as well as apparent as well as apparent that the investigating agency has failed to comply with the mandatory procedure specified under Section 17A of the Prevention of Corruption Act, and have failed to obtain any prior approval in the manner specified in the said section. The said failure strikes the very root of the instant case, and the instant case becomes void ab initio mundae, that is, if the initiation is unlawful, everything that follows is also illegal. Furthermore, the non compliance to section 17A of the Prevention of Corruption Act prior to registration of the instant case, has led to a situation, where the investigation is lacking any legal sanctity, and as such every exercise undertaken by the investigating agency with regard to investigation is illegal and unwarranted in eyes of law.

28. It is further submitted that the opposite party/State has served the petitioners with a copy of intimation letter being letter no. 15 – P&AR (ACB)/ACB-23/2013 dated 28.02.2020 issued by the Special Secretary Government of West Bengal to Sri R. K. Gupta (I.P.S.) D.G. and I.G.P. Anti Corruption Brunch Government West Bengal thereby intimating that the competent authority had been pleased to accord permission under Section 17A of Prevention of Corruption Act 1988 as (Amended upto date) against the petitioner along with other co accused persons. It is stated that the said letter is a mere intimation and cannot be said to be a sanction as required by the statue under Section 17A of the Prevention of Corruption Act 1988 as (Amended upto date). Therefore the investigating agency does not hold or has brought into record till date any such document which satisfies the statuary requirement under Section 17A of the Prevention of Corruption Act 1988 as (Amended upto date) hence the said letter is a mere intimation of a fact and not the sanction in itself.

29. The judgments relied upon on behalf of the petitioners are:-

(a) Yashwant Sinha & Ors. vs C.B.I. through its Director & Anr., (2020) 2 SCC 338, decided on November 14, 2019, the Supreme Court held:-

> ***"116.*** *In the year 2018, the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as "the 2018 Act", for short) was brought into force on 26-7-2018. Thereunder, Section 17-A, a new section was inserted, which reads as follows:*
>
> *"**17-A. Enquiry or inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties**.—(1) 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 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."

(emphasis supplied)

117. *In terms of Section 17-A, no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent CBI, is done after Section 17-A was inserted. The complaint is dated 4-10-2018. Para 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paras 6 and 7 of the complaint are relevant in the context of Section 17-A, which read as follows:*

"6. We are also aware that recently, Section 17-A of the Act has been brought in by way of an amendment to introduce the requirement of prior permission of the Government for investigation or inquiry under the Prevention of Corruption Act.

7. We are also aware that this will place you in the peculiar situation, of having to ask the accused himself, for *permission to investigate a case against him. We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the Government under Section 17-A of the Prevention of Corruption Act for investigating this offence and under which, "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"."*

(emphasis supplied)

118. *Therefore, the petitioners have filed the complaint fully knowing that Section 17-A constituted a bar to any inquiry or enquiry or investigation unless there was previous approval. In fact, a request is made to at least take the first step of seeking permission under Section 17-A of the 2018 Act. Writ Petition (Criminal) No. 298 of 2018 was filed on 24-10-2018 and the complaint is based on non-registration of the FIR. There is no challenge to Section 17-A. Under the law, as it stood, both on the date of filing the petition and even as of today, Section 17-A continues to be on the statute book and it constitutes a bar to any inquiry or enquiry or investigation. The petitioners themselves, in the complaint, request to seek approval in terms of Section 17-A but when it comes to the relief sought in the writ petition, there was no relief claimed in this behalf."*

(b) Nara Chandrababu Naidu vs The State of Andhra Pradesh & Anr., in Criminal Appeal No. ………… of 2024 (arising out of petition for Special Leave to Appeal (Criminal) No. 12289 of 2023), decided on 16th January, 2024, the Supreme Court held:-

*"**28.** Having considered the different contours of Section 17A, I am of the opinion **that Section 17A would be applicable to the offences under the PC Act as***

amended by the Amendment Act, 2018, and not to the offences existing prior to the said amendment. *Even otherwise,* ***absence of an approval as contemplated in Section 17A for conducting enquiry, inquiry or investigation of the offences alleged to have been committed by a public servant in purported exercise of his official functions or duties, would neither vitiate the proceedings nor would be a ground to quash the proceedings or the FIR registered against such public servant.***

29. *In the instant case,* ***the Appellant having been implicated for the other offences under IPC also, the Special Court was completely within its jurisdiction to pass the remand order in view of the powers conferred upon it under Section 4 and 5 of the PC Act.*** *There was no jurisdictional error committed by the Special Court in passing the impugned order of remand. The impugned judgment and order passed by the High Court also does not suffer from any illegality or infirmity which would warrant interference of this Court.*

