Prof. N.K.Ganguly vs Cbi New Delhi on 19 November, 2015

Equivalent citations: 2015 AIR SCW 6372, 2016 (2) SCC 143, AIR 2016 SC(CRI) 200, 2016 (1) ALJ 315, (2016) 1 RECCRIR 98, (2015) 12 SCALE 500, (2016) 92 ALLCRIC 470, (2016) 1 ORISSA LR 338, (2015) 4 MAD LJ(CRI) 605, (2015) 4 CURCRIR 267, (2016) 1 ALLCRIR 460, (2016) 157 ALLINDCAS 186 (SC), (2016) 1 ALLCRILR 270, (2015) 4 CRIMES 372, (2016) 1 DLT(CRL) 223, (2015) 4 JLJR 554, 2016 (1) AJR 339, 2016 CRI. L. J. 371, AIR 2016 SC (CRIMINAL) 200, 2016 (1) SCC (CRI) 478, (2016) 1 PAT LJR 71

Author: V.Gopala Gowda

Bench: Amitava Roy, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.798 OF 2015

PROF. N.K. GANGULY ……APPELLANT

Vs.

CBI NEW DELHI ……RESPONDENT

WITH

CRIMINAL APPEAL No. 799/2015
CRIMINAL APPEAL No. 800/2015
CRIMINAL APPEAL NO. 801/2015
CRIMINAL APPEAL No. 930/2015
AND
CRIMINAL APPEAL No.1537/2015
(Arising Out of SLP (Crl) No.9838 of 2015)
(@ SLP (Crl)…… CRL. M.P. NO.9612 of 2015)

J U D G M E N T

V.GOPALA GOWDA, J.

Delay condoned. Leave granted in Special Leave Petition (Crl).....Crl.M.P. No.9612 of 2015.

These appeals arise out of the common judgment and order dated 27.05.2013 passed in Application Nos. 480 of 2013, 41206, 40718, 41006 and 41187 of 2012 and judgment and order by the High Court of Judicature at Allahabad dated and order 07.10.2014 passed in Application No. 277KH of 2014 in Special Case No. 18 of 2012 by the learned Special Judge, whereby the High Court dismissed the applications filed by the appellants herein under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the CrPC") to quash the criminal proceedings of Special Case No. 18 of 2012 as well as the summoning order dated 08.11.2012 passed by the learned Special Judge, Anti Corruption, CBI, Ghaziabad. All the appeals are being disposed of by this common judgment.

As the facts in all the appeals are common, for the sake of convenience, we refer to the facts of Criminal Appeal No. 798 of 2015, in this judgment which are briefly stated hereunder:

> The Indian Council of Medical Research (hereinafter referred to as "ICMR"), a registered society under the Societies Registration Act, 1860 is a premier research institute dealing with the formulation, coordination and promotion of bio-medical research. Its functional object is to initiate, aid develop and coordinate medical and scientific research in India and to promote and assist institutions for the study of diseases, their prevention, causation and remedy. It is fully funded by the Government of India through Department of Health Research, Ministry of Health and Family Welfare. The Institute of Cytology & Preventive Oncology (hereinafter referred to as "ICPO") is one of the institutes of ICMR, the main aim of which is to promote research in the field of cancer.
>
> On 30.11.2010, a criminal case was registered under Section 120-B of the Indian Penal Code (hereinafter referred to as the "IPC") read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "P.C. Act, 1988") on the basis of written complaint filed by M.R. Atrey, Sub-Inspector of Police, CBI, EOU, VII, New Delhi against the appellants herein namely N.K. Ganguly, the then Director General, Mohinder Singh, the then Sr.Dy. Director General-Admin, P.D. Seth, the then Financial Advisor, A.K. Srivastava, Executive Engineer, all from ICMR, New Delhi and B.C. Das, the then Director ICPO, NOIDA and other unknown persons in the matter relating to the alleged unauthorized and illegal transfer of plot no.119, Sector 35, NOIDA, measuring 9712.62 sq. meters from ICPO, NOIDA to ICPO-ICMR Cooperative Group Housing Society Ltd. NOIDA (hereinafter referred to as the "ICPO-ICMR Housing Society").
>
> In the preliminary inquiry in the matter, it was found that the aforesaid officials and the other unknown persons had entered into a criminal conspiracy by abusing their official position as public servants and had unauthorisedly and illegally transferred the aforesaid plot from ICPO to ICPO-ICMR Housing Society at a consideration of Rs.4,33,90,337/- which was much lower than the then prevailing sector rate of Rs.18,000/- per sq.mtrs. of NOIDA, thereby, giving themselves and other members

