Legal Bars of Prosecution of Public Servants

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1(A). **Public Servant** : The word 'Public Servant' has been defined u/s 2(c) of the Prevention Of Corruption Act, 1988.

1(B). **Definition of "public servant" in Sec. 21 IPC not to apply to the definition of "public servant" given in Sec. 2(c) of the P.C. Act, 1988 :** Definition of the word "public servant" given in Sec. 21 of the IPC and in Sec. 2(c) of the P.C. Act, 1988 are substantially different. Interpretation given to Sec. 21 of the IPC has no bearing while interpreting the definition of the word "public servant" given in Sec. 2(c) of the P.C. Act, 1988. See : **Manish Trivedi Vs State of Rajasthan, AIR 2014 SC 648.**

Note : *In the above case of Manish Trivedi, the councilors and Members of the Municipal Board of Banswara, Rajasthan were held to be public servant u/s 2(c) of the P.C. Act, 1988.*

2.1 **Minister or Chief Minister to be Public Servant :** A Chief Minister or a Minister are in the pay of the Government and are, therefore, public servants within the meaning of S. 21(12) of the I.P.C. See : **M. Karunanidhi Vs. Union of India, AIR 1979 SC 898 (Five-Judge Bench).**

2.2 **Governor Competent to grant for prosecution of Chief Minister or Ministers** : Governor is competent to grant sanction for prosecution of Chief Minister or Ministers for offences committed under the P.C. Act, 1988 and in proper cases Governor may act independently of or contrary to the advice of his Council of Ministers in exercise of his discretionary powers under Article 163 of the constitution. See : **M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC 788 (Five-Judge Bench).**

2.3 **<u>Who can grant Sanction for prosecution u/s 19 of the PC Act, 1988 ?</u> :** As per Section 19(2) of the PC Act, 1988 : "Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other Authority, such sanction shall be given by that Government or Authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed". See : **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** *(para 16)*

2.3 **<u>Sanction not required for prosecution of a Minister after his resignation</u> :** No sanction u/s 19 of the P.C. Act, 1988 for prosecution of a Minister, after his resignation, for offences committed by him during his tenure as Minister is required. See : **M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC788 (Five-Judge Bench).**

2.4.1. **<u>Deemed Sanction u/s 19 after three or four months time limit</u> :** The directions issued by the Hon'ble Supreme Court (*in para 56*) in Dr. Subramanaan Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185 are as under **:**

"(a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the concerned authority.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed. But the request for consultation is to be sent in writing within the three months mentioned in (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit.

(c) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit." **Kindly See :**

(i) Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185

(ii) Vineet Narain Vs. Union of India, (1998) 1 SCC 226 (Three-Judge Bench)

Note : *Vineet Narain's case has been followed in Dr. Subramanian Swamy*.

2.4.2. <u>Deemed Sanction u/s 19 after three or four months time limit</u> : *Whether trial court is competent to proceed with the case on the basis of deemed sanction to prosecute the accused, a prosecution sanction is not accorded by the competent authority/State within the period of four months in terms of the direction issued by the Apex Court in Vineet Narayan & Another Vs. Union of India & Another, (1998) 1 SCC 226---Three-Judge Bench ?* In the case noted below where CBI had submitted a charge-sheet to the competent authority in the food-grain scam of UP for grant of prosecution sanction u/s 19 of the P.C. Act, 1988 for offences u/s 409, 420, 467. 468., 120-B IPC and u/s 13(2) of the P.C. Act, 1988 but the sanction for the prosecution was not granted by the competent authority within a period of four months, then relying on two Supreme Court decisions reported in (i) Vineet Narayan & Another Vs. Union of India & Another, (1998) 1 SCC 226 and (ii) Dr. Subramanaan Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185, it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that since the State Government had not taken any decision in regard to sanction of prosecution of the accused on the charge-sheet submitted by the CBI and the four months period fixed for grant of sanction by the Apex Court had already expired, hence the trial court was right in presuming the "Deemed Sanction" and had

rightly issued process to the accused persons by taking cognizance of the offences. See : **Shashikant Prasad Vs. State, 2013 (83) ACC 215 (All)(LB).**

The directions issued by the Hon'ble Supreme Court (in para 56) in **Dr. Subramanaan Swamy Vs. Dr. Manmohan Singh and another,** AIR 2012 SC 1185 are as under **:**

2.5 **Relevant considerations for grant of Sanction & duty of Sanctioning Authority :** The only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The Competent Authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true. See. **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** *(para 31)*

2.5.01 **Duty of prosecution and sanctioning authority :** In the case noted below, the Hon'ble Supreme Court has summarized the role of the prosecution and the sanctioning authority before according sanction u/s 19 of the P.C. Act, 1988 as under **:**

(a). The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b). The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction**.**

(c). The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d). The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material**.**

(e). In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law**.**

See : CBI Vs. Ashok Kumar Aggarwal, 2014 (84) ACC 252 (para 8)

2.5.02.<u>Sanction u/s 19(1) for prosecution not to be granted if the prosecution is simply vexatious</u> : Sanction u/s 19(1) of prosecution cannot be granted if the prosecution is simply vexatious nor the court can issue a positive direction to the sanctioning authority to give sanction for prosecution. See **: Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123.**

2.5(b).<u>Power u/s 19 of the P.C. Act, 1988 of sanction to prosecute cannot be delegated by the competent authority</u> : Power u/s 19 of the P.C. Act, 1988 of sanction to prosecute cannot be delegated by the competent authority. Sanction cannot be granted on the basis of report given by some other officer or authority. See : **Manish Trivedi Vs. State of Rajasthan, AIR 2014 SC 648.**

2.6 <u>Satisfaction of the Sanctioning Authority should be based on material produced</u> : Grant or refusal of sanction is not a quasi judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the Competent Authority before it takes a decision in the matter. What is required to be seen by the Competent Authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investing agency prima facie disclose commission of an offence by a public

servant. If the Competent Authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the Competent Authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail appropriate legal remedy. See**. Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** *(para 27)*

2.6(a). <u>Only prima facie satisfaction of sanctioning authority needed for grant of sanction u/s 19 (1) of the P.C. Act, 1988</u> : Grant of sanction u/s 19(1) of the P.C. Act, 1988 for prosecution is administrative function. Only prima facie satisfaction of the sanctioning authority is needed. See : **State of Maharashtra Vs Mahesh G. Jain, (2013) 8 SCC 199.**

2.7.1 <u>Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988</u> : Relying upon its two earlier decisions reported in (i) State of UP Vs. Paras Nath Singh, (2009) 6 SCC 372 (Three-Judge Bench) and (ii) Army Headquarters Vs. CBI, (2012) 6 SCC 228 and (iii) Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64, it has been held by the Hon'ble Supreme Court that Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988. See : **Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(paras 17 to 22).*

2.7.1(a). <u>Preliminary enquiry necessary before lodging of FIR where a public servant is charged with acts of dishonesty amounting to serious misdemeanour or misconduct:</u> The appellant P. Sirajuddin was a Chief Engineer of the Highways & Rural works, Madras. An FIR against him was lodged for the offences under the Prevention of Corruption Act, 1947. The Hon'ble Supreme Court ruled thus **:** "In our view the procedure adopted against the appellant before

the laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. No doubt when allegations about dishonesty of a person of the appellant's rank were brought to the notice of the Chief Minister it was his duty to direct an enquiry into the matter. The Chief Minister in our view pursued the right course. The High Court was not impressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of a person who was going to benefit by the retirement of the appellant and who was said to be a relation of the Chief Minister. The High Court rightly held that the relationship between the said person and the Chief Minister, if any, was so distant that it could not possibly have influenced him and we are of the same view. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful- validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for someone in authority to take down statements of persons involved in the matter and to examine documents which

have a bearing on the issue involved. It is only thereafter that a charge-sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be resorted to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report." See : **P. Sirajuddin Vs. State of Madras, AIR 1971 SC 520** *(para 17)*.

2.7.2(a).<u>Sanction for prosecution of public servant for offences u/s 420, 409, 467, 468, 471 IPC not required</u> : Sanction for prosecution of public servant for offences u/s 420, 409, 467, 468, 471 IPC not required. See : **Chandan Kumar Basu Vs. State of Bihar, 2014 (86) ACC 856 (SC).**

2.7.2. <u>Stage of raising plea of sanction</u>--- Interpreting the provisions u/s. 196, 197, 156, 196(1-A) Cr.P.C., it has been held by the Supreme Court that the plea of sanction can be raised at the time of taking cognizance of the offence or any time thereafter. But the plea of sanction cannot be raised or Sec. 197 Cr.P.C. is not attracted at the stage of registration of FIR, investigation, arrest, remand of the accused u/s. 167 Cr.P.C. or submission of the police report u/s. 173(2) Cr.P.C. When a case is under IPC and PC Act, 1947, question as to need of sanction u/s. 197 Cr.P.C. not necessarily to be raised as soon as the complaint is lodged. It can be raised at any stage and from stage to stage. If the cognizance of the offence has been taken without sanction, the plea of want of sanction can be raised by the accused after the commitment of the case and when the accused are called upon to address the court u/s. 227 and 228 Cr.P.C. See---

1. **State of Karnataka vs. Pastor P. Raju, AIR 2006 SC 2825**
2. **K. Kalimuthu vs. State by DSP, 2005 (3) SCJ 682**
3. **Birendra K. Singh v. State of Bihar, 2000 (4) ACC 653 (SC)**

2.7.3. **Court may when defer to decide the question of sanction u/s 197 CrPC at a later stage of the case ?** ---In a case where ex facie no order of sanction has been issued when it is admittedly a prerequisite for taking cognizance of the offences or where such an order apparently has been passed by the authority not competent therefor, the court may take note thereof at the outset. But where the validity or otherwise of an order of sanction is required to be considered having regard to the facts and circumstances of the case and furthermore when a contention has to be gone into as to whether the act alleged against the accused has any direct nexus with the discharge of his official act, it may be permissible in a given situation for the court to examine the said question at a later stage. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294** (para 38).

