Buddi Chandra Mohan, S/O.Late ... vs Counsel For The on 30 January, 2017

Author: T.Sunil Chowdary

Bench: T.Sunil Chowdary

HONOURABLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.16208 of 2014

30-01-2017

Buddi Chandra Mohan, S/o.late B.Krishna Murthy Petitioner

The State of Andhra Pradesh, represented by its Standing Counsel for ACB Cases, High Court, Hyderabad Respondent

Counsel for the petitioner:Sri V. Pattabhi

Counsel for the respondent: Sri Udaya Bhaskara Rao,
Special Standing Counsel for ACB

<GIST:

>HEAD NOTE:

? CASES REFERRED:
1)(2012) 13 SCC 614
2)(2013) 3 SCC 330
3)(2013) 9 SCC 293
4)(2013) 10 SCC 591
5)(2000) 2 SCC 636
6)2014 (2) ALD (Crl.) 617
7)2004 (1) ALD 620
8)(2009) 1 SCC 180
9)(1999) 1 SCC 31
10 (2006) 4 SCC 57
11)(2016) 1 SCC 560
12)2014(1)ALD(Cri)120
13)2010 (3) ALD 452 (DB)
14)2012 (2) ALD 425
15)2016 (1) ALT (Crl.) 350 (A.P)
16)(2010) 12 SCC 497
17)(2011) 7 SCC 167
18)AIR 1996 SC 901
19)2000 (1) ALD (Crl.) 362 (SC) = 2000 (1) SCR 417
20)(2007) 1 SCC 1

21)(2013) 16 SCC 728
22)(1984) 2 SCC 183
23)2004 CriLJ 3892
24)(2014) 16 SCC 807
25)1999 CriLJ 3696
26)2014 LawSuit (Chh) 232 = 2014 CriLJ 4701
27)1998 (2) ALD (Crl.) 359 (SC)

THE HONBLE SRI JUSTICE T. SUNIL CHOWDARY
CRIMINAL PETITION No.16208 OF 2014
ORDER:

This petition is filed under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.69 of 2013 on the file of the Special Court for trial of ACB cases in Rayalaseema Region, Kurnool.

2 The facts leading to the filing of the present petition are, briefly, as follows:

> The petitioner joined the Government service on 05.12.1978 as Probationary Deputy Tahsildar and got promotions from time to time. The petitioner worked as Special Grade Deputy Collector, Srisailam Project with effect from 01.03.2009 to 28.10.2009. The petitioner retired from service on attaining the age of superannuation on 31.12.2010. On receiving credible information, that the petitioner has acquired disproportionate assets, while functioning as a public servant, the Inspector of Police, ACB registered a case in Crime No.11/RCA-KUR/2009 dated 21.11.2012, against the petitioner, for the offences punishable under Sections 13 (2) r/w 13 (1) (e) of Prevention of Corruption Act, 1988 (the P.C.Act). After completion of investigation, the Investigating Officer laid charge sheet on 12.11.2013 against the petitioner for the aforesaid offences. The learned Special Judge has taken cognizance of the offences under Sections 13 (2) r/w 13 (1)
>
> (e) of the P.C.Act and numbered the same as C.C.No.69 of 2013.

As per the allegations made in the charge sheet, the petitioner has acquired disproportionate assets worth of Rs.1,18,11,883/- to the known sources of his income.

3 The first and foremost contention of the learned counsel for the petitioner is that this court can quash the criminal proceedings at any stage. On the other hand, the learned standing counsel for the respondent ACB contended that the trial was commenced and as many as 88 witnesses were examined on behalf of the prosecution and hence this is not the stage to quash the proceedings against the petitioner.

4 To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the following decisions.

Satish Mehra vs. State (NCT of Delhi) & Another wherein the Honble apex Court at Para No.14 held as follows:

> 14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognised to be inherent in every High Court.

