Nurul Islam & 25 Ors vs The State Of Assam on 7 June, 2013

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM
AND ARUNACHAL PRADESH)

1. Crl. Pet 494/2012

Subhamoy Gupta & 2 others.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

2. Crl. Pet 387/2012

Rajib Bhuyan.

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

3. Crl. Pet 531/2012

Jatin Sarma.

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

4. Crl. Pet 523/2012

Mashuk Uddin Laskar

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

Criminal petitions Page 1 of 94

5. Crl. Pet 329/2012

Chandra Devi Sarma

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

6. Crl. Pet 708/2012

Samsuddin Laskar

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

7. Crl. Pet 245/2012

Mujahid Ali

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

8. Crl. Pet 230/2012

Madan Roy Choudhury.

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

9. Crl. Pet 261/2012

Criminal petitions Page 2 of 94

Ishaque Ali Barbhuiya

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

10. Crl. Pet 236/2012

Prasenjit Kumar Pathak

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

11. Crl. Pet 334/2012

Smt. Mayuri Pujari

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

12. Crl. Pet 199/2012

Md. Arman Sheikn & Anr.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

13. Crl. Pet 673/2012

Jitendra Nath Phukan

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.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

14. Crl. Pet 809/2012

Akshay Kumar Das

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

15. Crl. Pet 650/2012

Rameswar Deka

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

16. Crl. Pet 208/2012

Khagendra Nath Buragohain & 2 Ors.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

17. Crl. Pet 226/2012

Sashidhar Dutta & 7 ors

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

18. Crl. Pet 372/2012

Nirode Chandra Das

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

19. Crl. Pet 743/2012

Hiren Talukdar

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

20. Crl. Pet 240/2012

Jahir Uddin Barbhuiya

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

21. Crl. Pet 333/2012

Pabitra Kaiborta & 3 Ors

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

22. Crl. Pet 808/2012

Manmath Deka

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

23. Crl. Pet 400/2012

Rajani Kanta Talukdar & Anr.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

24. Crl. Pet 646/2012

Tarun Chandra Barua

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

25. Crl. Pet 533/2012

Jawharlal Das & Anr.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

26. Crl. Pet 384/2012

Binod Kumar Deka

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

27. Crl. Pet 216/2012

Ajay Tewari

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

28. Crl. Pet 234/2012

Dr. Alok Khare

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

29. Crl. Pet 728/2012

Ranjit Kr. Sarmah & Anr.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

30. Crl. Pet 242/2012

Animul Haque Choudhury

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

31. Crl. Pet 218/2012

Dr. Ashish Kumar Bhutani

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

32. Crl. Pet 217/2012

Hemanta Narzary

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

33. Crl. Pet 212/2012

Anup Pratim Gogoi & 4 Ors.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

34. Crl. Pet 232/2012

Pradip Kumar Das

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

35. Crl. Pet 210/2012

Mahat Ch. Brahma & 8 Ors.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

36. Crl. Pet 211/2012

Ahmed Hussain & 2 Ors.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

37. Crl. Pet 176/2012

Nurul Islam & 25 Ors.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

38. Crl. Pet 201/2012

Joy Ram Nath Hazarika & 2 Ors.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

39. Crl. Pet 224/2012

Motilal Pegu

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

40. Crl. Pet 181/2012

NGI Than Let Gohain

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

41. Crl. Pet 545/2012

Md. Fakaruddin Laskar

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

42. Crl. Pet 568/2012

Dr. Tara Prasad Das

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

43. Crl. Pet 530/2012

Joynal Abedin

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

44. Crl. Pet 247/2012

Md. Arman Sheikh

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

45. Crl. Pet 274/2012

Dipak Kr. Baishya

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

46. Crl. Pet 269/2012

Janaki Ram Das & Anr.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

-with-

47. Crl. Pet 566/2012

Ashok Kumar Roy

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

48. Crl. Pet 522/2012

Bharat Ch. Sarma

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

49. Crl. Pet 738/2012

Swapan Kumar Roy

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

50. Crl. Pet 231/2012

Lalit Mohan Suklabaidya

.....Petitioner

-Vs-

The State of Assam.

.....Respondent.

-with-

51. Crl. Pet 399/2012

Dr. Gopal Chandra Medhi & 8 Ors.

.....Petitioners

-Vs-

The State of Assam.

.....Respondent.

BEFORE

THE HON'BLE MR. JUSTICE B. K. SHARMA

For the petitioners : Ms. M. Hazarika, Sr. Adv
Mr. M.K. Choudhury, Sr. Adv.
Mr. P. Pathak, Sr. Adv.
Mr. K.P. Sharma, Sr. Adv.
Mr. HRA Choudhury, Sr. Adv.
Mr. P.K. Goswami, Sr. Adv.
Mr. K. Agarwal, Adv.
Mr. S. Bhattacharjee, Adv.
Mr. D. Das, Adv.
Mr. B.M. Choudhury, Adv.
Mr. T. J. Mahanta, Adv.
Ms. K. Devi, Adv.
Mr. A. M. Bora, Adv.
Mr. A. Chowdhury, Adv.

Mr. S.K. Talukdar, Adv.
Mr. JMA Choudhury, Adv.
Mr. NNB Choudhury, Adv.
Mr. A. I. Uddin, Adv.
Mr. D. Talukdar, Adv
Mr. P. Kataki, Adv.

For the Respondents : Mr. K.N. Choudhury, Sr. AAG, Assam
Mr. Z. Kamar, PP, Assam.

Date of hearing : 13/03/2013.

Date of Judgement : 07/06/2013.

JUDGEMENT AND ORDER (CAV)

This batch of criminal petitions under Section 482 read with section 401 and 397 of the Code of Criminal Procedure, pertaining to prosecution sanction as envisaged under Section 197 of the Cr.P.C., 1973 and Section 19 of the Prevention of Corruption Act (P.C. Act), 1988 have been heard analogously and are being disposed of by this common judgment and order. It will be appropriate at this stage to refer to the said provisions:

"197.Prosecution of Judges and public servants.-

(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 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;

(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.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

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19. Previous sanction necessary for prosecution

(1) No court shall take cognizance of an

offence punishable under section 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,-

(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."

2. The petitions have been filed against the orders passed by the learned Special Judge, Assam, Guwahati in taking cognizance of the offences either deeming prosecution sanction in absence of any order pertaining to the same from the competent authority for several years (even to the extent of 11 years in some cases), or taking cognizance where there is refusal to grant sanction as per the advice of the Judicial Department and the learned Advocate General of the State. In some cases,

prosecution sanction itself is under challenge while in some other cases, plea of non-maintainability of the proceedings in the Court of the learned Special Judge in absence of prosecution sanction has been raised. In some other cases, referring to the above categories of cases, challenge is to the proceedings and orders / charge sheet pertaining to the same itself, although no prosecution sanction is required. In all the petitions the prayer is to set aside those orders and to quash the criminal proceedings.

3. The offences alleged against the petitioners are that of alleged misappropriation of huge amounts by preparing false bills/diverting funds from one scheme to another; misappropriation of Govt. money by not entering the particular amount in the receipt book and thereafter removing the pages (original and duplicate) from the receipt books; misappropriation of Govt. money by preparing falls bills showing payments to Muster Roll Workers; misappropriation of huge Govt. money under the scheme called Operation Black Board (OBB); defrauding of poor farmers by placing supply orders with the particular firm and receiving substandard materials (came to be known as Green House Scam); fraudulent selection as Member/Chairman of Assam Public Service Commission (APSC) for pecuniary gains; acquiring of huge movable and immovable properties disproportionate to known source of income; taking bribe and recovery of signed currency notes from the possession of the accused; releasing of loan installments on the basis of progress report of works without any assessment and certification of the same in collusion with the loanee etc.

4. Each one of the cases and the pleas raised therein towards assailing the orders passed by the learned Special Judge in respect of the prosecution sanction either deeming it to be there or holding that refusal to grant sanction is perverse being not based on the evidence/materials and taking cognizance of the offences will be dealt with in due course of the judgment. I deem it appropriate to refer at this stage to the decisions on which the learned counsel for the parties have placed reliance in support and against the impugned orders passed by the learned Special Judge.

1. (2010) 14 SCC 527 (State of Himachal Pradesh Vs. Nishant Sareen)

2. (2005) 12 SCC 709 (Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh)

3. (2009) 11 SCC 299 (Ram Naresh Prasad Vs. State of Jharkhand & Ors.)

4. AIR 1968 SC 117 (Abhinandan Jha & Ors. Vs. Dinesh Mishra)

5. (1997) 7 SCC 622 (Manusukhlal Vithaldas Chauhan Vs. State of Gujarat)

6. AIR 1948 PC 82 (Gokulchand Dwarkadas Morarka Vs. The King)

7. (2009) 17 SCC 92 (State of Punjab & Anr. Vs. Mohammed Iqbal Bhati)

8. (2003) 2 SCC 649 (M.C. Abraham & Anr. Vs. State of Maharastra & Ors.)

9. (2009) 8 SCC 617 (State of Madhya Pradesh Vs. Sheetla Sahai & Ors.)

10. (1998) 1 SCC 226 (Vineet Narain & Ors. Vs. Union of India & Anr.)

11. (2012) 3 SCC 64 (Subramanian Vs. Manmohan Singh & Anr.)

12. (2010) 8 SCC 1 (Vinod Sheth Vs. Devinder Bajaj & Anr.)

13. AIR 1967 SC 528 (M.L. Sethi Vs. R.P. Kapur)

14. (2006) 1 SCC 294 (Romesh Lal Jain Vs. Naginder Singh Rana)

15. AIR 1966 SC 529 (Martin Burn Ltd. Vs. Corpn of Calcutta)

16. (2006) 4 SCC 584 (Sankaran Moitra Vs. Sadhna Das & Anr.)

17. (2012) 2 SCC 731 (Vasanti Dubey Vs. State of Madhya Pradesh)

5. In Nishant Sareen (supra), it has been held by the Apex Court that in case of any order refusing to grant sanction, the investigating agency ought to have challenged the order of the sanctioning authority. That was a decision rendered in the back ground of the fact that once sanction was refused, the competent authority could not have re-considered the same and granted sanction in absence of any fresh materials. In Dilawar Singh (supra) the Court was concerned with summoning of a co-accused. It was held that a Special Judge while trying an offence under the P.C. Act cannot summon another person and proceed against him in the purported exercising of power under Section 319 Cr.P.C., if no sanction had been granted by the appropriate authority for proceeding of such a person as the existence of a sanction is sine qua non for his cognizance of the offence qua that person. In Ram Naresh Prasad (supra) the Apex Court was concerned with cognizance of offence by Magistrate and the direction that can be issued in case a final report was submitted by the police under Section 173 Cr.P.C. as no case was found against the accused. It was in the said fact situation, the Apex Court held that the Magistrate cannot direct filing of charge sheet. However, he has power either to take cognizance of offence or direct further investigation. The decision in Abhinandan Jha (supra) has been referred to so as to emphasis that the Magistrate cannot compel the police to form a particular opinion on the investigation, and to submit a report, accepting such opinion, as such a course of action will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate.

6. In Manusukhlal Vithaldas Chauhan (supra) while holding that the validity of the sanction will depend on the application of mind by the sanctioning authority and that the said authority should not pass the orders, mechanically but should apply its mind to the relevant facts and circumstances of each case, it was also held that the High Court exercising its jurisdiction under Article 226 cannot issue a writ of mandamus compelling the Government to reach a particular decision for granting sanction. Referring to this decision, Mr. K.N. Choudhury, learned Sr. Additional Advocate General, Assam defending some of the accused petitioners submitted that although the order passed by the competent authority refusing to grant sanction might be bad in law being non-speaking coupled with non- appreciation of the evidence, but the same cannot be a ground to render it nonest and

then to come to own conclusion by the Court that on the basis of the materials on record, sanction ought to have been granted. He submitted that at the best it could be a case of remitting the matter back to the sanctioning authority for re- consideration appreciating the materials/ evidence on record.

