Parkash Singh Badal And Anr vs State Of Punjab And Ors on 6 December, 2006

Equivalent citations: AIR 2007 SUPREME COURT 1274, 2007 AIR SCW 1415, 2006 (13) SCALE 54, (2007) 51 ALLINDCAS 623 (SC), (2007) 1 JCC 236 (SC), (2007) 36 OCR 233, 2007 CRILR(SC&MP) 182, 2007 SC CRIR 488, 2007 (1) CALCRILR 401, 2007 (1) SCC(CRI) 193, 2007 (1) JCC 236, 2007 (1) SCC 1, 2007 CRILR(SC MAH GUJ) 182, (2007) 113 FACLR 299, (2007) 2 MAD LJ(CRI) 1262, (2007) 3 ANDHLD 8, (2007) 1 ALLCRIR 78, (2007) 1 WLC(SC)CVL 250, (2007) 1 ALLCRILR 401, (2006) 8 SUPREME 964, (2007) 1 EASTCRIC 229, (2007) 1 KANT LJ 497, (2007) 1 PAT LJR 291, (2007) 1 RECCRIR 1, (2006) 13 SCALE 54, (2007) 1 JLJR 283, (2006) 4 CRIMES 388, MANU/SC/5415/2006, 2007 CHANDLR(CIV&CRI) 479, 2007 (1) ANDHLT(CRI) 122 SC, 2007 (1) ALD(CRL) 760

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (civil)  5636 of 2006

PETITIONER:
Parkash Singh Badal and Anr

RESPONDENT:
State of Punjab and Ors

DATE OF JUDGMENT: 06/12/2006

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No.19640 of 2004) WITH Criminal Appeal No.1279/06 @ SLP (Crl.)No.2697/2004, Civil Appeal No 5637/06 @ SLP (C)No.20000/2004, Criminal Appeal No.1281/06 @ SLP (Crl.)No.1620/2006, Civil Appeal No.5639/06 @ SLP (C)No.10071/2006, Civil Appeal No.5638/06 @ SLP (C)No. 20010/2004 and Criminal Appeal No.1280/06 @ SLP (Crl.)No. 3719/2006 Dr. ARIJIT PASAYAT, J.

Leave granted.

In each of these appeals challenge is to the judgment of the Punjab and Haryana High Court dismissing the petition filed by the appellant in each case questioning the validity of proceedings initiated under the Prevention of Corruption Act, 1988 (in short the 'Act') and/or the Indian Penal Code, 1860 (in short the 'IPC'). In the latter category of cases the question raised is either lack of sanction in terms of Section 197 of the Code of Criminal Procedure, 1973 (in short the 'Code') or the legality thereof.

It is the stand of the appellant in each case that the proceedings were initiated on the basis of complaints which were lodged mala fide and as an act of political vendetta. It is stated that allegations are vague, lack in details and even if accepted at the face value, did not show the commission of any offence. It is stated that though the High Court primarily relied on a Constitution Bench decision of this Court in R.S. Nayak v A.R. Antulay (1984 (2) SCC 183), the said decision was rendered in the context of the Prevention of Corruption Act, 1947 (in short the 'Old Act'). It is submitted that the provisions contained in Section 6 thereof are in pari materia to Section 19 of the Act so far as relevant for the purpose of this case; the effect of Section 6(2) of the Old Act (corresponding to Section 19(2) of the Act) was lost sight of. The decision in the said case was to the effect that if an accused is a public servant who has ceased to be a public servant and/or is a public servant of different category then no sanction in terms of Section 19(1) of the Act corresponding to Section 6(1) of the Old Act is necessary.

So far as the factual scenario of these cases is concerned appellant Sri Parkash Singh Badal was at the relevant point of time the Chief Minister of the State of Punjab, Smt. Surinder Kaur is his wife and Shri Sukhbir Singh is his son. Smt. Surinder Kaur and Shri Sukhbir Singh Badal allegedly committed offences punishable under Sections 8 and 9 of the Act. Shri Tota Singh, Shri Gurdev Singh Badal, Dr. Ratan Singh Ajnala and Shri Sewa Singh Sekhwan were Ministers during the concerned period and were at the time of taking cognizance members of Legislative Assembly. Shri Sukhbir Singh Badal was a member of the Parliament. As noted above, primary stand is that the effect of Section 6(2) of the Old Act corresponding to Section 19 (2) of the Act was not considered and in that view of the matter the judgment in Antulay's case (supra) is to be considered per incuriam. Additionally, it is submitted that the voluminous charge sheets filed are extremely vague and do not indicate commission of any definite offence. Some allegations of general nature have been made. The decision in P.V. Narasimha Rao v. State (1998 (4) SCC 626) specifically dissented from the view regarding vertical hierarchy which appears to be the foundation for the conclusion that the authority competent to remove the accused from office alone could give sanction. It is submitted that the offences alleged to have been committed under IPC had close nexus with the workmen who are on official duty and therefore sanction under Section 197 of the Code is mandatory. With reference to several judgments of this Court it is submitted that even offences punishable under Sections 468, 471 and 120B have been in certain cases held to be relatable to the official duty thereby mandating sanction in terms of Section 197 of the Code.

It is pointed out that the mala fide intention is clear as all these cases were registered at Mohali Police Station which was declared to be the police station for the purpose of investigation of the concerned cases and new Court was established for the trial of the concerned cases and jurisdiction was conferred on one officer without following the process of consultation with the High Court.

These are indicative of the fact that action was taken with mala fide intention only to harass the accused persons as noted above.