Rajiv Thapar vs. Madan Lal Kapoor wherein the Honble apex Court at Para No.30 held as follows:

> 30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:
>
> 30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?
>
> 30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?
>
> 30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant;

and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused. As per the principle enunciated in the above cited cases, High Court, at any stage, can quash the proceedings against the accused if the material produced by him clearly rules out the allegations made against him and such allegations would not end in conviction. The Honble apex Court reiterated and reaffirmed the principle enunciated in the cases cited supra in Prashant Bharti vs. State (NCT of Delhi) and Umesh Kumar vs. State of Andhra Pradesh .

5 On the other hand, the learned standing counsel for the ACB has drawn the attention of this Court to the ratio laid down in G.Sagar Suri vs. State of U.P wherein the Honble apex Court at para No.9 held as follows:

> 9. In State of Karnataka v. L. Muniswamy {(1977) 2 SCC 699} this Court said that in the exercise of the wholesome power under Section 482 of the Code the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings are to be quashed.

As per the principle enunciated in the case cited supra, this Court can quash the criminal proceedings by exercising inherent jurisdiction under Section 482 Cr.P.C. to prevent abuse of process of law and thereby to secure the ends of justice. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to accede to the contention of the learned standing counsel that the present petition is liable to be dismissed in limine in view of commencement of trial.

6 The second contention of the learned counsel for the petitioner is that Inspector of Police is not entitled to investigate into the offence punishable under Section 13(e) of the P.C. Act. He further submitted that the investigating officer who was working as Sub-Inspector of Police was officiated as Inspector of Police and hence on that ground also the investigation conducted by the investigating officer is not legally sustainable. In such circumstances, forcing the petitioner to face the rigour of criminal trial is nothing short of abuse of process of law. 7 On the other hand, the learned standing counsel for the ACB submitted that there is no bar to investigate into the matter by the Inspector of Police in view of the provisions of the P.C. Act. To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in V.Suryanarayana vs. State wherein this Court at Para No.17 held as follows:

> 17. The learned Senior Counsel for the petitioner placed reliance upon Section 17(c) of the P.C.Act which contemplates that a Deputy Superintendent of Police or a Police Officer of equivalent rank alone is entitled to investigate any offence punishable under the P.C.Act in residuary circumstances not covered by Sections 17(a) and 17(b). Where the case is covered by Section 17(a), the question of Section 17(c) being applicable does not arise. Indeed, Section 17 of the P.C.Act is mandatory.

However, where Sri G.Sudhakar is an Inspector of Police of the Delhi Special Police Establishment, Section 17(a) of the P.C.Act empowers him to conduct the investigation. I therefore reject the contention of the learned Senior Counsel for the petitioner that the investigation is bad being in violation of Section 17 of the P.C.Act.

As per the principle enunciated in the case cited supra, the Inspector of Police is competent to investigate into the ACB cases, in view of Section 17 of the P.C. Act. The question raised in the case on hand is identical to the issue decided in the case cited supra. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to

accede to the contention of the learned counsel for the petitioner that the investigation conducted in this case is not legally sustainable.

8 The learned counsel for the petitioner vehemently submitted that after receipt of final report, the Government can initiate departmental proceedings instead of prosecuting the petitioner; therefore, continuation of criminal proceedings against the petitioner is not sustainable. To substantiate the argument, the learned counsel for the petitioner placed reliance on the Memo No.623/Spl.C/A1/2008-1 dated 15.10.2008. The relevant portion of the said Memo is extracted hereunder:

> 2. The Government, after careful examination, have accepted the recommendations of the Group of Ministers. The following instructions are issued in respect of certain recommendations relating to ACB / Vigilance cases:
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> (i) .
> (ii) After receipt of the Final report of the Investigating
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> Agency, the Department concerned shall examine further within one month and take a decision as to entrust the case:
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> 1. either for prosecution; or
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> 2. for departmental action; or
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> 3. for placing the accused officer on his defence before the Tribunal for Disciplinary Proceedings; or
>
> 4. for closure of the case and seek the advice of A.P. Vigilance Commission.