7. Gokulchand Dwarkadas Morarka (supra) is a case from the Privy Council. This decision has been referred to in reference to the above argument of the learned Sr. Additional Advocate General, Assam that at best the matter could be remanded back to the sanctioning authority so as to contend that the order of sanction need not be in any form and that the prosecution sanction can be refused on any ground. The decision in Mohammed Iqbal Bhati (supra) is a reiteration of the decision in Nishant Sareen (supra). The decision in M.C. Abraham (supra) has been referred to, to bring home the argument that the learned Special Judge could not have directed the investigating agency to submit charge sheet consequent upon the order passed on deemed sanction. In the said case, the investigation was in progress. Referring to the statutory duty of the investigating agency to fully investigate the matter and then submit a report to the Magistrate, it was held that the High Court was in error to issue a direction that the case should not only be investigated, but a charge sheet must be submitted.

8. The decision in Sheetla Sahai (supra) has been referred to so as to contend that for the purpose of attracting the provisions of Section 197 Cr.P.C., it is not necessary that they must act in their official capacity but even where public servants purport to act in their official capacity, the same would attract the provisions of Section 197 of the Cr.P.C. The decision in Vineet Narayan (supra) was exclusively referred to by the learned counsel for the parties, which has been referred to in Subramanian Swamy (supra). It is in this decision, the Apex Court issued directions as contained in paragraph-58 of the judgment, one of which is the direction No. 15, in which referring to the particular recommendation, it was held that the time limit of three months for grant of sanction for prosecution must be strictly adhered to with additional time of one month where consultation is required with the Attorney General or any other law officer in his office. While the learned counsel for the petitioners argued that this time limit of three months does not lead to the inference that upon failure to adhere to the same there should be a deemed sanction.

9. Subramanian Swamy (supra) is the decision, on which the learned Special Judge has primarily based his opinion regarding requirement of the sanction within three months and the deduction of the principle therefrom that upon failure to adhere to this time limit of three months, there would be a deemed sanction entitling the Court to proceed with the proceeding without even the required sanction. The decision in Vinod Seth (supra) has been referred to in reference to Vineet Narayan (supra) case to buttress the argument that unless a deeming provision is made in the statue, the Court cannot presume something, more particularly in the matter of sanction. The decision in M.L. Sethi (supra) has been referred to so as to contend that because of bar of jurisdiction in absence of the required prosecution sanction, learned Special Judge could not have taken cognizance of the offence alleged to have been committed by the accused.

10. The decision in Romesh Lal Jain (supra) is in respect of quashment of sanction for proceeding on the plea that the sanction was a composite one inclusive of section 19 of the P.C, Act and Section

197 Cr.P.C. It was held by the Apex Court that such quashment by State was not proper. The said case was also posed with the question as to when sanction under Section 197 Cr.P.C. is necessary and the stage thereof. It was held that sanction is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith. It was further held that sanction is not necessary when the offence complained of has nothing to do with the discharge of his duty. In paragraph 33 of the said judgment it has been observed thus:

> "33. The upshot of the aforementioned discussions is tat whereas an order of sanction in terms of Section 197 CrPC is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea ore the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined."

(Emphasis supplied)

11. The decision in Martin Burn Ltd. (supra) has been referred to, to bring home the argument that a result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to believe what it considers a distress resulting from its operation. A statue must of course be given effect to whether a court likes the result or not. The decision in Sankaran Moitra (supra) has been referred to so as to emphasis on the requirement of obtaining sanction to prosecute a public servant. It was held in the said decision that the proceeding was hit by the provision under Section 197 Cr.P.C. and could not have been launched without the contemplated sanction. However, it was also held that the question of applicability of Section 197 Cr.P.C. may arise not necessarily at the inception but even at a subsequent stage. In the given facts and circumstances of the said case, the request to postpone the decision on the said question was held not acceptable. In paragraph- 23 of the judgment, it has been observed thus:

> "23. Coming to the facts of this case, the question is whether the appellant was acting in his official capacity while the alleged offence was committed or was performing a duty in his capacity as a police officer which led to the offence complained of. That it was the day of election to the State Assembly, that the appellant was in uniform; that the appellant traveled in an official jeep to the spot, near a polling booth and the offence was committed while he was on the spot, may not by themselves attract Section 197 (1) of the Code. But, as can be seen from the facts disclosed in the counter affidavit filed on behalf of the State based on the entries in the General Diary of the Phoolbagan Police Station, it emerges that on the election day information was

> received in the Police Station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and clashes between the supporters of two political parties was imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in this behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognizance of the offence that the appellant on reaching the spot had a discussion with the Officer-in-charge who was stationed at the spot and thereafter a lathi charge took place or there was an attack on the husband of the complainant and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. It therefore emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken note of. The complainant no doubt has a case that it was a case of the deceased being picked and chosen for illtreatment and he was beaten up by a police constable at the instance of the appellant and the Officer-in-charge of the Phoolbagan Police Station and at their behest. If that complaint were true it will certainly make the action, an offence, leading to further consequences. It is also true as pointed out by the learned counsel for the complainant that the entries in the General Diary remain to be proved. But still, it would be an offence committed during the course of the performance of his duty by the appellant and it would attract Section 197 of the Code. Going by the principle, stated by the Constitution Bench in Matajog Dobey (supra), it has to be held that a sanction under Section 197 (1) of the Code of Criminal Procedure is necessary in this case."

12. The decision in Vasanti Dubey (supra) is the reiteration of the decision in M.C. Abraham (supra). The decision in Mohammed Iqbal Bhati (supra) has been referred to so as to contend that the Trial Court itself could not have sat on appeal over the order refusing to grant sanction, although the legality and/or validity of the order granting sanction would be subject to review by it and that an order refusing to grant sanction may attract judicial review by the superior courts only.

13. Mr. Z. Kamar, learned P.P., Assam during the course of his argument referred to the decisions in Vineet Narayan (supra) and Subramanian Swamy (supra) supporting the impugned orders passed by the learned Special Judge submitted that the particular provisions relating to sanction for prosecution are relatable only to the acts/offence alleged to have been committed by the public servants while acting or purporting to act in discharging of his official duty and not otherwise. During the course of hearing, he also produced the copy of the office order No. 31/5/05 dated 12.5.2005 of the CVC laying down the guidelines to be followed by the sanctioning authority. The guidelines are in reference to the decision of the Apex Court as indicated therein including the decision in Vineet Narayan (supra).

14. In addition to the above, he also placed reliance on the Office Memorandum dated 3.5.2012 issued by the Government of India in the Ministry of Personnel, Public Grievance & Pension and the decision dated 12.2.2013 of this Court in Crl. Pet. No. 575/2012 (Virendra Kr. Dhir Vs. C.B.I.). He also placed reliance on the Office Order No. 23/6/06 daed 23.6.2006 of the CVC; Circular No. 07/03/12 dated 28.3.2012 of the CVC and Guideline dated 31/5/2012 issued by the Ministry of Finance (Vigilance Department).

15. In Virendra Kr. Dhir (supra), it has been held that a conspirator could not be delinked from a public servant for the purpose of trial without considering the fact that scheme of special law is to cover a non-public servant connected with the offence of public servant. Referring to the Apex Court decision, it has been held that if a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under P.C. Act, or such a non-public servant abetted any of the offences which the public servant committed, such non-public servant is also liable to be tried along with the public servant before a Court of Special Judge having jurisdiction in the matter. It has also been held that there is nothing to debar trial of a non-public servant for the offence punishable under Section 12 and 14 (b) of the P.C. Act.

16. In the Office Order dated 12.5.2005, the CVC expressed its concern about the delay in according sanction for prosecution under Section 19 of the P.C. Act and under Section 197 of Cr.P.C.. Such concerns have been expressed in reference to the time limit of three months laid down by the Apex Court. In the circular letter dated 28.3.2012, the CVC has referred to the decisions in Vineet Narayan and Dr. Subramanian Swamy (supra) emphasizing the need to adhere to the time limit towards granting or non-granting of prosecution sanction. Similarly in the Office memorandum dated 3.5.2012 also the Government of India in the Ministry of Personnel, Public Grievances & Pension has observed that it is imperative that cases of sanction for prosecution should be decided expeditiously and within the timeframe of three months. As indicated in the said Office Memorandum, the Government of India had constituted a Group of Ministers (GoM), on 6.1.2011 with the approval of the Prime Minister, to consider measures that can be taken by the Government to tackle corruption. One of the terms of reference was to consider and advise on "Fast tracking of all cases of public servants accused of corruption". The Group of Ministers, while considering the terms of reference, observed that it is imperative that cases of sanction for prosecution should be decided expeditiously and within the time frame of three months. The following are the recommendations of the GoM:

> "(a) In all cases where the Investigating Agency has requested sanction for prosecution and also submitted a draft charge sheet and related documents along with the request, it will be mandatory for the competent authority to take a decision within a period of 3 months from receipt of request, and pass a Speaking Order, giving reasons for this decision.
>
> (b) In the event that the competent authority refuses permission for sanction to prosecute, it will have to submit its order including reasons for refusal, to the next higher authority for information within 7 days.

Wherever the Minister-in-charge of the Department is the competent authority and he decides to deny the permission, it would be incumbent on the Minister to submit, within 7 days of passing such order denying the permission, to the Prime Minister for information.

(c) It will be the responsibility of the Secretary of each Department. Ministry to monitor all cases where a request has been made for permission to prosecute. Secretaries may also submit a certificate every month to the Cabinet Secretary to the effect that no case is pending for more than 3 months, the reasons for such pendency and the level where it is pending may also be explained."

17. As indicated in the Office Memorandum, the aforesaid recommendations have been accepted by the Government with the approval of the Prime Minister. Accordingly direction has been issued to All Ministers/Departments to ensure -

> "(a) Strict compliance with the above procedure and timelines for sanctioning prosecution of public servants;
>
> (b) Submission of a certificate every month by the Secretary of each Ministry/Department to the Cabinet Secretary to the effect that no case is pending for more than 3 months and wherever a case is pending for more than 3 months, the reasons for such pendency and the level where it is pending;
>
> (c) Submission of disagreement cases, where the competent authority proposes to disagree with CVC, to the DoP&T giving at least three weeks time for DoP&T to finalize its views and communicate the same to the competent authority; and
>
> (d) Submission of copies of orders refusing sanction to prosecute to the next higher authority (Prime Minister, in case of an order passed by a Minister-in-charge of a Ministry/Department), within seven days."

18. In Vineet Narayan (supra), the Apex Court was inclined to monitor the investigation in the matter of accusation made against high dignitaries. It was alleged that Government agencies like CBI and reviewing authority had failed to perform their duties and legal obligation. Because of such monitoring with various orders as referred to in paragraph-7 of the judgment, the machinery of investigation started moving and after investigating of the allegation made against several persons, charges were filed. In paragraph 16 of the judgment, it has been observed thus.

> "Everyone against whom there is reasonable suspicion of committing a crime has to be treated equally and similarly under the law and probity in public life is of great significance. The constitution and working of the investigating agencies revealed the lacuna of its inability to perform whenever powerful persons were involved. For this reason, a close examination of the constitution of these agencies and their control assumes significance. No doubt, the overall control of the agencies and responsibility of their functioning has to be in the exhaustive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive, is imperative.

It is this exercise which became necessary in these proceedings for the future. This is the surviving scope of these writ petitions.