of the ICPO-ICMR Housing Society an undue pecuniary advantage. It was also revealed in the enquiry that the membership of the ICPO-ICMR Housing Society was granted to such persons who were otherwise not eligible for getting membership as per the bye-laws of the society and terms and conditions stipulated and approved by ICMR for membership in the said society. It was further revealed that the officers of New Okhla Industrial Development Authority (hereinafter referred to as "NOIDA") allowed the transfer of the said plot unauthorisedly and illegally from ICPO to ICPO-ICMR Housing Society, despite the fact that they were not competent to pass such order of transfer.

During the course of investigation by CBI, apart from the aforesaid named accused persons in the FIR, the fact of the involvement of other officials namely, L.D. Pushp, the then Administrative Officer, ICPO, Jatinder Singh, the then Senior Accounts Officer, ICMR, Dr. S.K. Bhattacharya, the then Additional Director General, ICMR, Dr. Bela Shah, Head of NCD Division, ICMR, Smt. Bhawani Thiagarajan, the then Joint Secretary, Ministry of Health and Family Welfare, Government of India, S.C. Pabreja, the then Manager (Residential Plots), NOIDA and R.S. Yadav, OSD (Residential Plots), NOIDA, was revealed.

After completion of the investigation, a charge-sheet was filed against the appellants for the alleged offences committed by them on account of unauthorised and illegal transfer of the plot in question in favour of the ICPO-ICMR Housing Society.

The competent authority of NOIDA declined to grant sanction under Section 19 of the P.C. Act, 1988 for prosecuting A.K. Srivastava and Dr. Bela Shah.

The charge-sheet was filed before the learned Special Judge, Anti Corruption, CBI (hereinafter referred to as the "Special Judge") against all the appellants, except R.S. Yadav, OSD, NOIDA, under Section 173(2) of CrPC for the offences punishable under Section 120-B of IPC read with Section 13(1)(d) and 13(2) of the P.C. Act, 1988. The requisite sanction for prosecution against R.S. Yadav was declined by the Competent Authority. After considering the charge-sheet and other materials available on record, the learned Special Judge came to the conclusion that a prima facie case appeared to have been made out by the CBI against the appellants. Accordingly, the learned Special Judge vide his order dated 08.11.2012 has taken cognizance and summons were issued against the appellants to face the trial for the said offences.

Aggrieved of the order of taking cognizance and issuance of summons, the appellants filed applications before the High Court of Allahabad under Section 482 of CrPC, urging various grounds and prayed that the entire proceedings on the file of the learned Special Judge in the case No. 18 of 2012 be quashed. Finding no merit in the applications filed by the appellants, the High Court refused to interfere with the order of the learned Special Judge dated 08.11.2012 and dismissed the same. The learned Judge of the High Court held as under:

"…..at this stage it cannot be said that no offence under Section 120B IPC read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act is made out against the petitioners. There are sufficient materials available on record which may prima facie establish the involvement of the petitioners accused in commission of the aforesaid offences by getting the plot in question transferred for the purposes of constructing flats to ICPO- ICMR Cooperative Group Housing Society (a private housing society) in which they were also the members and ultimately after construction of the flats they also obtained individual flats after getting pecuniary benefit for themselves and others and caused loss to the ICPO/ICMR (a fully govt. funded body). Due to the said transfer of plots allotted to ICPO for staff quarters, the officials of the ICPO have been permanently deprived of getting official quarters in future.

……In this case, the role of each petitioners in processing, approving and ultimately getting the plot in question transferred to ICPO-ICMR Cooperative Group Housing Society (a private housing society) has been categorically assigned by the prosecution and after conducting thorough and detailed investigation in the matter, the charge sheet has been submitted against them, on which the learned Special Judge, Anti Corruption, CBI, Ghaziabad has taken cognizance. In my considered opinion, there appears to be no infirmity, illegality, irregularity or jurisdictional error in submitting the charge sheet by the CBI and taking cognizance thereon by the learned Special Judge, Anti Corruption, CBI, Ghaziabad." Hence the present appeals.

