Nara Chandrababu Naidu vs The State Of Andhra Pradesh on 16 January, 2024

Author: Aniruddha Bose

Bench: Bela M. Trivedi, Aniruddha Bose

2024 INSC 41 REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO._____OF 2024
(Arising out of Petition for Special Leave to Appeal (Criminal) No.12289 of 2023)

NARA CHANDRABABU NAIDU …APPELLANT(S)

VERSUS

THE STATE OF ANDHRA PRADESH
& ANR. …RESPONDENT(S)

JUDGMENT

ANIRUDDHA BOSE, J.

Leave granted.

2. The appellant is aggrieved by initiation of a criminal proceeding against him and his detention in connection with the same by the respondent State through its CID. Allegations have been made against him for commission of offences under Sections 166, 167, 418, 420, 465, 468, 471, 409, 209 and 109 read with Sections 120□B, 34 and 37 of the Indian Penal Code, 1860 and Section 12 and 13(2) read with Sections 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. The said offences are alleged to have been committed between the years 2015 and 2019, during which period he was the Chief Minister of the State of Andhra Pradesh. Initially, a First Information Report dated 09.12.2021 was lodged with CID Police Station, Andhra Pradesh, Mangalagiri implicating twenty□ six persons as accused. On that basis, CR No. 29/2021 was registered. The appellant was not

included in the array of accused persons in that F.I.R. The offences primarily relate to siphoning of public funds and I shall refer broadly to the allegations forming the basis of the F.I.R. in the succeeding paragraphs of this judgment. The list of accused persons was subsequently expanded and the appellant was also arraigned as an accused by an "Accused Adding Memo" dated 08.09.2021 lodged before the Special Judge, SPE & ACB cases (hereinafter referred to as "the Special Judge"). The appellant was implicated as accused no.37, whereas another individual, Kinjarapu Atchannaidu was made the 38th accused. The latter is a former minister of Andhra Pradesh and appears to be a member of the legislative assembly of that State at present. The appellant was arrested on 09.09.2023 and was produced before the Special Judge on 10.09.2023. He was remanded to judicial custody by the Special Judge. The appellant applied before the High Court on 12.09.2023 for quashing the F.I.R. in Crime No. 29 of 2021 implicating him, invoking the jurisdiction of the Court under Section 482 of the Code of Criminal Procedure, 1973 (1973 Code). The legality of the remand order dated 10.09.2023 was also challenged in the same petition before the High Court. The appellant's plea was rejected and his petition was dismissed on 22.09.2023 by a learned Single Judge. The present appeal is against this judgment of dismissal of the said petition.

3. The primarily allegation against the appellant is facilitating diversion of public money in the approximate range of Rs.370/□crores, which was to be used for setting up of six clusters of skill development centres in Andhra Pradesh. For this purpose, Andhra Pradesh State Skill Development Corporation (hereinafter referred to as "APSSDC") was established through a memorandum numbered as G.O.Ms. No.47 dated 10.09.2014 (referred to as 13.12.2014 in the order of the Special Judge dated 10.09.2023) issued by the Higher Education (EC A2) Department. APSSDC entered into an agreement with two corporate entities, Siemens Industry Software India Pvt. Ltd. ("SIEMENS" in short) and Design Tech India Pvt. Ltd. (we shall refer to it henceforth as "Design Tech"). The original object, in terms of a memorandum numbered as G.O.Ms. No. 4 dated 30.06.2015 issued by the Skill Development, Entrepreneurship & Innovation (Skills) Department approving the said Agreement, was to set up six different clusters comprising of one Centre of Excellence and five Technical Skill Development Institutions and Skill Development Centres in Andhra Pradesh. The total project cost was conceived to be Rs.3281,05,13,448/□with each of the six clusters costing Rs.546,84,18,908/□ Government contribution was limited to 10 percent of the cost amounting to Rs.55,00,00,000/□, with SIEMENS and Design Tech providing grant□in□aid of 90% i.e., Rs.491,84,18,908/□ It is the State's case that requirement of contribution of the two corporate entities was ignored and the final memorandum of agreement only entailed outflow of Rs.330/□ crores from the State to Design Tech. A signed copy of this memorandum, which does not carry any date, has been made Annexure R□15 to the counter□affidavit of the State (Volume IV at page 206).

4. Submission on the part of the State is that in course of an investigation by the Additional Director General, GST Intelligence at Pune, while examining claims of availing CENVAT credit by Design Tech and one Skillar Enterprises India Pvt. Ltd. ("Skillar"), a financial scam was unearthed involving both SIEMENS and Design Tech. This was in relation to funds pertaining to the project of setting up skill development centres. The complaint of the taxing body was that SIEMENS and Design Tech had subcontracted substantial part of their work to Skillar despite there being no provision of any sub□contract in the Agreement. Design Tech had claimed that Skillar provided training software development including various sub□modules designed for high end software for

advance manufacturing of CAD/CAM. As per Design Tech, royalty and subscription were paid to Skillar, as they developed the software and Skillar had directly supplied the same to the Skill Development Centres in Andhra Pradesh. As recorded in the judgment under appeal, when the tax authorities confronted Skillar, they took a stand that no technical work was sub-contracted and the training software development modules, which were provided, were technical materials. According to Skillar royalty and subscription were wrongly mentioned in the invoices. It appears that an in-depth scrutiny by the tax authorities showed that the concerned software including various sub-modules purported to have been supplied by Skillar to Design Tech was purchased by Skillar from different companies. It is also the State's stand that these companies were shell/defunct companies and they had issued invoices without providing any services and that they were used as vehicles for diverting funds. The APSSDC had conducted a forensic audit in the year 2020 and the audit found flaws and irregularities in the systems and in utilisation of funds between the financial years 2014-2015 and 2018-2019.

5. As per the investigating authorities a sum of Rs.370/-crores from the government funds of the APSSDC has been siphoned off. Case of the State against the appellant is that he was the mastermind, who had unilaterally appointed G. Subbarao and K Lakshminarayana (accused nos. 1 and 2) as MD and CEO, and Director for the Skill Development Corporation without getting approval from the Andhra Pradesh Cabinet. It was the appellant who had approved the same and as per his instruction, Memorandum of Association and Articles of Association of APSSDC were also approved. As per estimation, costs for six clusters, were projected as Rs.3319.68 crores but the private participants did not infuse any fund as per their original obligation. It is recorded in the impugned judgement that the Andhra Pradesh Cabinet headed by the appellant at the instance of the accused no.1 had approved sanction of a budget of Rs.370/-crores towards 10% contribution of the government in the project and G.O.Ms. No.4 dated 30.06.2015 was issued to that effect. The main complaint against the appellant is that he had fast tracked the project and approved the cost estimation with criminal intent and by pursuing the government officials, he had ensured release of Rs.370/-crores. The project was allotted to Design Tech and SIEMENS on nomination basis, without following any tender process. Misappropriation of government funds through corrupt and illegal methods has been alleged and abuse of official position has been attributed to the appellant. Summary of the allegations against the appellant is revealed from the Memorandum dated 08.09.2023, filed on behalf of the prosecution, for adding the appellant as an accused. These allegations, inter-alia, are to the following effect: -"....A-37 by abusing his (A-37) official position, fraudulently committed criminal breach of trust with a common intention, caused wrongful loss to the Government exchequer by allowing accused and others to divert APSSDC funds by using fake invoices as genuine one for purpose of cheating through the shell, defunct companies without providing materials/services to the APSSDC-Siemens project."

6. On behalf of the appellant, the main argument, which was also made before the High Court, revolves around non-compliance of Section 17A of the Prevention of Corruption Act, 1988 in implicating the appellant under Sections 12, 13(2) read with 13(1) (c) and (d) of the 1988 Act and proceeding against him inter-alia, under the aforesaid provisions. The arguments on behalf of the appellants have been mainly advanced by Mr. Harish N. Salve and Mr. Siddharth Luthra, learned Senior Advocates. Mr. Mukul Rohatgi with Mr. Ranjit Kumar, both learned Senior Counsel have

primarily argued on behalf of the State. It is also the appellant's case that once fault is found with implicating the appellant under the aforesaid provisions of the 1988 Act, the entire proceeding qua the appellant before the Special Judge would also collapse because in such a case the Special Judge under the PC Act would have had acted beyond his jurisdiction and the remand order would become non□est.

7. Section 17A was introduced to the 1988 Act with effect from 26.07.2018. The said provision reads: □"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

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

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

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

> Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:
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> Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

8. The High Court, inter□alia, held that the said provision cannot be applied to any offence committed prior to 26.07.2018. It has also been highlighted before us on behalf of the State that offences under Section 13 (1) (c) & (d) were deleted from the said statute by the Prevention of Corruption (Amendment) Act, 26 of 2018. It was by the same Amendment Act, that Section 17A was incorporated in the said statute. On this basis, it is urged, that any protective measure, which is conceived in the Amendment Act could not extend to offences committed when such protective measure for obtaining prior approval was not a part of the statutory scheme. The High Court primarily decided the case on the premise that the aforesaid provision cannot be given retrospective effect.

9. The other limb of argument of the State, which was also sustained by the High Court is that a regular inquiry was already ordered on 05.06.2018 regarding the allegations of corruption against the officials of APSSDC. This was ordered by the Director General of Anti□Corruption Bureau,

Andhra Pradesh. A redacted version of this letter dated 05.06.2018 has been annexed in Volume V of the compilation of documents submitted by the State (at page 2 thereof). This compilation of documents (pages 2 to 7A of the said volume) suggests that Anti-Corruption Bureau had been asking for information in that regard. I quote below the redacted version of the said letter:- " Office of the Director General Anti-Corruption Bureau, Andhra Pradesh, Vijayawada Rc No.10/RE- CIU/2018 Dated:5-6-2018 MEMORANDUM Sub:-Public Servants-Industries Department- Allegations of corruption against the officials of A.P. State Skill Development Corporation, Vijayawada-Regular Enquiry-ordered-Reg.