19. As a result of the debate in the proceedings in Vineet Narayan (supra), certain committees came to be constituted with certain terms of reference including the examination of the then structures and working of the CBI, the Enforcement Directorate and related agencies. The particular committee while suggesting ways and means towards effective investigation and for deciding the question of grant of sanction, interalia recommended for time limit of three months for sanction for prosecution with additional time of one month where consultation is required with the Attorney General. While doing so, the committee also took note of the earlier guidelines relating to prosecution sanction issued from time to time.

20. Accepting the said proposal/recommendation, the Apex Court in its various directions contained in paragraph 58 of the judgment in Vineet Narain also directed that the time limit of three months for granting sanction for prosecution must be strictly adhered to. However, additional time limit of one month was also allowed in case of requiring consultation with the Attorney General or any other Law Officer in his office.

21. While issuing the aforesaid direction, the Apex Court also recorded its experience in the field of proceeding with the finding that the same was discouraging. In paragraph 52, 55, 56 and 58 of the judgment, the Apex Court made the following significant observations:

> "52. As pointed out in Vishakha (supra), it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.
>
> 55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.
>
> 56. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that

future aid to under-developed countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries.

57. Of course, the necessity of desirable procedures evolved by court rules to ensure that such a litigation is properly conducted and confined only to mattes of public interest is obvious. This is the effort made in these proceedings for the enforcement of fundamental rights guaranteed in the Constitution in exercise of powers conferred on this Court for doing complete justice in a cause. It cannot be doubted that there is a serious human rights aspect involved in such a proceeding because the prevailing corruption in public life, if permitted to continue unchecked, has ultimately the deleterious effect of eroding the Indian polity."

(Emphasis supplied)

22. Much have been debated on Subramanian Swamy's (supra) case as the learned Special Judge has exclusively referred to the said decision in the impugned orders so as to come to the finding that in absence of strict adherence to the aforementioned time limit of three months for prosecution sanction, such sanction should be deemed to have been granted. In the said case, the Apex Court was concerned with a private citizen's initiative to obtain sanction in reference to the P.C. Act, 1988 and the provisions thereof. It has been held that there is no restriction on a private citizen filing a private complaint against a public servant. It has also been held that the Court is also not barred from taking cognizance of offence by relying on incriminating materials collected by private citizen. It has further been held that mandatory compliance with the directions given in Vineet Narayan (supra) must be strictly adhered to rejecting the plea that question of grant of sanction for prosecution of a public servant charged with any of the offence enumerated in Section 19 (1) arises only at the stage when court decides to take cognizance and any request made prior to that is premature.

23. In the aforesaid case, the appellant had been vigorously pursuing the cases allegedly involving loss of thousands of crores of Rupees to the public exchequer due to arbitrary and illegally grant of license at the behest of the respondent No. 2. Noticing the delay in responding to the appellant's persuasion in the matter, the Apex Court also answered the question as to whether the sanction for prosecution of the respondent No. 2 for the offence allegedly committed by him under the P.C. Act, 1988 is required even after he resigned from the council of Minister through he continued to be a member of Parliament. Referring to the Constitution Bench decision in R.S. Nayak Vs. A.R. Antulay reported in (1984) 2 SCC 183 followed by the decision in Habibullah Khan Vs. State of Orissa reported in (1995) 2 SCC 437; State of Himachal Pradesh Vs. M.P. Gupta reported in (2004) 2 SCC 349; Prakash Singh Badal Vs. State of Punjab reported in (2007) 1 SCC 1 and Balakrishnan Ravi Menon Vs. Union of India reported in (2007) 1 SCC 45, it has been held that no such sanction is required as the respondent No. 2 was no longer a Minister though he continued to be a member of

Parliament. In paragraph 42 of the said judgment, the Apex Court while holding that the decisions relied upon by the learned Attorney General did not have any bearing on the moot question whether respondent No. 1, was required to take appropriate decision in the light of the direction contained in Vineet Narayan's case made the following significant observation in paragraph 56 of the judgment:

> "56. In the result, the appeal is allowed. The impugned order is set aside. It is declared that the appellant had the right to file a complaint for prosecuting respondent No.2. However, keeping in view the fact that the Court of Special Judge, CBI has already taken cognizance of the offences allegedly committed by respondent No.2 under the 1988 Act, we do not consider it necessary to give any other direction in the matter. At the same time, we deem it proper to observe that in future every Competent Authority shall take appropriate action on the representation made by a citizen for sanction of the prosecution of a public servant strictly in accordance with the direction contained in Vineet Narain v. Union of India (1998) 1 SCC 226 and the guidelines framed by the CVC.
>
> (Emphasis supplied)

24. Supplementing the judgment delivered by Hon'ble Justice G.S. Singhvi (for himself and Hon'ble Justice Ganguly), Justice Ganguly made the following observations in paragraphs 68, 69, 71, 75, 76, 77 and 79:

> "68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it."
>
> "69. Time and again this Court has expressed its dismay and shock at the ever growing tentacles of corruption in our society but even then situations have not improved much. [See Sanjiv Kumar v. State of Haryana & ors., (2005) 5 SCC 517; State of A.P. v. V. Vasudeva Rao, (2004) 9 SCC 319; Shobha Suresh Jumani v. Appellate Tribunal Forfeited Property & another, (2001) 5 SCC 755; State of M.P. & ors. v. Ram Singh, (2000) 5 SCC 88; J. Jayalalitha v. Union of India & another, (1999) 5 SCC 138; Major S.K. Kale v. State of Maharashtra, (1977) 2 SCC 394."

"71. In this connection we might remind ourselves that courts while maintaining rule of law must structure its jurisprudence on the famous formulation of Lord Coke where the learned Law Lord made a comparison between "the golden and straight metwand of law" as opposed to "the uncertain and crooked cord of discretion"

"75. Therefore, in every case where an application is made to an appropriate authority for grant of prosecution in connection with an offence under P.C. Act it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue without being influenced by any extraneous consideration. In doing so, the authority must make a conscious effort to ensure the rule of law 57 and cause of justice is advanced. In considering the question of granting or refusing such sanction, the authority is answerable to law and law alone. Therefore, the requirement to take the decision with a reasonable dispatch is of the essence in such a situation. Delay in granting sanction proposal thwarts a very valid social purpose, namely, the purpose of a speedy trial with the requirement to bring the culprit to book. Therefore, in this case the right of the sanctioning authority, while either sanctioning or refusing to grant sanction, is coupled with a duty."

"76. The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of rule of law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecution and is adversely viewed in public mind that in the name of considering a prayer for sanction, a protection is given to a corrupt public official as a quid pro quo for services rendered by the public official in the 58 past or may be in the future and the sanctioning authority and the corrupt officials were or are partners in the same misdeeds. I may hasten to add that this may not be factual position in this but the general demoralizing effect of such a popular perception is profound and pernicious."

"77. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny and determination of the allegations against corrupt official and thus the legitimacy of the judicial institutions is eroded. It, thus, deprives a citizen of his legitimate and fundamental right to get justice by setting the criminal law in motion and thereby frustrates his right to access judicial remedy which is a constitutionally protected right. In this connection, if we look at Section 19 of the P.C. Act, we find that no time limit is mentioned therein. This has virtually armed the sanctioning authority with unbridled power which has often resulted in protecting the guilty and perpetuating criminality and injustice in society."

"79. Article 14 must be construed as a guarantee against uncanalized and arbitrary power. Therefore, the absence of any time limit in granting sanction in Section 19 of the P.C. Act is not in consonance with the requirement of the due process of law which has been read into our Constitution by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India and Another, (1978) 1 SCC 248."

25. After making the aforesaid observations, Hon'ble Justice Ganguly supplementing the judgment delivered by Hon'ble Justice Singhvi recorded his views that Parliament should consider the constitutional imperative of Article 14 enshrining the Rule of Law wherein "due process of law" has been read into by introducing a time limit in Section 19 of the P.C. Act, 1988 for its working in a reasonable manner. He also expressed his opinion that the Parliament should consider the following guidelines:

> "(a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under section 19 of the P.C. Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.
>
> b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit.
>
> c) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit."

26. It is the aforesaid opinion expressed for introducing a time limit in Section 19 of the P.C. Act, which has been referred to by the learned Special Judge in his impugned orders so as to hold that non- adhering to the time limit of three months would lead to a situation in which there should be deemed sanction to the proposal for prosecution and the prosecuting agency would proceed to file charge sheet to commence proceeding within 15 days of the expiry of the time limit. This aspect of the matter will be dealt with a little later.

27. Since much has been emphasized on the purported direction of the learned Special Judge directing the I/O to file charge sheet and taking cognizance of the matter in that manner, it may not be out of place to refer to the term "taking cognizance" which has not been defined in the Cr.P.C. In State of W.B. Vs. Mohd. Khalid reported in (1995) 1 SCC 684, the Court referred to Section 190 Cr.P.C. and observed thus:

> "In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word `cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different

> thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons"

28. In State of Karnataka Vs. Pastor P. Raju reported in (2006) 6 SCC 728, The Apex Court referred to the provisions of Chapter XIV and Sections 190 and 196 (1-A) of the CrPC and observed thus:

> "There is no bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173 CrPC. If a criminal case is registered, investigation of the offence is done and the police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) CrPC and no illegality of any kind would be committed"

29. The Apex Court has also referred to some of the precedents including the judgment in Mohd. Khalid's (supra) case and observed thus:

> "It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out"

30. In K. Kalimuthu Vs. State reported in (2005) 4 SCC 512, the only question considered by the Apex Court was whether in the absence of requisite sanction under Section 197 CrPC, the Special Judge for CBI cases, Chennai did not have the jurisdiction to take cognizance of the alleged offences. The High Court had taken the view that Section 197 was not applicable to the appellant's case. Affirming the view taken by the High Court, the Apex Court observed thus:

> "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. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted."

31. The aforesaid observations has been made after taking note of the Vineet Narayan (supra) case and the Office Order dated 12.5.2005 with the following observations:

> "48. In paragraph 58 of the judgment in Vineet Narain, the Court gave several directions in relation to the CBI, the CVC and the Enforcement Directorate. In para

58 (I)(15), the Court gave the following direction:

"58. (I)(15) Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office"

49. CVC, after taking note of the judgment of the Punjab and Haryana High Court in Jagjit Singh v. State of Punjab (1996) Crl. Law Journal 2962, State of Bihar v. P. P. Sharma 1991 Supp. 1 SCC 222, Superintendent of Police (CBI) v. Deepak Chowdhary, (1995) 6 SC 225, framed guidelines which were circulated vide office order No.31/5/05 dated 12.5.2005. The relevant clauses of the guidelines are extracted below:

"2(i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would prima-facie constitutes the offence.

(ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.

(vii) However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction. 39

(viii) If the Sanctioning Authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the Sanctioning Authority to adhere to the time limit allowed by the Supreme Court in Vineet Narain's case."

50. The aforementioned guidelines are in conformity with the law laid down by this Court that while considering the issue regarding grant or refusal of sanction, the only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The Competent Authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true."

(Emphasis supplied)

32. The decisions on which the learned counsel for the petitioners have referred to and discussed above, are basically on the legal technicalities and niceties of granting or refusing to grant prosecution sanction.

33. It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the Court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration. (See: Zee Telefilms Ltd. & Anr. Vs. Union of India & Anr. reported in (2005) 4 SCC 649). In this regard, the following words of Lord Denning, quoted in Haryana Financial Corporation & Anr. Vs. Jagdamba Oil Mills & Anr. reported ion (2002) 3 SCC 496, are also quite apt:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

34. The petitioners have argued with the pre-supposition that the offence alleged to have been committed by them either under PC Act or under the IPC, are relatable to their act in the discharge of official duty. However, Section 19 of the PC Act provides that no Court shall take cognizance of an offence punishable under Section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant except with the previous sanction of the State Government, if the public servant is employed in connection with the affairs of the State. Same is the case with the public servant employed in connection with the affairs of the Union. In that case, sanction of the Central Government is required.