2.7.4. **Stage of necessity of sanction in complaint case :** In the case noted below, the accused, a police officer, had conducted a search without warrant and Magistrate had taken cognizance against him of the offences u/s 342, 389, 469, 471, 120-B IPC without sanction for prosecution u/s 197 CrPC. The Hon'ble Supreme Court held that in the above case, sanction u/s 197 CrPC for prosecution of the police officer was necessary. Protection of Section 197 CrPC is available to a public servant when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable Act. Therefore, the concept of Section 197 CrPC does not get immediately attracted on institution of the complaint case. The test to determine whether omission or neglect to do that act would have brought on the charge of dereliction of his official duty. See :

(i) Rakesh Kumar Mishra Vs. State of Bihar (2006) 1 SCC 557 *(paras 6 & 13)*

(ii) Center for Public Interest Litigation Vs. Union of India, AIR 2005 SC 4413.

2.8 **Public servant & sanction**--- A public servant cannot be prosecuted for acts done in connection with his official duty. See--- **Jaya Singh vs. K.K. Velayutham, 2006 (55) ACC 805 (SC).**

2.9 **Special Judge under P.C. Act, 1988 competent to pass order upon application u/s. 156(3) Cr.P.C.**---A Special Judge for Prevention of Corruption is deemed to be a Magistrate under Section 5(4) of the Prevention of Corruption Act, 1988 and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options : he may take cognizance of the offence under Section 190 CrPC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) CrPC. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) CrPC. See : **Anil Kumar & Others Vs. M.K. Aiyappa and Another, (2013) 10 SCC 705** *(para 16)*.

2.10 **Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988 :** Relying upon its two earlier decisions reported in (i) State of UP Vs. Paras Nath Singh, (2009) 6 SCC 372 (Three-Judge Bench) and (ii) Army Headquarters Vs. CBI, (2012) 6 SCC 228 and (iii) Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64, it has been held by the Hon'ble Supreme Court that Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988. See : **Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(paras 17 to 22)*.

2.11 **Special Judge under P.C. Act, 1988 can order registration of FIR and investigation thereof u/s 156(3) Cr.P.C.** : Special Judge under P.C. Act, 1988 is empowered to grant an application u/s. 156(3) Cr.P.C. involving offences under the P.C. Act, 1988 and under IPC. He can also take cognizance on a complaint by private person. See--- **Mahipal vs. State of U.P., 2008 (63) ACC 692 (All).**

2.12 **Special Judge under P.C. Act, 1988 competent to pass order upon application u/s. 156(3) CrPC** ---A Special Judge for Prevention of Corruption is deemed to be a Magistrate under Section 5(4) of the Prevention of Corruption Act, 1988 and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options : he may take cognizance of the offence under Section 190 CrPC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) CrPC. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) CrPC. See : **Anil Kumar & Others Vs. M.K. Aiyappa and Another, (2013) 10 SCC 705** *(para 16)*.

2.13 **Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988.**---Relying upon its two earlier decisions reported in (i) State of UP Vs. Paras Nath Singh, (2009) 6 SCC 372 (Three-Judge Bench) and (ii) Army Headquarters Vs. CBI, (2012) 6 SCC 228 and (iii) Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64, it has been held by the Hon'ble Supreme Court that Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988. See : **Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(paras 17 to 22).*

2.14 **Special Judge or Magistrate to apply his mind before ordering registration of FIR u/s 156(3) CrPC** **:** *"The Scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Masksud Saiyad Case (Maksud Saiyad Vs. State of Gujarat, (2008) 5 SCC 668) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."* **See : Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(para 11).*

2.15 **Power u/s 156(3) to be sparingly exercised**--- Power u/s. 156(3) Cr.P.C. should be exercised sparingly when there is something unusual and extra ordinary like miscarriage of justice. See---

1. **Nathulal Gangwar vs. State of U.P., 2008 (61) ACC 792 (All)**

2. **Sukhwasi vs. State of U.P., 2007 (59) ACC 739 (All—D.B.)**

2.16.1.<u>Sanction u/s 197 CrPC not required when sanction u/s 19 of the PC Act, 1988 has already been granted</u> : A Full Bench of the Hon'ble Allahabad High Court has held as under :

(i) For prosecution under PC Act, 1988, once sanction u/s 19 of the said Act is granted, there is no necessity for obtaining further sanction u/s 197 of the CrPC.

(ii) Where a public servant is sought to be prosecuted under the PC Act, 1988 read with Section 120-B IPC and sanction u/s 19 of the PC Act, 1988 has been granted, it is not at all required to obtain sanction u/s 197 CrPC from the State Government or any other authority merely because the public servant is also charged u/s 120-B IPC

(iii) The offences under the PC Act, 1988 as well as charge of criminal conspiracy cannot be said to constitute "acts in discharge of official duty". See….**Full Bench Judgment dated 25.01.2006 of the Hon'ble Allahabad High Court delivered in Criminal Revision No. 22882/2004, Smt. Neera Yadav Vs. CBI (Bharat Sangh).**

2.16.2.<u>Authority competent to grant sanction u/s 19 of the P.C. Act, 1988 can also grant sanction u/s 197 CrPC</u> : Sanction required under Section 197 CrPC and sanction required under the 1988 Act stand on different footings. Whereas sanction under the Penal Code in terms of the Code of Criminal Procedure is required to be granted by the State; under the 1988 Act it can be granted also by the authorities specified in Section 19 thereof. It is not in dispute that the Deputy Inspector General of Police was the competent authority for grant of sanction as against the respondent R in terms of the provisions of the 1988 Act. The State, thus, could not have interfered with that part of the said order whereby requisite sanction had been granted under the 1988 Act. The contention to the effect that the order of sanction passed by the Deputy Inspector General of Police was a composite one and, thus, the State could cancel the same, is unacceptable. Offences under the Penal Code and offences under the 1988 Act are different and

distinct. On the face of the allegations made against R, they do not have any immediate or proximate connection. The test which is required to be applied in such a case is as to whether the offences for one reason or the other punishable under the Penal Code are also required to be proved in relation to offences punishable under the 1988 Act. If the answer to the said question is rendered in the negative, the same test can be applied in relation to a matter of sanction. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294** *(paras 11 & 12).*

2.16.3. **Test for necessity of composite sanction u/s 19 of the P.C. Act, 1988 and u/s 197 CrPC also** : Test to determine for sanction order to amount to a composite order, there must be an immediate or proximate connection between the P.C. Act and the IPC offences for which accused is charged. The test to be applied in such a case would be whether the offences under IPC are also required to be prove in relation to the offences under the P.C. Act, 1988. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294.**

2.17. **Section 197 CrPC when attracted ?** : The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for any thing done by them in the discharge of their official duties without rescannable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. But before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to this question is in the

affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. See : **Center for Public Interest Litigation & Another Vs. Union of India & Another, AIR 2005 SC 4413 (Three-Judge Bench).**

2.18. **<u>Sanction u/s 197 CrPC required only when the offence committed is attributable to or has direct nexus with the official duty of the public servant</u> :** Whereas an order of sanction in terms of Section 197 CrPC is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294** *(para 33).*

3. **<u>Corporators not public servant</u>**:- Councilors of Municipal Corporation and Members of Municipal Council are not public servants for purposes of P.C. Act, 1947. See

(i) **State of Tamil Nadu V. T. Thulasingam and other, AIR 1995 S.C. 1314.**

(ii) Ramesh Balkrishna Kulkarni V. State of Maharashtra, AIR 1985 SC 1655

4. **P.C. Act, 1947 to apply to Supreme Court and High Court Judges…..** The Judges are also covered within the expression "Public Servant" u/s 2(c) (iv) of the P.C. Act 1988 and the Act is applicable to them also. See **K. Veeraswami V. Union of India and others, (1991) 3 SCC 655 (Five Judge Bench)**

5. **Meaning of "Gratification" …….** Interpreting the provisions of S. 7 and 20(1) of the P.C. Act, 1988, it has been held by the Supreme Court that the word "gratification" must be understood to m1ean any payment for giving satisfaction to the public servant who receives it and not reward. The fact that the public servant is found in possession of currency notes smeared with **phenolphthalein** is sufficient to draw legal presumption u/s 7 & 20(1) of the P.C. Act, 1988 and the prosecution need not further prove that money was paid to public servant. See **Madhukar Bhaskarrao Joshi V. State of Maharashtra, AIR 2001 S.C. 147.**