Ref: 1) Letter of Sri <OMITTED> Pune, dt. 14-5-2018.

2) CBI Letter No.122 2017 (CE-117/2017) CBI/Pune/3865, dated 2-10-2017 *** The letter of <OMITTED> Pune and letter of CBI, Pune are enclosed herewith. You are instructed to conduct a Regular Enquiry into the contents letter of petition and submit a RE report within the stipulated time. You are also directed to submit Plan of Action duly approved by the LA-cum-Special PP, ACB, HO, Vijayawada.

-Sd/-For Director General, Anti-Corruption Bureau, A.P., Vijayawada To:

Sri Narra Venkateswara Rao, DSP, CIU, ACB, Vijayawada."

10. The High Court has accepted the argument of the State that a regular enquiry was ordered on 05.06.2018 regarding the allegations of corruption against the officials of APSSDC by the DG Anti-Corruption Bureau AP before Section 17A of the 1988 Act came into operation i.e. on 25.07.2018. As a corollary, the requirement of previous approval as contemplated in the aforesaid provision would not be applicable in the case of the appellant.

11. First, I shall examine the point as to whether enquiry had commenced by the letter of 05.06.2018. I have quoted the letter of 05.06.2018 in the preceding paragraph. This letter refers to an earlier letter dated 14.05.2018 addressed to the Andhra Pradesh Anti-Corruption Bureau by the Director General of GST Intelligence, Pune submitting information regarding corruption and siphoning of Government funds pertaining to APSSDC. The letter dated 05.06.2018 essentially carries a request for enquiry. There is no indication in the materials produced before us as to whether any step was taken in pursuance of such request till the year 2021. The first suggestion of any active enquiry can be seen in a letter of 22.02.2021 originating from the Deputy Superintendent of Police, Anti-Corruption Bureau of that State, which states that the bureau is investigating a regular enquiry pertaining to allegations of corruption, misappropriation of funds and procedural lapses in relation to collaboration of APSSDC/AP Government with Design Tech. It appears that there was a previous communication in this regard dated 09.02.2021. Even though reference is made to the letter of 05.06.2018 in this communication, there are no specific particulars of such enquiry or the date on which such enquiry was started. There are subsequent letters dated 22.02.2021, 30.03.2021, 23.06.2021 and 18.08.2021, all referring to the letter of 05.06.2018. But as it has been already observed earlier, there are no specific particulars regarding when and in what form the enquiry has started. There obviously was a time gap between the date of issue of the letter

of 05.06.20218 and actual date on which the enquiry was commenced. The State has justified this delay in its counter affidavit. It has been stated that instead of acting on the letter of the taxing authorities dated 14.05.2018, which in turn has been referred to in the communication of 05.06.2018, the note file pertaining to the project was removed by the appellant from the secretariate in collaboration with other accused persons and this was done to temper with evidence and to ensure that the offences were not brought to light. This act of removal of file may constitute a or an independent offence. But if otherwise no enquiry was started because of such alleged wrong, this time gap cannot be treated to have caused the date of issue of the letter of 05.06.2018 to be starting point of an enquiry, in the nature contemplated in Section 17A of the 1988 Act.

12. Section 17A thereof postulates prior approval from the appointing authority in relation to any enquiry, inquiry, or investigation under the 1988 Act. While the expression “inquiry” has been defined in the 1973 code, there is no specific definition of the word “enquiry”. The Concise Oxford English Law Dictionary, Revised Tenth Edition, defines the said expression as “an act of asking for an information”. It entails commencement of an active search to ascertain the truth or falsity of an alleged wrongful act.

13. In ordinary perception, “enquiry” by a police officer would imply positive exercise for searching certain details or particulars pertaining to allegations of commission of an offence by an accused persons or a set of accused persons. “Inquiry” is defined in Section 2 (g) of the 1973 and implies inquiry conducted under the Code by a Magistrate or Court. Similarly, “investigation” in terms of Section 2 (h) of the same Code includes all the proceedings conducted thereunder for collection of evidence by a police officer or a person authorised by a Magistrate in that behalf. The nature of actions undertaken by the State after 05.06.1988 constitutes neither inquiry nor investigation, as no step under the 1973 Code was taken by the State prior to the year 2021. If that is the meaning attributed to this expression, the letter of 05.06.2018 or the earlier letter from taxing authority dated 14.05.2018 cannot be construed to be the commencing point of any enquiry. These were requests for starting an enquiry, which obviously did not commence prior to the aforesaid dates in the year 2021. Thus, on this point I cannot accept the finding of the High Court that a regular enquiry was already initiated on 05.06.2018. The restriction in Section 17A of the 1988 Act is on conducting an enquiry by a police officer without the prior approval of the authority specified therein. A request to conduct an enquiry by itself cannot be the starting point of the enquiry under the said provision to bypass the restriction postulated therein. Moreover, in the facts of this case, actual search for information had commenced in the year 2021, as I have already indicated, and lack of action on this count has been attributed by the State to the appellant and the other accused persons themselves. We are not going into the truth of such allegations. But if such allegations are assumed to be correct, the same shall only support the appellant’s case that no enquiry was initiated before incorporation of Section 17A in the statute book. Further, in the F.I.R. or the preliminary enquiry report dated 09.12.2021, there was no reference to the communication of 05.06.2018. I, accordingly, hold that before Section 17A of the 1988 Act had become operational, no enquiry, inquiry or investigation had commenced as against the appellant in relation to the subject crime.

14. Mr. Salve has also relied on a Standard Operating Procedure (hereinafter referred to as “SOP”) for processing cases under Section 17A of the 1988 Act. This has been issued under Memo

no.428/07/2021□AVD.IV(B) dated 03.09.2021 by the Department of Personnel and Training of the Government of India. This memo in detail records how the aforesaid provisions shall apply. Clause 4.2 thereof stipulates: □"Enquiry for the purposes of these SOPs, means any action taken, for verifying as to whether the information pertains to commission of offence under the Act."

15. As there is no authoritative guideline defining what constitutes an enquiry, I find it safe to rely on the explanation given in the aforesaid clause of the SOP. This explanation also contemplates any action taken for verifying as to whether the information pertains to commission of offences under the Act or not. Again, the memo of 05.06.2018, if tested standalone, cannot be construed to imply taking any action.

16. The High Court citing the judgments of this Court in the cases of Shambhoo Nath Misra □vs□ State of U.P. & Others [(1997) 5 SCC 326] and State of Uttar Pradesh □vs□Paras Nath Singh [(2009) 6 SCC 372], has held that the protection of sanction sought by the accused persons therein cannot be applied because when a public servant is alleged to have committed the offence of fabrication of records or misappropriation of public funds, it cannot be said that he acted in discharge of his official duty. Obviously, it cannot be said that such misdemeanour on the part of a public servant can be equated to his official duties. But these judgments were delivered while interpreting the provisions of Section 197 of 1973 Code. The requirement of previous sanction contemplated in Section 197 of the 1973 Code comes at the stage of taking cognizance of an offence. Thus, a judicial authority, in such a context has the advantage of coming to some form of opinion as to whether the offending acts can be said to have been committed in discharge of his official duty or not. In the case of Dr. S.M. Mansoori(Dead) Through Legal Representatives □vs□Surekha Parmar and Others [(2023) 6 SCC 156], the complaint related to offences punishable under Sections 498□A and 506 read with Section 34 of IPC as well as Sections 3 and 4 of the Dowry Prohibition Act, 1961. The police personnel had entered the house of the appellant therein without any previous sanction and the charges framed against the accused were quashed by the High Court on the ground that prior sanction under Section 197 of 1973 Code was not taken. In that context, it was held by a Coordinate Bench of this Court that looking at the nature of allegations in the complaint, at that stage it was impossible to conclude that the acts alleged to have been done by the accused were committed by her while in discharge of official duty. The High Court judgment was set aside and it was opined by the Coordinate Bench in the facts of that case, that a final view on that issue would be taken only after the evidence was recorded.

17. So far as the provision of Section 197 of the 1973 Code is concerned, the requirement for deciding the question on obtaining sanction is at the stage of taking cognizance. Thus, some element of application of mind is necessary while examining that issue. In the case of Matajog Dobey □vs□H. C. Bhari (AIR 1956 SC 44), there was use of force when a tax raiding party was resisted from conducting a search. This gave rise to two complaints, which were sent to two magistrates for judicial enquiry. Summonses were issued against the income tax officials and the accompanying policemen over use of force. Matajog Dobey (supra), the resistor, contended that use of such force was not in discharge of official duty. Objection was raised against the issuance of summons on the ground of lack of sanction as contemplated in Section 197 of the Criminal Procedure Code, which was prevalent at that point of time (1950). Negating such a contention, a Constitution Bench of this

Court observed:"20. Is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained? At first sight, it seems as though there is some support for this view in Hori Ram case and also in Sarjoo Prasad v. King-Emperor. Sulaiman, J. says that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution. Varadachariar, J. also states that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceeding. But a careful perusal of the later parts of their judgments shows that they did not intend to lay down any such proposition. Sulaiman, J. refers (at P-179) to the prosecution case as disclosed by the complaint or the police report and he winds up the discussion in these words:"Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground". The other learned Judge also states at p. 185, "At this stage we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty". It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.