35. In some of the cases involved in this proceeding, it has been argued that since the departmental proceedings have been initiated (in some cases with conclusion with imposition of punishment), a parallel criminal proceeding is not maintainable. In fact, in some of this nature of cases, the Govt. has refused to grant sanction on the basis of the opinion rendered by the judicial department and the Advocate General of the State. As to what is the nature of offences allegedly committed by the petitioners have been referred to above with the details against each one of the cases discussed below. Referring to the nature of the offences, it was argued by Mr. Z. Kamar, the learned PP, Assam that the particular act being not related to the discharge of official duty, the sanction as contemplated under Section 197 Cr.P.C. is not attracted. Referring to the particular sections of the IPC under which some of the petitioners have been charged, it was argued by him that the offences under the said sections do not require any sanction.

36. In view of the above, I feel it appropriate to refer to some of the decisions of the Apex Court on the requirement of prosecution sanction.

37. in Matajog Dobey Vs. H.C. Bhari reported in AIR 1956 SC 44, the Apex Court dealing with the principle underlying protection under Section 197 Cr.P.C. vis-à-vis Article 14 of the Constitution of India, observed that Article 14 does not render Section 197 ultra-vires as the discrimination is based upon a rationale classification. It was observed that the public servant have to be protected from harassment in the discharge of official duty while ordinary citizens not so engaged, do not require this safeguard. While holding so, the Apex Court made the following significant observations :

> "15. .....It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the government and not in a minor official. Further, we are not now concerned with any such question. We have merely to see whether the Court could take cognisance of the case without previous sanction and for this purpose the Court has to find out if the act complained against was committed by the accused while acting or purporting to act in the discharge of official duty. Once this is settled, the case proceeds or is thrown out.
>
> Whether sanction is to be accorded or not is a matter for the government to consider. The absolute power to accord or withhold sanction conferred on the government is irrelevant and foreign to the duty cast on the Court, which is the ascertainment of the true nature of the act."

38. In Shreekantiah Ramayya Munnipalli Vs. State of Bombay reported in AIR 1955 SC 287, the Apex Court observed thus :-

> "Now it is obvious that if section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning."

39. The question of previous sanction also arose in Amrik Singh Vs. State of Pepsu reported in AIR 1955 SC 309, summarizing the discussions on sanction under Section 197 Cr.P.C., it was observed thus :-

> "If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under S. 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required."

40. Referring to the aforesaid two decisions, the Apex Court in Matajog Dobey (Supra), made the following observations :-

> "19. The result of the foregoing discussions is this:
>
> There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.
>
> 23. Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonable necessary for such execution.

If in the exercise of the power of the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with commonsense and does not seem contrary to any principle of law.

The true position is neatly stated thus in Broom's Legal maxims, 10th Ed: at page 312; "It is a rule that when the law commands a thing to be done, it authorizes the performance of whatever may be necessary for executing its command."

41. Proceeding further with the matter, the Apex Court also considered as to whether the question of sanction is to be considered as soon as the complaint is lodged and on the allegations contained therein. It was held that the question may arise at any stage of the proceedings. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.

42. In Monohar Nath Kaul Vs. State of Jammu & Kashmir reported in AIR 1983 SC 610, discussing the meaning of the expression "Acting or purporting to act in the discharge of his official duty", the Apex Court held that where a public servant commits the offence of cheating or abets another so to cheat the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offence has no necessary connection between it and the performance of the duties of a public servant, the official status furnishing only the action or opportunity for the commission of the offence.

43. Section 197 Cr.P.C. has been quoted above. The section is designed to facilitate and effective and unhampered performance of official duty by public servants by making provisions for scrutiny into allegations against them by superior authorities and prior sanction for prosecution as a condition precedent to the cognizance of cases against them by courts so that protection may be available from Frivolous, Vexacitious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. As pointed out by the Apex Court in Srivastava Vs. Misra reported in AIR 1970 SC 1661, the umbrella of protection is available in respect of offences alleged to have been committed while acting or purporting to act in the

discharge of official duty.

44. The question of sanction also arose in the case of K. Satwant Singh v. The State of Punjab, (1960) 2 SCR 89; (AIR 1960 SC 266) and on that occasion before a Constitution Bench. Concerned with the rehabilitation programme in Burma after the Japan's invasion during the Second World War, certain works were undertaken - some to be executed by the Army and others were entrusted to contractors. The appellant was one of such contractors and claimed payment for work done and on his request payments were made through cheques which were encashed at Lahore. The Government of Burma looked into the claims again on account of suspicion and discovered that some of the claims were false and payment therefor was not due. The contractor was therefore, charged for an offence under s 420, I.P.C. and some of the officers connected with the payments were charged under Sec. 420/109, I.P.C. Imam, J. Spoke for the Constitution Bench thus:

> "Henderson was charged with intentionally aiding the appellant in the Commission of an offence punishable under s. 420 of the Indian Penal Code by falsely stating as a fact, in his reports that the appellant's claims were true and that statement had been made knowing all the while that the claims in question were false and fraudulent and that he had accordingly committed an offence under Section 420/109, Indian Penal Code. It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable under s. 161 of the Indian Penal Code, is one of them and offence of cheating or abetment there of is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant the official status furnishing only the occasion or opportunity for the commission of the offences (vide Amrik Singh's case) (AIR 1955 SC 309). The act of cheating or abetment thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty". (underlining is ours)

45. The Court held that the protection under s. 197 of the Code was not available. It was held that whether a public servant commits the offence of cheating or abets another so to cheat the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offence have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences. It was held that the acts of cheating or abetment thereof has no reasonable connection with the discharge of official duty.

46. In Baijnath Gupta & Ors. Vs. The State of Madhya Pradesh (1966) 1 SCR 210, the Chief Accountant-cum-Office Superintendent in an Electric Supply Undertaking run by the Government

of erstwhile State of Madhya Bharat was prosecuted for offences punishable under Sections 477A and 409, I.P.C. It was contended before the Court that the offences had been committed in the discharge of official duty and in the absence of prior sanction the conviction was not maintainable. The majority quoted with approval the following observations of Lord Simonds in Hori Ram Singh v. Emperor reported in AIR 1939 FC 43.

> "A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus, a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does in virtue of his office.."

The Court proceeded to say:

> "It is not every offence committed by a public servant that requires sanction for prosecution under Sec. 197 (1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Sec. 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with 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."

47. In B. Saha Vs. M.S. Kochar reported in AIR 1979 SC 1841, a three Judge bench of the Apex Court dealing with the plea of absence of prior sanction in respect of certain officers of the Customs Department convicted for offences punishable under Section 120B, 166 and 409 IPC, made the following observation :-

> "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 these 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".

48. A little reference to the facts involved in Amrik Singh case (Supra) may not be out of place here. The accused was a Sub- divisional Officer in the Public Works Department of Pepsu. It was a part of his duties to disburse the wages to workmen employed in certain works. The procedure usually followed was that he drew the amount required from the Treasury and disbursed the amount to the employees against their signatures or thumb impressions in the Monthly Acquaintance Roll. Payment was shown to have been made to one Parma for the month of April, 1951. The accused was prosecuted on the allegation that Parma was non-existent and the thumb impression in the Acquaintance Roll was of the accused himself. He was charged with misappropriation of the wages. Repelling the contention that conviction was un-sustainable for wants of sanction under Section 197 of the Code in respect of the offences under Section 409 and 465 of the IPC, the Apex Court held as quoted above.

49. In Balbir Singh Vs. D. N. Kadian reported in AIR 1986 SC 345, where it was alleged that the act of tempering with the search memo was committed by the appellants when the same was in custody of the Court. It was held that such an act cannot be deemed to be an act purported to have been done by the appellants in discharge of their official duties and therefore, the previous sanction of the Lt. Governor as provided in Section 197 Cr.P.C. was not at all necessary for initiating the proceeding against them.

50. In Mansukhlal Vithaldas Chauhan Vs. State of Gujarat reported in AIR 1977 SC 3400, dealing with the particular direction of the High Court directing the sanctioning authority to grant sanction, the Apex Court also dealt with the concept of "Application of mind" by the sanctioning authority, emphasized on the need to dealt with the facts of the case as also the material and evidence collected during investigation. It was also emphasized that the sanctioning authority has to apply its own independent mind for the generation of genuine suggestion whether the prosecution sanction has to be granted or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. It is incumbent to show that the discretion to grant or not to grant sanction has not been affected by any extraneous consideration.

51. In Shabhoo Nath Misra Vs. State of U.P. reported in AIR 1997 SC 2102, when it was found that the offence alleged was that of fabrication of records and misappropriation of public fund by public servant, the Apex Court held that the same being not an official duty, sanction for prosecution was not necessary.

52. In State of Himachal Pradesh Vs. M.P. Gupta reported in AIR 2004 SC 730, the Apex Court held that before Section 197 Cr.P.C. is 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 was held that for the offence of forgery, no prosecution sanction is necessary. In para 8 of the judgement, it has been observed thus :-

"8. 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 official 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. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

53. In Bakhshish Singh Brar Vs. Smt. Gurmej Kaur reported in AIR 1988 SC 257, upholding the orders of the Trial Court, the Apex Court noticing that cognizance was taken for offences under Section 302, 323, 149 IPC, held that the said orders to the effect that necessity of sanction could be decided after gathering materials and evidence.

54. In State of Kerala Vs. Padmanavan Nyer reported in AIR 1999 SC 2405, it was held that the prosecution sanction was not necessary when the charge against the Govt. servant was under

> Section 406 read with section 120B IPC. It was also held that upon ceasure of the accused to be a public servant on the date when the Court took cognizance of the offence under PC Act, he cannot claim any immunity on the ground of want of sanction.

55. In Paul Varghese Vs. State of Kerala reported in AIR 2007 SC 2618 drawing the distinction between Section 19 of the PC Act and Section 197 of the Cr.P.C., the Apex Court observed thus :-

> "9. Whether sanction is necessary or not has to be considered on the factual scenario. The question of sanction involves two aspects i.e. one relating to alleged lack of jurisdiction and the other relating to prejudice.
>
> 10. It may be noted that Section 197 of the Code and Section 19 of the Act operate in conceptually different fields. In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 of the Code, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus to the discharge of duties. Position is not so in case of Section 19 of the Act."

56. In Bholuram Vs. State of Punjab reported in (2008) 9 SCC 140, dealing with Section 319 Cr.P.C. and the applicability thereof, the Apex Court held that when it appears during trial / recording of evidence that such person has committed an offence which can be tried together with the accused, the Magistrate than has power to summon such person as accused in the case. Interpreting the expression "Acting or purporting to act in discharge of his official duty" in reference to the offences under section 409, 420, 467, 468 and 471 IPC, the Apex Court held that such offences cannot be regarded as committed by public servant while discharging or purporting to act in discharge of his official duty. Referring to Section 197 Cr.P.C. and its stage of its adjudication, it has further been held that the issue of sanction can be decided at any stage of the proceeding.

57. Similar view has been expressed in Raghunath Anant Govilkar Vs. State of Maharashtra reported in (2008) 11 SCC 289, when it was found that the charge for offences was under Section 406, 409 and 120 B IPC. The said view has been reiterated in State of UP Vs. Paras Nath Singh reported in (2009) 6 SCC 372.

58. In the decision reported in 2004(1)GLT235 (Gittesh Ranjan Deb Vs. State of Assam), following the decision in Sambhu Nath Misra (Supra), this Court held that misappropriation of public fund being not an official duty of the public servant, no sanction for prosecution was required.