Learned counsel for the respondents on the other hand submitted that the decision in R.S. Nayak's case (supra) correctly lays down the position. Several attempts were made in the past to distinguish said case and to propound that the said decision did not indicate the correct position in law. The allegations of mala fide are clearly unfounded. No new court was established and in fact Special Judge of Special Court who was appointed to have consultation with the High Court was only designated to hear the cases. In fact for the sake of convenience these cases having link with each other can be disposed of early if they are taken up together by one Court.

In essence, it is submitted that the decision in R.S. Nayak's case (supra) is not per incuriam as contended. Under Section 19(1) of the Act previous sanction is prescribed for a public servant if (a) he is a public servant at the time of taking cognizance of the offence and (b) the accused continues to hold office alleged to have been mis-used at the time of taking cognizance of the offence by the Court. This is the view expressed in R. S. Nayak's case (supra).

Section 6 of the Old Act and Section 19 of the Act read as follows:

> "6. Power to try summarily. (1) Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section l2 A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-

section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

> Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:
>
> Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the ease in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates. (2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall he no appeal by a convicted person in any case tried summarily under this

section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by a special Judge.

19. Previous sanction necessary for prosecution. (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. (4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation. For the purposes of this section,

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

IPC provided for offences by or relating to public servants under Chapter IX including Sections 161 to 165A. The Old Act was enacted on 12.3.1947, with the object of making provisions for the prevention of bribery and corruption more effective. In 1952 a Committee headed by Dr. Bakshi Tek Chand was constituted. The said Committee examined the true intent and purpose of Section 6 of the Old Act. It was inter alia noted by the Committee as follows:

> "Section 6 of the Act prescribes that no prosecution under Section 5(2) is to be instituted without the previous sanction of the authority competent to remove the accused officer from his office. The exact implications of this provisions have on occasions given rise to a certain amount of difficulty. There have been cases where an offence has been disclosed after the officer concerned has ceased to hold office, e.g., by retirement. In such cases it is not entirely clear whether any sanction is at all necessary. Another aspect of the same problem is presented by the type of case which, we are told, is fairly common-where an officer is transferred from one jurisdiction to another or an officer who is lent to another Department, commits an offence while serving in his temporary office and then returns to his parent Department before the offence is brought to light. In a case of this nature doubts have arisen as to the identity of the authority from whom sanction for prosecution is to be sought. In our opinion there should be an unambiguous provision in the law under which the appropriate authority for according sanction is to be determined on the basis of competence to remove the accused public servant from office at the time when the offence is alleged to have been committed."

The Law Commission of India in its 41st Report recommended amendment to Section 197 of the Code suggesting to grant protection of previous sanction to a public servant who is or was a public servant at the time of cognizance. Following the report of the Law Commission of India, Section 197 of the Code was amended in 1969. The Act was enacted on 9.9.1988 and the Statement of Objects and Reasons indicated widening of the scope of the definition of "public servant" and the incorporation of offences already covered under Sections 161 to 165A of the IPC in the Act. New Section 19 as was enacted virtually the same as section 6 of the Old Act. Earlier to R.S. Nayak's case (supra) this Court had occasion to deal with the issues in S. A. Venkataraman v. State (AIR1958 SC 107). In para 14 it was stated as follows:

> "14 ..There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the Court was asked to take cognizance, although he had been such a person at the time the offence was committed ..A public servant who has ceased to be a public servant is not a person removable from any office by a competent authority .."

Following the decision rendered in Venkataraman's case (supra) and C.R. Bansi v. State of Maharashtra (1970(3) SCC

537) the High Court accepted the view of learned trial Judge and declined relief as noted above.

The use of the expression "is" in Section 19 of the Act vis- `-vis the expression "is" or "was" is indicative of the legislative intent. Though certain changes were made in the Code no corresponding change was made in the Act.

Mr. P.P. Rao, learned senior counsel for the appellants in connected case contended that this was a case of casus omissus. The discussions indicate that the reports of Dr. Bakshi Tek Chand and of the Law Commission of India were to be accepted so far as they relate to covering the ex public servants. This plea shall be dealt with in the cases separately.

In reply, learned counsel for the respondents submitted that much before R.S. Nayak's case (supra) this Court in C.R. Bansi's case (supra) held as follows:

> "9 ..But if a person ceases to be a public servant the question of harassment does not arise. The fact that an appeal is pending does not make him a public servant. The appellant ceased to be a public servant when the order of dismissal was passed. There is no force in the contention of the learned counsel and the trial cannot be held to be bad for lack of sanction under Section 6 of the Act."

It is their stand that where the public servant has ceased to be a public servant in one capacity by ceasing to hold office which is alleged to have been misused, the fortuitous circumstance of the accused being in another capacity holding an entirely different public office is irrelevant. It was categorically held in R. S. Nayak's case (supra) in para 13 that "on analysis of the policy of the whole section the authority competent to remove the public servant from the office alleged to have mis-used is alone the competent sanctioning authority."