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23. Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution. If in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with commonsense and does not seem contrary to any principle of law. The true position is neatly stated thus in Broom's Legal Maxims, 10th Edn. at p. 312:" It is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command." The scope of operation of Section 17A of the 1988 Act is, however, different from that of Section 197 of the Code. The requirement of taking sanction under Section 19 of the 1988 Act also is at the same stage. Unlike Section 197 of 1973 Code (which is near identically phrased as the same section in the earlier version of the Code), Section17A of the 1988 Act imposes restriction on police officer at the enquiry stage itself, from proceeding against a public servant in relation to any offence alleged to have been committed by him, relatable to any recommendation made or decision taken by such public servant (emphasis added), without previous approval of the authorities stipulated in the said Section. We do not think the cases arising out of Section 197 of the 1973 Code would give proper guidance for interpreting the provision of Section 17A of the 1988 Act because, in the cases under Section 197, the decision on requirement for sanction is to be taken at the stage of taking cognizance. Thus, there is in-built scope of application of judicial mind to assess, at least prima-facie, if an alleged act falls within discharge of official duty or not. Under the provisions of Section 17A of the 1988 Act, there is no scope of judicial application

of mind in determining if the flaw in making recommendation or taking decision is interwoven with discharge of official duty or function or not. Moreover, the qualified embargo therein is on a police officer. On the point as to assessing whether the offending act is in discharge of official duty or not, having regard to the nature of duties of a police officer, he is less equipped to assess that factor, which involves some form of judicial application of mind. No material has been placed before us to demonstrate that the concerned police officer had undertaken any exercise for prima facie forming his opinion as to whether the offence alleged against the appellant was relatable to any recommendation made or decision taken by the appellant in discharge of his official duty. Unlike in the case of Dr. S.M. Mansoori (supra), in which the offences involved, by their very nature, were prima facie not relatable to discharge of official duty by the accused, here the appellant's actions relate to making recommendations or taking decisions and these decisions and recommendations otherwise, prima face, relate to discharge of official functions. In the case of State of Telangana □vs□ Managipet alias Mangipet Sarveshwar Reddy [(2019) 19 SCC 87] the accused questioned the authorisation of the investigating officer in terms of Section 17 of the 1988 Act. This Court held :□ "36. The High Court has rightly held that no ground is made out for quashing of the proceedings for the reason that the investigating agency intentionally waited till the retirement of the accused officer. The question as to whether a sanction is necessary to prosecute the accused officer, a retired public servant, is a question which can be examined during the course of the trial as held by this Court in K. Kalimuthu [K. Kalimuthu v. State, (2005) 4 SCC 512 : 2005 SCC (Cri) 1291] . In fact, in a recent judgment in Vinod Kumar Garg v. State (NCT of Delhi) [Vinod Kumar Garg v. State (NCT of Delhi), (2020) 2 SCC 88 :

> (2020) 1 SCC (Cri) 545 : (2020) 1 SCC (L&S) 146] , this Court has held that if an investigation was not conducted by a police officer of the requisite rank and status required under Section 17 of the Act, such lapse would be an irregularity, however unless such irregularity results in causing prejudice, conviction will not be vitiated or be bad in law. Therefore, the lack of sanction was rightly found not to be a ground for quashing of the proceedings."
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> 18. I shall test later in this judgment as to whether the remand proceeding before the Special Judge was mere irregularity or fatal, but before that I have to answer the question as to whether the protection of Section 17A is applicable in the case of the appellant.
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> 19. Large part of Mr. Salve's arguments was devoted to the proposition that the content of Section 17A of the 1988 Act was procedural in nature and relying on the judgments of this court in the cases of (i) Anant Gopal Sheorey □vs□State of Bombay [AIR 1958 SC 915]; (ii) Rattan Lal □vs□State of Punjab [AIR 1965 SC 444]; and (iii) CBI □vs□R.R. Kishore [2023 INSC 817], he has argued that the said provision is retroactive and not retrospective. His submission is that the amended provision applies at the starting point of enquiry, inquiry, or investigation, even though the offence may relate back to a period when the requirement of obtaining previous sanction was not necessary for starting these processes. I have already referred to Section 19 of the 1988 Act which requires the Court to satisfy itself whether such

> sanction stated therein has been taken at the stage of taking cognizance. So far as acts of a public servant in making recommendation or taking decision in discharge of official duties are concerned, an entry point check, prior in time has been contemplated for the investigating agencies. Thus, the requirement of taking prior approval would arise at that stage, being the beginning or commencing of enquiry, inquiry, or investigation. In my view a plain reading of the said Section leads to such an interpretation. Section 17A does not distinguish between alleged commission of offence prior to 26.07.2018 or post thereof. This provision stipulates the time when any enquiry, inquiry or investigation is commenced by a police officer.

Mr. Rohtagi drew my attention to the judgment of this Court in the case of State of Rajasthan □vs□ Tejmal Choudhary [2021 SCC Online SC 3477] to refute Mr. Salve's submissions on this point. In this judgment, a Coordinate Bench has held that the Section 17A of the 1988 Act is substantive in nature and is therefore applicable prospectively. The same view has been taken by different High Courts but as I have an authority of this Court on this point, I do not consider it necessary to refer to all these High Court Judgements.

20. In the case of Tejmal Choudhary (supra) the FIR was registered on 01□01□2018 and the accused public servant sought quashing of the FIR on the ground of introduction of Section 17A in the 1988 Act. In para 10 of this judgment, the Coordinate Bench observed that:□"10. In State of Telangana v. Managipet alias Mangipet Sarveshwar Reddy reported (2019) 19 SCC 87, this Court rejected the arguments that amended provisions of the PC Act would be applicable to an FIR, registered before the said amendment came into force and found that the High Court had rightly held that no grounds had made out for quashing the proceedings." In the present case, original FIR was registered on 09.12.2021 and the appellant was implicated in the aforesaid offences on 08.09.2023. There is no evidence of any substantive enquiry, inquiry, or investigation made against him prior to coming into operation of the Section 17A of the 1988 Act. Hence, the case at hand is distinguishable from the ratio laid down in the judgment of this Court of in the case of Tejmal Choudhary (supra).

21. The Amendment Act by which Section 17A of the 1988 Act was brought into the said statute also deleted the provisions of sub□clauses (c) and (d) of Section 13 (1) thereof. At the time the memorandum of adding the appellant as accused was issued, the said Amendment Act had become operational, but at the time of alleged commission of offence, aforesaid two sub□clauses were part of the statute book. Thus, per se, the appellant could be held liable for commission of offences stipulated in the said provisions, though their subsequent deletion might have some impact on the ultimate outcome of the case. We are not concerned with that aspect of the controversy at this stage. It has been asserted by Mr. Rohtagi, however, that since at the time of commission of offence, the protective shield of Section 17A was not in force, the appellant could not claim the benefits thereof. I, however, do not accept this argument. It has been already observed by me that the point of time Section 17A of 1988 Act would become applicable is the starting point of enquiry, inquiry, or investigation and not the time of commission of the alleged offence. In the event any of the three acts on the part of the prosecution is triggered off post 26.07.2018, the mandate of Section 17A would be applicable. The wording of Section 17A restricts the power of a police officer to conduct any of the three acts into any offence by a public servant "under this act". Thus, if the process of

enquiry commences at a time attracting specific provisions of the 1988 Act which stand deleted by the Amendment Act of 2018, the restrictive protection in form of Section 17A ought to be granted. The phrase "under this act", on such construction ought to include offences which were in the statue book at the time the subject offences are alleged to have been committed. Mr. Rohatgi, however, wants me to construe this expression, i.e. "under this Act" to mean the 1988 Act, as it existed on and from the date the provisions of Section 17A was introduced. As the said section did not exist at the time of alleged commission of the offences, his submission is that the said provision could not apply in the case of the appellant. The said section, however, as I have already narrated, had become operational when the enquiry started. Thus, proceeding on the basis that the said provision is prospective in its operation, the material point of time for determining its prospectivity would be the starting point of enquiry or inquiry and investigation.

22. The question as to whether the phrase "under this Act" used in Section 17A of the 1988 Act, would mean to be "the Act", as it existed at the time of alleged commission of offence or "the Act" as it stood post amendment when the enquiry commenced would also have to be answered by this Court. While dealing with the issue of necessity for obtaining prior approval, I have already held that the appellant could be implicated under Section 13 (1)(c) and

(d), as at the time of alleged commission of the offences, these provisions were alive. Once certain offences are deleted from an enactment, they do not vanish totally unless the lawmakers say so. They move to the back pages and can be revived if they were committed before being enacted out of the legislation. But I cannot give a restrictive interpretation to the expression "under this Act" to give an isolated retrospective operation to the said phrase, detaching it from rest of the provisions of Section 17A of the Act and remove the protective shield in a situation where an enquiry has started after introduction of the said provision but relates to an offence committed prior to its introduction in 2018. The said phrase ought to be relatable to the date of starting of the enquiry, inquiry or investigation and not to the time or date of commission of offence.

23. Otherwise, if I apply an interpretation of the expression "under this Act" to mean the statute as it exists at the time the enactment is invoked, the same phrase is invoked, the same might result in divesting the Special Judge of his power to proceed against the appellant, as at the time the appellant's case was brought to the Special Judge, the aforesaid two sub sections stood deleted from Section 13 (1) of the 1988 Act.

I am making this observation because the Special Judge's jurisdiction is derived from Sections 3 and 4 of the 1988 Act. These provisions read: "3. Power to appoint special Judges.—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

4. Cases triable by special Judges.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years:

> Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:
>
> Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate."
>
> 24. Now if I accept the meaning Mr. Rohtagi wants us to give to the said expression as employed in Section 17A of the 1988 Act, the same expression i.e. "under this Act" as contained in Section 3 (1) (a) would also have to be read to mean as "the Act" prevailing at the point of time the appellant's case is brought to the Special Judge. This would result in shrinking the jurisdiction of the Special Judge to try offences which have been repealed by the Amendment Act of 2018. I am unable to agree with Mr. Rohatgi on this point. It is an established principle of statutory interpretation that if a particular phrase is employed in different parts of an enactment, Courts ought to proceed with an understanding that the legislature intended to assign the same meaning to that expression used in different provisions thereof, unless of course, a contrary intention appears from the statute itself. Here I find no such contrary intention.
>
> 25. Now I shall examine the legality of a proceeding which is started without complying with the requirement of previous approval under Section 17A of the 1988

> Act. In the case of Yashwant Sinha and Others vs Central Bureau of Investigation through its Director and Another [(2020) 2 SCC 338], a Bench of this Court comprising of three Hon'ble Judges, while dealing with power of review had also examined this question. The Bench was unanimous in rejecting the review plea.