A perusal of the above Memo, at a glance, demonstrates that after filing the final report, the Government may resort to any one of the modes indicated above.

9 It is the further contention of the contention of the learned counsel for the petitioner that on 12.2.2014 the then Chief Minister of the Composite State of Andhra Pradesh ordered departmental enquiry against the petitioner and that fact was suppressed by the prosecution agency by withholding concerned file. The learned counsel for the petitioner has drawn attention of this Court to Page No.67 of the material papers which reads as follows:

> The following file is approved:
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> Sl.No. File No. & CMF No. Subject Endorsement 48523/Vig.III(1)/2009 Disproportionate assets case registered by ACB against Sri B. Chandramohan, former Spl. Collector, SSP, Kurnool and now retired from service to initiate disciplinary action.

> Ordered for departmental enquiry on para 278 (A) and (B) on page 71 n.f.

10 The fact remains that the investigating officer filed charge sheet in the year 2013. The Special Court has taken cognizance of the offence in the year 2013 itself. In the reply to the counter filed on behalf of the respondent, the petitioner pleaded that his application under the Right to Information Act to issue copies of the Note File in Rc. No.48523/Vig.III(1)/2009 was rejected and this Court may call for the Note File. The petitioner filed a petition seeking permission of the Court to permit him to take additional grounds and the same was allowed.

In Uma Engineering Company v Chief Technocal Examiner (CE), Irrigation Wing , it was held at para Nos.15, 16 and 17 (Manupatra) as follows:

> 15. A plain reading of Section 8 (Freedom of Information Act, 2002) would show that certain types of information inter alia, the minutes or records of advise including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy making is not treated as information shall be exempted of the disclosure. ("Information" as defined by Clause
>
> (d) of Section 2).
>
> 16. Therefore, the information sought by the petitioner, i.e., alleged note orders issued by the Hon'ble Minister squarely fall within Section 8(e) of the Act and therefore, the petitioner cannot claim or enforce freedom of information under the Act.
>
> 17. There is yet another reason to conclude that the petitioner cannot insist on the supply of note orders to him. In the system of administration followed in Indian sub continent (which is credited Lord Macual), before any order is passed, the matter is generally considered on various levels i.e., from the level of a Clerk or Assistant, Head Clerk or Superintendent, the Junior Management Cadre Officer, Middle Management Cadre Officer, top Bureaucrats, Hon'ble Ministers, Every one contributes to the decision making process. All the notings made in that file at different levels cannot be called decisions as such. The collectivity of opinion and reasons therefore will ultimately manifest in the form of a decision which is communicated to a person. A person at whose instance a decision was taken, is no doubt entitled to receive and to be communicated a copy of the order containing the decision. Such person, however cannot claim any right from any of the notings in the file. Therefore, office notings in departmental files do not create any rights and such notings cannot be enforced in a Court of Law.

In the absence of production of the original file, it is not fair on the part of this Court to express any opinion with regard to the validity or otherwise of the same. While exercising power under Section 482 Cr.P.C. there is no need to call for the records, in view of the above decision.

11 The learned standing counsel for the respondentACB submitted that the petitioner has produced a part of the alleged note file. He further submitted that notings on the file itself will not create any right in favour of the petitioner. That is only an internal correspondence of the Government. To substantiate the same, he has drawn the attention of this Court to the ratio laid down in Sethi Auto Service Station vs. Delhi Development Authority wherein the Honble apex Court at para Nos.14 to 17 held as follows:

> 14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.
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> 15. In Bachhittar Singh v. State of Punjab {AIR 1963 SC 395}, a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to Article 166(1) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said article and was then communicated to the party concerned. The Court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the order of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.
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> 16. To the like effect are the observations of this Court in Laxminarayan R. Bhattad v. State of Maharashtra {(2003) 5 SCC 413}, wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right.
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> 17. In view of the above legal position and in the light of the factual scenario as highlighted in the order of the learned Single Judge, we find it difficult to hold that the recommendation of the Technical Committee of DDA fructified into an order conferring legal right upon the appellants.