59. From the aforesaid discussion of the decisions of the Apex Court, the following principles have emerged in the matter of granting or refusing to grant sanction for prosecution of a public servant.

(1) Under Section 19 of the PC Act, previous sanction is necessary for prosecution in respect of the offences punishable under Section 7, 10, 11, 13 and 15 of the said Act and alleged to have been

committed by a public servant employed in connection with the affairs of the Union or the State and is not removable from his office save by or with the sanction of the Central or State Government, as the case may be. However, the same is circumscribed by the provisions contained in Section 19(3) and 19(4) of the Act.

(2) In the matter of granting or refusing to grant sanction, the competent authority must apply its own independent mind and shall not be guided by any mechanical approach. At that stage, the only requirement is to derive prima-facie satisfaction on the basis of the evidence on record and without any indepth study of the same.

(3) Prosecution sanction sought for by the investigating agency must be responded to at the earliest as emphasized in Vineet Narayan (Supra) without keeping the matter un-attended to for an indefinite period.

(4) In the matter of granting sanction, it is to be seen as to whether the offence alleged is an act alleged to have been committed by the public servant while acting or purporting to act in the discharge of his official duty.

(5) If there is no nexus between the Act constituting the offence and the Act in discharge of official duty, no prosecution sanction is required in such cases. If the alleged offence relates to Section 120B, 406, 409, 420, 471 IPC etc. then in that case, no prosecution sanction is required.

60. Keeping in mind the above principles, the decisions referred to above dealing with the law relating to prosecution sanction, the impugned orders passed by the learned Special Judge, submissions advanced by the learned counsel for the parties and the materials available on records, I now proceed to deal with each one of the cases involved in this proceeding. For a ready reference, a gist of the relevant particulars relating to the offences alleged against each one of the petitioners and in reference to their criminal petitions involved in this proceeding is indicated against their cases.

61. Crl. Petition No. 568/2012 Criminal Case Date of Allegation Date when Whether No. and FIR Prosecution sanction Section of Law sanction granted/denied sought for ACB PS Case 3.10. Acquired properties 10.3.2005 Conveyed on No. 13/01 U/S 2001 worth Rs. 25.8.2009 that 13(1)(e)/13(2) 1,07,40,702/- no prosecution PC Act disproportionate to sanction Spl. Case No. known source of required.

15/12		income. Recovery of cash Rs. 71,44,300/- during search of house.

The offences alleged against the petitioner are under Section 13(1)(e) / 13(2) of the P.C. Act, 1988. He has already been charge sheeted vide order dated 4.5.2012. As per the charge sheet, the accused petitioner had acquired landed property in 9(nine) places in Guwahati and house properties at Barpeta Town and at Mathuranagar and Beltola of Guwahati during the period from 1992 to 2000. During raid by Income Tax authorities on 20.7.2000, cash amount of Rs. 71,44,300/- was recovered from his house. During the enquiry, it was ascertained that the value of the properties owned by the petitioner is disproportionate to his known sources of income. During the relevant period, he was the Member of the APSC, later on appointed as Chairman. The net disproportionate assets as revealed during investigation stood at Rs. 2,07,25,083.05. The petitioner did not disclose the said property through any Govt. agency like Income Tax Department, etc.

62. The Govt. in the Political (Vigilance Cells Deptt) vide its letter dated 25.8.09 issued under the signature of the Principal Secretary (Home and Political Department) and addressed to the SP, Vigilance and Anti-Corruption, Assam, conveyed that no prosecution sanction was required under Section 19(1) of the PC Act. The letter also refers to the decision reported in AIR 1995 SC 1124 (Habibulla Khan Vs. State of Orissa), in which the Apex Court has held thus :-

> "5. The appellants are being prosecuted for the criminal misconduct which they are alleged to have committed during the period they were holding high political office within the meaning of Section 5 [1] of the Special Courts Act read with Rule 2 (1) [f] (1) of the Rules made under that Act. The Special Courts Act incorporates the definition of "criminal misconduct" given in section 13 [1] (e) of the Act. The procedure for prosecution to be followed, however, is as laid down under the Special Courts Act. All that the Special Courts Act requires for launching a criminal prosecution against a person holding high political office is that the State Government should make a declaration under Section 5 [1] of that Act that there is prima facie evidence of the commission of an offence by a person who held high public or political office in the State. Hence the provisions of Section 19 of the Act do not come into the picture in the present case. That being so, no sanction of the Governor or any other authority is necessary for launching the criminal prosecutions in question.
>
> 6. Assuming, however, that the procedure to be followed before launching criminal prosecution is that under the Act, the admitted facts are that the appellants are being prosecuted for the misconduct alleged to have been committed by them during their tenure as the Members of the Council of Ministers and not in their capacity as the MLAs. Hence the provisions of Section 19 of the Act are inapplicable to the facts of the present case as held in R.S. Nayak v. A.R. Antulay [(1984) 2 SCR 495].
>
> The second question is whether the appellants could be prosecuted for the offence which they are alleged to have committed during their tenure as ministers after they ceased to be the ministers. This question has also been answered by two decisions of this Court. In S.A. Venkataraman v. The State [(1958) SCR 1040], it is held while construing similar provision of Section 6 of the predecessor of the present Act which

provision was similar to the provisions of Section 19 of the present Act that no sanction was necessary for the prosecution of the appellant in that case, as he was not a public servant at the time of the taking of cognizance of the offence. The Court there observed as follows:

"In construing the provisions of a statute it is essential for a Court, in the first in stance, to give effect to the natural meaning of the words used therein, if those words are clear enough. It is only in the case of any ambiguity that a Court is entitled to ascertain the intention of the legislature. Where a general power to take cognizance of an offence is vested in a Court, any prohibition to the exercise of that power, by any provision of law, must be confined to the terms of the prohibition. The words in Section 6 (1) of the Act are clear enough and must be given effect to. The more important words 'in clause (c) of Section 6 (1) are "of the authority competent to remove him from his office". A public servant who has ceased to be a public servant is not a person removable from any office by competent authority. The conclusion is inevitable that at the time a Court is asked to take cognizance not only must the offence have been committed by a public servant but the person accused must still be a public servant removable from his office by a competent authority before the provisions of Section 6 can apply."

Similarly, a Constitution Bench in Veeraswami v. Union of India [(1991) 3 SCC 655], while construing the provisions of the same Section 6 of the Prevention of Corruption Act, 1947 held that no sanction under Section 6 of that Act was necessary for prosecution of the appellant in that case since he had retired from service on attaining the age of superannuation and was not a public servant on the date of filing the charge sheet. "

63. The offences alleged to have been committed by the petitioner was during his incumbency as Member / Chairman, APSC during the period from 1991 to 2000. He is no longer a public servant having demitted the office of the Chairman, APSC, way back in 2000. In view of the law laid down by the Apex Court discussed above, including the one referred to in the aforementioned communication, no prosecution sanction is required in respect of the offence alleged to have been committed by the petitioner. Accordingly, irrespective of the impugned order passed by the learned Special Judge, the proceeding against him shall continue till its logical conclusion in accordance with law. Accordingly, the prayer for quashing the proceeding against the petitioner, now pending in the Court of the learned Special Judge, Assam, cannot be granted and accordingly the petition stands dismissed and consequently, the interim order also stands vacated.

64. CRP 208/2012, 530/2012, 274/12, 176/12, 199/12, 708/12, 224/12, 201/12, 216/12, 234/12, 242/12, 218/12, 212/12, 232/12, 210/12, 217/12 and 211/2012.

CRP No.	Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Wh sa gr de

208/12	Special Case No. 19/12/Vig. P.S. Case No. 2/2004, Dispur P.S. Case No. 867/02 U/S 420/468/471/109/ 120(B) IPC	2.9.02	Green house scam defrauding poor farmers by placing supply orders with the particular firms and receiving substandard materials (U.V. Films) thereby defrauding Govt. exchequer to the tune of crores of rupees.	23.2.2005	No
530/12	Special Case No. 19/12/Vig. P.S. Case No. 2/2004, Dispur P.S. Case No. 867/02 U/S 420/468/471/109/ 120(B) IPC R/W Section 3(3) of Benami Transaction (P) Act and Section 13(1)(d)(ii)/13(2) P.C. Act. Against the charge sheet itself.	-do-	-do-	-do-	-do-
274/12	-do-	-do-	-do-	-do-	-do-
176/12	-do-	-do-	-do-	-do-	-do-
199/12	-do-	-do-	-do-	Not required being private persons	-
708/12	-do-	-do-	-do-	23.2.2005	Not gr
224/12	-do-	-do-	-do-	-do-	-do-
201/12	-do-	-do-	-do-	-do-	-do-
216/12	Special Case No. 19/12/Vig. P.S. Case No. 2/2004, Dispur P.S. Case No. 867/02 U/S 420/468/471/109/ 120(B) IPC	-do-	-do-	-do-	-do-
234/12	-do-	-do-	-do-	-do-	-do-
242/12	-do-	-do-	-do-	-do-	-do-
218/12	-do-	-do-	-do-	-do-	-do-
212/12	-do-	-do-	-do-	-do-	-do-
232/12	-do-	-do-	-do-	-do-	-do-
210/12	-do-	-do-	-do-	-do-	-do-
217/12	-do-	-do-	-do-	-do-	-do-
211/12	-do-	-do-	-do-	-do-	-do-

These cases relate to the alleged Green House Scam defrauding poor farmers by placing supply orders with the particular firms and receiving sub-standard materials, thereby defrauding the Govt. Exchequer to the tune of crores of rupees. In the instant case, as per the FIR lodged on 2.9.2002, few Guwahati based suppliers / firms have swindled the Govt. by several crores of rupees by supplying sub-standard materials on exorbitant price, to be utilized in the implementation of low cost Green House-cum-Rain Shelter Schemes launched by the DRDAs of 21 districts of Assam in the year 1999. Application for sanction against the officers involved which included the petitioners, was sought for on 23.2.2005. However, after more than 3½ years, the Govt. of Assam vide its letter dated 12.12.2008 declined to grant prosecution sanction, although the departmental proceedings against them had been initiated. The said letter further reveals that for 9(nine) other officers who had already retired from service on attaining the age of superannuation, no action had been taken or even proposed for departmental proceeding on the ground of their retirement from service. The letter has further revealed that upon consultation with the Judicial Department as well as the Advocate general, Assam, a decision had been arrived at not to proceed with the remaining officers including the petitioners either judicially or criminally. However, the departmental proceeding against them was to continue.

65. On a bare perusal of the letter, it is revealed that there was total non-application of mind in refusing to proceed against the officers. Although the letter does not specifically refer to prosecution sanction but the observation that the Govt. was not inclined to proceed against the officers either judicially or criminally would imply that sanction for prosecution was declined. Such refusal to grant sanction is solely on the basis of the purported consultation with the Judicial Department as well as the learned Advocate General, Assam.

66. The learned Special Judge while appreciating the decision contained in the said letter, noticed that the matter was kept pending for more than 3 ½ years at the stage of consideration for prosecution sanction and eventually the Govt. declined to grant the same as conveyed vide its aforesaid letter dated 12.12.2008. As recorded in the impugned order of the learned Special Judge, sanction for prosecution was sought for in respect of 61 public servants. However, by the aforesaid letter dated 12.12.2008, the Govt. while refusing to grant prosecution sanction in respect of 26 officers and for that matter while exonerating them from the criminal charge, kept the matter pending for the remaining 35 public servants.