6. **Stage of presumption u/s 4 of P.C. Act, 1947 :** It cannot be said that the presumption under S. 4 of the Prevention of Corruption Act 1947 applies only after a charge is framed against an accused. The presumption is applicable also at the stage when the court is considering the question whether a charge should be framed or not. When the Court is considering under S. 245(1) of the Cr.P.**C.** whether any case has been made out against the accused which if unrebutted would warrant his conviction, it cannot brush aside the presumption under S. 4 of the Prevention of Corruption Act, 1947. See **R.S. Nayak V. A.R. Antulay, AIR 1986 S. C. 2045.**

7. **Presumption u/s 4 & 5 of the P.C. Act, 1947 is rebuttable:** In case of offence of accepting bribe , presumption against the accused u/s 4&5(1)(d) and (2) of the

P.C. Act 1947 is rebuttable. See **M. Sundermoorty v. State of Tamil Nadu AIR1990 S.C.1269**

8. **Burden on prosecution to prove charge of corruption under P.C. Act, 1947:-** An analysis of Section 5 (1)(e) of the Act, 1947 which corresponds to S. 13 (1)(e) of the new Act of 1988 shows that it is not the mere acquisition of property that constitutes an offence under the provisions of the Act but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law. See **M. Krishna Reddy V. State Deputy Superintendent of Police, Hyderabad, AIR 1993 S.C. 313.**

9. **Ingredients to be proved for conviction u/s 13(1)(e) of the P.C. Act, 1988 :** To substantiate a charge u/s 13(1)(e) of the P.C. Act 1988, the prosecution must prove the following ingredients ……

(i) the prosecution must prove that the accused is a public servant;

(ii) the nature and extent of the pecuniary resources or property which are found in his possession;

(iii) it must be proved as to what were his known sources of income i.e. known to the prosecution;

(iv) it must prove quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income. See : **M. Krishna Reddy Vs. State, Deputy Superintendent of Police, Hyderabad, AIR 1993 SC 313.**

10(A).Mere recovery of tainted money not sufficient to record conviction : Mere recovery of tainted money is not sufficient to record conviction for offence u/s 7 of the P.C. Act, 1988 unless there is evidence that bribe was demanded or money was paid voluntarily as bribe. In the absence of any evidence of demand and acceptance

of amount as illegal gratification recovery would not alone be a ground to convict accuse. See : **Vinod Kumar Vs. State of Punjab. (2015) 3 SCC 220.**

10(B).<u>Burden of proving innocence on trapped accused in case of recovery:-</u> Where a Sub-Inspector of Excise was trapped taking gratification and Rs. 50,000/- was recovered from his possession, it has been held by the Supreme Court that the burden to prove his innocence lay on the accused himself u/s 161 of the I.P.C. and u/s 5(1)(d) r/w Section 5(2) of the P.C. Act. See **B. Hanumantha Rao V. State of A.P., 1992(1) Crimes 1278 (SC).**

11. <u>Trap witness not necessarily to be independent:-</u> Where the accused/Government Doctor was convicted for demanding and accepting illegal gratification u/s 5(1)(d) of the P.C. Act 1947 on the basis of oral evidence corroborated by circumstantial evidence consistent with the guilt of the accused and not with his innocence, it has been held by the Supreme Court that the fact that the witnesses of trap where not independent is immaterial. See **State of U.P. V. Dr. G.K. Ghosh, AIR 1984 S.C. 1453 (Three Judge Bench).**

12. <u>Trap without sanction illegal</u> …… Where a lineman of Electricity Board had demanded illicit money from consumer and trap was laid by Police Inspector on earlier two occasions with prior permission of Judicial Magistrate but the accused did not turn up and then the trap laid down on third occasion by the Police Inspector was without prior permission of the Judicial Magistrate, the same was held illegal. See **Vishnu Kondaji Jadhav V. State of Maharashtra, AIR 1994 SC 1670.**

13<u>. No Stay of trial under P.C. Act, 1988:-</u> Trial of public servant for corruption charges under P.C. Act 1988 cannot be stayed by High Court by use of any power including inherent jurisdiction u/s 482 Cr.P.C. See : **Satya Narayan Sharma V. State of Rajasthan, AIR 2001 S.C. 2856.**

14(A).<u>Sanction against retired public servant not required</u> : If the public servant has ceased to be a public servant on the date of cognizance of the offence by the court, sanction for his prosecution is not required. See. **R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench).**

14(B). <u>Sanction for prosecution of retired public servant not required:-</u> If the alleged act of corruption was committed by the Minister during his tenure as such Minister, sanction u/s 19 of the P.C. Act 1947 for his prosecution after he ceased to be a Minister was not required. See---

(i) M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC788 (Five-Judge Bench)

(ii) **Habibulla Khan Vs. State of Orissa, AIR 1995 SC 1123.**

14(C). <u>Prior Sanction for prosecution of retired public servant not necessary</u> : See : The observations of the Hon'ble Supreme Court (in para 16) in **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** are thus : "Clauses (a) and (b) of sub-section (1) specifically provide that in case of a person who is employed and is not removable from his office by the Central Government or the State Government, as the case may be, sanction to prosecute is required to be obtained either from the Central Government or the State Government. The emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In case where the person is not holding the said office as he might have retired, superannuated, been discharged or dismissed then the question of removing would not arise. Admittedly, when the alleged offence was committed, the petitioner was appointed by the Central Government. He demitted his office after completion of five years' tenure. Therefore, at the

relevant time when the charge-sheet was filed, the petitioner was not holding the office of the Chairman of Goa Ship-yard Ltd. Hence, there is no question of obtaining any previous sanction of the Central Government."

(i) Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185 *(para 16)*

(ii) R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench)

(iii) Balakrishnanan Ravi Menon Vs. Union of India, (2007) 1 SCC 45.

(iv) Prakash Singh Badal Vs. State of Punjab, AIR 2007 SC 1274

(v) Habibullsa Khan Vs. State of Orissa, AIR 1995 SC 1124

(vi) State of H.P. Vs. M.P. Gupta, AIR 2004 SC 730

Note : Cases noted at (ii) to (vi) have been relied on in Dr. Subramanian Swamy's case.

14(D).<u>Sanction not required for prosecution of a Minister after his resignation</u> : No sanction u/s 19 of the P.C. Act, 1988 for prosecution of a Minister, after his resignation, for offences committed by him during his tenure as Minister is required. See.... **M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC788 (Five-Judge Bench)**

14(E).<u>Sanction for prosecution of a retired public servant is essential u/s 197 CrPC but not for offences under P.C. Act, 1947 or P.C. Act, 1988</u> : Necessity of obtaining sanction u/s 197 CrPC for prosecution of a retire public servant is must. But an accused facing prosecution for offences under the P.C. Act, 1947 or the P.C. Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences. The correct legal position, therefore, is that an accused facing prosecution for offences under the old P.C. Act, 1947 or the new P.C. Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences.

But the position is different in cases where Section 197 CrPC has application. See : **Rakesh Kumar Mishra Vs. State of Bihar, (2006) 1 SCC 557** *(paras 16, 17, 18 & 21)*

14(F). <u>Sanction u/s 19 of P.C Act when not required?</u> ..... Where the public servants in the State of U.P were found to have committed offenses in a planned, deliberate and intentional manner to usurp public fund for their own vested interests in relation to foodgrains scam, it has been held that such indulgence in corrupt practice by public servants is their private conducts and for that they can not claim protection u/s 19 of the P.C Act, 1988 and no sanction for their prosecution is required. See : **Vishwa Nath Chaturvedi Vs. Union of India & Others, 2011 (2) ALJ 370 (All)(Lucknow Bench)(DB).**

15(A). <u>Error in sanction when not material</u> --- In the absence of anything to show that the error or irregularity in sanction u/s 19 of the P.C Act, 1988 has caused failure of justice and once cognizance has been taken, it can not be said that cognizance has been taken on invalid police report. See.... **Ashok Tshering Bhutia Vs. State of Sikkim, 2011 CrLJ 1770 (SC)**

14(F). <u>Retired Public Servant & Sec. 197 CrPC</u>---If the accused public servant had ceased to be a public servant on the date when the court took cognizance of the offences under the P.C. Act, Section 197 Cr.P.C. is not attracted. See

(i) **State of Orissa V. Ganesh Chandra Jew, (2004) 8 SCC 40.**

(ii) State of Himachal Pradesh V. M.P. Gupta (2004) 2 SCC 349

(iii) S.K. Zutshi V. Sri Bimal Debnath, 2004 (50) ACC 198 (SC)

14(G).<u>Sanction when public servant holding more than one public office</u> : Where the public servant was holding more than one public office and the question of sanction for misusing or abusing one of his public offices arose, it has been held

by the Hon'ble Supreme Court that sanction of authority competent to remove him from office allegedly misused or abused alone is necessary and not of all competent authorities. See : **R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench).**

15(A-1) <u>Stage of sanction u/s 197 CrPC</u> : In a case of trial of accused for offences u/s 18 (a) (i) read with Sec. 27, 27-A, 17-C of the Drugs & Cosmetics Act, 1940, it has been held by the Supreme Court that the question of sanction u/s 197 Cr PC for prosecution should be left open to be decided by the trial judge at the end of the trial. See--- **State of Maharashtra Vs. Deva Hari Deva Singh, 2009 (64) ACC 117 (SC).**

15(A-2) <u>Stage of sanction u/s 197 CrPC</u> : Question of validity of Sanction u/s 19 of the P.C. Act, 1988 can be raised at an earlier stage of proceedings. After the order of remand passed by the High Court, the Special Judge acted upon and entertained the matter. See **: CBI Vs. Ashok Kumar Aggarwal, 2014 (84) ACC 252 (SC).**

15(B). <u>Stage of sanction u/s 19 of the PC Act, 1988</u> : Necessity of grant of sanction u/s 19 of the PC Act, 1988 is required not only at the stage of taking cognizance of the offence under the Act but also at the stages before it. See : Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185 *(paras 19, 40 & 43)*

16(A).<u>Sanction of Prosecution without application of mind</u>….. Where the accused public servant/Pharmacist was prosecuted and convicted for offences u/s 161 I.P.C. and Sec. 5/2 of the P.C. Act 1947 but there was no application of mind by the sanctioning authority, the conviction was set aside on the ground of non-application of mind before according sanction by the sanctioning authority. Order granting sanction should be demonstrative of fact of proper application of mind.