We have heard Mr. P.P Khurana, Mr. Gopal Subramanium and Mr. R Basant, the learned senior counsel appearing on behalf of the appellants, and Mr. P.S Patwalia, the learned Additional Solicitor General and Ms. Kiran Suri, learned senior counsel appearing on behalf of the respondent. On the basis of the factual evidence on record produced before us, the circumstances of the case and also in the light of the rival legal contentions urged by the learned senior counsel for both the parties, we have broadly framed the following points that would arise for our consideration:-

1) Whether an offence under Section 120B IPC is made out against the appellants, and if so, whether previous sanction of the Central Government is required to prosecute them for the same?

2) Whether the order dated 08.11.2012 passed by the learned Special Judge taking cognizance of the offence against the appellants is legal and valid?

3) What order?

Answer to Point Nos. 1 and 2:

As the point numbers 1 and 2 are inter-related, we answer them together by assigning the following reasons:

> The issue of prior sanction required to be obtained against the appellants in order to prosecute them for the offence said to have been committed by them under Section 120B, IPC has to be examined in light of the allegations contained in the charge-sheet that was filed before the learned Special Judge by the respondent herein.
>
> The learned senior counsel appearing on behalf of the appellants contended that the entire transaction of transferring the plot in question in favour of the ICPO-ICMR Housing Society was handled in a transparent manner, and it was done keeping in view the dire need of housing of the employees of ICPO-ICMR. The learned senior counsel submitted that the transfer of the said plot from ICPO to the ICPO-ICMR Housing Society was done after obtaining legal opinions and necessary sanction from the competent authority of NOIDA. The learned senior counsel further contended that the CBI withheld the report of the Comptroller and Auditor General of India (CAG) while submitting the charge-sheet before the learned Special Judge, which is not tenable in law.

It is further contended by Mr. P.P. Khurana, and Mr. Gopal Subramanium, the learned senior counsel appearing on behalf of some of the appellants that no prior sanction was obtained from the Central Government, which was mandatorily required under Section 197, CrPC as the appellants were employed as public servants at the time of commission of the alleged offences. It is contended by them that the transfer of the plot in question occurred when the appellants were holding public office and the alleged offences were committed by them, if at all, in discharge of their official duty. Thus, the learned Special Judge erred in taking cognizance of the offences alleged against the appellants without prior sanction of the Central Government having been obtained by the respondent. The learned senior counsel further contended that the learned Special Judge should not have taken cognizance in the absence of prior sanction obtained from the Central Government, especially in light of the fact that taking cognizance of the alleged offences and setting the wheel of the criminal justice system in motion is a matter which could affect the fundamental rights guaranteed to the appellants under Articles 14, 19 and 21 of the Constitution of India.

The other learned counsel appearing on behalf of other appellants have adopted the arguments made by Mr. P.P Khurana and Mr. Gopal Subramanium and they have filed their written submissions in support of their contentions, which are also considered by this Court.

On the other hand, Mr. P.S. Patwalia, the learned Additional Solicitor General and Ms. Kiran Suri, learned senior counsel appearing on behalf of the respondent contended that the legal submissions advanced by the learned senior counsel appearing on behalf of the appellants are wholly untenable in law for the reason that the very act of the appellants constitute an offence under IPC, as they entered into a conspiracy to illegally transfer the plot in question in favour of the said society referred to Supra without obtaining the permission of the competent authority of NOIDA, with an ulterior motive to make unlawful gain for themselves. The appellants became members of the ICPO-ICMR Housing Society, even though they were not eligible to be enrolled as members of the society, and thereafter proceeded to transfer the plot at a value which was much lesser than the prevailing market rate at the time, thus making an unlawful gain for themselves, which is an offence