67. The learned Special Judge in his detailed order dated 9.4.2012 declined to accept the final report dated 30.3.2012 filed by the Investigating Officer under Section 169 / 173 Cr.P.C. in respect of the 26 Officers including the petitioners in reference to Section 190 Cr.P.C. and Section 19 of the P.C. Act and Section 197 Cr.P.C. While doing so, the learned Special Judge has referred to the decision of the Apex Court reported in AIR 1989 SC 885 (India Carat Pvt. Ltd. Vs. State of Karnataka and others) in which it was held that on receipt of a police report under Section 173 Cr.P.C., a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Cr.P.C. even if the police report is to the effect that no case is made out against the accused persons. The learned Special Judge has also

referred to the decision reported in AIR 2007 SC 1274 (Prakash Singh Badal Vs. State of Punjab), in which it was held that there cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor it is possible to lay down any such rule. It was further held that the concept of section 197 does not immediately get attracted on institution of the complaint case and that the offence of cheating under Section 420 IPC and for that matter offences relatable to Sections 467, 468, 471 and 120B IPC 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.

68. The learned Special Judge on perusal of the FIR, charge sheet, statement of witnesses, case diary, etc. found that the 26 officers including the petitioners while were posted in the districts concerned were responsible in placing supply orders violating the tender rules. Not only that, the entire payment was made under their control and supervision, which resulted in loss to the State Exchequers. It was also found that while implementing the particular schemes of constructing the Green House-cum-Rain Shelter in the 22 districts of Assam, the said officers of the Govt. machineries had taken recourse to forging the relevant documents for the purpose of cheating, fraudulent withdrawal of Govt. fund after making criminal conspiracy among themselves. Accordingly, cognizance has been taken under Section 120B/468/471/409 IPC against them. As referred to above, in some of the cases the petitioners have challenged the charge sheet itself without waiting for framing of charges.

69. As discussed above, in various decisions of the Apex Court, it has been held that for the alleged offences triable under the aforesaid sections of IPC, there is no requirement of prosecution sanction. The offences alleged to have been committed by the officers cannot be said to be in discharge of their official duty while acting or purporting to act in the discharge of such official duty.

70. Above apart, in the decision conveyed vide letter dated 12.12.2008, there is absolutely no reflection of any independent application of mind and exercising of the sound discretion taking note of the evidence on record and the facts and circumstances involved in the case.

71. Referring to the departmental proceedings that were initiated against the petitioners, it is the plea of the petitioners that the same having been dropped against them in acceptance of their written statement, the criminal proceeding cannot be launched against them. As discussed above, the principles underlying departmental proceeding and criminal proceeding are quite distinct and different. The very fact that a decision was arrived at to proceed departmentally against the petitioners would rather lend support towards proceeding against the petitioners.

72. From the records produced by the learned counsel assisting the learned Sr. AAG, Assam, it appears that a departmental enquiry was conducted in respect of the anomalies in the implementation of the aforesaid scheme. As per the report of the Inquiry Officer dated 28.9.2001, inter alia the following violation of the Govt. of India's instruction and omissions were noticed "2. The following violations of the Govt. of India's instructions and omissions are noticed in the Govt. letter no. RDD.170/98/31 dated 24.3.99 :-

a) No cost norms were mentioned.

(b) No mechanism for implementation and practical aspects for implementation were mentioned.

(c) No approval of the State Level Committee for EAS etc. were taken.

(d) .....

(e) The ration of wages to material of EAS, JRY is violated by the guidelines.

(f) .....

(g) .....

3. M/s. Nilachal Enterprise appears to have secured possession of the Govt. letter RDD.170/98/31 dated 24.3.99 and RRD.170/98/31 dated 24.3.99 and their representative delivered the letter in number of DRDAs. The letter was not issued formally through the Issue Branch of Assam Secretariat.

4. Some DRDAs called for short tender/quotation whereas some other directly accepted the rates approved by other DRDAs and in some cases even the rates given by Supplier M/s.

Nilachal Enterprise was directly accepted. The PD, DRDAs where tendering was done accepted the lowest rate without comparing with the rate given in the model estimate or the market verification of the rates. No publicity was given to NIT/NIQ issued by the DRDAs and proper procedure was not followed. The PDs vio9lated the financial rules and caused huge loss to the state exchequer/DRDAs by accepting a rate, which was much higher than market rate. The whole tendering procedure was a fraud in the name of tendering.

5. .....

6. .....

7. UV film supplied by M/s. Nilachal Enterprise did not conform to quality standards given in the Govt. guidelines.

8. The omission on the part of P & RD department to recommend specifically the UV film (200 micron) produced by Indian Petrochemicals Limited left lot of scope for supply of sub-standard materials.

9. .....

10. All the DRDAs put together made an excess expenditure of around Rs. 3.75 crores in purchase of UV films. The price paid by DRDAs was more than 100% than the reasonable price. All the PD,

DRDAs directly and DC & Chairman, DRDAs indirectly are responsible for causing this loss.

11. It was a major omission on the part of the department or the Director, P & RD not to fix the price of UV film centrally or procure the material centrally from the authorized dealer.

12. .....

13. .....

14. The statement - IV clearly brings out the fact that procurement of materials and payments to M/s. Nilachal Enterprise was done at a very prompt speed, which is unusual in DRDAs or Govt. departments. It may not be coincidence that similar pattern was observed in all DRDAs.

15. .....

16. .....

17. .....

18. .....

19. .....

20. There was no monitoring and supervision of the implementation of the Green house scheme by the Director, P & RD department.

21. The P & RD department did not take the matter seriously when it was brought to their notice by AAU and IPCL in June 1999 that DRDAs are procuring sub-standard plastic films.

22. .....

23. .....

24. .....

25. .....

26. .....

27. The Commissioner & Secretary, P & RD and Deputy Secretary, P & RD during the relevant period will have to bear their share of responsibilities for the omissions on their part.

28. .....

29. Recommendation on actions to be taken is not within the purview of the Inquiry Officer.

However, it is obvious that the abnormal profit earned by the supplier especially M/s.

Nilachal Enterprise, Nalinibala Devi Path, Guwahati - 781 005 has not been appropriated by themselves only. There is every likelihood of there being other beneficiaries of this amount. Apart from the other action that the department may consider, an inquiry by vigilance wing under Political department is recommended to go in to this aspect.

30. ....."

73. Inspite of the aforesaid revelations made in the enquiry report submitted by the Inquiry Officer appointed by the Govt. itself, the prosecution sanction was not accorded. Even on perusal of the purported opinion of the Judicial Department as well as the one rendered by the learned AG, Assam, it is found that while the Judicial Department without expressing any opinion in the matter simply referred the same to the learned AG, Assam, the learned AG, Assam while expressing serious concern in the manner and method in which the scheme was dealt with, lastly expressed his opinion not to proceed against the Officers. As discussed above in reference to the various case laws, apart from the fact that there was no independent application of mind on the part of the sanctioning authority and it simply relied upon the opinion rendered by another authority, it was also not necessary to make an in depth study of the materials on record. What was required was to find out as to whether there was any prima facie material to proceed against the officers.

If the aforesaid reflection made in the enquiry report, cannot constitute the prima facie satisfaction towards granting sanction, I am afraid, nothing can constitute opinion to grant prosecution sanction. The provision for prosecution sanction is only to protect the public servant from vexatious and frivolous proceeding and not to shield them from a proceeding arising out of dereliction of duty.

74. For all the aforesaid reasons and also for the reasons stated below against Crl. Pet. No. 240/2012, I am not inclined to accept the criminal petitions for quashing of the proceeding against the petitioners and accordingly, they are dismissed. Stay orders stand vacated.

75. In Crl. Pet. No. 274/2012 and Crl. Pet. No. 530/2012 challenge is the charge sheet itself dated 30.3.2012. Be it stated here that the petitioner involved in Crl. Pet. No. 274 has also filed Crl. Pet. No. 176/2012 challenging the order dated 6.3.2012 passed by the learned Special Judge directing the S.P. Chief Minister's Vigilance Cell to submit charge sheet against the public servants including the petitioner. In Crl. Pet. No. 199/2012, the petitioner being not a public servant, no prosecution sanction is required.

Criminal Case No. and	Date of FIR	Allegation	Date when Prosecution	Whether sanction

Section of Law			sanction sought for	granted/denied
Vig. P.S. Case No. 1/02 U/s. 120B/420 IPC R/w 13(2) of PC Act. Special Case No. 24/12	8.7.2002	Supply of substandard materials flouting the guidelines in collaboration with DRDA officials and thereby causing huge loss to the Govt. exchequer.	Petitioner not Govt. servant	Does not arise

In this case, the petitioner is the proprietor of M/S Nilachal Enterprise and stated to be involved in the Green House Scam case. The learned Special Judge by his order dated 12.4.2012 has taken cognizance against the accused persons named in the order including the petitioner. Being satisfied that there are incrementing materials against the accused petitioner on the basis of the statement of the witnesses, Case Diary and other relevant documents, a prima facie satisfaction has been recorded that the petitioner conspired with other accused persons towards defrauding Government by supplying inferior and substandard materials (UV Films). Cognizance has been taken to proceed against him under Section 120(B)/420 IPC.

77. Apart from the reasons recorded above, the petitioner also being not a Government servant, no prosecution sanction is required. Accordingly, this petition is also dismissed with the vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
Vig PS Case No. 3/97 U/s. 409 /120B/116/420 IPC r/w. 13(2) of PC Act. Spl Case No.	17.11.97	Misappropriation of huge money under the Scheme Operation Black Board (OBB)	4.6.2010	Not granted

So far as the charge under Section 13(2) of the P.C. Act is concerned, the learned Special Judge in his order dated 6.3.2012 has held that the prosecution sanction having not been accorded although sought for on 4.6.2010, the same shall be deemed to have been granted on expiry of three months from the date of seeking prosecution sanction. In this connection, he has referred to the decision in Subramanian Swamy (supra). Learned counsel for the petitioner argued that deemed sanction as mentioned in paragraph- 81 of the supplementing judgment of one of the Hon'ble Judges (A.K.

Ganguly, J) is not in the realm of direction, but are guidelines for consideration of the Parliament. There is no gain saying that in Vineet Narain (supra) case referred to in Subramanian Swamy (supra), there was specific direction to adhere to the time lime of three months for granting of sanction for prosecution with the additional time limit of one month where consultation is required with the Attorney General or any Law Officer in his office. This position cannot be frustrated by shielding the accused by not granting prosecution sanction indefinitely.

79. Although, it was argued that neither in Vineet Narain nor in Subramanian Swamy (supra), the consequence of non-adherence to the time limit of three months having not been specified, there cannot be any deemed sanction, but the same will have to be considered in the light of the observations made in both the cases, which have been exclusively referred to above. The said observations are of significant importance.

80. If the conduct of a public servant amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It is not for nothing, the Apex Court in Vineet Narain (supra) fixed the time of three months for grant of prosecution sanction with the clear stipulation that the said time limit must be strictly adhered to. Following the said judgment and some other judgments, certain guidelines have also been issued by the Government of India, which have been held to be in conformity with the law laid down by the Apex Court. As recorded in paragraph 50 of the judgment in Subramanian Swamy (supra) while considering the issue regarding grant or refusal of sanction, the only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The Competent Authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true.

81. As noted above, in the instant case, apart from the fact that there has been gross and unexplained delay on the part of the sanctioning authority, there is also no independent application of mind towards arriving at a prima facie satisfaction, but in some of the cases decision not to proceed judicially or criminally has been arrived at solely on the basis of the opinion of the learned Advocate General, Assam.