In that case, it was inter alia, held as follows:

> "13. Section 5 of the 1947 Act defines the offence of criminal misconduct and a public servant who commits an offence of criminal misconduct is liable to be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine. Section 6 provides for a sanction as a pre- condition for a valid prosecution for offences punishable under Sections 161, 164, 165 IPC and Section 5 of the 1947 Act. It reads as under:
>
> 6. (1) No court shall take cognizance of an offence punishable under Section 161 or Section 165 of the Indian Penal Code, or under sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person who is employed in connection with affairs of the Union and is not removable from his office save by or with the sanction of the Central Government,

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government,

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

Xx xx xx xx

19. Section 6 bars the court from taking cognizance of the offences therein enumerated alleged to have been committed by a public servant except with the previous sanction of the competent authority empowered to grant the requisite sanction. Section 8 of 1952 Act prescribes procedure and powers of Special Judge empowered to try offences set out in Section 6 of I 947 Act. Construction of Section 8 has been a subject to vigorous debate in the cognate appeal. In this appeal we will proceed on the assumption that a Special Judge Can take cognizance of offences he is competent to try on a private complaint. Section 6 creates a bar to the court from taking cognizance of offences therein enumerated except with the previous sanction of the authority set out in clauses (a),(b) and (c) of sub-section (1). The object underlying such provision was to save the public servant from the harassment of frivolous or unsubstantiated allegations. The policy underlying Section 6 and similar sections, is that there should not be unnecessary harassment of public servant. (See C.R. Bansi V. State of Maharashtra (1971 (3) SCR 236). Existence thus of a valid sanction is a prerequisite to the taking of cognizance of the enumerated offences alleged to have been committed by a public servant. The bar is to the taking of cognizance of offence by the court. Therefore, when the court is called upon to take cognizance of such offences, it must enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to have been committed by him as public servant. Undoubtedly, the accused must be a public servant when he is alleged to have committed the offence of which he is accused because Sections 161, 164, 165 IPC and Section 5(2) of the 1947 Act clearly spell out that the offences therein defined can be committed by a public servant. If it is contemplated to prosecute public servant who has committed such offences, when the court is called upon to take cognizance of the offence, a sanction ought to be available otherwise the court would have no jurisdiction to take cognizance of the offence. A trial without a valid sanction where one is necessary under Section 6 has been held to be a trial without jurisdiction by the court. (See R.R. Chari v. State of U.P.(1963) 1 SCR 121) and S.N. Bose v. State of Bihar (1968 (3) SCR

563) In Mohd. Iqbal Ahmad v. State of A P.(1979(2) SCR 1007) it was held that a trial without a sanction renders the proceedings ab initio void. But the terminus a quo for a valid sanction is the time when the court is called upon to take cognizance of the offence. If therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would he necessary for taking cognizance of the offence against him. This approach is in accord with the policy underlying Section 6 in that a public servant is not to be exposed to harassment of a frivolous or speculative prosecution. If he has ceased to be a public servant in the meantime, this vital consideration ceases to exist. As a necessary corollary, if the accused has ceased to be a public servant at the time when the court is called upon to take cognizance of the offence alleged to have been committed by him as public servant, Section 6 is not attracted. This aspect is no more res integra. In S.A. Venkataraman v. State (1958 SCR 1040) this Court held as under:

> In our opinion, in giving effect to the ordinary meaning of the words used in Section 6 of the Act, the conclusion is inevitable that at the time a court is asked to take cognizance not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority before the provisions of Section 6 can apply. In the present appeals, admittedly, the appellants had ceased to be public servants at the time the court took cognizance of the offences alleged to have been committed by them as public servants. Accordingly, the provisions of Section 6 of the Act did not apply and the prosecution against them was not vitiated by the lack of a previous sanction by a competent authority.
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> And this view has been consistently followed in C.R. Bansi case and K.S. Dharmadatan v. Central Government (1979 (3) SCR 832). It therefore appears well settled that the relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Section 6 is the date on which the court is called upon to take cognizance of the offence of which he is accused.
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> (underlined for emphasis) Xx xx xx
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> 23. Offences prescribed in Sections 161, 164 and 165 IPC and Section 5 of the 1947 Act have an intimate and inseparable relation with the office of a public servant. A public servant occupies office which renders him a public servant and occupying the office carries with it the powers conferred on the office. Power generally is not conferred on an individual person. In a society governed by rule of law power is conferred on office or acquired by statutory status and the individual occupying the office or on whom status is conferred enjoys the power of office or power flowing from the status. The holder of the office alone would have opportunity to abuse or misuse the office. These sections codify a well-recognised truism that power has the tendency to corrupt.

It is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This interrelation and interdependence between individual and the office he holds is substantial and not severable. Each of the three clauses of sub- section (1) of Section 6 uses the expression office' and the power to grant sanction is conferred on the authority competent to remove the public servant from his office and Section 6 requires a sanction before taking cognizance of offences committed by public servant. The offence would be committed by the public servant by misusing or abusing the power of office and it is from that office, the authority must be competent to remove him so as to be entitled to grant sanction. The removal would bring about cessation of interrelation between the office and abuse by the holder of the office. The link between power with opportunity to abuse and the holder of office would be severed by removal from office. Therefore, when a public servant is accused of an offence of taking gratification other than legal remuneration for cluing or forbearing to do an official act (Section 161 IPC) or as a public servant abets offences punishable under Sections 161 and 163 (Section 164 IPC) or as public servant obtains a valuable thing without consideration from person concerned in any proceeding or business transacted by such public servant (Section 165 TPC) or commits criminal misconduct as defined in Section 5 of the 1947 Act, it is implicit in the various offences that the public servant has misused or abused the power of office held by him as public servant. The expression 'office' In the three sub-clauses of Section 6(1) would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to he prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. This interrelation between the office and its abuse if severed would render Section 6 devoid of any meaning. And this interrelation clearly provides a clue to the understanding of the provision in Section 6 providing for sanction by a competent authority who would he able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can he 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. (See Mohd. Iqbal Ahmad v. State of A.P.)(1979 (2) SCR 1007). The Legislature 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 fudge 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 he in a position to know what was the power conferred on the office which the public servant holds, how that power could he 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 he by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference o knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the Legislature clearly provided that that authority alone would be competent to grant', sanction which is entitled to remove the public servant against whom sanction is sought from the office.

24. Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to use. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned Counsel that a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was- in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. Ode can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant/while abusing one office which he may have ceased to hold. Such an interpretation in contrary to all canons of construction and leads to an absurd and product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rougue's charter. (See Davis & Sons Ltd. v. Atkins [1977] Imperial Court Reports, 662) xx xx xx

26. Therefore upon a true construction of Section 6, it is implicit therein that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive and for which a prosecution is intended to be launched against him".

Para 18 of the said judgment is also of considerable importance. It reads as follows:

> "18. Re. (a) The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it."

As is clear from a bare reading of the paragraph, this Court adopted a construction which is based on the avoidance of mischief rule. That being so, the plea that the effect of Section 6(2) of the Old Act was not kept in view does not merit acceptance. Though a mere reference to a provision in all cases may not in all cases imply consciousness as to the effect of that provision the case at hand does not fall to that category. In this case not only was there reference to that provision, but also this Court adopted a construction which kept in view the object of the statute and the need for interpretation in a particular way. Foundation for the interpretation is found in para 24 of the judgment. With reference to Davis & Sons Ltd. v. Atkins (1977 Imperial Court Report 662) it was held that legislation must at all costs be interpreted in such a way that it would not operate as a rogue's charter.

In Habibulla Khan v. State of Orissa and Anr. (1995 (2) SCC 437) it was held was as follows:

> "12. However, it was contended that while the Governor had given sanction to prosecute the Chief Minister when he continued to be an MLA in the case of R.S. Nayak v. A.R. Antulay, the question whether the sanction was necessary to prosecute an MLA as a public servant did not arise. It was, therefore, contended that although the offence alleged to have been committed was during the appellants' tenure as Ministers, the appellants continued to be MLAs and, therefore, as public servants on the day of the launching of prosecution and hence sanction of the Governor under Article 192 of the Constitution was necessary. This question has also been answered in R.S. Nayak v. A.R. Antulay. Referring to this Court's decision in State (S.P.E., Hyderabad) v. Air Commodore Kailash Chand this Court held : (SCC pp. 208-09, paras 25-26):

> "We would however, like to make it abundantly clear that if the two decisions purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decisions in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Section 6.
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> Therefore, upon a true construction of Section 6, it is implicit therein that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive and for which a prosecution is intended to be launched against him."

The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity.

In other words, where the act performed under the colour of office is for the benefit of the officer or for his own pleasure Section 19(1) will come in. Therefore, Section 19(1) is time and offence related.

This Court in Shreekantiah Ramayya Munipalli v. The State of Bombay reported in (1955 (1) SCR 1177 at pages1186-1187) held as follows:

> "We have therefore first to concentrate on the word "offence".

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. In the present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion 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. Therefore, the act complained of, namely the disposal, could not have been done in any other way. 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 other, 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.

The act of abetment alleged against him stands on the same footing, for his part in the abetment was to permit the disposal of the goods by the doing of an official act and thus "wilfully suffer" another person to use them dishonestly : section 405 of the Indian Penal Code. In both cases, the "offence" in his case would be incomplete without proving the official act."

(underlined for emphasis) The main contention advanced by Shri Venugopal Learned senior counsel appearing for the appellant is that a public servant who continues to remain so (on transfer) has got to be protected as long as he continues to hold his office. According to the learned counsel, even if the offending act is committed by a public servant in his former capacity and even if such a public servant has not abused his subsequent office still such a public servant needs protection of Section 19(1) of the Act. According to the learned counsel, the judgment of this Court in R.S. Nayak's case (supra) holding that the subsequent position of the public servant to be unprotected was erroneous. According to the learned counsel, the public servant needs protection all throughout as long as he continues to be in the employment.

The plea is clearly untenable as Section 19(1) of the Act is time and offence related.

Section 19(1) of the Act has been quoted above. The underlying principle of Sections 7, 10, 11, 13 and 15 have been noted above. Each of the above Sections indicate that the public servant taking gratification (S.7), obtaining valuable thing without consideration (S.11), committing acts of criminal misconduct (S.13) are acts performed under the colour of authority but which in reality are for the public servant's own pleasure or benefit. Sections 7, 10, 11, 13 and 15 apply to aforestated acts. Therefore, if a public servant in his subsequent position is not accused of any such criminal acts then there is no question of invoking the mischief rule. Protection to public servants under Section 19(1)(a) has to be confined to the time related criminal acts performed under the colour or authority for public servant's own pleasure or benefit as categorized under Sections 7, 10, 11, 13 and 15. This is the principle behind the test propounded by this court, namely, the test of abuse of office.

Further, in cases where offences under the Act are concerned the effect of Section 19 dealing with question of prejudice has also to be noted.

In Balakrishnan Ravi Menon v. Union of India (SLP (Crl.) No.3960 of 2002 decided on 17.9.2002) a similar plea was rejected. It was inter alia held as follows:

> "Hence, it is difficult to accept the contention raised by U.R. Lalit, the learned senior counsel for the petitioner that the aforesaid finding given by this Court in Antulay's case is obiter.

> Further, under Section 19 of the PC Act, sanction is to be given by the Government or the authority which would have been competent to remove the public servant from his office at the time when offence was alleged to have been committed. The question of obtaining sanction would arise in a case where the offence has been committed by a public servant who is holding the office and by misusing or abusing the powers of the office, he has committed the offence. The word 'office' repeatedly used in Section 19 would mean the 'office' which the public servant misuses or abuses by corrupt motive for which he is to be prosecuted.
>
> xx xx xx Clauses (a) and (b) of sub-section (1) specifically provide that in case of a person who is employed and is not removable from his office by the Central Government or the State Government, as the case may be, sanction to prosecute is required to be obtained either from the Central Government or the State Government. The emphasis is on the words "who is employed" in connected with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2) the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In case where the person is not holding the said office as he might have retired, superannuated, discharged or dismissed then the question of removing would not arise."