The sanctioning authority must judge whether the public servant should receive the protection under the P.C. Act 1988 or not. See--

(i) **State of Karnataka V. Ameer Jan, 2007 (59) ACC 811 (SC)**

(ii) **Bishambhar Dayal Srivastava V. State of U.P., 1994(1) Crimes, 712 (All)**

(iii) **Ramesh Lal Jain v. Naginder Singh Rana,(2006)1 SCC 294**

(iv) **State of H.P. vs. Nishant Sareen, 2011 (72) ACC 423 (SC).**

16(B). <u>Question of validity of Sanction order can be raised during trial</u> : In a case of trial of accuse under PC Act, 1988, it has been held by the Hon'ble Supreme Court that the question of validity of sanction order passed by the sanctioning authority u/s 19 of the PC Act, 1988 can be raised during the trial of the case. See….**Dinesh Kumar Vs. Chairman, Airport Authority of India & another, AIR 2012 SC 858.**

17. **<u>Sanction subsequent to discharge of accused</u>**…. If the accused was discharged for want of sanction (under POTA), court can proceed subsequent to obtaining sanction. See **Balbir Singh V. State of Delhi, 2007 (59) ACC 267 (SC).**

18. **<u>Sanction by incompetent authority</u>**…. Sanction granted by an officer not competent to do so is a nullity. If the officer granting sanction was not conferred the delegated powers of the sanctioning authority, the same is nullity. Sanction must be granted by an officer competent to remove the accused from office. See **State Inspector of Police V. Surya Sankaram Karri, 2006 (46) AIC 716 (SC).**

19. <u>Permission for investigation</u> ……. Where on three occasions there was demand of money and each constituted an offence by itself to investigate for which permission for investigation was necessary under section17 and on the third occasion the Inspector had failed to take the permission under section17 which is mandatory before investigation is launched, the accused appellant is entitled to succeed. See **Vishnu Kondaji Jadhav v. State of Maharashtra, AIR 1994 SC 1670.**

20. Sanction order to be speaking …. When the sanction order for prosecution of the accused under the P.C. Act is eloquent and speaks for itself, it is valid. See **C.S. Krishnamurthy V. State of Karnataka, 2005(3) SCJ 660**

21. Abetment of Offence under P.C. Act, 1988 also punishable…. Where the co-accused had played significant role in negotiating on the figure of amount and having notes exchanged at the dictate of the accused Sub-Inspector of Police for terminating the criminal proceedings during the investigation, it has been held by the Supreme Court that the co-accused had substantially abetted the crime under the P.C. Act, 1988 and he was also liable for conviction and sentence along with the guilty public servant/Sub-Inspector of Police. See **Rambhau and another V. State of Maharashtra, AIR 2001 SC 2120.**

22. No sanction required for offence u/s. 12 of the P.C. Act, 1988--- Abetment of any offence punishable u/s. 7 or 11 is in itself a distinct offence. Sec. 19 of the P.C. Act, 1988 specifically omits Sec. 12 from its purview. Courts do not take cognizance of an offence punishable u/s. 7, 10, 11, 13, 15 alleged to have been committed by a public servant except with the previous sanction of the government. No such sanction is required in cases of offence punishable u/s. 12 of the P.C. Act, 1988. See--- **State Through CBI vs. Parmeshwaran Subramani, 2009 (67) ACC 310 (SC)**

23. Relevant date for sanction of prosecution …. The relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Sec. 6 of the P.C. Act 1947 is the date on which the Court is called upon to take cognizance of the offence of which he is accused. See **R.S. Nayak V. A.R. Antulay, AIR 1984 S.C. 684. (Five Judge Bench)**

24. Court of Special Judge constituted u/s 3 & 4 of the P.C. Act 1988 alone to try the cases…. A special court constituted under the P.C. Act 1988 alone is competent to try the offence under the Act. See **R.S. Nayak V. A.R. Antulay, AIR 1984 S.C. 684. (Five Judge Bench)**

25. Fake T.A. Bill and prosecution therefor…… Travelling allowance is not a source of income to the Government Servant but only a compensation to meet his expenses. However, it is open to the Government Servant to lead evidence to show that he had in fact saved something out of TA. The question of automatically considering entire TA as a source of income does not arise; See **R. Janakiram V. State, represented by Inspector of Police, CBI, SPE, Madras, (2006) 1 SCC 697.**

26. No leniency in sentence to corrupt public servants ….. There can be no leniency in awarding penalty to corrupt public servants. The corruption by public servants has become gigantic problem. Large scale corruption retards the nation building activities and every one has to suffer on that court. The efficiency in public service would improve only when the public servant does his duty truthfully and honestly. **State of Madhya Pradesh V. Shambhu Dayal Nagar, (2006) 8 SCC 693.**

27. No leniency in sentence on ground of long pendency of case …. The fact that the case is pending before Court since long time cannot be a special ground for reducing the minimum sentence awardable under the P.C. Act 1988. See **Madhukar Bhaskarrao V. State of Maharashtra, AIR 2001 SC 147.**

28. Sec. 409 IPC & PC Act--- By virtue of Sec. 23 of the General Clauses Act, 1897, the accused can be convicted and punished for the offence u/s. 5(2) of the PC Act despite acquittal for the offence u/s. 409 IPC even if the accused was prosecuted in the same trial for the two offences named above. See--- **State of M.P. vs. Veereshwar Rao Agnihotri, AIR 1957 SC 592**

29. Departmental enquiry & criminal trial can go on simultaneously--- Where a public servant was being tried for offence u/s. 13 of the P.C. Act, 1988 and a departmental enquiry was also going on against him in respect of the same act, it has been held by the Supreme Court that the departmental enquiry and the criminal trial can go on simultaneously except where departmental enquiry would seriously prejudice the delinquent in his defence at the criminal trial and no strait-jacket formula can be laid down in this behalf as each case has to be decided on its facts. See---- **Hindustan Petroleum Corporation Ltd. vs. Sarvesh Berry, AIR 2005 SC 1406**

30. **Sec 7 of the PC Act 1988 when attracted ?** .... Mere recovery of currency notes itself does not constitute offense u/s 7 of the PC Act,1988 unless it is proved beyond all reasonable doubts that accused voluntarily accepted money knowing it to be bribe. Demand of illegal gratification is sine qua non to constitute offense under this Act. See... **C.M Sharma v. State of A.P, AIR 2011 SC 608.**

31. **Investigation by officer not authorised in writing not fatal** ..... Where investigation of offenses under P.C Act, 1988 was done by an officer not authorised in writing, it has been held that trial does not stand viciated as the investigation done was not found to be unfair. See..... **Ashok Tshering Bhutia Vs. State of Sikkim, 2011 CrLJ 1770 (SC)**

32(A). **Nature of Order of Sanction 'Administrative' :** In the cases of **(i) State of Bihar etc. Vs. P.P. Sharma, IAS and another, AIR 1991 SC 1260 (ii) State of Maharashtra & others Vs. Ishwar Piraji Kalpatri, AIR 1996 SC 722** and **(iii) State of Punjab & another Vs. Mohammed Iqbal Bhatti, (2009) 17 SCC 92,** it has been held by the Hon'ble Supreme Court that the order of sanction passed under Section 197 CrPC and/or under Section 19 of **the Prevention of Corruption Act, 1988** is only an administrative act and not a quasi-judicial one.