In a concurring judgment one of the Hon'ble Judges, (K. M. Joseph, J.) held: "116. In the year 2018, the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as "the 2018 Act", for short) was brought into force on 26-7-2018. Thereunder, Section 17-A, a new section was inserted, which reads as follows:

> "17-A. Enquiry or inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—(1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval —
>
> (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;
>
> (b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:
>
> Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:
>
> Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month." (emphasis supplied)
>
> 117. In terms of Section 17-A, no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed. In respect of the public

servant, who is involved in this case, it is clause (c), which is applicable.

Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent CBI, is done after Section 17A was inserted. The complaint is dated 4-10-2018. Para 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paras 6 and 7 of the complaint are relevant in the context of Section 17A, which read as follows:

> "6. We are also aware that recently, Section 17A of the Act has been brought in by way of an amendment to introduce the requirement of prior permission of the Government for investigation or inquiry under the Prevention of Corruption Act.
>
> 7. We are also aware that this will place you in the peculiar situation, of having to ask the accused himself, for permission to investigate a case against him. We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the Government under Section 17A of the Prevention of Corruption Act for investigating this offence and under which, "the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month"." (emphasis supplied)
>
> 118. Therefore, the petitioners have filed the complaint fully knowing that Section 17A constituted a bar to any inquiry or enquiry or investigation unless there was previous approval. In fact, a request is made to at least take the first step of seeking permission under Section 17A of the 2018 Act. Writ Petition (Criminal) No. 298 of 2018 was filed on 24-10-2018 and the complaint is based on non-registration of the FIR. There is no challenge to Section 17A. Under the law, as it stood, both on the date of filing the petition and even as of today, Section 17A continues to be on the statute book and it constitutes a bar to any inquiry or enquiry or investigation. The petitioners themselves, in the complaint, request to seek approval in terms of Section 17A but when it comes to the relief sought in the writ petition, there was no relief claimed in this behalf." The same view has been reflected in the case of Tejmal Choudhary (supra).
>
> 26. One point which has been urged in relation to this authority is that this was not a contention raised by the parties in the judgment of Yashwant Sinha (supra) and was not dealt with by the majority opinion. Hence, according to the respondents a concurring opinion could not be a binding authority on a point which has not been dealt with by the majority of the Hon'ble Judges in the Bench. Mr. Rohatgi relied on a decision in the case of Rameshbhai Dabhai Naika -vs- State of Gurajat and Others [(2012) 3 SCC 400] on this point. The ratio of this decision would not apply in the context of the judgment delivered in the case of Yashwant Sinha (supra), as in the latter authority the majority view does not reflect any discord over the concurring

view. In my opinion, however, position of law laid down in a concurring judgment ought to be treated as part of the main judgment and that opinion would form a binding authority. I should not distinguish between the main judgment and the concurring view and isolate the reasoning contained in the concurring opinion and hold the reasoning contained in the main opinion (of majority of the judges) only to have the status of a binding precedent. The concurring view is just as much part of the main opinion (of majority of the judges) and will be a binding precedent, composite with the majority view. The position of law would be different if the majority view had expressed, either directly or by implication, a contrary view. That is not the case so far as the judgment in the case of Yashwant Sinha (supra) is concerned. Hence this principle of law contained in the concurring judgment would constitute precedent even though it was expressed in a concurring judgment of a learned Single Judge which the majority members of the Bench have not differed. Thus, the steps taken against the appellant under the 1988 Act ought to be invalidated as the same did not commence with prior approval as laid down under Section 17A of the 1988 Act.

27. The cases of Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra [AIR 2021 SC 315] and State □vs□M. Maridoss [(2023) 4 SCC 338] were cited by the respondents to contend that investigation ought not be scuttled at a nascent stage and it was also highlighted that the petition for quashing of an FIR was made within five days from the date the appellant was arraigned as an accused. It is a fact that the appellant had approached the quashing Court with extraordinary speed but that factor by itself would not render his action untenable, ousting him from the judicial forum to have the proceeding against him invalidated. In the cases of R.P. Kapur □ vs□State of Punjab [AIR 1960 SC 866] and State of Haryana □vs□Bhajan Lal [(1992) Supp. (1) SCC 335], it has been held that prosecution undertaken in violation of a legal bar would be a valid ground for quashment of the proceeding. Further, in the case of Mahmood Ali & others □vs□State of UP [2023 INSC 684] a Coordinate Bench of this Court has observed :□"13..... The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation....."

28. Now I shall address the issue as to whether striking down the set of offences under the 1988 Act from the FIR would render the remand order passed by the Special Judge appointed in terms of Section 3 of the aforesaid statute illegal and non□est. For the purpose of testing this legal issue, which was raised on behalf of the appellant, it would be necessary to refer to the provisions of Sections 3 and 4 of the 1988 Act which have been reproduced above.

29. The question of lack of prior approval under the 1988 Act was raised before the Special Judge at the time of remand but this argument was rejected on the ground

> that time for commission of the alleged offences related to a period prior to 26.07.2018. I have in the earlier part of this judgment discussed this question and held the point in favour of the appellant.
>
> 30. There are allegations of commission of offences against the appellant under different provisions of the 1860 Code. I have been taken through the memorandum for adding the appellant as accused and also the order of the remand Court. The IPC offences also relate to the same or similar set of transactions, for which the aforesaid provisions of the 1988 Act were applied. The substantive offences alleged against the appellant are Section 12 and Sections 13(1) (c) and (d) read with Section 13(2), which is the provisions prescribing punishment. I am not satisfied, at this stage, that the 1988 Act offences are so dominant in the set of allegations against the appellant that once I consider the allegations against the appellant de hors the alleged offences under 1988 Act, the allegations of commission of the IPC offences would automatically collapse. At this stage, in my opinion, the alleged commission of IPC offences are not mere ancillary to the 1988 Act offences, as has been argued by Mr. Salve and Mr. Luthra and if commission of offences by the appellant under the IPC provisions is proved, could form the basis of conviction independent of the offences under the 1988 Act. Thus, the ratio of the judgement of this Court in the case of Ebha Arjun Jadeja and others □vs□State of Gujarat [(2019) 9 SCC 789], to which I was a party, would not aid the appellant. In this judgment, it was held:□"18. In the case in hand, the only information recorded which constitutes an offence is the recovery of the arms.

The police officials must have known that the area is a notified area under the TADA Act and, therefore, carrying such arms in a notified area is itself an offence under the TADA Act. It is true that this may be an offence under the Arms Act also but the basic material for constituting an offence both under the Arms Act and the TADA Act is identical i.e. recovery of prohibited arms in a notified area under the TADA Act. The evidence to convict the accused for crimes under the Arms Act and the TADA Act is also the same. There are no other offences of rape, murder, etc. in this case. Therefore, as far as the present case is concerned, non□compliance with Section 20□A(1) of the TADA Act is fatal and we have no other option but to discharge the appellants insofar as the offence under the TADA Act is concerned. We make it clear that they can be proceeded against under the provisions of the Arms Act." As would be evident from quoted portion of the judgment in the case of Ebha Arjun Jadeja (supra), the Coordinate Bench had permitted proceeding against the appellant therein under the provisions of the Arms Act though basic material for constituting the offences was both under the Arms Act and the TADA.

31. In the case of State through Central Bureau of Investigation, New Delhi □vs□Jitender Kumar Singh [(2014) 11 SCC 724] certain persons who were not public servants were being tried with a public servant in relation to offences outside the purview of the 1988 Act. The public servant however was implicated in offences under the aforesaid statute. It has been held and observed in this judgment:□"46. We may now examine Criminal Appeal No. 161 of 2011, where the FIR was registered on 2□7□1996 and the charge□sheet was filed before the Special Judge on 14□9□2001 for

the offences under Sections 120-B, 420 IPC read with Sections 13(2) and 13(1) of the PC Act. Accused 9 and 10 died even before the charge-sheet was sent to the Special Judge. The charge against the sole public servant under the PC Act could also not be framed since he died on 18-2-2005. The Special Judge also could not frame any charge against non-public servants. As already indicated, under sub-section (3) of Section 4, the Special Judge could try non-PC offences only when "trying any case" relating to PC offences. In the instant case, no PC offence has been committed by any of the non-public servants so as to fall under Section 3(1) of the PC Act. Consequently, there was no occasion for the Special Judge to try any case relating to the offences under the PC Act against the appellant. The trying of any case under the PC Act against a public servant or a non-public servant, as already indicated, is a sine qua non for exercising powers under sub-section (3) of Section 4 of the PC Act. In the instant case, since no PC offence has been committed by any of the non-public servants and no charges have been framed against the public servant, while he was alive, the Special Judge had no occasion to try any case against any of them under the PC Act, since no charge has been framed prior to the death of the public servant. The jurisdictional fact, as already discussed above, does not exist so far as this appeal is concerned, so as to exercise jurisdiction by the Special Judge to deal with non-PC offences.