The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In Sub-Section (3) the stress is on "failure of justice" and that too "in the opinion of the Court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to root of jurisdiction as observed in para 95 of the Narasimha Rao's case (supra). Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the Old Act (Section 19(2) of the Act) question relates to doubt about authority to grant sanction and not whether sanction is necessary.

In Halsbury's Laws of England, 4th Edn., Vol.26 it is stated:

> "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

In Govt. of A.P. v. B. Satyanarayana Rao (2000 (4) SCC 262) it has been held as follows:

> ""The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or

where a court omits to consider any statute while deciding that issue."

"Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" as held in Young v. Bristol Aeroplane Co. Ltd. (1944 (2) All ER 293) is avoided and ignored if it is rendered "in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. The above position was highlighted in State of U.P. v. Synthetics and Chemicals Ltd. (1991 (4) SCC 139). To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.

The above position was highlighted in Babu Parasu Kaikadi (dead) by Lrs. v. Babu (dead) thr. Lrs. (2004 (1) SCC 681 and Sunita Devi v. State of Bihar and Anr. (2005 (1) SCC

608) As regards applicability of Section 197 of the Code, the position in law has been elaborately dealt with in several cases.

In Bakhshish Singh Brar v. Smt. Gurmej Kaur and Anr. (AIR 1988 SC 257), this Court while emphasizing on the balance between protection to the officers and the protection to the citizens observed as follows:-

"It is necessary to protect the public servants in the discharge of their duties. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence."

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but

there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. This aspect makes it clear that the concept of Section 197 does not immediately get attracted on institution of the complaint case.

At this juncture, we may refer to P. Arulswami v. State of Madras (AIR 1967 SC 776), wherein this Court held as under:

> "... It is not therefore 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 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."

Section 197(1) and (2) of the Code reads as under:

> "197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -
>
> (a) in the case of person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

* * * (2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means 'taking notice of'. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Saha and Ors. v. M. S. Kochar (1979 (4) SCC 177), it was held : (SCC pp. 184-85, para 17) "The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies

between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197 (1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision."

Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H. C. Bhari (AIR 1956 SC 44) thus:

> "The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty ... 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 (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

The above position was highlighted in State of H.P. v. M.P. Gupta (2004 (2) SCC 349), State of orissa through Kumar Raghvendra Singh & Ors. v. Ganesh Chandra Jew (JT 2004(4) SC 52), Shri

S.K. Zutshi and Anr. v. Shri Bimal Debnath and Anr. (JT 2004(6) SC 323), K. Kalimuthu v. State by DSP (2005 (4) SCC 512) and Rakesh Kumar Mishra v. The State of Bihar and Anr. (2006 (1) SCC 557).

In Rakesh Kumar Mishra's case (supra) it was inter alia observed as follows:

> "14. In S.A. Venkataraman v. The State (AIR 1958 SC 107) and in C. R. Bansi v. The State of Maharashtra (1970 (3) SCC 537) this Court has held that:
>
> "There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed."

Xx xx xx

16. When the newly-worded section appeared in the Code (Section 197) with the words "when any person who is or was a public servant" (as against the truncated expression in the corresponding provision of the old Code of Criminal Procedure, 1898) a contention was raised before this Court in Kalicharan Mahapatra v. State of Orissa (1998 (6) SCC

411) that the legal position must be treated as changed even in regard to offences under the Old Act and New Act also. The said contention was, however, repelled by this Court wherein a two-Judge Bench has held thus:

> "A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 197 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction."

17. The correct legal position, therefore, is that an accused facing prosecution for offences under the Old Act or New Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application.

18. Section 197(1) provides that when any person who is or was a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government and (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged

offence employed, in connection with the affairs of a State, or the State Government.

19. We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed:

> "it appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant".

It was in pursuance of this observation that the expression 'was' come to be employed after the expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted."

In P.K. Pradhan v. State of Sikkim (2001 (6) SCC 704) it has, inter alia, held as follows:

> "The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is prohibition imposed by the Statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly I excess of the needs and requirements of the situation."

The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not

may have to be determined from stage to stage.

So far as the question about the non application of mind in the sanction or absence of sanction is concerned, this has been answered in the first question i.e. where the public servant has ceased to be a public servant since he has ceased to hold the office where the alleged offence is supposed to have been taken place, the other questions really become academic.

A plea has been taken that charge sheet is a bundle of confusions and no definite material is placed on record to substantiate the allegation of commission of any offence. This assertion has been refuted by learned counsel for the respondent-State with regard to various definite materials indicating commission of offence. Particular reference has been made to the following:

> Pages 396-397, Volume 3 discloses how Rs.9 crores were recycled by Badal family through the accounts of K.S. Siddhu into the project ORBIT Resort.
>
> Pages 398-399, 404-407, 416-420, 448 establishes facts showing recycling of several crores of rupees with the aid of Narottam Singh Dhillon, an NRI and close to Badal family. Illegally earned money used to be deposited in the account of Narottam Singh Dhillon who used to then get FDRs issued and thereafter used to take loans against the FDRs. His bank account shows operation during 1997-2002. This loan money has been given to Parkash Singh Badal, S. Kaur and Sukhbir Singh Badal as loans which have never been returned. This recyling involved making of fake entries in the bank. There is evidence showing taking of gratification in transfers, postings and promotions.
>
> Pages 430-434 show purchases of property and shares in the name of Satnam Singh and Namta Singh who were close to Badal family and the transfer of their interest to SB in the year 2001.
>
> Pages 489-494: Evidence collected shows amassing of benami property in the name of Shri Harbans Lal and his family members who are close to Badal family.
>
> Pages 499-502: reveals routing of black money into the transport companies being run by the Badal family.
>
> Pages 553-566 present a detailed analysis of the assets of Badal family generated during the check period. Total disproportionate asset is to the tune of Rs.78.39 crores. But disproportion could not be explained. Present market worth is over Rs.500 crores.
>
> At pages 571-580 there is evidence to show flow of money from abroad.
>
> At page 582, it is specifically concluded that Parkash Singh Badal colluded with his wife and son and other persons and committed corruption at large scale and huge

wealth and money was amazed which is more than their disclosed income.

Page 611 onwards relates to only of the income and wealth tax returns of Badal family during the check period. Thus all relevant facts disclosing the offences committed by Parkash Singh Badal, S. Kaur and Sukhbir Singh Badal in collusion with each other and with other persons is clearly set out in the charge sheet and the same was submitted to the Speaker along with relevant materials. The charge sheet is neither jumbled nor unclear and sanctioning authority applies his mind.

As regards the plea relating to non-definite offence, a few provisions of the Code need to be noted. Sections 173, 215 and 220 reads as follows:

173. Report of police officer on completion of investigation. (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to

be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding, such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

215. Effect of errors. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

220. Trial for more than one offence. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of properly as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

Section 72 IPC is also relevant. Same reads as follows:

> "72. Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.--In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences, he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all".

The report in terms of Section 173 of the Code is in the nature of information to the Magistrate. Statutory requirement is complied with if the requisite information is given. It purports to be an opinion and therefore elaborate details are not necessary. In K. Veeraswami v. Union of India and Ors. (1991 (3) SCC 655) it was held as follows:

> "The charge sheet is nothing but a final report of police officer under Section 173(2) of the Cr.P.C. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case;
>
> (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section
>
> 170. As observed by this Court in Satya Narain Musadi and Ors. v. State of Bihar (1980 (3) SCC 152); that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the Court to inquire into the offence and the necessary information is being sent to the Court. In fact, the report under Section 173(2) purports to be an opinion of the investigating officer that as far as he is concerned he has been able to

> procure sufficient material for the trial of the accused by the Court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence."

Mere non-description of the offences in detail is really not material. At the stage of framing charge it can be urged that no offence is made out.

With reference to the absence of allegations under Sections 8 and 9 of the Act, it is submitted whether the charge sheet has reference to any particular material referred to in it and the relevance of it is to be considered at the time when the charge is framed. It would not be desirable to analyse minutely the materials as at that stage the Court is primarily concerned with the question as to whether charge is to be framed in respect of any offence and whether there prima facie appears existence of any material and not the sufficiency of the materials. Therefore, the appellants' stand that the charge sheet does not refer to any particular material cannot be accepted, more particularly, in view of the specific materials referred to by learned counsel for the respondent-State.

It is the stand of the State that the appellant-Parkash Singh Badal was the fulcrum around which the entire corruption was woven by the members of his family and others and it was his office of Chief Minister-ship which had been abused. Therefore, Sections 8 and 9 of the Act would not be applicable to him and would apply only to his wife, son and others. It is the stand of the appellants that in the documents filed only Section 13(1) has been only mentioned and not the exact alleged infraction. It is to be noted that the offence of criminal mis-conduct is defined in Section 13. Five clauses contained in the said provision represent different types of infraction under which the offence can be said to have been committed. If there is material to show that the alleged offence falls in any of the aforesaid categories, it is not necessary at the stage of filing of the charge sheet to specify as to which particular clause covers the alleged offence. It is the stand of the respondent-State that clauses (a), (b) (d) and (e) are all attracted and not clause (c). Therefore, the sanctioning authority has rightly referred to Section 13(1) and that does not make the sanction order vulnerable.

The sanctioning authority is not required to separately specify each of the offence against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalized guidelines in that regard.

The sanction in the instant case related to offences relatable to Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during

trial.

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 (supra). 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.

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.

In Baijnath v. State of M.P. (1966 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."

So far as the appellant Sukhbir Singh Badal is concerned, the stand is that he being a member of the Parliament is a public servant and cannot be charged with offences under Sections 8 and 9 of the Act. His contention is that Sections 8, 9, 12, 14 and 24 of the Act are applicable to private persons and not to public servants. The opening word of Sections 8 and 9 is "whoever". The expression is very wide and would also cover public servants accepting gratification as a motive or reward for inducing any other public servant by corrupt or illegal means. Restricting the operation of the expression by curtailing the ambit of Sections 8 and 9 and confining to private persons would not reflect the actual legislative intention.

If Section 8 is analytically dissected then it would read as below:

> (i) Whoever
>
> (ii) Accepts or obtains gratification from any person
>
> (iii) For inducing any public servant (by corrupt or illegal means)
>
> (iv) To render or attempt to render any services or disservice (etc.)
>
> (v) With any public servant (etc.) So far as Section 9 is concerned the only difference is that inducement is "by the exercise of personal influence". The above analysis shows that public servants may be involved.