32(B). **Review of previous order granting or refusing sanction when possible? :** In the case of **State of Punjab & another Vs. Mohammed Iqbal Bhatti, (2009) 17 SCC 92,** a question had arisen for consideration of the Hon'ble Supreme Court as to whether the sanctioning authority has power of review in the matter of grant of sanction u/s 197 of the CrPC and under Section 19 of the Prevention of Corruption Act, 1988. The facts of the above case were that the accused Mohammed Iqbal Bhatti was posted and working as Block Development and Panchayat Officer in the State of Punjab and on an FIR being lodged and completion of investigation thereof, a charge-sheet was prepared against him by the investigating agency i.e.

the Vigilance Department for commission of offences u/s 7 and 13(2) of the **Prevention of Corruption Act, 1988**. Governor of the State of Punjab was the appointing authority of the public servant/accused named above. By an order dated 15.12.2003, sanction for prosecution was refused. The matter was, however, after change of government placed before the competent authority once again without any fresh/new material and on 14.09.2004, sanction to prosecute the public servant/accused named above was granted. Questioning the validity of the aforesaid order dated 14.09.2004 granting sanction for prosecution, the public servant/accused named above filed a Writ Petition before the Hon'ble Punjab & Haryana High Court and the same was allowed by observing that "the State had no power of review and in any event, the impugned order could not have been passed as the State while passing its earlier order dated 15.12.2003 had exhausted its jurisdiction." The State of Punjab then challenged the aforesaid order of the Hon'ble Punjab & Haryana High Court by filing an appeal before the Hon'ble Supreme Court. Dismissing the appeal, the Hon'ble Supreme Court observed as under:

"The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise..... The legality and/or validity of the order granting sanction would be subject to review by criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts….. the source of power of an authority passing an order of sanction must also be considered…..although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction under Section 197 CrPC, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage,

express power of review in the State may not be necessary as even such a power is administrative in character. "

32(C). <u>Administrative review of previous administrative order permissible</u> : In the case of **R.R. Verma & others Vs. Union of India & others, AIR 1980 SC 1461**, the Hon'ble Supreme Court has ruled that "it is not correct to say that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration, they cannot be hide-bound by the rules and restrictions of judicial procedure though off course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Again, if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a court." It is, therefore, clear that administrative review of an administrative order is legally possible provided there is any fresh or new material necessitating such review. Since the nature of the order granting or refusing sanction for prosecution is administrative, therefore, review of an earlier order granting or refusing sanction is permissible under law if the same is required on the basis of new material/evidence produced before the authority concerned.

32(D).<u>Review of previous Sanction order permissible only on fresh material</u> : Sanction to prosecute on review of previous order (u/s 7 of Explosive Substances Act, 1908) can be considered only when fresh materials have been collected. See…**Deepak Khinchi Vs. State of Rajasthan, 2012 (77) ACC 919 (SC).**

32(DD).<u>Previous order refusing sanction can be reviewed on production of fresh material</u> : A Division Bench of the Hon'ble Himachal Pradesh High Court in the case of **Omkar Sharma Vs. State of HP & others, 2003 CrLJ 1024** has held that

once sanction for prosecution of public servant was refused by competent authority, the same cannot be revised or reviewed on same materials.

32(E). <u>Review of previous order refusing sanction not permissible</u> : In the case of **Naresh Chandra Gupta Vs. the Chief Engineer, Hydel and others, 2010 (6) ALJ 380 (Allahabad High Court….D.B.),** a Junior Engineer of UP Power Corporation was apprehended taking bribe of Rs. 70/- in the year 1979 and his prosecution for offences under Section 161, 162, 120-B of the IPC and under Section 5(2) of the Prevention of Corruption Act, 1947 was proposed. Sanction for his prosecution was refused by the Chief Engineer on the ground that the trap laid on the accused Junior Engineer had legal defects. The successor Chief Engineer found that his predecessor had travelled beyond his powers in refusing the sanction for prosecution of the accused Junior Engineer and granted sanction to prosecute him for the said offences. Quashing the order of sanction passed by the successor Chief Engineer, a **Division Bench of the Hon'ble Allahabad High Court has (in para 23)** held that ***"The principles of res judicata are not applicable in the case of the orders passed by executive authorities. In administrative decisions, however, the power of review or recall is not to be presumed, until it is conferred by statute. The concession of the powers of review or recall in administrative matters, unless expressly conferred by the Statute, or where the order is vitiated on misrepresentation and fraud, will lead to frequent change of orders and uncertainty in governance. If the Chief Engineer (Hydel), Lucknow was not satisfied with the order passed by his predecessor refusing sanction to prosecute the petitioner on the grounds that he was not entitled to look into the evidence or the opinion of the Investigating officer, the matter could have been referred by him to the State Government."***

32(F).<u>Only purely administrative and/or legislative act to be reviewed under Section 21 of the General Clauses Act, 1897</u> : Interpreting **Section 21 of the General Clauses Act, 1897**, in the case of **Indian National Congress (I) Vs. Institute of Social Welfare & others, (2002) 5 SCC 685**, it has been ruled by the

Hon'ble Supreme Court that order which can be modified or rescinded or varied or amended etc cannot be a quasi-judicial order but the same has to be either executive or legislative in nature. Section 21 (wrongly quoted as Section 31 by the applicants in their representation dated 21.05.2012) of the said Act thus applies to administrative orders and, therefore, the power of review of an earlier order granting or refusing sanction for prosecution is available to a competent authority. But as has been discussed in the preceding sub-paragraphs of para 4, there must be some fresh material necessitating review of earlier order of refusal or grant of sanction for prosecution**.**

32(G). **Quasi-Judicial order or act cannot be reviewed u/s 21 of the General Clauses Act, 1897**: **Only purely administrative and/or legislative act to be reviewed under Section 21 of the General Clauses Act, 1897** : Interpreting **Section 21 of the General Clauses Act, 1897**, in the case of **Indian National Congress (I) Vs. Institute of Social Welfare & others, (2002) 5 SCC 685**, it has been ruled by the Hon'ble Supreme Court that order which can be modified or rescinded or varied or amended etc cannot be a quasi-judicial order but the same has to be either executive or legislative in nature. Section 21 (wrongly quoted as Section 31 by the applicants in their representation dated 21.05.2012) of the said Act thus applies to administrative orders and, therefore, the power of review of an earlier order granting or refusing sanction for prosecution is available to a competent authority. But as has been discussed in the preceding sub-paragraphs of para 4, there must be some fresh material necessitating review of earlier order of refusal or grant of sanction for prosecution**.**

33(A). **SANCTION FOR PROSECUTION AS REQUIRED U/S. 197 CR.P.C. & U/S. 19 OF THE P.C. ACT, 1988 & Stage of raising plea of sanction**--- Interpreting the provisions u/s. 196, 197, 156, 196(1-A) Cr.P.C., it has been held by the Supreme Court that the plea of sanction can be raised at the time of taking

cognizance of the offence or any time thereafter. But the plea of sanction cannot be raised or Sec. 197 Cr.P.C. is not attracted at the stage of registration of FIR, investigation, arrest, remand of the accused u/s. 167 Cr.P.C. or submission of the police report u/s. 173(2) Cr.P.C. When a case is under IPC and PC Act, 1947, question as to need of sanction u/s. 197 Cr.P.C. not necessarily to be raised as soon as the complaint is lodged. It can be raised at any stage and from stage to stage. If the cognizance of the offence has been taken without sanction, the plea of want of sanction can be raised by the accused after the commitment of the case and when the accused are called upon to address the court u/s. 227 and 228 Cr.P.C. See---

1. **State of Karnataka vs. Pastor P. Raju, AIR 2006 SC 2825**
2. **K. Kalimuthu vs. State by DSP, 2005 (3) SCJ 682**
3. **Birendra K. Singh v. State of Bihar, 2000 (4) ACC 653 (SC)**

33(B).<u>Public servant & sanction</u>--- A public servant cannot be prosecuted for acts done in connection with his official duty. See--- **Jaya Singh vs. K.K. Velayutham, 2006 (55) ACC 805 (SC)**

33(C).<u>Special Judge under P.C. Act, 1988 competent to order registration of FIR and investigation thereof u/s. 156(3) Cr.P.C.</u>--- Special Judge under P.C. Act, 1988 is empowered to grant an application u/s. 156(3) Cr.P.C. involving offences under the P.C. Act, 1988 and under IPC. He can also take cognizance on a complaint by private person. See--- **Mahipal vs. State of U.P., 2008 (63) ACC 692 (All)**

33(D).<u>Power u/s. 156(3) to be sparingly exercised</u>--- Power u/s. 156(3) Cr.P.C. should be exercised sparingly when there is something unusual and extra ordinary like miscarriage of justice. See---

1. **Nathulal Gangwar vs. State of U.P., 2008 (61) ACC 792 (All)**

2. **Sukhwasi vs. State of U.P., 2007 (59) ACC 739 (All—D.B.)**

33(E).<u>Sanction u/s 197 CrPC not required when sanction u/s 19 of the PC Act, 1988 has already been granted</u> : A Full Bench of the Hon'ble Allahabad High Court has held as under :

(i) For prosecution under PC Act, 1988, once sanction u/s 19 of the said Act is granted, there is no necessity for obtaining further sanction u/s 197 of the CrPC.