47. Consequently, we find no error in the view taken by the Special Judge, CBI, Greater Mumbai in forwarding the case papers of Special Case No. 88 of 2001 in the Court of the Chief Metropolitan Magistrate for trying the case in accordance with law. Consequently, the order passed by the High Court is set aside. The competent court to which Special Case No. 88 of 2001 is forwarded, is directed to dispose of the same within a period of six months. Criminal Appeal No. 161 of 2011 is allowed accordingly." Citing this authority along with the judgement of this court in the cases of (i) Chiranjilal Goenka -vs- Jasjit Singh & Others [(1993) 2 SCC 507], (ii) State of Tamil Nadu -vs- Paramasiva Pandian [(2002) 1 SCC 15], (iii) State of Punjab -vs- Davinder Pal Singh Bhullar [(2011) 14 SCC 427] and (iv) Kaushik Chaterjee -vs- State of Haryana [(2020) 10 SCC 92] it was argued that the defect of jurisdiction strikes at the very power or authority of the Court and hence the Special Judge could not have passed the remand order and hence the entire proceeding against the appellant before the Special Judge ought to fail. On the same point, certain other authorities were also referred to but we do not consider it necessary to individually cite those authorities and deal with them separately.

32. So far as the present case is concerned, the principle of law laid down in the authorities referred to in the preceding paragraph would not apply. In Section 4(3) of the 1988 Act it has been stipulated that when trying any case, a Special Judge may also try any offence other than an offence specified in Section 3, with which the accused may be charged with under the 1973 Code, at the same trial. In the case of Jitender Kumar Singh (supra), the public servant against whom allegations of commission of offences under the 1988 Act were brought, had died before framing of charge and other accused persons were not public servants. They were not charged with any offence under the 1988 Act. It was in this context the aforesaid judgment was delivered. It has been submitted before us on behalf of the State that other co-accused persons have been implicated in offences under the 1988 Act. A similar line of reasoning was followed in the case of A. Sreenivasa Reddy -vs- Rakesh Sharma and Another [2023 INSC 682]. I have earlier observed that the offences against the appellant relate to the same or similar set of transactions in relation to which the Special Judge is

proceeding with the case initiated by the F.I.R. dated 09.12.2021 against the other accused persons. In this context, I shall refer to Section 223 of the 1973 Code, which stipulates :□"223. What persons may be charged jointly.—The following persons may be charged and tried together, namely:—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first□named persons, or of abetment of or attempting to commit any such last named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

> Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the [Magistrate or Court of Session] may, if such persons by an application in writing, so desire, and [if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

33. Sub clause (a) of the aforesaid provision of the 1973 Code, so far as charging and trying of an accused is concerned, could apply in the present case, as the non□ obstante clause with which Section 4 of the 1988 Act is couched, would not oust the principles contained in Section 223 of the 1973 Code. There is no incompatibility in applying the aforesaid principle considering the content of sub□section 3 of Section 4 of 1988 Act. In the case of Vivek Gupta □vs□Central Bureau Investigation and Another [(2003) 8 SCC 628] decided by a Coordinate Bench of this Court, it has been held:□"14. The only narrow question which remains to be answered is whether any other person who is also charged of the same offence with which the co□accused is

charged, but which is not an offence specified in Section 3 of the Act, can be tried with the co-accused at the same trial by the Special Judge. We are of the view that since sub-section (3) of Section 4 of the Act authorizes a Special Judge to try any offence other than an offence specified in Section 3 of the Act to which the provisions of Section 220 apply, there is no reason why the provisions of Section 223 of the Code should not apply to such a case. Section 223 in clear terms provides that persons accused of the same offence committed in the course of the same transaction, or persons accused of different offences committed in the course of the same transaction may be charged and tried together. Applying the provisions of Sections 3 and 4 of the Act and Sections 220 and 223 of the Code of Criminal Procedure, it must be held that the appellant and his co-accused may be tried by the Special Judge in the same trial.

15. This is because the co-accused of the appellant who have been also charged of offences specified in Section 3 of the Act must be tried by the Special Judge, who in view of the provisions of sub-section (3) of Section 4 and Section 220 of the Code may also try them of the charge under Section 120-B read with Section 420 IPC. All the three accused, including the appellant, have been charged of the offence under Section 120-B read with Section 420 IPC. If the Special Judge has jurisdiction to try the co-accused for the offence under Section 120-B read with Section 420 IPC, the provisions of Section 223 are attracted. Therefore, it follows that the appellant who is also charged of having committed the same offence in the course of the same transaction may also be tried with them. Otherwise it appears rather incongruous that some of the conspirators charged of having committed the same offence may be tried by the Special Judge while the remaining conspirators who are also charged of the same offence will be tried by another court, because they are not charged of any offence specified in Section 3 of the Act."

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

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

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

Court, however, shall not foreclose the option of the concerned authority in seeking approval in terms of the aforesaid provision. In this case, liberty is preserved for the State to apply for such approval as contained in the said provision.

(iii) I decline to interfere with the remand order dated 10.09.2023 as I am of the view that the Special Judge had the jurisdiction to pass such order even if the offences under the 1988 Act could not be invoked at that stage. Lack of approval in terms of Section 17A would not have rendered the entire order of remand non□est.

(iv) The appellant, however, could be proceeded against before the Special Judge for allegations of commission of offences under the Indian Penal Code, 1860 for which also he has been implicated.

35. The appeal stands partly allowed, in the above terms.

36. All connected applications stand disposed of.

..... J.

(ANIRUDDHA BOSE) NEW DELHI;

16th January, 2024

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024

(@SPECIAL LEAVE PETITION (Crl.) No. 12289 OF 2023 NARA CHANDRABABU NAIDU ...APPELLANT(S) VERSUS THE STATE OF ANDHRA PRADESH & ANR. ...RESPONDENT(S) JUDGMENT BELA M. TRIVEDI, J.

1. Leave granted.

2. The entire controversy in the instant Appeal centres around the interpretation of Section 17A of the Prevention of Corruption Act,1988 (hereinafter referred to as the “PC Act”), and its applicability to the facts of the present case. Having had the benefit of going through the draft opinion of my esteemed Brother Justice Aniruddha Bose, I deem it appropriate to pen down my views on the issues involved in the Appeal.

FACTUAL MATRIX:

3. Bereft of unnecessary details, the bare minimum facts required to decide the present Appeal are that the appellant, who is sought to be added as the accused No. 37 vide the "Accused Adding Memo" dated 08.09.2023, in the FIR No. 29/2021 registered at the P.S. CID P.S., AP, Amarvathi, Mangalalagiri, on 09.12.2021, was the Chief Minister of Andhra Pradesh between 2014-2019. The said FIR No.29/2021 was initially registered against 26 accused on the basis of the report of the Chairman APSSDC dated 07.09.2021 and the preliminary enquiry report dated 09.12.2021, for the offences under Sections 166, 167, 418, 420, 465, 468, 471, 409, 201, 109 read with 120-B IPC and Section 13(2) read with Section 13(1)(c) and 13(1)(d) of the PC Act, in connection with the alleged swindling of funds by the then Special Secretary and other officers of the Government and by the Directors, Project team members and other officers of M/s Siemens and M/s DesignTech and their shell/defunct allies, by creating bogus invoices and thereby siphoning of funds of the government.

4. As per the case of the respondent state, the office of Director General, Anti-corruption Bureau, A.P, Vijayawada, vide the memorandum dated 05.06.2018 had directed the DSP, CIU, ACB, Vijayawada to conduct a Regular Inquiry into the letter/complaint dated 14.05.2018 received by it in respect of the allegations of corruption made against the officials of the A.P. State Skill Development Corporation Vijayawada. Based on the report of the complainant Sri Konduru Ajay Reddy, Chairman, APSSDC; and the PE Report of Sri N. Surendra, Dy. S.P. EOW-II, CID, A.P. Mangalagiri, the case being FIR No. 29/2021 was registered on 09.12.2021.

5. It was stated in the "Accused Adding Memo" dated 08.09.2023 filed in CR No. 29/2021 against the appellant (A-37) inter alia that– "As per the investigation so far done, prima facie established that A36 committed the offence through a prior conspiracy led by A-37 along with A-1 A-2 and others. A-38 colluded with A-37, on 16.2.2015, as a minister in the AP cabinet led by A-37, approved the cost estimation of Siemens project received through A-1, without getting any assessment, verification, proper DPR and evaluation. The accused A-38 while holding office as public servant as a Minister holding departments i.e SDEI & APSSDC, conspired, colluded with A-37, A-2, A- 6 to A-10 and with criminal intention, released the Govt funds through the accused without verifying the contribution of Technology partners, allowed other accused to do fraudulent and illegal acts, committed misappropriation of Government funds to the tune of around Rs.279 Crores which were entrusted to them or under their control by corrupt and illegal methods. A-37 & A-38 through A-1, allowed other accused to divert APSSDC funds by using fake invoices as genuine one for purpose of cheating through the shell, defunct companies without providing materials/services to the APSSDC-Siemens project by the M/s DesignTech, by conspiring, colluding and intentionally co-operating in the commission offence with several acts of by the concerned Directors of companies and private persons. A-38 as a Minister holding a concerned department i.e SDE&I & APSSDC did not review the project and caused the wrongful loss to the Govt. and wrongful gain to himself and others.

Therefore, a prima-facie case was established for the offences U/s 120(B), 418, 420, 465, 468, 471, 409, 201, 109 r/w 34 & 37 IPC & Section 12, 13(2) r/w 13(1) (c) and (d) of Prevention of Corruption Act, 1988 against Sri Nara Chandra Babu Naidu (A- 37), formerly Chief Minister of Andhra Pradesh and against Sri K. Atchannaidu, the then Minister for Labour & Employment, Factories, Youth & Sports, Skill Development and Entrepreneurship, Govt. of A.P were added as accused no. 37 and

A-38 respectively to this case."