Sections 8 and 9 of the Act correspond to Sections 162 and 163 of IPC. During the currency of Old Act, Sections 161 to 165A of IPC were operating. This Court had occasion to examine Section 5(1)(d) of the Old Act and Sections 161 and 162 IPC. It has been held that they constitute different offences. [See Ram Krishan and Anr. v. State of Delhi (AIR 1956 SC 476)] In view of the above, it would not be permissible to contend that a public servant would be covered by Section 13(1)(d) (similar to section 5(1)(d) of Old Act) and therefore the public servant would not be covered by Sections 8 and 9 of the Act. The offences under Section 13(1)(d) and the offences under Sections 8 and 9 of Act are different and separate. Assuming, Section 13(1)(d)(i) covers public servants who obtain for 'himself or for any other person' any valuable thing or pecuniary advantage by corrupt or illegal means, that would not mean that he would not fall within the scope of Sections 8 and 9. The ingredients are different. If a public servant accepts gratification for inducing any public servant to do or to forbear to do any official act, etc. then he would fall in the net of Sections 8 and 9. In Section 13(1)(d) it is not necessary to prove that any valuable thing or pecuniary advantage has been obtained for inducing any public servant.

Another difference is that Section 13(1)(d) envisages obtaining of any valuable thing or pecuniary advantage. On the other hand Sections 8 and 9 are much wider and envisages taking of "any gratification whatever". Explanation

(b) of Section 7 is also relevant.

The word 'gratification' is not restricted to pecuniary gratifications or to gratifications estimable in money. Thus, Sections 8 and 9 are wider than Section 13(1)(d) and clearly constitute different offences.

Section 24 envisages the making of a statement by a person in any proceeding against the public servant for an offence under Sections 7 to 11 or Sections 13 and 15. It is clear from Section 24 that there can be a proceeding against public servant for which offence under Sections 7 to 11 which per se includes Sections 8 and 9. On the face of this provision, it cannot be contended that a public servant cannot be proceeded against Sections 8 and 9.

Great emphasis has been led by the appellants on some factual scenario to show that the complainant was close to incumbent Chief Minister and he has been rewarded subsequently for making the complaint. In essence, the plea is that mala fides are involved. This allegation of mala fides is also linked with the so called conferment of power with the particular police station at Mohali and conferment of jurisdiction on a particular Special Judge by Notification dated 17.11.2003.

A plea of mala fides has not only to be clearly pleaded but specifically proved by adducing cogent evidence. Mere allegation and suspicions would not be sufficient. The person against whom mala fides conduct is attributed is interestingly not a party in the proceedings.

So far as the allegation that political opponent had lodged the complaint is concerned, that itself is not sufficient for the Court to interfere. When the allegation is made, investigation is undertaken to

find out whether there is any substance in the allegation. Merely because the political opponent was the complainant that does not per se lead to an inference that the complaint has to be thrown out or that no notice should be taken thereof.

Before dealing further whether the submissions ought to prevail, the legal principles governing the registration of a cognizable offence and the investigation arising thereon need to be noted. Section 154(1) is the relevant provision regarding the registration of a cognizable offence and that provision reads as follows:

> "154. Information in cognizable cases.-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in his behalf".

The above sub-section corresponds to Section 154 of the Old Code (Act of 1898 to which various amendments were made by Act 26 of 1955 and also to Section 154 of the Code of Criminal Procedure of 1882 (Act 10 of 1882) except for the slight variation in that expression 'local government' had been used in 1882 in the place of 'State Government'. Presently, on the recommendations of the Forty-first Report of the Law Commission, the sub-sections (2) and (3) have been newly added but we are not concerned with those provisions as they are not relevant for the purpose of the disposal of this case except for making some reference at the appropriate places, if necessitated. Section 154(1) regulates the manner of recording the first information report relating to the commission of a cognizable offence.

The legal mandate enshrined in Section 154 (1) is that every information relating to the commission of a 'cognizable offence' (as defined under section 2 (c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer incharge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report"

> and which act of entering the information in the said form is known as registration of a crime or a case.
>
> At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154 (1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect

> the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 thereof. In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.
>
> It has to be noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information"

are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and

(g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act XXV of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer incharge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act X of 1872) which thereafter read that 'every complaint' preferred to an officer incharge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the Code. An overall reading of all the Codes makes it clear that the condition which is sine-qua-non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence.

It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer incharge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. In this connection, it may be noted that though a police officer cannot investigate a non-cognizable offence on his own as in the case of cognizable offence, he can investigate a non- cognizable offence under the order of a Magistrate having power to try such non-cognizable case or commit the same for trial within the terms under Section 155(2) of the Code but subject to Section 155(3) of the Code. Further, under sub- section (4)

to Section 155, where a case relates to two offences to which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and, therefore, under such circumstances the police officer can investigate such offences with the same powers as he has while investigating a cognizable offence. The next key question that arises for consideration is whether the registration of a criminal case under Section 154(1) of the Code ipso facto warrants the setting in motion of an investigation under Chapter XII of the Code. Section 157(1) requires an Officer Incharge of a Police Station who 'from information received or otherwise' has reason to suspect the commission of an offence-that is a cognizable offence-which he is empowered to investigate under Section 156, to forthwith send a report to a Magistrate empowered to take cognizance of such offence upon a police report and to either proceed in person or depute any one of his subordinate Officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. This provision is qualified by a proviso which is in two parts (a) and (b). As per Clause (a) the Officer Incharge of a Police Station need not proceed in person or depute a subordinate officer to make an investigation on the spot if the information as to the commission of any such offence is given against any person by name and the case is not of a serious nature. According to Clause (b), if it appears to the Officer Incharge of a Police Station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. Sub-section (2) of Section 157 demands that in each of the cases mentioned in Clauses (a) and (b) of the proviso to Sub-section (1) of Section 157, the Officer Incharge of the Police Station must state in his report, required to be forwarded to the Magistrate his reasons for not fully complying with the requirements of Sub- section (1) and when the police officer decides not to investigate the case for the reasons mentioned in Clause (b) of the proviso, he in addition to his report to the Magistrate, must forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause the case to be investigated. Section 156(1) which is to be read in conjunction with Section 157(1) states that any Officer Incharge of a Police Station may without an order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of the concerned police station would have power to enquire into or try under provisions of Chapter XIII. Section 156(3) vests a discretionary power on a Magistrate empowered under Section 190 to order an investigation by a police officer as contemplated in Section 156(1). It is pertinent to note that this provision does not empower a Magistrate to stop an investigation undertaken by the police. (See State of Bihar and Anr. v. J.A.C. Saldanha and Ors. (1980 (1) SCC 554) In that case, power of the Magistrate under Section 156(3) to direct further investigation after submission of a report by the investigating officer under Section 173(2) of the Code was dealt with. It was observed as follows:

> "The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the

> investigating officer to further investigate the case even after submission of the report as provided in Section 173(8)."

The above position has been highlighted in State of Haryana and Ors. v. Bhajan Lal and Ors. (1992 Supp (1) SCC 335).

In State of Punjab and Anr. v Gurdial Singh and Ors. (1980 (2) SCC 471) it was observed as follows:

> " ..If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal."

At this stage it needs to be clarified that the obligation to register a case is not to be confused with the remedy if same is not registered. Issue of the remedy has been decided by this Court in several cases. (See Gangadhar Janardan Mhatre v. State of Maharashtra and Ors. (2004 (7) SCC 768) The ultimate test therefore is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.

So far as conferment of jurisdiction with the police station over the whole State is concerned, it appears that the same was created on 31.10.1994 by the then Government of Chandigarh and by order dated 20.4.1995 the office of Superintendent of Police, Vigilance Flying Squad-I/Criminal Investigation Agency, Chandigarh was shifted to Police Station, Mohali. This order continued to operate subsequently. As rightly contended by learned counsel for the respondent- State, the fresh notification was issued creating some more police stations qua other districts. It is pointed out that PS Mohali falls within the Ropar district and within the area of Special Judge, Ropar as was specified in consultation with the Punjab and Haryana High Court. The Special Judges are transferred by the High Court and, therefore, the allegation of choosing any Special Judges with oblique motive is clearly without any substance. The notification regarding the re- organization of the police station with Police Station, Mohali having jurisdiction over the whole State of Punjab was notified on 19.12.2002.

At this juncture, it is relevant to note that allegations of impropriety were made because of the Notification dated 17.11.2003 relating to jurisdiction of the Special Judge. A few relevant aspects need to be noted at this juncture. The Court of Special Judge, Ropar was created by Notification dated 5.1.1990 of the State Government which was issued in consultation with the High Court for the area of Ropar District. Another Notification was issued on 5.9.2000 in consultation with the High Court. By this Notification, Sessions Judges in the State of Punjab were appointed as Special Judges within their respective districts. The Notification dated 31.10.1994 creating P.S., Chandigarh with Statewide jurisdiction which was shifted to P.S., Mohali by order dated 20.4.1995 was already in existence when Sessions Judges were made Special Judges. There is no dispute about this fact.

The controversy revolves around the Notification dated 19.10.2002 regarding P.S., Mohali with Statewide jurisdiction. According to learned counsel for the respondent-State it represents a

continuity and there was no new creation. So far as the Notification dated 17.11.2003 is concerned, undisputedly, the expression used is "appoint". It was clarified that though the said expression has been used, it did not actually mean appointment of a Sessions Judge and First Additional Sessions Judge, Ropar as Special Judges. They were already appointed and designated as stated in the Notification itself. What was intended related to allocation of cases registered at P.S., Mohali to the existing Courts of Special Judges, Ropar. There is also no dispute that P.S., Mohali falls within the area of district Ropar over which Special Judges, Ropar had jurisdiction as approved by the High Court.

Stand of learned counsel for the State is that since the impugned notification allocated certain cases to Courts of Special Judges already established with the consultation with the High Court, no further consultation was required.

It is pointed out that said re-allocation does not impinge upon the control of the High Court as envisaged by Article 235 of the Constitution.

There is no doubt that the control of the High Court is comprehensive, exclusive and effective and it is to subserve the basic feature of Constitution, i.e. independence of judiciary. [See High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and Anr. (1998 (3) SCC 72) and Registrar (Admn.), High Court of Orissa, Cuttack v. Sisir Kanta Satapathy (dead) by Lrs. and Anr. (1999 (7) SCC 725)] Articles 233 and 234 of the Constitution are not attracted because this is not a case where appointment of persons to be Special Judges or their postings to a particular Special Court is involved. It is however factually conceded that the expression "notwithstanding the jurisdiction of other Special Judges in the State of Punjab" is not necessary.

Once group of cases are allocated to Special Court, consequentially other Special Courts cannot deal with them. Use of the afore-said expression was really un-necessary. We consider it to be severable and so direct.

At this juncture, it is to be noted that learned counsel for the State submitted that to avoid any fear of forum shopping, the State is even willing to abide by the decision of this Court if the trial takes place in Chandigarh or wherever this Court directs, and to show that the State has no intention to the trial being conducted at a particular place and to prove its transparency the stand is taken. We do not think it necessary to so direct, because the expression "notwithstanding the jurisdiction of other Special Judges in the State of Punjab" has already been stated to be unnecessary and would be of no consequence. That being so, the plea in that regard as raised by the appellants also fails.

Since all the challenges have been held to be without substance, the inevitable result is that the appeals deserve to be dismissed which we direct.