under Section 13(1)(d) of the P.C. Act, 1988, punishable under Section 13(2) of the Act. It is further contended that the CBI filed the charge-sheet against the appellants after due investigation, and therefore, the High Court has rightly dismissed the applications filed by them under Section 482 of CrPC by passing a valid judgment and order which does not call for interference by this Court in exercise of its appellate jurisdiction. The illegal acts done by the appellants in transferring the said plot at a lower price cannot be said to have been carried out in exercise of their official duty. Therefore, no previous sanction from the Competent Authority was required under Section 197 of CrPC to prosecute the appellants for the alleged offence. The learned Additional Solicitor General and the learned senior counsel appearing on behalf of the respondent submit that this is the reason that the present cases are not ones which warrant for this Court to exercise its appellate jurisdiction and quash the proceedings as prayed by the Appellants.

The FIR and the charge-sheet both contain references to the allegations made against the appellants and other unknown persons, that they entered into a criminal conspiracy by abusing their official positions as public servants during the year 2006-2007 and illegally transferred the plot in question from ICPO to ICPO-ICMR Housing Society at a much lower price than the then prevailing sector rate. On this basis, it is alleged that the appellants dishonestly obtained an undue pecuniary advantage for themselves and others to the extent of Rs.13,14,36,823/- by illegally transferring the plot in favour of the above said society with an ulterior motive. The process of transfer of the plot was initiated by B.C. Das, the then Director, ICPO, vide letter dated 29.03.2006 on the basis of a representation prepared by L.D. Pushp, the then Administrative Officer, ICPO, containing signatures of 51 employees of ICPO sent to Mohinder Singh, Sr. Dy. Director General (Admn), ICMR. The said representation was for the purpose of establishment of the ICPO-ICMR Housing Society with an object to promote control, coordinate and take charge of the plot in question. The final approval for transfer of the plot and formation of the proposed ICPO-ICMR society was given by the appellant N.K. Ganguly, the then Director General of ICMR on 06.06.2006 and the same was approved and communicated by A.K. Srivastava, Executive Engineer vide letter dated 09.06.2006 to B.C. Das. On 12.06.2006, N.K. Ganguly recorded a note in the file stating that “the proposal was approved provided it was under the provisions of laws and land use for which it was acquired”. The aforesaid allegations contained in the chargesheet suggest that a conspiracy was hatched by the appellants to commit an offence under Section 13(1)(d) of the P.C. Act, 1988. A perusal of the chargesheet reveals that there is sufficient material on record to indicate the existence of the alleged conspiracy. In view of the same, Section 197 of CrPC is squarely applicable to the facts of the present case.

At this stage, it is important to examine the concept of criminal conspiracy as defined in IPC. Section 120-A of the IPC reads as under:

> “When two or more persons agree to do, or cause to be done,— (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.” In the instant case, it is alleged in the charge-sheet that the appellants entered into an

> agreement to commit an illegal act, which is an offence punishable under Section 120B of IPC. Therefore, the provision of Section 197 of CrPC is squarely applicable to the facts of the case. Prior sanction of the Central Government was required to be taken by the respondent before the learned Special Judge took cognizance of the offence once the final report was filed under Section 173(2) of CrPC. In this regard, Mr. Gopal Subramanium, learned senior counsel appearing on behalf of the appellant has very aptly placed reliance on the decision of a three judge bench of this Court in the case of R.R. Chari v. State of Uttar Pradesh[1], wherein, while examining the scope of Section 197 of CrPC, this Court made an observation indicating that the term "cognizance" indicates the stage of initiation of proceedings against a public servant. The Court placed reliance upon the judgment of the Calcutta High Court delivered in the case of Superintendent and Remembrance of Legal Affairs, West Bengal v. Abhani Kumar Bannerjee[2], wherein it was held that before taking cognizance of any offence, a Magistrate must not only be said to have applied his mind to the contents of the petition-

"but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter,--proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence." Both the learned senior counsel placed reliance on another judgment of a three judge bench of this Court in Shreekantiah Ramayya Munipalli v. State of Bombay[3]. In that case, the allegation against the appellant therein and two other government servants was that they had conspired to defraud the Government in respect of certain properties and arranged to sell the goods to the approver. The case against them was registered under Section 120-B read with Section 409 of IPC. While considering the contention advanced that the said acts could not be said to have been committed in discharge of official duty, Bose, J. placed reliance upon the observations made by the Federal Court in the case of Dr. Hori Ram Singh v. Emperor[4], wherein Vardachariar, J observed that in respect of a charge under Section 409 of IPC, the official capacity is relevant only for entrustment, and not necessarily in respect of misappropriation or conversion which may be the act complained of. It was held by this Court that the correct position of law was laid down in the case of Hori Ram Singh, which is as under:-