(ii) Where a public servant is sought to be prosecuted under the PC Act, 1988 read with Section 120-B IPC and sanction u/s 19 of the PC Act, 1988 has been granted, it is not at all required to obtain sanction u/s 197 CrPC from the State Government or any other authority merely because the public servant is also charged u/s 120-B IPC

(iii) The offences under the PC Act, 1988 as well as charge of criminal conspiracy cannot be said to constitute "acts in discharge of official duty". See….**Full Bench Judgment dated 25.01.2006 of the Hon'ble Allahabad High Court delivered in Criminal Revision No. 22882/2004, Smt. Neera Yadav Vs. CBI (Bharat Sangh).**

33(F).<u>Sanctions u/s 197 CrPC & u/s 19 of PC Act, 1988 are different</u> : Sanction contemplated in Section 197 CrPC concerns a public servant who *"is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty"* whereas the offences contemplated in the Prevention of Corruption Act, 1988 are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in

the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 CrPC. See : **Kalicharan Mahapatra Vs. State of Orissa, AIR 1998 SC 2595** *(para 13)*

33(FF). **Sanctions u/s 197 CrPC & u/s 19 of PC Act, 1988 are different :** Sanction contemplated in Section 197 CrPC concerns a public servant who *"is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty"* whereas the offences contemplated in the Prevention of Corruption Act, 1988 are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 CrPC. Section 197 of the CrPC & Section 19 of the PC Act operate in conceptually different fields. See :

(i) **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** *(paras 37 & 38)*

(ii) **Lalu Prasad Vs. State of Bihar, 2007 (1) SCC 49** *(para 9)*

(iii) **Kalicharan Mahapatra Vs. State of Orissa, AIR 1998 SC 2595** *(para 13)*

34. **Three or four Months time limit for grant of Sanction & Deemed Sanction u/s 19 of the P.C. Act, 1988** : The directions issued by the Hon'ble Supreme Court (in para 56) in Dr. Subramanaan Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185 are as under **:**

"(a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the concerned authority.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed. But the request for consultation is to be sent in writing within the three months mentioned in (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit.

(c) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit."

(i) Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185

(ii) Vineet Narain Vs. Union of India, (1998) 1 SCC 226 (Three-Judge Bench)

Note : *Vineet Narain's case has been followed in Dr. Subramanian Swamy*.

35. **Private complainant competent to file complaint against the public servant for offences under PC Act, 1988** : Relying upon a Constitution Bench decision of the Supreme Court rendered in the case of **A.R. Antulay Vs. Ramdas Sriniwas Nayak, AIR 1984 SC 718**, it has been held by the Hon'ble Supreme Court that there is no provision either in the PC Act, 1988 or in the CrPC which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence….. a private complainant has the right to file a complaint for prosecution of a public servant in respect of the offences allegedly committed by him under the PC Act, 1988…. it therefore, follows that the Special Judge can take cognizance of offences committed by the public servants under the PC Act, 1988 upon receiving a complaint of facts constituting such offences. See.… **Dr.**

Subramanian Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185 *(paras 18 & 19).*

36. **<u>Special Judge under P.C. Act, 1988 can summon a person not included as accused in charge-sheet</u>** : An addl. accused not included in the charge-sheet can be summoned by the Special Judge under the P.C. Act, 1988 for trial. Special Judge may take cognizance of offence without accused being committed to him for trial and the court of Special Judge shall be deemed to be a court of session. See : **R.N. Agarwal Vs. R.C. Bansal, (2015) 1 SCC 48.**

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37(a). **<u>The Judicial Officers' Protection Act, 1850</u> :** The Judicial Officers' Protection Act, 1850 contains only one section and is aimed at providing protection to the judicial officers acting in **good faith** in their **judicial capacity**. Section 1 of the 1850 Act reads as under :

"<u>Section 1</u>--- Non liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders—No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction : Provided that he at the time in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

37(b). <u>Information as to 'why' and for what 'reasons' judge had come to a particular decision or conclusion cannot be sought under the RTI Act, 2005</u> : Information as to 'why' and for what 'reasons' judge had come to a particular decision or conclusion cannot be sought under the RTI Act, 2005. A Judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion. A Judicial Officer is entitled to protection under the provisions of the **Judicial Officers' Protection Act, 1850** and the object of the same is not to protect malicious or corrupt judges but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independence decisions. See : **Khanapuram Gandaiah Vs. Administrative Officer, AIR 2010 SCC 615.**

38. <u>The Judges (Protection) Act, 1985</u> : Parliament passed The Judges (Protection) Act, 1985 to provide certain additional protections to Judges and Magistrates in addition to what was already available to them under The Judicial Officers' Protection Act, 1850. Certain important provisions contained under the Judges (Protection) Act, 1985 are as under :

"**<u>Sec.3</u>--- Additional Protection to Judges---** (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-sec. (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-sec. (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."

"**<u>Sec.4</u>--- Saving**—The provision of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges."

39(A). <u>Protection to Judges u/s 77 IPC</u> : Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith, he believes to be, given to him by law.

39(B). **<u>Acting in good faith---- when to be inferred</u>? :** Word "good faith" has been defined in Section 52 of the IPC which reads as under—

39(C). **"<u>Good faith" & its definition</u> : (Section 52 IPC) :** Nothing is said to be done or believed in 'good faith' which is done or believed without **due care and attention**."

40. **<u>Protection to Judicial Officers against Arrest & Prosecution----When Available?</u> : (i)** Where an Executive Officer/Sub-divisional Officer was holding two offices----one an Executive Office as a Sub-divisional Officer and other a Judicial Office as a Sub-divisional Magistrate and had ordered the arrest of a person for an offence u/s 436 IPC but the proceedings were closed without any trial and thereafter the aggrieved person filed a suit for damages against the Sub-divisional Officer, the Supreme Court, interpreting the scope of Sec. 1 of the Judicial Officers' Protection Act, 1850, held as under----

"In view of the admission made by the SDO that he had not taken cognizance as a Magistrate of the offence against the plaintiff before ordering his arrest, and his main defence that he had acted under the direction of his Superior Executive Officer, he must be held to have acted in his executive capacity and not in discharge of his duties as a Magistrate and hence was not entitled to protection under the 1850 Act. **The Judicial Officers Protection Act, 1850 protects a judicial officer only when he is acting in his judicial capacity and not in any other capacity**. If the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no inquiry will be entertained whether the act done or ordered to be done was erroneous, irregular or even illegal, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. If the act done or ordered to be done is not within the limits of his jurisdiction, the Judicial Officer acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act. The expression "jurisdiction" does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter." See : **Anowar Hussain Vs. Ajoy Kumar Mukherjee, AIR 1965 SC 1651**

(ii) In the case noted below, an Additional Subordinate judge dismissed the suit of the plaintiff/appellant and decreed that of the then defendant. During the pendency of the decree holder's petition for execution of the decree and that of the appellant for its stay, the plaintiff/appellant issued a notice to the judge *inter alia* alleging that in his judgment he had created new facts by making third version without evidence; that he had intentionally, with bad faith and maliciously, distorted the existing oral and documentary evidence; that he had maintained different standards in the same judgment; that he had side-tracked the binding direct

decisions of the High Courts and the Supreme Court; and that in the circumstances he could be said to have acted with mala fide exercise of powers without jurisdiction and, therefore, he was liable for damages for the loss incurred by the appellant and for the injury. The Supreme Court, interpreting the provisions of Sec. 1 of the Judicial Officers' Protection Act, 1850 held as under :

"If the judicial officer is found to have been acting in the discharge of his judicial duties, then, in order to exclude him from the protection of Sec. 1 of the Judicial Officers Protection Act, 1850 the complainant has to establish that--- **(i) the judicial officer complained against was acting without any jurisdiction whatsoever**; and **(ii) he was acting without good faith in believing himself to have jurisdiction**. The expression "jurisdiction" in this section has not been used in the limited sense of the term, as connoting the 'power' to do or order to do the particular act complained of, but is used in a wide sense meaning 'generally the authority of the judicial officer to act in the matters'. Therefore, if the judicial officer had the general authority to enter upon the enquiry into the cause, action, petition or other proceedings in the course of which the impugned act was done or ordered by him in his judicial capacity, the act, even if erroneous, will still be within his 'jurisdiction', and the mere fact that it was erroneous will not put it beyond his 'jurisdiction'. Error in the exercise of jurisdiction will not put it beyond his 'jurisdiction'. Error in the exercise of jurisdiction is not to be confused with lack of jurisdiction in entertaining the cause or proceeding. Initiation of criminal contempt proceedings against the appellant was held proper by the Supreme Court. See : **Rachapudi Subba Rao Vs. Advocate General, A.P., (1981) 2 SCC 577.**

41. **Pre-conditions of FIR & Arrest of Judicial Officers :** There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless Judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

42(A). <u>Delhi Judicial Service Association Tis Hazari Courts Delhi Vs. State of Gujarat, (1991) 4 SCC 406 (Three-Judge Bench)</u> : The facts of this case are as under :