As per the principle enunciated in the cases cited supra, no right will be conferred on the person unless and until he receives the official communication of the final order from the Government. It is not the case of the petitioner that he received the official communication from the Government with regard to initiation of departmental enquiry and also closing of criminal prosecution against him.

12 The learned counsel for the petitioner submitted that the Government, having taken a decision to initiate departmental enquiry against the petitioner, ought not to have continued the criminal proceedings against him. To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in State of Bihar v. Suprabhat Steel Ltd. and State of Jharkhand vs. TATA Cummins Ltd wherein the Honble apex Court held that the notifications meant for implementing the industrial policy of the State Government cannot override the incentive policy.

In Lloyd Electric and Engineering Limited vs. State of Himachal Pradesh the Honble apex Court at para No.13 held as under:

13. The High Court, with great respect, has gone wrong in not appreciating the background of the case and the decision of the Council of Ministers to extend its own Industrial Policy announced in 2004 and the tax concession beyond 31.03.2009. Once the Council of Ministers takes a policy decision, the implementing Department cannot issue a notification contrary to the policy decision taken by the Government. The High Court also erred in analyzing and understanding the Notification dated 18.06.2009 as if it introduced the CST concession @ 1 per cent with effect from the date of issuance of notification.

In Mohd. Aleemuddin vs. State of A.P a learned single Judge of this Court held that the competent authority or the Government having refused to grant sanction to prosecute the Government employee is not legally justified to accord sanction basing on the same material subsequently.

13 In the above cases, the State Government has taken a policy decision, but the implementing department issued a notification contrary to the policy of the Government. Therefore, the Honble apex Court held that the notification issued by the implementing department has no legal sanctity. The Memo dated 15.10.2008 cannot be equated with the policy decision of the Government in the public interest. It is not the case of the petitioner that the ACB issued the notification contrary to the Memo of the Government dated 15.10.2008. The facts of the case on hand are different from the facts of the cases in Suprabhat Steel Ltd., TATA Cummins Ltd., Mohd. Aleemuddin and Lloyd Electric and Engineering Limited supra. Hence, those decisions are no way helpful to the petitioner. 14 Even assuming but not conceding that the Government has taken a decision to initiate departmental enquiry, whether the same is having any binding force or not?

15 The learned standing counsel for the ACB submitted that there is no specific recital in the alleged note file to drop the criminal proceedings against the petitioner and in such circumstances, the relief sought by the petitioner cannot be granted. To substantiate the argument, the learned standing counsel has drawn the attention of this Court to the ratio laid down in K.Srinivasulu v. Government of Andhra Pradesh wherein this Honble Court at para Nos.19 and 20 held as follows:

19. G.O.Ms.No.25 dated 15.01.2009 does not even state that sanction was being refused. All that the G.O. records is that the Government had decided to initiate a departmental enquiry against the 4th respondent. Both the Learned Additional Advocate General and Sri P. Gangaiah Naidu would submit that, since the Government had directed that disciplinary proceedings be initiated against the 4th respondent, it must be inferred that the Government had rejected the request of the Anti-Corruption Bureau for grant of sanction.

20. There must be a clear recital in the sanction order that sanction, for prosecution under the Prevention of Corruption Act, 1988, is being accorded or refused. The memo dated 29.04.2009 merely reiterates the order issued in G.O.Ms.No.25 dated 15.01.2009 and both these proceedings do not explicitly state that sanction for prosecution of the 4th respondent, under the Prevention of Corruption Act, 1988, was being refused. It is evident, therefore, that the impugned order also suffers from non-application of mind.