34. *A question has also been raised by the appellant as to whether the Special Judge could have passed the remand order in the event the remand was asked for only in respect of alleged commission of the IPC offences. We are apprised in course of hearing that the appellant has been enlarged on bail. Hence, this question need not be addressed by me in this judgment. I, accordingly, dispose of this appeal with the following directions:-*

(i) If an enquiry, inquiry or investigation is intended in respect of a public servant on the allegation of commission of offence under the 1988 Act after Section 17A thereof becomes operational, which is relatable to any recommendation made or decision taken, at least prima facie, in discharge of his official duty, previous approval of the authority postulated in subsection (a) or (b) or (c) of Section 17A of the 1988 Act shall have to be obtained. In absence of such previous approval, the action initiated under the 1988 Act shall be held illegal.

(ii) The appellant cannot be proceeded against for offences under the Prevention of Corruption Act, 1988 as no previous approval of the appropriate authority has been obtained. ***This opinion of this Court, however, shall***

> ***not foreclose the option of the concerned authority in seeking approval in terms of the aforesaid provision. In this case, liberty is preserved for the State to apply for such approval as contained in the said provision.***
>
> *(iii) I decline to interfere with the remand order dated 10.09.2023 as I am of the view that the Special Judge had the jurisdiction to pass such order even if the offences under the 1988 Act could not be invoked at that stage.* ***Lack of approval in terms of Section 17A would not have rendered the entire order of remand non-est.***
>
> ***(iv) The appellant, however, could be proceeded against before the Special Judge for allegations of commission of offences under the Indian Penal Code, 1860 for which also he has been implicated."***

30. **The Hon'ble Apex Court** dealt with the same issue as involved in the instant case and their Lordships Hon'ble Justice ANIRUDDHA BOSE and her Lordship Hon'ble Justice BELA M. TRIVEDI came to divergent views on the interpretation of Sanction 17A of the Prevention of Corruption Act 1988 and their Lordships were pleased to place the entire matter before the Hon'ble Chief Justice of India so that appropriate decision can be taken for Constitution of Larger Bench for adjudication on the point on which contrary opinions have been expressed by Their Lordships.

31. On the other hand the State in its Written Argument has stated that the sanction for registration of a case was received vide letter No. 15 – P & AR (ACB)/ACB-23/2013 Dated 28.02.2020 (A-4) from Personnel & Administrative Reforms Department, Vigilance Cell, Govt. of West

Bengal with reference to ID No. 546/ACB/AGP/C/PE-6/13 Dated 13.12.2013 of Dte of ACB.

32. The Govt. has accorded sanction for registration of criminal case u/s 17A of P.C. Act, 1988 as amended vide P.C. (Amendment) Act, 2018 vide letter No. 15-P & AR (ACB)/ACB-23/2013 Dated 28.02.2020 against (1) Shri Abhinav Chandra, IAS, the then DM, & DPD SSM Nadia, (2) Sri Ashok Kumar Saha, WBCS (Exe.) the then ADM Nadia, (3) Sri Ashim Kumar Bala, WBCS (Exe.), the then DPO SSM, Nadia and (4) Three Directors of M/s Shiv Shakti Sponge Iron Ltd. namely – (i) Amit Kumar Singh,(ii) Sri Arjun Kr.Singh, (iii) Sri Arvind Kr. Singh.

33. On the basis of that letter No.-15 – P & AR(ACB)/ACB-23/2013 Dated 28.02.2020 (A-4), ACB PS Case No. 4/20 dt. 05.03.20 u/s 7(c) of the Prevention of Corruption Act, 1988 as amended vide Prevention of Corruption (Amendment) Act, 2018 and 409/120B IPC has been started (A-5).

34. The relevant materials in this case are as follows:-

i) The alleged incident in this case occurred in the year 2012-2013.

ii) From the letter dated 28.02.2020 being no.15-P&AR(ACB)/ACB-23/2013 issued by the Special Secretary to the Govt. of West Bengal it prima facie appears that the competent authority has accorded permission under Section 17A of the P.C. Act, 1988 as amended in 2018 for the registration of the case against all the accused persons in the year 2020.

iii) The present case has been registered on 05.03.2020 for alleged offence committed in the year 2012-2013, prior to the amendment in the 2018.

iv) **Section 17A(b) of the P.C. Act, lays down:-**

> *"**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.**-(1)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 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) ……………………………*
>
> *(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."***

v) Section 17A(b) of the P.C. Act has been relied upon by the State in support of their contention that the State is the Competent Authority to **accord approval** in case of the accused no. 1 (an IAS Officer) as also in respect of other public servants, as the accused no.1 at the time of the offence was employed/in connection with the affairs of the State of West Bengal as the District Magistrate of its district, Nadia.