"Soon after the posting of 'P' as Chief Judicial Magistrate at Nadiad in the State of Gujarat in October 1988, he found that the local police was not co-operating with the courts in effecting service of summons, warrants and notices on accused persons as a result of which the trials of cases were delayed. He made complaint against the local police to the District Superintendent of Police and forwarded a copy of the same to the Director General of Police but nothing concrete happened. On account of these complaints, 'S', the then Police Inspector Nadiad, became annoyed with the Chief Judicial Magistrate and withdrew constables posted in the CJM's Court. When 'P' directed the police to drop the criminal cases against certain persons who had caused obstruction in judicial proceedings on their tendering unqualified apology, 'S' reacted strongly to the direction and made complaint against the CJM to the Registrar of the High Court through District Superintendent of Police. On September 25, 1989, 'S' met the CJM in his chamber to discuss a case where the police had failed to submit charge-sheet within 90 days. During discussion 'S' invited the CJM to visit the police station to see the papers and further assured that his visit would mollify the sentiments of the police officials. Accordingly, at about 8.40 p.m. 'S' sent a police jeep at the residence of 'P' and on that vehicle 'P' went to the police station. When he arrived in the chamber of 'S' in the police station, he was forced to consume liquor and on his refusal he was assaulted. He was handcuffed and tied up with a thick rope by the Police Inspector, a Sub-Inspector, a Head Constable and a Constable. This was deliberately done in defiance of Police Regulations and Circulars issued by the Gujarat Government and the law declared by the Supreme Court in *Prem Shankar Shukla Vs. Delhi Administration, (1980) 3 SCC 526.* A panchnama showing the drunken state of 'P' was prepared on the dictation of 'S' and was signed by 'S' as well as two panchas—a Mamlatdar and a Fire Brigade Officer. Thereafter, 'P' was taken to Civil Hospital handcuffed and tied with thick rope where he was deliberately made to sit outside in the verandah on a bench for half an hour to enable the police to have a full view of the CJM in that condition. A press photographer was brought on the scene and the policemen posed with 'P' for the press photograph. The photographs so taken were published in newspapers. A belated justification for this was pleaded by the notice that 'P' desired to have himself photographed in that condition. Request made by 'P' in the casualty ward of the Civil Hospital to the doctors to contact the District Judge and inform him about the incident was not allowed by 'S' and other police officers. On examination at the hospital, the body of 'P' was found to have a number of injuries. His blood was taken and chemical examination conducted without following the procedure prescribed by the Rules and Circulars issued by the Director of Medical Services, Gujarat. The Chemical Examiner submitted the report holding that the blood sample of 'P' contained alcohol on the basis of the calculation made by him in the report, though he later clearly admitted that he had

never determined the quantity of liquor by making calculation in any other case before. At the initial stage only one case was registered against 'P' by the police under the Bombay Prohibition Act, but when the lawyers met 'S' for securing release of 'P' on bail, the offence being bailable, 'S' registered another case u/s 332 and 506 IPC in order to frustrate the attempt to get 'P' released as the offence u/s 332 IPC is non-bailable. The then District Superintendent of Police did not take any immediate action in the matter; instead he created an alibi for himself alleging that he had gone elsewhere and stayed in a Government Rest House there. The register at the Rest House indicating the entry regarding his stay was found to have been manipulated subsequently by making interpolation. All these facts were found established by a then sitting Judge of the Allahabad High Court who was appointed as Commissioner by the Supreme Court to hold inquiry and submit report after the Court took cognizance of the matter and issued notices to the State of Gujarat and other police officers pursuant to the writ petitions under Article 32 filed and telegrams sent to the Court from all over the country by Bar Councils, Bar Associations and individuals for saving the dignity and honour of the Judiciary.

42(B). <u>Directions issued by the Supreme Court in Delhi Judicial Service Association, Tis Hazari Courts Delhi Vs. State of Gujarat, AIR 1991 SC 2176 (Three-Judge Bench)</u> :

(A) If a Judicial Officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

(B) If facts and circumstances necessitate the immediate arrest of a Judicial Officer of the Subordinate Judiciary, a technical or formal arrest may be affected.

(C) The fact of such arrest should be immediately communicated to the District & Sessions Judge of the concerned district and the Chief Justice of the High Court.

(D) The Judicial Officer so arrested shall not be taken to a police station without the prior order or directions of the District & Sessions Judge of the concerned district, if available.

(E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisors and Judicial Officers including the District & Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Advisor of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) There should be no handcuffing of a Judicial Officer. If however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the Chief Justice of the

High Court. But the burden would be on the Police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the police officers causing the arrest will be responsible for such arrest and handcuffing and would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a judicial officer. These guidelines should be implemented by the State Governments as well as by the High Courts.

Note: The relevant **Circular Letters** of the Allahabad High Court and the **G.Os.** issued by Central Government for strict observance of the directions of the Apex Court in the abovenoted case are as under :

(i) C.L. No. 54/IX-f-69/Admn. 'G' dated October 22, 1992
(ii) C.L. No. 190117/4/90-Jus. Dated 26.4.1990/3.5.1990
(iii) Central Government's G.O. No. VII-11017/15/88-G.P.A. II, dated 4.10.1988
(iv) Central Government's Letter No. 19017/3/92-Jus., dated 3.4.1992/23.4.1992
(v) Central Government's Letter No. VI-25013/42/89-G.P.A. II, dt. 31.3.1992

43. Chief Justice's Prior permission Must for F.I.R. : No crime or criminal case shall be registered against a judicial officer in respect of anything allegedly done or purported to be done in discharge of his duty or in his capacity as holder of such judicial office without prior permission of Chief Justice of the High Court concerned. See : **U.P. Judicial Officers' Association versus Union of India, (1994) 4 SCC 687**

44(A). Superior Courts must protect the reputation of judicial officers of sub-ordinate courts against false allegations : The facts of the case noted below were thus **:** "Shri Vishram Singh Raghuvanshi is an Advocate practicing for last 30 years in the District Court, Etawah (UP). On 25.07.1998, Shri Vishram Singh Raghuvanshi Advocate produced one Om Prakash for the purpose of surrender by impersonating him as Ram Kishan s/o of Asharfi Lal who was wanted in a criminal case in the court of IInd ACJM, Etawah. There was some controversy regarding the genuineness of the person who came to surrender and, therefore, the Presiding Officer of the court raised certain issues. So, Shri Vishram Singh Raghuvanshi Advocate misbehaved with the Presiding Officer in the court and used abusive language. The Presiding Officer of the court vide his letter dated 28.09.1998, made a complaint against Shri Vishram Singh Raghuvanshi Advocate to the UP Bar Council and vide letter dated 27.10.1998, made a reference to the Allahabad High Court for initiating contempt proceeding u/s 15 of the Contempt of Court Act, 1971. The Division Bench of the Allahabad High Court after due

hearing of the matter, vide its judgment and order dated 05.05.2006 held Shri Vishram Singh Raghuvanshi Advocate guilty of committing contempt of the said court and sentenced him to undergo 03 month's simple imprisonment with a fine of Rs. 2000/-. Shri Vishram Singh Raghuvanshi Advocate then filed appeal before the Hon'ble Supreme Court." The Hon'ble Supreme Court while dismissing the appeal ruled thus : "The contempt jurisdiction is to uphold majesty and dignity of the law Courts and the image of such majesty in the minds of the public cannot be allowed to be distorted. Any action taken on contempt or punishment enforced is aimed at protection of the freedom of individuals and orderly and equal administration of laws and not for the purpose of providing immunity from criticism to the judges. The superior Courts have a duty to protect the reputation of judicial officers of subordinate Courts, talking not of the growing tendency of maligning the reputation of judicial officers by unscrupulous practicing advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose. Such an issue touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the institution as a whole. The dangerous trend of making false allegations against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise the judicial system itself would collapse. The Bench and the Bar have to avoid unwarranted situations on trivial issues that hamper the cause of justice and are in the interest of none. Liberty of free expression is not to be confounded or confused with license to make unfounded allegations against any institution, much less the judiciary". Kindly see : **Vishram Singh Raghuvanshi Advocate Vs. State of UP, AIR 2011 SC 2275** *(paras 15 & 16)*

44(B).<u>High Court must protect honest Judicial Officers</u> : In the case noted below, a probationer lady Civil Judge (Junior Division) of Gujarat faced several difficulties from her sub-ordinate staff and wrote several letters to the District Judge by recording their objectionable conduct but there was no response to her letters and she was ultimately awarded adverse entries in her ACR by the District Judge and the same was also approved by the High Court. Her services were terminated by the High Court on the basis of the said adverse entries and also on the ground that she used to cross permitted lines of behavoiur while talking to her male colleagues. Quashing her termination order, the Hon'ble Supreme Court has held that since the probationer lady Judicial Officer was facing hostile atmosphere of staff and Bar, her complaint made to the District Judge was also not attended to rather adverse entries in her ACR were recorded and the Vigilance Judge of the High Court appear to be biased against her and had not provided her any opportunity to defend her and, therefore, her termination was bad in law. The Supreme Court further observed that when the misconduct leading to termination order is stigmatic in nature, even a probationer is entitled to enquiry as such penalty attracts Article 311 of the Constitution even to a probationer. The Supreme Court also observed that no enquiry can be held behind the back of the delinquent/Judicial Officer. The High Court must protect honest Judicial Officers.