16 There is no specific recital in the note file dated 12.02.2014 refusing sanction or dropping criminal proceedings against the petitioner. The learned standing counsel for ACB further submitted that the identical question fell for consideration before this Court in K.Rama Krishna Raju vs. Government of A.P. , wherein this Court held at para Nos.12 to 14 as follows:

12. Sri N. Ravi Prasad, would place reliance on the memo No.623/Spl.C/A1/2008-1 dated 15.10.2008 wherein the Government had accepted the recommendations of a group of Ministers, and had issued certain instructions in respect of certain recommendations relating to ACB/Vigilance cases. In clause (ii) thereof it is noted that, after receipt of the final report of the investigating agency, the Department concerned should further examine, within one month, and take a decision whether to entrust the case either for prosecution or for departmental action or for placing the accused officer on his defence before the Tribunal for Disciplinary Proceedings or for closure of the case and seek the advice of the A.P. Vigilance Commission. According to the Learned Counsel, the said memo permitted the Department either to prosecute or to take departmental action or to initiate disciplinary proceedings against the officer by having an enquiry conducted by the Tribunal for Disciplinary Proceedings; the respondents were entitled only to choose one amongst the three i.e., either to prosecute or to initiate disciplinary action or to take disciplinary proceedings before the Tribunal for Disciplinary Proceedings and, as they had earlier chosen to refer the matter to the Tribunal for Disciplinary Proceedings, they could not now grant sanction to prosecute the petitioner under the Prevention of Corruption Act, 1988. This contention is only to be noted to be rejected.

13. The Memo dated 15.10.2008 is more in the nature of administrative/executive instructions issued by the Government under Article 162 of the Constitution of India. The requirement of according sanction is under Section 19 of the Prevention of

> Corruption Act, 1988. Such an exercise of statutory power cannot be curtailed or negated by executive/administrative instructions.

If the rules are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. (Sant Ram Sharma v. State of Rajasthan {AIR 1967 SC 1910}; Union of India vs. K. P. Joseph {(1973) 1 SCC 194}; Dhananjay Malik v State of Uttaranchal (2008) 4 SCC 171). The Government cannot, however, supersede statutory rules by administrative instructions. No executive instructions can be issued, or be read as, contrary to the statutory provisions in force.

14. Even otherwise, the petitioner cannot seek a mandamus for enforcement of administrative/executive instructions issued by the Government. Ordinarily, the High Court would not issue a writ of mandamus to enforce administrative instructions/ guidelines not having statutory force, and which do not give rise to any legal right in favour of the petitioner. (J.R. Raghupathy v. State of A.P {AIR 1988 SC 1681}; Union of India v. S.L. Abbas {(1993) 4 SCC 357}. I see no reason, therefore, to accept the petitioners contention that, since the Government had referred the matter to the Tribunal for Disciplinary Proceedings, it must be presumed to have refused to accord sanction for prosecution of the petitioner.

In Akunuri Haranadha Babu Rao vs. State this Court held as follows:

> Again the State Government issued another Memo No.623/SPL.C/2008-2, dated 15.10.2008. The relevant portion of the said Memo reads as follows:
>
> After detailed deliberations with the representatives of the Associations, the concerned Heads of Departments/Departments on the issues raised by the representatives of the Confederation, the Group of Ministers have submitted a report containing recommendations on the issues for consideration of the Government. The Government, after careful examination, have accepted the recommendation of the Group of Ministers, that while evaluating the disproportionate assets, the existing margin of 10% may be enhanced to 20%. (underlined by me) From a perusal of the above Memos at a glimpse, it is manifest that the State Government issued the Memos for the benefit of the Government employees, who involved in ACB cases. The Government servant is entitled to the benefit of the said Memos in respect of disproportionate assets as given below:
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> ```
> 20% margin              from 13.2.1989 to 27.02.2003
> 10% margin              from 28.2.2003 to 14.10.2008
> 20% margin              from 15.10.2008 onwards.
> ```
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> The learned senior counsel Sri T.Niranjan Reddy strenuously submitted that the petitioner is entitled to claim the benefit of the Memo, which was in force as on the date of the alleged offence. The FIR was registered on 16.03.1999 on which date the first Memo, dated 13.02.1989 was in existence. The State Government accorded permission for prosecution of the petitioner on 26.11.2007. As on the date of