82. In paragraph-56 of the judgment in Subramanian Swamy (supra), the Apex Court has reiterated that every competent authority shall take appropriate action in the matter of sanction for prosecution strictly in accordance with the direction contained in Vineet Narain (supra). It is in this context, supplementing the judgment, one of the Hon'ble Judges (A.K. Ganguly, J) issued direction that the Parliament should consider the Constitutional imperative of Article 14 enshrining the rule of law wherein 'due process of law' has been read into by introducing a time limit in Section 19 of the P.C. Act 1988 for its working in a reasonable manner. Here lies the importance of judicial legislation upon failure on the part of the legislature in not laying down any time limit for prosecution sanction under Section 19 of the P.C. Act and on the face of inordinate delay on the part of the executive in the matter of prosecution sanction. The Apex Court had no other option than to judicially legislate

towards stipulating time limit for prosecutions sanction. The direction contained in paragraph-81 of Subramanian Swamy's judgment will have to be considered in that context.

83. In Dayaram Vs. Sudhir Batham reported in (2012) 1 SCC 333, the Apex Court referring to the decision in Vineet Narain and the guidelines and directions issued therein has held that issuance of such guidelines and directions is a well settled practice which has taken firm roots in our constitutional jurisprudence and that such exercise was essential to fill the void in the absence of suitable legislation to cover the field. The particular observations made in paragraphs-52 and 53 of Vineet Narain (supra) has been quoted in the said judgment, which is again reproduced below:

> "52. As pointed out in Vishakha (supra), it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.
>
> 53. On this basis, we now proceed to give the directions enumerated hereafter for rigid compliance till such time as the legislature steps in to substitute them by proper legislation. These directions made under Article 32 read with Article 142 to implement the rule of law wherein the concept of equality enshrined in Article 14 is embedded, have the force of law under Article 141 and, by virtue of Article 144, it is the duty of all authorities, civil and judicial, in the territory of India to act in aid of this Court.
>
> (Emphasis supplied)

84. In Kalyan Chandra Sarkar Vs. Rajesh Ranjan reported in (2005) 3 SCC 284, the Apex Court held that:

> "33. Article 142 is an important constitutional power granted to this Court to protect the citizens. In a given situation when laws are found to be inadequate for the purpose of grant of relief, the court can exercise its jurisdiction under Article 142 of the Constitution."

85. In Supreme Court Bar Association Vs. Union of India reported in (1998) 4 SCC 409, a Constitution Bench of the Apex Court held thus:

> "48. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognized and established that this Court has always been a lawmaker and its role travels beyond merely dispute settling. It is a 'problem-solver in the nebulous... provisions dealing with the subject- matter of a given case cannot be altogether ignored by this Court, while making an order under Article

142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

86. As noted in Dayaram (supra), Benjamin Cardozo in his inimitable style said that the power to declare the law carries with it the power and within limits the duty to make law when none exists (nature of the Judicial Process, p. 124). Directions issued in the exercise of judicial power can fashion modalities out of existing executive apparatus, to ensure that eligible citizens entitled to affirmative action alone derive benefits of such affirmative action. The directions issued in Madhuri Patil reported (1994) 6 SCC 241 are intrinsic to the fulfillment of fundamental rights of backward classes of citizens and are also intended to preclude denial of fundamental rights to such persons who are truly entitled to affirmative action benefits.

87. It is well known that a deeming provision is a legal fiction and an admission of the non-existence of the fact deemed. Therefore, while interpreting a provision creating a legal fiction, the court has to ascertain the purpose for which the fiction is created. When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.

86. It is true that Section 19 of the P.C. Act has not laid down any time limit for prosecution sanction. There is also no deeming clause. However, as noted above in absence of any statutory provision, the provision made by the Apex Court in its decisions referred to above will have to be strictly adhered to. Non-adherence of the time limit coupled with the duty of the court to uphold Rule of Law may require the court to step in to remove the injustice resulted due to the inaction on the part of the legislature and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligation under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislature to cover the field.

89. While it is true that the previous sanction for taking cognizance of an offence prescribed under Section 10, 11, 13 and 15 of the P.C. Act alleged to have been committed by public servant has been provided for, for the purpose of protection of such public servants from vexatious and frivolous proceeding, but the same cannot be made use of as a shield to protect the public servants against whom a prima facie offence is established. In the instant proceeding we have seen that prosecution sanction has not been accorded even for long 11 years in some cases. While materials available on record disclose a prima facie case for prosecution, competent authority cannot sit over the matter indefinitely and must adhere to the time limit fixed in Vineet Narain (supra) and reiterated in Subramanian Swamy (supra).

The criminal petition is dismissed. Stay order stands vacated.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
Vig P.S. Case No. 2/2010 U/S 120B/409 IPC R/W 13(2) P.C. Act Spl. Case No.	24.9.2010	Misappropriation of huge Govt. money in respect of Panchayat schemes	Charge Sheet No. 3/12 submitted on 13.3.2012	Charge framed on 29.8.12 under Section 120(B)/409 IPC R/W 13(2) P.C. Act

In this case, the petitioner is aggrieved by the summons issued to him from the Court of the learned Special Judge, Assam, Guwahati requiring him to answer the charge framed under Sections 406/409/420/34 IPC. The allegation against the petitioner relates to misappropriation of huge Government money in respect of implementation of scheme under NREGA. Misappropriation of Government money cannot be said to be in discharge of official duty as contemplated under Section 197 Cr.P.C. and thus there is no requirement of obtaining sanction for prosecution. This principle relating to prosecution sanction has been discussed above. In that view of the matter, the petition is dismissed and the interim order passed earlier stands vacated.

91. Crl. Pet. No. 231/2012, Crl. Pet. No. 334/2012 , Crl. Pet. No. 261/2012 , Crl. Pet. No. 650/2012, Crl. Pet. No. 400/2012, Crl. Pet. No. 673/2012, Crl. Pet. No. 329/2012, Crl. Pet. No. Crl. Criminal Case No. and Date of FIR Allegation Date when Whether Pet Section of Law Prosecution sanction No. sanction granted/denie sought for d 231/12 Vig. P.S. Case No. 3/97 U/S 17.11.1997 Misappropria - Charge framed 120(B)/116/409/420 IPC tion of huge on 20.4.12 money under under Sec.

			the Scheme Operation Black Board (OBB)		120B/ 420 I
334/12	Vig PS Case No. 3/97 U/s. 409 /120B/116/420 IPC r/w. 13(2) of PC Act.	17.11.97	-do-	4.6.2010	Not g
261/12	-do-	-do-	-do-	-do-	-do-
650/12	-do-	-do-	-do-	-do-	-do-
400/12	-do-	-do-	-do-	-do-	-do-
673/12	-do-	-do-	-do-	-do-	-do-
329/12	Vig. P.S. Case No. 3/97, U/S 120(B)/116/409/420 IPC R/W Section 13 (2) P.C. Act.	17.11.1997	-do-	-do-	-do-
399/12	Vig. P.S. Case No. 3/97, U/S 120(B)/116/409/420	17.11.1997	-do-	-do-	-do-

IPC

In these cases, the petitioners are aggrieved by the orders of the learned Special Judge, Assam, by which, cognizance has been taken against some of the accused persons under Sections 120(B)/116/409/420 IPC read with Section 13 (2) of the P.C. Act and in some others under Section 120(B)/116/409/420 IPC. From the materials on record, it has been found that the alleged offence was committed not in discharge of official duty, but in dereliction of the same. As noted above, the charge against the officers including the petitioners is that of misappropriation of huge Government money under the scheme called Operation Black Board (OBB). The scheme was for substantial improvement of facilities in primary education. As per the impugned order, the prosecution sanction having not been accorded within the stipulated period of time, the same should be deemed to have been granted in terms of Vineet Narain and Subramanian Swamy (supra).

92. As noted above, the provision of prosecution sanction is to ensure that the public servant is not put to unnecessary harassment but certainly not to shield him from criminal proceeding in respect of indulge in corruption utilizing the very service which he is in as a tool for the same. This aspect of the matter has been discussed above.

93. For the reasons stated therein. I do not find any infirmity in taking cognizance of the offence allegedly committed by the petitioners. Moreover, the question of sanction may be raised on or determine during the course of the proceeding depending upon the stage of the same and thus said proceeding need not be stalled at this stage. Consequently, the criminal petitions pertaining to OBB are dismissed with the vacation of the stay order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
Vig. P.S. Case No. 1/01 U/S 120(B)/420/ 468/ 471(A) IPC R/W Section 13(2)(d) of PC Act . Spl. Case No.	29.3.2001	Releasing of loan installments on the basis of progress of works without assessing but certifying the same collusion with loanee	Charge sheet No. 2/12 submitted on 16.3.2012	Petitioner retired from service on 28.2.2009

The challenge in this petition is the order dated 31/3/2012 and also the proceeding that has been initiated against the petitioner by the learned Special Judge, Assam. By the said order, direction has

been issued for issuance of summons to the 4 accused persons named in the order including the petitioner. In the case, charge has been submitted under Section 120(B)/420/468/471(A) IPC read with Section 13(2)(d) of the P.C. Act, 1988. As reflected in the order, the petitioner was arrested during investigation. Due to non-appearance of the petitioner in response to the summons issued, learned Special Judge has issued notice to the bailor on 5.4.2012 directing production of the petitioner.

95. According to the petitioner, the said two orders are not sustainable in law. Urging various grounds on fact leading to filing of the criminal petition, it is the case of the petitioner that he is not responsible for the offence alleged against him. Referring to the departmental proceeding that was initiated against him, the petitioner has contended that the said proceeding having come to an end coupled with the fact that the petitioner has already retired from service on attaining the age of superannuation with effect from 28.2.2009, the criminal proceeding is not maintainable. It will be pertinent to mention here that pursuant to the departmental proceeding, the petitioner has been imposed with the penalty of recovery of the misappropriated Government money to the tune of Rs. 4,98,000/-. As per the certificate dated 30.4.2012 annexed to the petition, already the amount has been recovered from the monthly salary bills of the petitioner and thereafter from the retirement benefit.

96. In Rumi Dhar Vs. State of West Bengal reported in (2009) 6 SCC 364, although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debt Recovery Tribunal, the accused was being proceeded with for the commission of the offences under Section 120B/420/467/468/471 IPC along with bank officers who had been prosecuted under Section 13(2) r/w 13(1)(d) of the PC Act. The Court refused to quash the charge against the accused by holding that the Court cannot quash a case involving a crime against society when the prima facie case has been made out against the accused for framing the charge.

97. Although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences under Section 120-B/420/467/468/471 of the IPC along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani Vs. Union of India reported in (2012) 11 SCC 321 was again a case where the accused persons were charged of having committed offences under Sections 120-B, 465, 467, 468 and 471, IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The decision in Ashok Sadarangani (Supra) supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

98. Above apart, as discussed above, merely because a departmental proceeding was initiated against the petitioner, he cannot question the criminal proceeding on that ground. The principles underlying both the proceedings are quite distinct and different. In that view of the matter, I do not find any merit in the petition and accordingly it is dismissed with the vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
Vig. P.S. Case No. 1/01 U/S 120(B)/420/ 468/ 471(A) IPC R/W Section 13(2)(d) of PC Act . Spl. Case No. 23/12	29.3.2001	The petitioner in collusion with some officials of the Government Deptt. managed to cheat the department withdrawing a loan amount of Rs. 1.60 lakhs by submitting false and fictitious land records.	Charge sheet No. 2/12 submitted on 16.3.2012	Challenge is the charge sheet itself and the order dated 6.3.2012 issuing P & A in view of non-appearnace.

The challenge in this petition is the charge sheet itself and also the order dated 4.6.2012 for appearance and execution of P&A due to non-appearance. According to the petitioner, the I.O. did not investigate the case properly and also did not take into consideration that the petitioner had already deposited the entire amount purportedly misappropriated by him. After defalcating Govt. money, the petitioner cannot take the plea that since the amount had already been refunded, no proceeding can be initiated against him. If a prima facie case has been found against him the proceeding should be allowed to come to its logical conclusion.