> "I would observe at the outset that the question is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances; it seems neither useful nor desirable to paraphrase the language of the section in attempting to lay down hard and fast tests." Bose, J., further held in Shreekantiah case referred to supra that there are cases and cases and each must be decided on its own facts. It was held as under:
>
> "Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course, it is no part of an official's duty to

commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it." (emphasis laid by this Court) While considering the facts of the case, Bose J. observed that the offence in question, could not have been committed any other way, and held as under:

"...If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately; there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the order, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it." (emphasis laid by this Court) Mr. Gopal Subramanium, the learned senior counsel on behalf of some of the appellants has further rightly placed reliance upon the judgement of a three judge bench of this Court in the case of Amrik Singh v. State of Pepsu[5] to buttress the contention that the issue of requirement of prior sanction under Section 197 of Cr.PC can be raised at any stage of the proceedings, and not just at stage of framing of charges. The decision in the case of Hori Ram Singh (supra) was also quoted with approval, especially the categorisation of situations in three scenarios, as under:

"a) Decision which held that sanction was necessary when the act complained of attached to the official character of the person doing it;

b) Judgments which held that sanction was necessary in all cases in which the official character of the person gave him an opportunity for the commission of the crime; and Those which held it was necessary when the offence was committed while the accused was actually engaged in the performance of official duties." It was further held in the Amrik Singh case that:

"The result of the authorities may thus be summed up: it is not every offence committed by a public servant that requires sanction for prosecution u/s 197 of the Cr.PC; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be invested at the trial and could not arise at the stage of grant of sanction, which must precede the institution of the prosecution." (emphasis laid by this Court) The position of law, as

laid down in the case of Hori Ram Singh was also approved by the Privy Council in the case of H.H.B. Gill v. The King[6], wherein it was observed as under:

"A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty." Reliance was further rightly placed by the learned senior counsel on the decision of a constitution bench of this Court in the case of Matajog Dobey v. H.C. Bhari[7], which pertained to an income tax investigation. It was alleged by the appellant therein that while conducting a search, the officials of the income tax department had forcibly broke open the entrance door of the house and interfered with the boxes and drawers of the tables. It was also alleged by the appellant therein that the officials tied him and beat him up. Upon an enquiry of the said complaint, the magistrate came to the conclusion that a prima facie case had been made out and issued process. During the course of trial, the issue pertaining to want of sanction was urged. This Court held as under:

"Article 14 does not render Section 197, Criminal Procedure Code ultra vires as the discrimination is based upon a rational classification. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard." (emphasis laid by this Court) On the other hand, ordinary citizens not so engaged do not require this safeguard. It was further observed that:-

"....Whether sanction is to be accorded or not, is a matter for the Government to consider. The absolute power to accord or withhold sanction on the Government is irrelevant and foreign to the duty cast on that Court which is the ascertainment of the true nature of the act." The Court finally summed up the result of the discussion as follows:- "There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty....." (emphasis laid by this Court) In the case of Satwant Singh v. State of Punjab[8], a constitution bench of this Court while examining the scope of Section 197 of CrPC, observed as follows:

"It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable under s.161 of IPC, is one of them and the offence of cheating or abetment thereof is another... where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences..... ...the Act of cheating or abetment thereof has no

reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty." In the case of R.R. Chari referred to supra, while examining the scope of Section 197 of CrPC, this Court held as follows:

"It is clear that the first part of Section 197(1) provides a special protection, inter alia, to public servants who are not removable from their offices save by or with the sanction of the State Government or the Central Government where they are charged with having committed offences while acting or purporting to act in the discharge of their official duties; and the form which this protection has taken is that before a criminal Court can take cognizance of any offence alleged to have been committed by such public servants, a sanction should have been accorded to the said prosecution by the appropriate authorities. In other words, the appropriate authorities must be satisfied that there is a prima facie case for starting the prosecution and this prima facie satisfaction has been interposed as a safeguard before the actual prosecution commences. The object of Section 197(1) clearly is to save public servants form frivolous prosecution....." (emphasis laid by this Court) The learned senior counsel further placed reliance on a three judge bench decision of this Court in the case of Baijnath Gupta v. State of Madhya Pradesh[9], wherein the question that arose before this Court was whether the conviction of the appellant under Sections 409 and 477A of the IPC was illegal for want of sanction. This Court observed as follows:

"It is not that every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable." (emphasis laid by this Court) In the case of B. Saha v. M.S Kochar[10], the constitution bench of this Court observed that the question of sanction under Section 197 of CrPC could be raised and considered at any stage of the proceedings. On the issue of when the protection of Section 197 of CrPC is attracted, this Court held as under:

"In sum, the sine qua non for the applicability of this Section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him." The learned senior counsel further placed reliance on the

decision of a constitution bench of this Court in the case of R.S Nayak v. A.R Antulay[11], wherein certain observations were made with regard to Section 6 of P.C Act, 1988, as under:

"Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider. By a catena of decisions, it has been held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants....The Legislative advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that that authority alone would be able, when facts and evidence are placed before him to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how taht power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit interference of knowledge about the fuctions and duties of the office and its misuse or abuse by the public servant. That is why the legislature clearly provided that that authority done would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office.....

(emphasis laid by this Court) Mr. P.P. Khurana, the learned senior counsel appearing on behalf of some of the appellants has further placed reliance upon the judgments of this Court in the cases of R. Balakrishna Pillai v. State of Kerala[12], Abdul Wahab Ansari v. State of Bihar[13], Shankaran Moitra v. Sadhna Das[14] and State of M.P v. Sheetla Sahai[15], in support of his submission that the acts constituting the offence were alleged to have been committed by the appellant in discharge of his official duty and that being the fact, it was not open to the Special Judge court to take cognizance of the offences without obtaining the previous sanction of the Central Government by the respondent.

The learned Additional Solicitor General, on the other hand, appearing on behalf of CBI placed strong reliance on the decision of this Court in the case of Prakash Singh Badal v. Union of India[16] to buttress his contention that no sanction was required to be taken in the instant case as the Appellants have entered into a criminal conspiracy, therefore, it cannot be said to be a part of their official duty as the public servants. The act of the appellants of transferring the plot in question in favour of the aforesaid society, allotted in favour of ICMR for the purpose of construction of the flats and allotting the same in favour of the employees of ICPO-ICMR society without obtaining the order from either CEO or Chairman of the NOIDA with a motive to make wrongful gain for themselves after entering into a conspiracy cannot be said to be an act that has been carried out in discharge of their official duty. The learned Additional Solicitor General placed reliance on the following paragraphs of the Prakash Singh Badal case (supra):-

"49. Great emphasis has been led on certain decisions of this Court to show that even in relation to offences punishable under Section 467 and 468 sanction is necessary. The foundation of the position has reference to some offences in Rakesh Kumar Mishra's case. That decision has no relevance because ultimately this Court has held that the absence of search warrant was intricately with the making of search and the allegations about alleged offences had their matrix on the absence of search warrant and other circumstances had a determinative role in the issue. A decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context.

50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence." Mr. P.P Khurana and Mr. Gopal Subramaniam, the learned senior counsel appearing on behalf of some of the appellant, on the other hand, contends that the decision in the Prakash Singh Badal case needs to be appreciated in light of the facts of that case. Thus, while stating that the offences under Sections 420,467,468,471 and 120B of IPC can by no stretch of imagination and by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of his official duty, this Court did not mean that merely because an official was charged with an offence under these sections, no sanction was required to be taken. The learned counsel placed reliance on the following paragraph of the judgment to emphasise the same:

"51. In Baijnath v. State of M.P. (1966 (1) SCR 210) the position was succinctly stated as follows:

"..it is the quality of the Act that is important and if it falls within the scope and range of his official duty the protection contemplated by Section 197 of the Code of Criminal

> Procedure will be attracted.""