Thus the competent authority in this case is the State Government.

vi) The accuseds have been charged for offence punishable under Section 7(c) of the P.C Act.

vii) **Section 7(c) of the P.C. Act, lays down:-**

> *"**7. Offence relating to public servant being bribed. -** Any public servant who,-*
>
> *(a) ....*
>
> *(b) ....*
>
> *(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine."*

In the present case the allegation includes the ingredients required to prima facie constitute the offence alleged as three of the accused persons in this case are public servants. It is also alleged that the offence was committed in collusion with the petitioners. This also prima facie meets the requirement of the said section.

viii) **The present case is under Section 7(c) of the Prevention of Corruption Act, 1988 as amended vide Prevention of Corruption (Amendment) Act, 2018 and Sections 409/120B of the Indian Penal Code.**

Section 197 Cr.P.C. – uses the word 'Sanction'.

Section 17A P.C. Act, 1988 uses the word 'approval'.

35. The Karnataka High Court in ***Smt. Shreeroopa vs The State of Karnataka, WP No. 20132 of 2023, decided on 4th October, 2023,*** held:-

> *"**36.** At this stage, the stark and striking difference between **the granting of a "sanction to prosecute" and "according an approval to investigate" to an Investigating Officer would have to be elaborated.** The grant of "sanction to prosecute" and the "grant of approval to investigate" are two very different concepts and would be governed by completely different parameters. At the stage of seeking sanction to prosecute, the Investigating Officer would have completed the investigation and would also have collected material, which, in his opinion, would prove that the public servant is guilty of the offence(s) alleged against him. In other words, at that stage of seeking sanction to prosecute, the Investigating Officer is well armed and certain that there is material which would establish the guilt of the public servants.*
>
> ***40. To summarize,** the law has conferred a two-fold protection vis-à-vis the public servants for offences under the Act. The first layer of protection is even before an investigation is conducted, where a prior approval is needed under Section 17A of the Act. The second layer of protection is after the completion of investigation, where sanction to prosecute the public servant is required under Section 19 of the Act.*
>
> ***42.** It should also not be forgotten that merely because an approval is accorded to conduct an investigation, the Investigating Officer cannot proceed to prosecute the public servant and he is still required to obtain prior sanction of the Government to prosecute the public servant under Section 19 of the Act.*
>
> ***43.** Section 19 of the Act, in fact, prohibits a Court from taking cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, unless there is prior sanction by the respective Government.*

> ***45.*** *The last proviso to Section 19 of the Act enables the Central Government to prescribe guidelines for the purpose of granting sanction to prosecute a public servant. Similarly, Section 29A of the Act also enables Rules to be framed in the matter of granting sanction to prosecute under Section 19 of the Act. This clearly indicates that the law has made it clear that the granting of sanction to prosecute would have to be guided by Rules or guidelines so that sanctions are not simply granted for requests made by an Investigating Officer.*
>
> ***46.*** *However, in respect of Section 17A of the Act, there is no such proviso or an enabling provision for the Government to frame Rules or guidelines for the purpose of according approval to conduct investigation. This, therefore, indicates that the law accepts that there would be different standards for granting approval to investigate and for granting of a sanction to prosecute, and one cannot be equated with the other.* ***To put it differently, the parameters that are to be applied for according approval to investigate a public servant are not as stringent as the parameters which provide for granting sanction to prosecute a public servant.”***

36. In ***A. Sreenivasa Reddy vs Rakesh Sharma & Anr., in Criminal Appeal No. 2339 of 2023, (arising out of SLP (Criminal) No. 7542 of 2022), decided on 8th August, 2023,*** the Supreme Court held:-

> *“**59.** From the aforesaid, it can be said that there can be no thumb rule that in a prosecution before the court of Special Judge, the previous sanction under Section 19 of the PC Act, 1988 would invariably be the only prerequisite. If the offences on the charge of which, the public servant is expected to be put on trial include the offences other than those punishable under the PC Act, 1988 that is to say under the general law (i.e. IPC), the court is bound to examine, at the time of cognizance and also, if necessary, at subsequent stages (as the case progresses) as to whether there is a necessity of sanction under Section 197 of the CrPC. There is a material difference between the statutory requirements of Section 19 of the PC Act, 1988 on one hand, and Section 197 of the CrPC, on the other.* ***In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant. In cases under the general penal law***

against the public servant, the necessity (or otherwise) of sanction under Section 197 of the CrPC depends on the factual aspects. *The test in the latter case is of the "nexus" between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 of the CrPC on such reasoning. The "safe and sure test", is to ascertain if the omission or neglect to commit the act complained of would have made the public servant answerable for the charge of dereliction of his official duty.* ***He may have acted "in excess of his duty", but if there is a "reasonable connection" between the impugned act and the performance of the official duty, the protective umbrella of Section 197 of the CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts.***