according permission i.e. 26.11.2007 and filing of the charge sheet i.e. 29.02.2008, the second memo was in existence. If the argument of the learned counsel for the petitioner is accepted, the Court has to quash the proceedings extending the benefit, to the petitioner, covered under Memo dated 13.02.1989. The State Government accorded permission for prosecution of the petitioner by scrupulously following the procedure contemplated under Section 19 of the Act and also keeping in mind the 2nd memo referred supra.

It is a settled principle of law that the State Government may issue administrative or executive instructions by way of Memos and G.Os in pursuance of the power conferred on it under Article 162 of the Constitution of India. It is needless to say that Memos or G.Os issued by the State Government must be in consonance with the provisions of the Act. The Government cannot, however, supersede the statutory provisions by way of administrative instructions. No instructions can be issued or be read contrary to the statutory provisions in force. In the instant case, the criminal proceedings are initiated against the petitioner under Section 13 (2) r/w 13 (e) of the Act. It is not mentioned in these Memos that the instructions have been issued by exercising power under a specific provision of the Act. Utmost the Memos may be treated as guidelines for ACB officials, without any statutory force. The Parliament enacted Prevention of Corruption Act, 1988 by repealing the Act II of 1947. Even assuming without conceding that the State Government has power to make necessary Rules under the Act, but under any circumstances those Rules should not run contrary to the provisions of the Act. 17 There is no material on record to establish that the State Government has communicated the decision of dropping of the criminal proceedings against the petitioner to ACB. The facts of the case on hand are almost identical to the facts of the cases in K.Srinivasulu, K.Rama Krishna Raju and Akunuri Haranadha Babu Rao cited supra. Therefore, the point urged by the learned counsel for the petitioner is no more res integra. Having regard to the facts and circumstances of the case, I am of the considered view that the Memo is no way helpful to the petitioner for quashing the criminal proceedings.

18 The predominant contention of the learned counsel for the petitioner is that taking of cognizance of offence without sanction from competent authority is not legally sustainable. The learned standing counsel for the ACB strenuously submitted that by the time of taking cognizance, the petitioner retired from service; therefore, no sanction is required to prosecute the petitioner. 19 The crime was registered against the petitioner on 26.10.2009. The petitioner retired from service on attaining the age of superannuation on 31.12.2010. Charge sheet was filed on 12.11.2013. Subsequently the Court has taken cognizance of the offence. The fact remains that by the time of taking cognizance, the petitioner was not in service. The Court has taken cognizance of offence nearly three years after the retirement of the petitioner. 20 The crucial question that falls for consideration is whether sanction is a condition precedent to prosecute a retired employee.

The learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in Louis Peter Surin vs. State of Jharkhand wherein the Honble apex Court at Para No.3 observed as follows:

> 3. We see from the judgments (Mahendra Lal Dua v. State of Bihar, (2002) 1 SCC 149 and Ramanand Chaudhary v. State of Bihar, (2002) 1 SCC 153) cited by Mr. Vikas Singh that they proceed on facts which are akin to the present one. In both cases sanction was granted after a delay of thirteen years while the officials concerned were still in service under the State Government. We find in the matter before us that the appellant had superannuated in the year 1997 and the cognizance had been taken by the Special Judge four years thereafter in a matter arising out of an F.I.R. registered in April 1984 even though the request for sanction had been rejected by the State Government on two occasions. In view of these peculiar facts we are of the opinion that the initiation of proceedings against the appellant was not justified.

In the above decision, the apex Court observed that the initiation of proceedings was not justified as the State Government twice refused sanction for prosecution of the appellant therein while he was in service.