The learned senior counsel also placed reliance on the three judge bench decision of this Court rendered in the case of Shreekantiah Ramayya Munipalli, referred to supra, wherein it was held as under:

> "18. ....If Section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of ofcourse it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act because an official act can be performed in the discharge of official duty as well as in dereliction of it....
>
> 19. Now an offence seldom consists of a single act. It is usually composed of several elements and as a rule a whole series of acts must be proved before it can be established.... Now it is evident that the entrustment and/ or domino here were in an official capacity and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity...." From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate government under Section 197 of CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the Appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the Appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 of CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.

Answer to Point No.3 We have adverted to the contentions advanced by the learned counsel appearing on behalf of both the parties. We find much merit in the contention advanced by the learned senior counsel & other counsel appearing on behalf of the appellants and accept the same. We accordingly pass the following order:

> For the aforesaid reasons, we set aside the impugned judgment and order of the High Court dated 27.05.2013 passed in Application Nos. 480 of 2013, 41206, 40718, 41006 and 41187 of 2012 and order dated 7.10.2014 passed in Application No. 277KH of 2014 in Special Case No. 18 of 2012 and quash the proceedings taking cognizance and issuing summons to the appellants in Special Case No. 18 of 2012 by the Special Judge, Anti Corruption (CBI), Ghaziabad, U.P. in absence of previous sanction obtained from the Central Government to prosecute the appellants as required under

Section 197 of CrPC. The appeals are allowed. All the applications are disposed of.

... ... J. [V. GOPALA GOWDA] .....J. [AMITAVA ROY] New Delhi, November 19, 2015 ITEM NO.1A-For Judgment COURT NO.10 SECTION II S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Criminal Appeal No(s). 798/2015 PROF. N.K.GANGULY Appellant(s) VERSUS CBI NEW DELHI Respondent(s) WITH Crl.A. No. 1537/2015 @ SLP (CRL.) NO.9838/2015 @ SLP (CRL.)...CRLMP Date : 19/11/2015 These appeals were called on today for pronouncement of JUDGMENT.

For Appellant(s) Mr. P.P. Khurana, Sr. Adv.

Mr. Arun K. Sinha,Adv.

Mr. Rajesh Singh Chauhan, Adv.

Mr. Sachin Sood, Adv.

Mr. Jetendra Singh, Adv.

Ms. Kalpana Sabharwal, Adv.

Ms. Priyanka Singh, Adv.

Ms. Manju Jetley,Adv.

Mr. Kumar Kaushik, Adv.

Mr. Bhupesh Sharma, Adv.

Mr. Shiv Ram Pandey, Adv.

Mr. S.D. Singh, Adv.

Mr. Vijay Kumar, Adv.

Mr. J. Singh, Adv.

Ms. Bharti Tyagi,Adv.

Mr. T. Srinivasa Murthy, Adv.

Ms. Shruti Iyer, Adv.

Mr. T. Rahman, Adv.

Mr. Kushagra Pandey, Adv.

Mr. Senthil Jagadeesan,Adv.

For Respondent(s) Mr. B. V. Balaram Das,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Amitava Roy.

Delay condoned. Leave granted in Special Leave Petition (Crl.).....Crl.M.P. No.9612 of 2015.

The appeals are allowed in terms of the signed Reportable Judgment. All the applications are disposed of.

(VINOD KUMAR) COURT MASTER	(MALA KUMARI SHARMA) COURT MASTER

(Signed Reportable Judgment is placed on the file)

---

[1] [2]AIR 1951 SC 207 [3] [4] AIR 1950 Cal 437 [5] [6] AIR 1955 SC 287 [7] [8] AIR 1939 FC 43 [9] [10] AIR 1955 SC 309 [11] [12] AIR 1948 PC 128 [13] [14] AIR 1956 SC 44 [15] [16] AIR 1960 SC 266 [17] [18] AIR 1966 SC 220 [19] [20] (1979) 4 SCC 177 [21] [22] (1984) 2 SCC 183 [23] [24] (1996) 1 SCC 478 [25] [26] (2000) 8 SCC 500 [27] [28] (2006) 4 SCC 584 [29] [30] (2009)8 SCC 617 [31] [32] (2007) 1 SCC 1