6. The appellant was arrested on 09.09.2023 and was produced before the Special Court for SPE and ACB cases Vijayawada, A.P. The Special Court on 10.09.2023, passed the order remanding the appellant (accused no.37) to the judicial custody till 22.09.2023 under Section 167 Cr.PC by holding inter alia that the material on record prima facie showed that accused no. 37 had in pursuance of criminal conspiracy, while holding his office as a public servant, colluded with the other accused and committed misappropriation of government funds to the tune of Rs.279 crores by corrupt and illegal methods, causing huge loss to the Government exchequer. It was also observed that there was a prima facie material to show the nexus of accused no.37 with the other accused no. 1, 2, 6 and 38 and the other representatives of shell companies, and also sufficient material eliciting the role of A-37 in the approval of the Skill Development Project and its activities, attracting the offences under IPC and PC Act.

7. The appellant thereafter filed a petition being Criminal Petition no. 6942/2023 in the High Court under Section 482 of Cr.PC seeking to quash the FIR being no.29/2021 qua him and the consequential order of remand dated 10.09.2023 passed by the Special Court. The said Criminal Petition came to be dismissed by the High Court vide the impugned order dated 22.09.2023 which is under challenge before this Court by way of the present Appeal.

SUBMISSIONS

8. During the course of lengthy arguments made by a battery of lawyers led by learned Senior Advocate Mr. Harish N. Salve appearing for the appellant, broadly following submissions were made:

> (i) The absence of a prior approval as mandated by Section 17A of the PC Act, vitiated the conduct of enquiry or inquiry or investigation; the initiation and continuation of investigation in FIR No. 29 of 2021 dated 09.12.2021, including the various investigative steps of adding of the appellant as Accused No. 37 and arresting the appellant on 08.09.2023; and the remand of the appellant into the custody pursuant to the orders passed by the Special Court.

(ii) Section 17A of the PC Act which was introduced with effect from 26.07.2018, interdicts ".... any enquiry or inquiry or investigation into an offence alleged to have been committed by a public servant .....", without the previous approval of functionaries specified in Clauses (a), (b) or (c), as the case may be, the only exception being where a public servant is apprehended "red handed".

(iii) Section 17A constitutes a complete legal bar to the very initiation of any enquiry, inquiry or investigation as was noted by this Court in Yashwant Sinha & Ors. Vs. Central Bureau of Investigation1.

(iv) Section 17A relates to the procedure by which an enquiry, inquiry or investigation into an offence is to be conducted. It is a procedural provision, which does not impair any right of the

investigating agencies. In this regard reliance is placed on Anant Gopal Sheorey vs. State of Bombay 2 and on Rattan Lal Alias Ram Rattan Vs. State of Punjab3.

(v) No person has a "vested right in the remedies and the methods of procedure in trials for crime." A law that draws upon antecedent facts in its prospective operation is not 1 (2020) 2 SCC 338 2 AIR 1958 SC 915 3 AIR 1965 SC 444 retrospective - it is sometimes referred to as being retroactive.

(vi) Section 17A is retroactive in the sense that it would apply in future in relation to all enquires, inquires or investigations being conducted, even though such enquiries, inquires or investigations may be in respect of offences which may have allegedly been committed prior to coming into force of Section 17A.

(vii) Section 17A (c) uses the phrase "at the time when the offence was alleged to have been committed". Meaning thereby it suggest that the provision is intended to apply to offences committed in the past without any limitation.

(viii) The question whether a prosecution can be initiated after a substantive offence is deleted is not being raised in the present case - the appellant's case will be that in such matters, if the law does not consider an act to be an offence anymore, initiating a prosecution after the offence is deleted violates Article 21. However, that will arise in the Trial and the issue is not being raised at this stage.

(ix) The conclusion of the High Court that the provision cannot be applied in the case of any offence committed prior to 26.07.2018 is erroneous, as in the instant case the alleged offences have taken place till 2019, as for the case of the prosecution.

(x) The SOP issued in relation to Section 17A contemplates a step-by-step approval requirement as per the notification issued in this behalf.

(xi) The alleged offences in the present case relate to the recommendations made/decisions taken by the appellant in discharge of his official functions or duties. The focus of the provision under Section 17A is the person who has committed the offence and not merely the offence. The private acts of a person, not in his or her capacity as a public servant are not protected by this provision, however, if the offences are based on the allegations in connection with recommendations or decisions taken in discharge of his official functions or duties, section 17A would apply. The allegations levelled against the appellant have a clear nexus to his post of Chief Minister.

(xii) Section 17A uses the phrase "any offence". Hence the requirement of obtaining prior approval under Section 17A is applicable to all offences, and not just offences under the PC Act. In any event, even if the prior approval under Section 17A applies only to allegations of offences under the PC Act, the continuation of investigation under IPC offences cannot be countenanced as the basic material for constituting both kinds of offences is the same.

(xiii) It is trite law that if the initial action is not in consonance with law, all subsequent and consequential proceedings would fall. In the present case, once offences under the PC Act are

effaced from existence, the custody of the appellant pursuant to the orders passed by the Special Court from time to time was without any sanction of law, as the Special Court in that case had no powers to remand persons accused of offences under the IPC alone. The jurisdictional fact for the exercise of jurisdiction by the Special Court is the existence of an offence under the PC Act, and once such jurisdictional fact ceases to exist, the orders of Special Court are required to be treated as without any sanction of law and non-est. In this regard, reliance is placed on State of Punjab vs. Davinder Pal Singh Bhullar & Others4.

(xiv)A legal bar to a prosecution is a valid ground for quashing the proceedings as held by this Court in R.P. Kapur vs. State of Punjab5 and State of Haryana Vs. Bhajan Lal6.

9. Learned Senior Advocate Mr. Mukul Rohtagi for the Respondent – State of Andhra Pradesh made following submissions: -

> (i) None of the facets contained in Section 17A would be applicable to the facts of the present case in as much as 4 (2011) 14 SCC 770 5 AIR 1960 SC 866 6 1992 (Suppl.) SCC 335 Section 17A of the PC Act came into force with effect from 26.07.2018, whereas the Regular Enquiry was initiated in respect of the alleged scam against the appellant and others by ACB vide the letter dated 05.06.2018, on the basis of the complaint received from within the DGSTI on 14.05.2018. When the Enquiry began, Section 17A was not in existence and therefore cannot be made applicable to the present case.

(ii) On 11.07.2021, the State issued a memo at the request of the M.D. of APSSDC entrusting a detailed investigation into the very alleged scam. As long as the enquiry into the offence. i.e. facts constituting the offence by the ACB and the CID enquiry are one and the same i.e. about the siphoning of funds from APSSDC during the period 2015- 2018. Therefore, the date of initiation of Enquiry into the said offence for the purpose of deciding the applicability of Section 17A of the PC Act is the date on which the Enquiry was first initiated into that particular offence, i.e. 05.06.2018 in the instant case.

(iii) The word “Enquiry” is neither defined in the Code of Criminal Procedure nor in the PC Act. As per the Standard Operating Procedure issued by the Government of India however describes “enquiry” as – “enquiry for the purposes of the SOPs means any action taken, for verifying as to whether the information pertains to commission of an offence under the Act.” Hence, the date of initiation of Enquiry is only offence specific and not investigation agency specific or complaint/ complainant specific, and does not change by the mere change of investigating agency.

(iv) The Enquiry, which was initiated by the ACB on 05.06.2018 i.e. much prior to the incorporation of Section 17A into the PC Act, was later entrusted to the AP CID. All the decisions that formed part of the offences were taken much prior to the amendment of the PC Act i.e. between 2015 and 2017. Therefore, no approval as contemplated under Section 17A would be required.

(v) The offences allegedly committed by the appellant were not in discharge of his official functions or duties. Even as per the appellants case, he was neither the Minister In-Charge of the concerned Project, nor had he had anything to do with the concerned corporation (APSSDC).

(vi) In the instant case, the alleged offences have been registered not only under the PC Act but also under various offences of Indian Penal Code (IPC) like Sections 409, 166, 167, 418, 420, 465, 468, 471, 201 and 109 read with Section 120(B) of IPC. Committing criminal breach of trust/misappropriation of funds could never be construed to fall under the discharge of official duties. In any case the question whether an act is within one's official capacity or not can only be decided in the course of trial.

(vii) As held in State of Rajasthan vs. Tejmal Choudhary,7 Section 17A of PC Act is 'a Substantive Provision' and is therefore applicable only prospectively. Section 17A envisages a substantive right against non-prosecution of innocent acts in course of official duty; and not an obstacle/ hurdle in the investigation process of the prosecution, especially when the sanction is denied. Section 17A creates new rights, disabilities and obligations and therefore it ought not to be applied retrospectively as held in G.J. Raja vs. Tejraj Surana 8.

(viii) Under the 2018 amendment, other than introducing Section 17A, other sections like Section 13 (1)(c) and 13(1)

(d) i.e. the offences for which the appellant is charged, were specifically repealed and the offences were redefined. Section 17A can have no application to the offences as they existed prior to the 2018 amendment.

(ix) Even if Section 17A of the PC Act were to be applicable to the present case, the IPC offences would survive and 7 2021 SCC Online SC 3477 8 (2019) 9 SCC 469 therefore also the FIR qua the appellant cannot be quashed. The question of competence of a particular court to try the offences would arise only after the investigation is complete and a chargesheet is filed.

(x) When one of the co-accused has been charged under the offences under both the PC Act and the IPC, while the other co-accused have only been charged under the IPC, the Special Court would have jurisdiction to try both the accused persons in view of Sections 3, 4 and 5 of the PC Act. In the instant case 38 persons including multiple public servants have been arrayed as the accused in Crime No. 29 of 2021 before the AP CID Police Station, and therefore the Special Court under the PC Act has the jurisdiction to try all the accused involved in the case.

(xi) In case of two possible constructions of a provision in the PC Act, it is the duty of the Court to interpret it in the manner which roots out corruption, as opposed to creating a road block in the fight against corruption.