21 The learned counsel for the petitioner as well as the learned standing counsel for the respondentACB have placed reliance on the ratio laid down in Chittaranjan Das v. State of Orissa wherein the Honble apex Court at Para Nos.12, 13 and 14 held as follows:

> 12. Sanction is a device provided by law to safeguard public servants from vexatious and frivolous prosecution. It is to give them freedom and liberty to perform their duty without fear or favour and not succumb to the pressure of unscrupulous elements. It is a weapon at the hands of the sanctioning authority to protect the innocent public servants from uncalled-for prosecution but not intended to shield the guilty.
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> 13. Here in the present case while the appellant was in service sanction sought for his prosecution was declined by the State Government. The Vigilance Department did not challenge the same and allowed the appellant to retire from service. After the retirement, the Vigilance Department requested the State Government to reconsider its decision, which was not only refused but the State Government while doing so clearly observed that no prima facie case of disproportionate assets against the appellant is made out. Notwithstanding that the Vigilance Department chose to file a charge-sheet after the retirement of the appellant and on that the Special Judge had taken cognizance and issued process.
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> 14. We are of the opinion that in a case in which sanction sought for is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of the public servant. Any other view will render the protection illusory. Situation may be different

> when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility.

22 In the cases cited supra, the Government declined to grant sanction when the accused was in service. In the instant case, the Government has not declined to grant sanction for prosecution of the petitioner at any point of time. Therefore, the facts of the case on hand are entirely different from the facts of the case cited supra. Hence the above two decisions will no way improve the case of the petitioner.

23 The learned counsel for the petitioner also placed reliance on the ratio laid down in R.Balakrishna Pillai v. State of Kerala . This decision deals with the scope of Section 197(1) Cr.P.C. but not Section 19 of the P.C. Act.

24 The learned counsel for the petitioner further placed reliance on V.Suryanarayana Case cited supra, wherein a learned single Judge of this Court held that sanction is necessary to prosecute even a retired government employee basing on G.Sagar Suri vs. State of U.P. and Prakash Singh Badal vs. State of Punjab . G.Sagar Suri Case is not arising out of the provisions of the P.C. Act. As per the principle enunciated by the Honble apex Court in Prakash Singh Badal case, no sanction is necessary if the public servant in question had ceased to be a public servant as on the date of taking of cognizance.

In Ajoy Acharya v. State Bureau of Investigation against Economic Offences , the Honble apex Court after referring the decisions in R.S. Naik v A.R.Antulay and Prakash Singh Badal Case, at para No.14 (Manupatra) held as follows:

> 14. The judgments referred to in paragraph 13 above, were relied upon by the Courts below to reject the contention advanced at the hands of the Appellant, that sanction was essential before the Appellant could be prosecuted. It would be pertinent to mention, that extracts from the judgments referred to in paragraph 13 reproduced above, deal with two pointed situations. Firstly, whether sanction before prosecution is required from each of the competent authorities entitled to remove an accused from the offices held by him, in situations wherein the accused holds a plurality of offices. The second determination was in respect of the requirement of sanction, in situations where the accused no longer holds the office, which he is alleged to have abused/misused, for committing the offence(s) for which he is being blamed. In answer to the first query, it has unambiguously been concluded, that if an accused holds a plurality of offices, each one of which makes him a public servant, sanction is essential only at the hands of the competent authority (entitled to remove him from service) of the office which he had allegedly misused. This leads to the clear inference, that other public offices held by the accused wherein an accused holds a plurality of offices, are irrelevant for purposes of obtaining sanction prior to prosecution. On the second issue it was concluded, that sanction was essential only if, at the time of taking cognizance, the accused was still holding the public office which

he had allegedly abused.

(emphasis supplied)

25 At this juncture, the learned standing counsel for ACB has placed reliance on the following judgments to contend that no sanction is necessary to prosecute a retired Government employee under the provisions of the P.C. Act.