See : **Registrar General, High Court of Gujarat Vs. Jayshree Chamanlal Buddhbhatti, 2014 (1) SLJ 130 (SC).**

44(C). **<u>Protection to Judicial Officers Against Executive as Litigant</u> :** There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless Judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

45. **<u>Protection to Judicial Officers Against Malicious Prosecution</u> :** There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 of the Delhi Special Police Establishment Act, 1946 provides for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless Judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

46(a). **<u>Application of mind by authority before according sanction for prosecution of judicial officers</u> :** There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That

apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) of the Delhi Special Police Establishment Act, 1946 without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

46(b). **Duty cast on High Court to protect honest Judicial Officers** : Article 235 of the Constitution confers supervisory jurisdiction on High Courts over sub-ordinate judiciary. A duty is also cast on the High Court to protect the honest Judicial Officers as that is paramount for survival of judicial system. See… **Nirmala J. Jhala Vs State of Gujarat, AIR 2013 SC 1513.**

47(A). **Police Protection to Judicial Officers :** For security to judicial officers at their courts and residences, following Circular Letters and G.Os. have been issued by the Allahabad High Court and the Government of U.P. :

(i). **C.L. No. 9/IVh-40/Admn. (G) dated/Alld./29th January, 1998** : ***To ensure security arrangements in district civil courts and at the residence of the Judicial Officers*** *:* "I am directed to draw your attention to the security arrangements in district civil courts and at the residence of the Judicial Officers whereupon the Government of Uttar Pradesh had issued a letter No. 344A/Chha-pu-1-94-113/93 TC/dated 10.11.94 to A.D.G.P. (Security) and all the DMs/SSPs/SPs of the State (copy enclosed). In order to review implementation of the guidelines contained in U.P. Govt.'s letter dated 10.11.94 and also tone up security arrangements, the Government of Uttar Pradesh have also issued Fax to all the District Magistrates/Senior Superintendents of Police/Superintendents of Police of State of U.P. with intimation to the court. I am, therefore, to request you kindly to apprise the Court immediately as to what action District Magistrates and Superintendents and Police have taken in the matter of security of Civil Courts and the residences of the Judicial Officers. I am, further, to request you kindly to report to the Court if the arrangements made by the District Authorities are sufficient or not."

;पपद्ध शासनादेश संख्या–33उ/छः–30.1.94–114/93/टी.सी.
गृह (पुलिस) अनुभाग–1 लखनऊ, दिनांक 10 नवम्बर 1994

विषयः जिला न्यायालयों के कार्यरत मुंसिफ मजिस्ट्रेटों/न्यायाधीशों की सुरक्षा व्यवस्था के सम्बन्ध में।
महोदय,

उपर्युक्त विषयक अतिरिक्त पुलिस महानिदेशक सुरक्षा, अभिसूचना विभाग, उत्तर प्रदेश लखनऊ के अर्द्ध शा. पत्र संख्या–एच–4(क33)/93, दिनांक 20 दिसम्बर, 93 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि शासन द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि उत्तर प्रदेश के जिला न्यायालयों में कार्यरत मुंसिफ मजिस्ट्रेटों/न्यायाधीशों की निम्नलिखित बिन्दुओं के अनुसार सुरक्षा व्यवस्था की जाय तथा कृत कार्यवाही से शासन को यथा समय अवगत कराया जाय।

(क) न्यायालयों के परिसर में एक सशस्त्र आर्म गार्ड नियुक्त किया जाना चाहिए जिसका प्रमुख कर्तव्य न्यायालयों की सुरक्षा सुनिश्चित करना होगा।

(ख) प्रत्येक दिन न्यायालयों की कार्य अवधि के दौरान नागरिक पुलिस का एक उपनिरीक्षक तथा डेढ़ सेक्शन पी.ए.सी. नियुक्त की जानी चाहिए जो न्यायालय परिसर में बनी रहेगी।

(ग) जिला न्यायाधीश (जिला तथा सेशन न्यायाधीश) के आवास पर एक सशस्त्र आर्म्ड गार्ड की नियुक्ति की जानी चाहिए ।

(घ) जिला न्यायाधीश की अति समीप सुरक्षा (क्लोज प्राक्सीमेट) के लिए एक गनर स्टेनगन के साथ नियुक्त किया जाना चाहिए।

(ड़) यदि कई न्यायाधीश एक ही परिसर में रहते हैं तो पूरे परिवार के लिए एक ही सशस्त्र आर्म्ड गार्ड की व्यवस्था की जानी चाहिए। प्रत्येक न्यायाधीश के लिए अलग–अलग गार्ड देना सीमित संसाधनों के कारण सम्भव नहीं है।

(च) यदि किसी न्यायाधीश को विशेष जीवन भय है तो उन्हें आवेदन पत्र देना चाहिए। जीवन भय के मूल्यांकन के आधार पर उन्हें विशेष सुरक्षा व्यवस्था उपलब्ध करायी जानी चाहिए।

(iii). <u>G.O. No.45/IVh-40 Dated 19th October, 2000</u>

To provide sufficient security to the Judicial Officers

In Criminal Contempt Case No. 16 of 1999 and 19 of 1999, In Re- Sri Swami Nath Yadav, Advocate and 4 Others, Hon'ble Court (Hon. Sri B.K. Roy and Hon. Sri M.C. Jain, JJ.) has given directions with regard to the security of Judicial Officers. See-- **In re, Swami Nath Yadav, Adv., 2001 Cr.L.J. 639 (Allahabad)(DB)** *Known as the case of Sri S.S. Nimesh, the then I/c District Judge, Azamgarh.*

I am desired to enclose herewith copy of the judgment given by the Hon'ble Court for your information and compliance as and when situation so demands.

(iv). <u>गृह (पुलिस) अनुभाग–2</u>, लखनऊः दिनांक 6 फरवरी, 2001

विषयः जिला न्यायालयों में कार्यरत मुंसिफ मजिस्ट्रेटों/न्यायाधीषों की सुरक्षा के सम्बन्ध में।

महोदय,

कृपया उपर्युक्त विषयक शासनादेश सं0 7334ए/6–30–1–94–114/93 टी0सी0 दिनांक 10.11.94 का संदर्भ ग्रहण करने का कष्ट करें।

मा0 उच्च न्यायालय, इलाहाबाद द्वारा क्रिमिनल कन्टेंप्ट सं0–19/99 एस.एस. निमेश बनाम स्वामीनाथ व अन्य में अपने निर्णय दिनांक 18.9.2000 में यह आदेश पारित किये गये हैं कि–

"If any Judicial Officer of the State apprehends any type of obstruction in fearless administration of justice, he shall inform his District Judge, who in turn, will first examine the same objectively and after finding substance shall at once bring to the notice of the Senior Superintendent of Police/Superintendent of Police of his district of the same, who in turn shall be duty bound to afford sufficient police protection to that Judicial Officer and if even then the District Judge finds that no proper action has been taken in that regard by the aforesaid police authorities, in that event he will make a report to the Chief Secretary of the State

through the Registrar General/Registrar of this Court and in that event the Chief Secretary shall take a serious view of the matter and apart from directing the Director General of Police of this State to take an appropriate action at once in relation to providing sufficient security to the Judicial Officer concerned shall also take further action against the erring Policing Authority concerned. The District Judges of the Judgeships shall also follow the same course if they apprehend the same by reporting to the Inspector General of police of their area thereafter the same course will be followed by all concerned."

इस संबंध में मुझे यह कहने का निदेश हुआ है कि कृपया माननीय न्यायालय के उपर्युक्त आदेशों के अनुसार आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करें।

(v). **C.L. No. 4331/IV-40/Admn. (G)/Dated 7th March, 2001**

To provide sufficient security to the Judicial Officers

Kindly refer to Court's Circular Letter No. 45/IVh-40/dated 10.10.2000 wherein a copy of judgment dated 28.9.2000 passed by Hon'ble Court (Hon'ble Sri B.K. Roy and Hon'ble Sri M.C. Jain, JJ.) in Criminal Contempt Case No. 16 of 1999 and 19 of 1999 in Re-Sri Swami Nath Yadav. Advocate and 4 others was sent to you on the above subject for compliance. In this connection, I am directed to say that the Government of Uttar Pradesh vide letter No. 5319/6-pu-2-2000/dated 6.2.2001 issued directions of the Hon'ble Court passed in aforesaid contempt case to all the Senior Superintendent of Police/Superintendents of Police of Uttar Pradesh for necessary action with regard to security to Munsif Magistrates/Judges of the District Courts.

I, am, therefore, to send a copy of Government's letter dated 6.2.2001 for information.

47(B). Powers of Judicial Officers u/s 228 IPC & Sec. 345 CrPC : In case any person intentionally offers any insult or causes any interruption in the judicial functioning of the court, the presiding officer may proceed summarily against such person u/s 345 Cr.P.C. and may punish him u/s 228 of the IPC. Section 28 of the IPC reads thus : *"Intentional insult or interruption to public servant sitting in judicial proceeding : Whoever, intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."*

48. Judicial Officer's Prosecution for Defamatory Comments on Transfer Application & Sec. 197 CrPC : Where the appellant, a Munsif Magistrate, by a letter to the District Judge submitted his remarks against the allegations made by the respondent, an advocate, in a transfer petition for transfer of a suit pending in appellant's Court and while so doing, called the respondent **'rowdy'**. **"a big gambler"** and **"a mischievous element"** and on this letter being read in open court, the respondent filed criminal complaint against the appellant without the sanction contemplated u/s 197 CrPC, it was held that the act complained of had no

connection with the discharge of official duty of the appellant. Hence Sec. 197 CrPC was not in any way attracted. See : **B.S. Sambhu Vs. T.S. Krishnaswamy, AIR 1983 SC 64.**

49. **No protection under the 1850 Act when not acting judicially :** Where some record sent by the court of Magistrate to a Sarpanch acting under U.P. Panchayat Raj Act, 1947 got lost and on enquiry against the Sarpanch, plea was taken by him regarding protection under the provisions of the Judicial Officers Protection Act, 1850, it was held by the Allahabad High Court that **since the Sarpanch was not acting as a court or judicial tribunal**, therefore, he was not entitled to any protection u/s. 1 of the 1850 Act. See : **Indra Pati Singh Vs. State of U.P., 1986 All LJ 1258 (All).**

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