60. *Before, we close this matter, we would like to observe something which, this Court may have to consider sooner or later. The object behind the enactment of Section 19 of the PC Act, 1988 is to protect the public servants from frivolous prosecutions. Take a case wherein, the sanctioning authority at the time of declining to accord sanction under Section 19 of the PC Act, 1988 observes that sanction is being declined because the prosecution against the accused could be termed as frivolous or vexatious. Then, in such circumstances what would be its effect on the trial so far as the IPC offences are concerned? Could it be said that the prosecution for the offences under the PC Act, 1988 is frivolous but the same would not be for the offences under the IPC? We are not going into this question in the present matter as sanction initially was not declined on the ground that the prosecution against the appellant herein is frivolous or vexatious but the same was declined essentially on the ground that what has been alleged is mere procedural irregularities in discharge of essential duties. Whether such procedural irregularities constitute any offence under the IPC or not will be looked into by the trial court. What we have highlighted may be examined by this Court in some other litigation at an appropriate time."*

37. In ***Shadakshari vs The State of Karnataka, in Criminal Appeal No. 256 of 2024, decided on 17.01.2024,*** the Supreme Court held:-

*"**21.** This aspect was also examined by this court in Shambhu Nath Misra (supra). Posing the question as to whether a public servant who allegedly commits the offence of fabrication of records or misappropriation of public funds can be said to have acted in the discharge of his official duties. Observing that it is not the official duty to fabricate records or to misappropriate public funds, this court held as under:*

"5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained."

***22.** Even in D. Devaraja (supra) relied upon by learned counsel for respondent No. 2, this court referred to Ganesh Chandra Jew (supra) and held as follows:*

"35. In State of Orissa v. Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] this Court interpreted the use of the expression "official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty."

23. Thus, this court has been consistent in holding that Section 197 Cr.PC does not extend its protective cover to every act or omission of a public servant while in service. It is restricted to only those acts or omissions which are done by public servants in the discharge of official duties."

38. **In the present case,** the concerned authority conducted One Preliminary Enquiry at Directorate of ACB vide Preliminary Enquiry No. 06/2013, dt. 25.06.2013, on the basis of letter No.-43–P&AR (ACB) dated 27.05.2013 (A-1) issued by the Assistant Secretary to the Govt. of West Bengal, Personnel & Administrative Reforms Department and Vigilance cell.

39. After completion of the enquiry, ACB Report was sent to the Principal Secretary to the Govt. of West Bengal, Personnel & Administrative Reform Department, vide ID No. 546/ACB/AGP/C/PE-6/13 Dated 13.12.2013 (A-2) recommending registration of a case under Prevention of Corruption Act, 1988 (P.C. Act in Short). This letter was issued following the Government Order No. – Vig.-283(SPAR)/2012 Dated 22.11.2012 of Personnel & Administrative Reforms Department (A-3). The present case has also been registered under Sections 409/120B of IPC.

40. Vide the letter no. 15 – P & AR (ACB)/ACB-23/2013 Dated 28.02.2020 (A-4) from Personnel & Administrative Reforms Department, Vigilance Cell, Govt. of West Bengal with reference to ID No. 546/ACB/AGP/C/PE-6/13 Dated 13.12.2013 of Dte of ACB, the **competent authority accorded "approval" to initiate the Investigation in this case on registering a regular case.**

41. The said 'approval' is for initiating the case for investigation and the 'approval' has been given on the basis of the findings of the preliminary enquiry and the materials collected during such enquiry.

42. **The requirement of "sanction" under Section 19 of the P.C. Act will arise only on completion of investigation and at the time of taking cognizance and not at this stage.**

43. As such the provision under Section 17A of the P.C. Act has been duly complied with in this case on the basis of the valid 'Approval' by the competent authority on the basis of a preliminary enquiry and materials before it.

44. The stage for granting of sanction under Section 19 P.C. Act shall arise on completion of investigation and taking cognizance.

45. Accordingly this Court finds no ground to exercise its inherent jurisdiction in the present case, the registration of which has been in compliance of Section 17A of the P.C. Act and thus in accordance with law .

46. **CRR 1068 of 2020 is dismissed.**

47. The investigation in ACB Police Station Case No. 4/2020 dated 05.03.2020 under Section 7(c) of the Prevention of Corruption Act, 1988 as amended vide Prevention of Corruption (Amendment) Act, 2018 and Sections 409/120B of the Indian Penal Code **to proceed in accordance with law.**

48. All connected applications, if any, stand disposed of.

49. Interim order, if any, stands vacated.

50. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

51. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)