(xii) Section 17A of the PC Act is substantially similar to Section 197 of the Cr.P.C., and this Court has interpretively narrowed down the circumstances in which sanction under Section 197 of Cr.P.C. needs to be obtained, by holding that official duties, when discharged for collateral or other benefits,

would fall outside the scope of the term “official duties”.

(xiii) The judgment in case of Yaswant Sinha vs. CBI (supra), relied upon by the appellant was not a binding precedent, as the portion thereof relied upon was a discordant note in Hon’ble Justice Joseph’s judgment, which was in variance with the main judgment.

(xiv)The appellant was added as an accused by filing the “Accused Adding Memo” on 07.09.2023 and the petition for quashing the FIR was filed by the appellant merely 5 days later, on 12.09.2023. There was a clear attempt on the part of the appellant therefore to scuttle the investigation at the preliminary stage qua him. When there are adequate grounds to initiate a criminal investigation, the same cannot be scuttled more particularly when the other central agencies are also investigating the same scam alleged against the appellant.

ANALYSIS:

> 10. At the outset, it may be noted that the PC Act 1988 sets the framework for prosecuting individuals involved in corrupt activities and provides measures to prevent corruption in various spheres of the society. By emphasizing accountability, transparency and strict legal consequences, the PC Act stands to combat corruption and to foster and uphold the culture of ethical conduct. The very objectives of the Act are to prevent corruption, to promote transparency and accountability in the public administration, to deter individuals from engaging in corrupt practices by imposing strict penalties, protects whistleblowers etc. It also provides for the investigation and prosecution of corruption cases, outlining the procedure for gathering evidence, conducting trials and ensuring a fair and expeditious legal process. By the Prevention of Corruption (Amendment) Act 2018 (hereinafter referred to as the Amendment Act, 2018), the PC Act 1988 was further amended, to fill in the gaps in the description and coverage of the offence of bribery so as to bring it in line with the current international practices and also to meet more effectively the country’s obligations under the United Nations Convention Against Corruption. The Central Government in exercise of the powers conferred by sub section (2) of Section (1) of the Amendment Act, 2018, had vide the Notification dated 26.07.2018 appointed the 26th July 2018 as the date on which the provisions of the said Amendment shall come into force. Accordingly, the said provisions of the Amendment Act, 2018 came into force on 26.07.2018.
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> 11. By the Amendment Act 2018, several provisions more particularly the offences described under Section 7, 8, 9, 10 and 13 in the PC Act, 1988 were substituted with the new provisions; and several new provisions like Section 7A, 17A, 18A, 29A etc. were inserted.

Certain provisions pertaining to the punishments of the offences under the Act were also amended. The newly added Section 17A being relevant for this Appeal, is reproduced as under: -

"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.— No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

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

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

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

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person: Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

12. Since the main issue involved in the present Appeal is in respect of the interpretation of the newly inserted provision Section 17A, let us regurgitate the basic principles of Statutory interpretation as propounded by this Court from time to time. It is well known rule of interpretation of statutes that the courts must look to the object which the Statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary9. The purport and object of the Act must be given its full effect10. The text and the context of the entire Act must be looked into while interpreting any of the expressions used in the Statue. If two views are possible, the view which most accords the object of the Act, and which makes the Act workable must necessarily be the controlling view. Even penal Statutes are governed not only by their literal language, but also by the object sought to be achieved by Parliament 11. Even if the words occurring in the Statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the 9 S. Gopal Reddy Vs. State of A.P.; 1996 (4) SCC 596. 10 Indian Handicrafts Emporium & Ors. Vs. Union of India & Ors.; 2003 (7) SCC

589. 11 Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vs. Central Bureau of Investigation; 2018 (16) SCC 299.

other provisions of the Statutes and bring about the real intention of the legislature12.

13. Although not specifically mentioned in the Statement of Objects and Reasons of the Amendment Act, 2018, the object of inserting Section 17A in the PC Act, which is in pari materia with the provisions contained in Section 6A of the Delhi Special Police Establishment Act 1946, is to protect the honest public servants from the harassment by way of inquiry or investigation in respect of the decisions taken or acts done in bonafide performance of their official functions or duties. Whereas Section 19 bars the courts from taking the cognizance of an offence punishable under the PC Act, alleged to have been committed by public servants except with the prior sanction of the concerned authorities mentioned therein, Section 17A bars the police officer from conducting any enquiry or inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties, without the previous approval of the concerned authorities mentioned therein. From the bare reading, it is discernible that Section 17A has the following main four facets.

(I) Enquiry or inquiry or investigation of offences under the PC Act.

12 R.M.D. Chamarbaugwalla & Anr. Vs. Union of India & Anr; AIR 1957 SC 628.

(ii) Alleged offences should be relatable to the recommendation made or decision taken by a public servant.

(iii) Such recommendation made or decision taken by a public servant should be in discharge of official functions or duties and

(iv) Previous approval of the authorities mentioned therein.

14. Though the word 'Enquiry' as contained in Section 17A has neither been defined in the PC Act nor in the CrPC, as per the Standard Operating Procedures (SOPs) issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel& Training) dated 3 rd September, 2021 for processing of cases under Section 17A, "Enquiry" means any action taken, for verifying as to whether the information received by the Police Officer pertains to the commission of an offence under the Act (Para 4.2 of the said SOPs). The meaning of the words 'inquiry' and 'investigation' for the purposes of Section 17A could be imported from the definitions contained in Section 2(g) & Section 2(h) respectively of Cr.PC, the same being made applicable subject to certain modifications in view of Section 22 of the PC Act.

15. As stated earlier, the provisions pertaining to the offences under the PC Act particularly the offences under Section 7, 8, 9, 10 and 13, have been substantially amended, and the new offence under Section 7(A), has been inserted by the Amendment Act 16/2018. Such substitution in place of existing provisions and such insertion of new provisions in the PC Act, have created new set of rights and liabilities under the Act. Section 17A having been newly inserted simultaneously with such amendments in the provisions pertaining to the offences, in my opinion, Section 17A could be made applicable only to the said amended/ newly inserted offences under the PC Act. Section 17A having

been introduced as a part of larger legislative scheme, and the other offences under the PC Act having been redefined or newly inserted by way of Amendment Act, 2018, Section 17A is required to be treated as a substantive and not merely a procedural in nature. Such a substantive amendment could not be made applicable retrospectively to the offences like Section 13(1)(c) and 13(1)(d), which have been deleted under the Amendment Act, 2018.

16. The submission of ld. Senior Advocate Mr. Salve that since Section 17A constitutes a legal bar to the very initiation of enquiry, inquiry or investigation into the offence alleged to have been committed by a public servant, without the previous approval of the functionaries specified in the said provision, such a provision is procedural in nature, and therefore the mandate of Section 17A should be made retroactively applicable i.e. even to the pending enquiry, inquiry or investigation, if not made applicable retrospectively, also can not be accepted. The cardinal principle of construction is that every statute would have prospective operation, unless it is expressly or by necessary implication made to have a retrospective operation. There could not be a presumption against the retrospectivity. In the instant case, the Amendment Act, 2018, by which Section 17A was inserted, was specifically made applicable with effect from 26.07.2018 by the Central Government vide the Notification of the even date. Hence, the intention of the Legislature was also to make the amendments applicable prospectively from a particular date and not retrospectively or retroactively. In Vineeta Sharma vs. Rakesh Sharma and Others13, a three-judge bench has very aptly distinguished the effect of retrospective statute, retroactive statute and prospective statute, and has observed as under: -

> “61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act. 13 2020 (9) SCC 1
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> 62. The concept of retrospective and retroactive statute was stated by this Court in Darshan Singh v. Ram Pal Singh [Darshan Singh v. Ram Pal Singh, 1992 Supp (1) SCC 191] , thus: (SCC pp. 211-13, paras 35-37) “35. Mr Sachar relies on Gokal Chand v. Parvin Kumari [Gokal Chand v. Parvin Kumari, (1952) 1 SCC 713 : AIR 1952 SC 231] , Garikapati Veeraya v. N. Subbiah Choudhry [Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540] , Jose Da Costa v. Bascora Sadasiva Sinai Narcornim [Jose Da Costa v. Bascora Sadasiva Sinai Narcornim, (1976) 2 SCC 917] , Govind Das v. CIT [Govind Das v. CIT, (1976) 1 SCC 906 : 1976 SCC (Tax) 133] , Henshall v. Porter [Henshall v. Porter, (1923) 2 KB 193] , United Provinces v. Atiqa Begum [United Provinces v. Atiqa Begum, 1940 SCC OnLine FC 11 : AIR 1941 FC 16] , in support of his submission that the Amendment Act was not made retrospective by the legislature either expressly or by necessary implication as the Act itself expressly

provided that it shall be deemed to have come into force on 23-1-1973; and therefore there would be no justification to giving it retrospective operation.

The vested right to contest which was created on the alienation having taken place and which had been litigated in the court, argues Mr Sachar, could not be taken away. In other words, the vested right to contest in appeal was not affected by the Amendment Act.

However, to appreciate this argument we have to analyse and distinguish between the two rights involved, namely, the right to contest and the right to appeal against the lower court's decision. Of these two rights, while the right to contest is a customary right, the right to appeal is always a creature of statute. The change of the forum for appeal by enactment may not affect the right of appeal itself. In the instant case we are concerned with the right to contest and not with the right to appeal as such. There is also no dispute as to the propositions of law regarding vested rights being not taken away by an enactment which is ex facie or by implication not retrospective. But merely because an Act envisages a past act or event in the sweep of its operation, it may not necessarily be said to be retrospective.

Retrospective, according to Black's Law Dictionary, means looking backward;

contemplating what is past; having reference to a statute or things existing before the Act in question. Retrospective law, according to the same dictionary, means a law which looks backwards or contemplates the past; one which is made to affect acts or facts occurring, or rights occurring, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. Retroactive statute means a statute which creates a new obligation on transactions or considerations already past or destroys or impairs vested rights."