M.China Gopala Krishna vs. State of A.P wherein this Court at para No.14 held as under:

> 14. The learned counsel for the appellant Sri P. Lakshman Rao could not lay his hands on any decision of the Supreme Court distinguishable from the above decision. The evidence available on record indicates that the appellant retired on 31-07-

1993 and the Court took cognizance of the offence on 01-09- 1993. Since the retirement of the appellant was much prior to the date of the Court taking cognizance of the offence, there is no necessity for any sanction to prosecute the officer. I therefore, do not find any force in the contention of the counsel for the appellant in this regard. This point is accordingly answered against the appellant.

State of Punjab vs. Labh Singh wherein the Honble apex Court at Para No.9 held as under:

> 9. In the present case the public servants in question had retired on 13.12.1999 and 30.04.2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13.09.2000 and later on 24.09.2003. The public servants having retired from service there was no occasion to consider grant of sanction Under Section 19 of the POC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the POC Act is not required if the public servant had already retired on the date of cognizance by the court. In S.A. Venkataraman v. State 1958 SCR 1040 while construing Section 6(1) of the Prevention of Corruption Act, 1947 which provision is in pari materia with Section 19(1) of the POC Act, this Court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in S.A. Venkataraman (supra) was adopted by this Court in C.R. Bansi v. State of Maharashtra (1970) 3 SCC 537 and in Kalicharan Mahapatra v. State of Orissa (1998) 6 SCC 411 and by the Constitution Bench of this Court in K. Veeraswamy v. Union of India (1977) 3 SCC 440. The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the POC Act was concerned.

State of Kerala v. Padmanabhan Nair wherein the Honble apex Court at para No.6 held as under:

> 6. The correct legal position, therefore, is that an accused facing prosecution for offences under the P.C. 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. So the High Court was at any rate wrong in quashing the prosecution proceedings in so far as they related to offences under the P.C. Act.

Neelam Bhardwaj vs. State of Chhattisgarh wherein the High Court of Chhattisgarh at Para No.11 held as follows:

> 11. From the aforesaid enunciation of law, it is quite vivid, if the accused has ceased to be public servant at the time, when the Court is called upon to take cognizance of offence alleged to have been committed by him as public servant. Section 19 of Prevention of Corruption Act, requiring previous sanction for prosecution is not attracted.

Kalicharan Mahapatra v. State of Orissa wherein the Honble apex Court at Para No.14 held as follows:

> 14. The result of the above discussion is 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 19 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 offence without any such sanction. In other words, the public servant who committed the offence while he was a public servant, is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution.

As per the principle enunciated in the cases in M.China Gopala Krishna, Labh Singh, Padmanabhan Nair, Neelam Bhardwan and Kalicharan Mahapatra cited supra, if a Government employee retired from service, as on the date of taking of cognizance of offence, no sanction is required as contemplated under Section 19 of the P.C. Act. Therefore, the decision in V.Suryanarayana is no way helpful to the case of the petitioner.

26 As stated supra, in the instant case, the crime was registered against the petitioner on 26.10.2009. The petitioner retired from service on attaining the age of superannuation on 31.12.2010. Charge sheet was filed on 12.11.2013. Therefore, the petitioner was not in service as on the date of taking cognizance of offence by the Court. Having regard to the facts and circumstances of the case and also the principle enunciated in cases M.China Gopala Krishna, Labh Singh, Padmanabhan Nair, Neelam Bhardwan and Kalicharan Mahapatra cited supra, I am unable to accede to the contention of the learned counsel for the petitioner that criminal prosecution is not maintainable against the petitioner for want of sanction.

27 The various points urged by the petitioner are not sustainable either on facts or in law. The petitioner failed to establish that continuation of criminal proceedings against him would amount to abuse of process of law which warrants interference of this Court by exercising jurisdiction under

Section 482 Cr.P.C. The petition lacks merits and bona fides. Hence Criminal petition is liable to be dismissed.

28 In the result, the Criminal Petition is dismissed. Consequently, miscellaneous petitions pending in this Criminal Petition shall stand closed.

_____ T. SUNIL CHOWDARY, J.

Date: 30.01.2017