17. Thus, whereas the prospective statute operates from the date of its enactments conferring new rights, the retrospective statute operates backwards and takes away or impairs vested rights acquired under the existing laws. A retroactive statute is one that does not operate retrospectively, however depending upon the status and nature of the events or transactions, the operation of the statute is extended or given effect from the date prior to its enactment. So far as the Amendment Act, 2018 is concerned, it has been made applicable specifically from the date of its notification i.e. 26.07.2018.

18. In Hitendra Vishnu Thakur and Others vs. State of Maharashtra and Others14, it was held by this Court that a 14 (1994) 4 SCC 602 statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided either expressly or by necessary implication. The ratio of the said judgment in Hitendra Vishnu Thakur was also followed in G.J. Raja vs. Tejraj Surana15.

19. In State of Telangana vs. Managipet @ Mangipet Sarveshwar Reddy16, this Court rejected the arguments that the amended provisions of the PC Act would be applicable to an FIR registered before the said amendment came into force.

20. In a very recent decision in the case of State of Rajasthan vs. Tejmal Choudhary17, this Court set-aside the interim order passed by the High Court which had quashed the proceedings only on the ground that the approval was not obtained under Section 17A of the PC Act, by observing inter alia that the legislative intent in the enactment of a statute is to be gathered from the express words used in the statute, unless the plain words literally construed give rise to absurd results. It has been further observed therein that this Court has to go by the plain words of the statute to construe the legislative intent, and that it could not possibly have been the intent of the legislature that all 15 (2019) 19 SCC 469 16 (2019) 19 SCC 87 17 (2021) SCC OnLine SC 3477 pending investigations up to July 2018 should be rendered infructuous.

21. Apart from the afore-stated legal position, it is also required to be noted that while passing the Amendment Act 2018 by which the then existing offences under the PC Act were deleted and redefined, and by which some new offences were inserted, the Legislature had simultaneously introduced Section 17A. It was also stated in the Amendment Act that the same shall come into force from the date as may be notified by the Central Government. Therefore, it is required to be presumed that the intention of the legislature was to make Section 17A applicable only to the new offences as amended by Amendment Act, 2018 and not to the offences which existed prior to the coming into force of the Amendment Act 2018. Any other interpretation may lead to an anomalous situation resulting into absurdity in as much as there could not be prior approval of the authorities as contemplated under Section 17A for the offences which have been deleted by the Amendment Act, 2018. If the submission of Mr. Salve that Section 17A is retroactive in operation is accepted, then all the pending proceedings of enquiry, inquiry and investigation as on 26.7.2018, carried out in respect of the offences which existed prior to the amendment would become infructuous, frustrating the very object of the Act.

22. As stated earlier, the very object of the PC Act is to combat the corruption, and the object of Section 17A is to protect the honest and innocent public servants from undergoing the harassment by the police for the recommendations made or decisions taken in discharge of official functions or duties. It cannot be the object of Section 17A to give benefit to the dishonest and corrupt public servants. If any enquiry or inquiry or investigation carried out by a police officer in respect of the offence committed by a public servant is held to be non est or infructuous by making Section 17A retrospectively or retroactively applicable, the same would not only frustrate the object of the PC Act but also would be counter-productive. It is axiomatic that no proceeding could stand vitiated or could become infructuous on account of the subsequent amendment in the Act. The well-known and well accepted rule of interpretation of statute is that the courts should take into consideration the other provisions of the Act also while interpreting a particular provision, and should avoid such interpretation as would lead to an anomalous situation or to frustration of the object of the Act.

23. As held in Subramanian Swamy vs. Manmohan Singh and Another18, in case of two possible constructions of a provision in the PC Act, it would be the duty of the court to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it. In Subramanian Swamy vs. Director, Central Bureau of Investigation and Another 19, the Constitution Bench had observed while dealing with Section 19 of the P.C. Act that the protection against malicious prosecution which is extended in public interest, cannot become a shield to protect corrupt officials.

24. The judgment in case of Yashwant Sinha and Others vs. Central Bureau of Investigation (supra), relied upon by Mr. Salve also would not be of any help to the appellant. Mr. Salve has relied upon the observations made by Hon'ble Justice Joseph in his concurring judgment, which according to Mr. Rohtagi was a discordant note in variance with the main judgment of two judges. Be that as it may, what has been observed by Justice Joseph is that Section 17A constitutes a bar of any enquiry, inquiry or investigation without the previous approval of the concerned authority. The said observation nowhere states that Section 17A shall operate retrospectively or retroactively. 18 (2012) 3 SCC 64 19 (2014) 8 SCC 682

25. Even otherwise, absence of approval before conducting any enquiry or inquiry or investigation into an offence alleged to have been committed by a public servant, as contemplated in Section 17A could never be the ground for quashing the FIR registered against the public servant or the proceedings conducted against him, more particularly when he is also charged for the other offences under the IPC in respect of the same set of allegations. As stated earlier, there are other important facets contained in Section 17A, like whether the alleged offence is relatable to the recommendation made or decision taken by the public servant or not, and whether such recommendation or decision was made or taken in discharge of his official functions or duties or not etc. Such facets could be examined only when the evidence is led during the course of trial. The alleged acts which prima facie constitute the offences, though done under the purported exercise of official function or duty, could not fall within the purview of Section 17A. The Protection sought to be granted to a public servant under Section 17A could not be extended to his acts which prima facie were not in discharge of his official functions or duties. Any other interpretation would certainly tantamount to scuttling the investigation at a very nascent stage. Such could neither be the intention of the legislature nor could such provision be interpreted in the manner which would be counter productive or frustrating the very object of the PC Act.

26. In response to the court's query as to how an FIR could have been registered in 2021 for the offences under Section 13(1)(c) and 13(1)(d) which have already been deleted by the Amendment Act 2018, Mr. Rohtagi submitted that though the old provision of Section 13 has been substituted by the new provision, and though Section 13(1)(c) and 13(1)(d) are no more offences under the amended provision of Section 13, the right of the investigating agency which had accrued to investigate the crime which took place prior to the amended provision of Section 13, continues in view of Clauses 'c' and 'e' of Section 6 of the General Clauses Act. According to him, unless a different intention appears in the Amendment Act 2018, the right of the investigating agency to investigate the offences under Section 13(1)(c) and 13(1) (d) could not be said to have been affected by the Amendment Act 2018. I find substance in the said submission of Mr. Rohtagi, in view of the observations made by this Court in M.C. Gupta vs. Central Bureau of Investigation, Dehradun 20, which clinches the issue.

"14. Viewed from this angle, clauses (c) and (e) of Section 6 of the GC Act become relevant for the 20 (2012) 8 SCC 669 present case. Sub-clause (c) says that if any Central Act repeals any enactment, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. In this case, the right which had accrued to the investigating agency to investigate the crime which took place prior to the coming into force of the new Act and which was covered by the 1947 Act remained, unaffected by reason of clause (c) of Section 6. Clause

(e) says that the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and Section 6 further states that any such investigation, legal proceeding or remedy may be instituted, continued or enforced and such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed. Therefore, the right of CBI to investigate the crime, institute proceedings and prosecute the appellants is saved and not affected by the repeal of the 1947 Act. That is to say, the right to investigate and the corresponding liability incurred are saved. Section 6 of the GC Act qualifies the effect of repeal stated in sub-clauses (a) to

(e) by the words "unless a different intention appears". Different intention must appear in the repealing Act (see Bansidhar [(1989) 2 SCC 557]). If the repealing Act discloses a different intention, the repeal shall not result in situations stated in sub-clauses (a) to (e). No different intention is disclosed in the provisions of the new Act to hold that the repeal of the 1947 Act affects the right of the investigating agency to investigate offences which are covered by the 1947 Act or that it prevents the investigating agency from proceeding with the investigation and prosecuting the accused for offences under the 1947 Act. In our opinion, therefore, the repeal of the 1947 Act does not vitiate or invalidate the criminal case instituted against the appellants and the consequent conviction of the appellants for offences under the provisions of the 1947 Act."

27. In view of the afore-stated legal position, unless a different intention is disclosed in the new Act or repealing Act, a repeal of an Act would not affect the right of the investigating agency to investigate the offences which were covered under the repealed Act. If the offences were committed when the repealed Act was in force, then the repeal of such Act would neither affect the right of the investigating agency to investigate the offence nor would vitiate or invalidate any proceedings instituted against the accused. In the instant case also the offences under Section 13(1)(c) and 13(1)(d) were in force when the same were allegedly committed by the appellant. Hence, the deletion of the said provisions and the substitution of the new offence under Section 13 by the Amendment Act, 2018 would not affect the right of the investigating agency to investigate nor would vitiate or invalidate any proceedings initiated against the appellant.

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

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

30. In that view of the matter, the appeal being devoid of merits is dismissed.

..... J.

[BELA M. TRIVEDI] NEW DELHI;

JANUARY, 16th 2024.

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO._____OF 2024 (Arising out of Petition for Special Leave to Appeal (Criminal) No.12289 of 2023) NARA CHANDRABABU NAIDU ... APPELLANT(S) VERSUS THE STATE OF ANDHRA PRADESH & ANR. ... RESPONDENT(S) ORDER As we have expressed opinions taking different views on the interpretation of Section 17A of the Prevention of Corruption Act, 1988 as also its applicability to the appellant in the subject-case, we refer the matter to the Hon'ble the Chief Justice of India. The Registry to place the papers before the Hon'ble the Chief Justice of India so that appropriate decision can be taken for the constitution of a Larger Bench in this case for adjudication on the point on which contrary opinions have been expressed by us.

..... J.

(ANIRUDDHA BOSE) ..... J.

(BELA M. TRIVEDI) NEW DELHI;

16TH JANUARY, 2024.