100. For the reasons stated above, this Criminal petition is dismissed with vacation of the interim order.

101. Crl. Pet. No. 269/2012, Crl. Pet. No. 245/2012 Crl. Pet Criminal Case Date of Allegation Date when Whether No. No. and Section FIR Prosecutio sanction of Law n sanction granted/denie sought for d 269/12 Vig. P.S. Case 8.7.2002 Supply of 25/11/200 According to No. 1/02 U/s. substandard 2 the petitioner 120B/420 IPC. materials flouting in Crl. Pet. No. Spl. Case No. the guidelines in 269/12, not 24/12 collaboration with granted but as DRDA officials and per the thereby causing impugned huge loss to the order of the ld.

Govt. exchequer. Spl. Judge, granted as letter date 4.5.2010

245/12 -do- -do- -do- -do- Not granted

In these cases, the petitioners are aggrieved by order dated 9.4.2012, by which, the learned Special Judge, Assam has recorded that Government has accorded sanction to prosecute the two accused petitioners involved in Crl. Pet. No. 269/2012. By the said order, it has also been held that there are materials against both the petitioners under Sections 420/120(B) IPC. Accordingly cognizance of the offence alleged against them has been taken with the issuance of summons. According to the petitioners, no prosecution sanction having been accorded, the learned Special Judge, Assam could not have held in the order dated 9.4.2012 that such prosecution sanction has already been accorded.

102. As stated in the petition, on conclusion of the investigation, prosecution sanction was sought for way back in 2002 (25.11.2002), but the authority sat over the matter for all these years. Prosecution sanction was again sought for vide letter dated 1.2.2010 in response to which the Government of Assam in the Political (Vigilance Cell) Department vide its letter dated 4.5.2010 informed the Investigating agency that steps had been taken by the concerned department for prosecution sanction against the petitioners. Although, it is the stand of the petitioners that no such prosecution sanction has been accorded, but as has been held in the impugned order, the Government has already accorded prosecution sanction against the petitioner. In this connection, the learned Special Judge has referred to the Government of Assam's letter No. PLA(V)154/2002/76 dated 5.4.2010, by which, the Government decision not to proceed judicially and criminally against the petitioner in Crl. Pet. No. 245/2012, while according sanction to prosecute the petitioners had been conveyed.

103. During the course of hearing of the instant batch of petitions, it was never argued either by the learned P.P., Assam or the learned Sr. Additional Advocate General, Assam that the Government has not accorded prosecution sanction against the petitioners. Moreover, the delay in according sanction is unexplained and inordinate. There is no explanation as to why the stipulation of 3/4 months as laid down in Vineet Narain (supra) could not be followed in the case. The offence alleged against the petitioners is very serious in nature involving huge loss to Government exchequer.

104. For all the aforesaid reason, I do not find any merit in the petition and accordingly stands dismissed with the vacation of the interim order.

Crl. Pet No.	Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/ denied
226/12	ACB PS Case No.	10.6.98	Misappropriation of	13.6.2001	Not gran

2/98 U/s. 409, 468, 471, 120B IPC r/w 13(2) PC Act. Spl. Case No. 8/12.		Govt. money by preparing false bills showing payment of MR Workers amounting to Rs. 30 lakhs

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order dated 31.3.2012, by which, cognizance under Section 409/468/471/120(B) IPC read with Section 13 (2) of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
ACB PS Case No. 3/09 U/s. 409, 511, 120(B) IPC r/w. 13(2) PC Act. Spl. Case No. 18/12.	23.9.2009	Misappropriation of Govt. fund amounting to Rs. 5,66,260/-	9.12.2011	Not granted

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 409/511/120(B) IPC read with Section 13 (2) of the P.C. Act, has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
Panbazar PS Case No. 316/02 U/s. 7 PC Act Spl. Case No.	3.10.2002	Taking bribe and seizure of the amount	12.11.2002	Not granted

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 7 of the P.C. Act, has been taken against the petitioner and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
Vig PS Case No. 1/97 U/s. 120B, 116, 409 IPC r/w. 13(1)(c) and 13(2) P.C. Act Spl. Case No. 3/12	29.7.97	Criminal conspiracy and abetment towards misappropriation of huge amount of Rs. 7,10,121.15/-.	15.5.2004	Not granted

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 120B/116/409 IPC read with Section 13(1)(c) and 13 (2) of the P.C. Act, has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
ACB PS Case NO. 8/02 U/s. 420, 468, 471(A), 120(B) IPC r/w 13(1)(d) and 13(2) PC Act.	21.10.02	Fraudulent selection in APSC for pecuniary gains	23.8.06	Not granted. But refer Crl. Petn. No. 568/12 above.

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 420/468/471(A)/120(B) IPC read with Section 13(2) of the P.C. Act has been taken against the petitioners and also for the reasons stated in Crl. Pet. 568/12 above and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
ACB Case No. 9/05 U/s. 13(1)(e)/13(2) PC Act Spl. Case No. 12/2012	16.11.05	Acquiring huge movable and immovable properties disproportionate to known sources of legal income.	12.1.2011	Not granted

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 13(1)(e)/13(2) of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
ACB PS Case No. 4/2000) U/s. 409, 468, 471, 120B IPC r/w. 13(1)(c) / 13(2) PC Act. Spl. Case No. 10/12	26.4.2000	Misappropriation of Govt. money amounting to Rs. 3,70,000/- by making false bills showing execution of works.	29.11.2007	Not granted

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 120(B)/468/471/409 IPC read with Section 13(1)(c)/13(2) of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

112. Crl. Pet. Nos. 533/2012, 494/2012 & 523/2012 Crl. Pet Criminal Case Date of FIR Allegation Date when Whether No. No. and Section Prosecution sanction of Law sanction granted/ sought for denied 533/12 ACB PS Case No. 21.3.2001 Misappropriation of 9.1.2003 Not granted 3/2001, U/s. huge amount by 409, 468, 471, preparing falls bills 477A, 420,120B / diverting funds IPC r/w. Section from one scheme 13(1)(c)(d) and to another.

13(2)of PC Act.

Spl. Case No. 13/12.

494/12	-do-	-do-	-do-	-do-	-d
523/12	-do-	-do-	-do-	-do-	-d

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 409/468/471/420/477(A)/120(B) IPC read with Section 13(1)(c)(d)/13(2) of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

113. Coupled with the above, the records (File No. CON.6/2006) contains the letter dated 12.3.2013 addressed to Mr. Z. Kamar, leaned P.P. Assam by the Government of Assam in the PWD (Confidential Cell) under the signature of the Deputy Secretary conveying that in the matter of prosecution sanction, the File No. Con.6/2006 was processed and the Government in the PWD accorded prosecution sanction vide No. Con.6/2006/18 dated 14.7.2010 in response to the Home & Political Department letter No. PLA(V)108/99/413 dated 17.3.2010. The letter further conveys that the department was again requested to issue prosecution sanction order in respect of the officers including the petitioners in the form of order duly signed and sealed by the competent authority vide letter dated 23.7.2010. Accordingly after completing necessary formalities, prosecution sanction has been accorded vide letter No. Con.6/06/25 dated 28.8.2012.

Criminal Case No. and	Date of FIR	Allegation	Date when Prosecutio n sanction sought for	Whether sanction granted/denied
Section of Law				
Vig PS Case No.	29.7.97	Misappropriation	15.5.2004	Not granted

2/97, U/s. 409 IPC r/w. Sec 131(2) of P.C. Act. Spl. Case No. 5/12.		of Govt. money amounting to Rs. 10,000/- by not entering the same in the Receipt Book and thereafter removing the pages (Original and duplicate) from the Receipt Book.

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 471(A)/409 IPC read with Section 13(1)(c)/13(2) of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
ACB PS Case No. 2/98 U/s. 409, 468, 471, 120B IPC r/w 13(2) PC Act. Spl. Case No. 8/12.	10.6.98	Misappropriation of Govt. money by preparing false bills showing payment of MR Workers amounting to Rs. 30 lakhs	13.6.2001	Not granted

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 409/468/471/120(B) IPC read with Section 13(2) of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
Golaghat PS	15.9.2008	Taking bribe of	20.11.2010	Not granted

case No. 449/2008 U/s. 7 PC Act Spl. Case No. 29/12.		Rs. 2000/- and recovery of signed notes from the possession of the accused.		

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 7 of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
ACB PS Case NO. 3/2003 U/s. 409, 120B IPC r/w. 13(1) (c) (d)(ii) / 13(2) PC Act Spl. Case No. 11/12.	Lodged in 2003	Misappropriation of Govt. money amounting to Rs. 5,99,022.49/-	26.2.2007	Not granted

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 109/468/471/420/120(B) IPC read with Section 13(1)(c)(d) (ii)/13(2) of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
CID Case No.	28.6.07	Misappropriation	2.7.2010	Not granted

25/07 U/s. 120B, 409, 406, 420, 468 IPC r/w 13(2) PC Act. Spl. Case No.	of huge Govt. money amounting to Rs. 33,55,996/-.

In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 120(B)/406/409/420/468 IPC read with Section 13(2) of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
ACB P.S. Case No. 12/03 U/S 13(1)(c)(d) (ii)/13(2) PC Act	10.6.2003	Pecuniary advance of Rs. 1,04,000 abusing official position.	31.5.2010	Not granted

It is also a case of deemed sanction on expiry of three months from the date of seeking prosecution sanction. By the impugned order dated 6.3.2012, it has been held that although there are incrementing materials against the petitioner to proceed under Section 13(1)(c)(d)(ii)/13(2) of the P.C. Act, but the Government for the reasons best known to it has not dealt with the matter relates to sanction, although was sought for on 31.5.2010. By the said impugned order, direction has been issued to the I/O to proceed with the matter towards filing of charge sheet etc. without waiting for the sanction. For the reasons stated above, the criminal petition also stands dismissed with vacation of the interim order.

Crl. Pet Criminal Case No. Date of FIR Allegation Date when Whether No and Section of Law Prosecutio sanction n sanction granted/ sought for denied 384/12 Mangaldoi P.S. 21.7.1995 Taking 6.10.199 Not granted Case No. 109/95 bribe/demand 5 U/S 7 of PC Act, of illegal 1988 gratification In view of the above discussions and for the reasons stated above, I do not find any infirmity in the impugned order, by which, cognizance under Section 7 of the P.C. Act has been taken against the petitioners and accordingly the petition stands dismissed with vacation of the interim order.

Although prosecution sanction was sought for way back in 1995 (6.10.1995), but no action has been taken for the last more than 16 years. As per the FIR, there was demand for illegal gratification for issuance of land valuation certificate.

Criminal Case No. and Section of Law	Date of FIR	Allegation	Date when Prosecution sanction sought for	Whether sanction granted/denied
ACB P.S. Case No. 12/04 U/S 409 IPC R/W Section 13(1)/13(2) of PC Act Spl. Case No. 8/10	4.8.2004	Misappropriation of Govt. money amounting to Rs. 55,13,450/- meant for farmers share and security deposits involving various field management commission.		Granted on 17.7.09

In this case, sanction for prosecution was granted on 17.7.2009, making a grievance against which, the petitioner had approached this Court by filing Crl. Pet. No. 99/2012 under Section 482 Cr.P.C. By the said petition, the petitioner challenged the legality and validity of the sanction granted by the State Government in the Agricultural Department to proceed with the prosecution of the petitioner under the provision of IPC as well as the P.C. Act, 1988. The petition was dismissed on 13.3.2012 on the basis of the prayer for withdrawal of the same with liberty to approach the trial Court to question the validity of the sanction granted. Thereafter the petitioner filed petition No. 470/2012 questioning the validity of the sanction for prosecution which has been rejected by order dated 14.8.2012. It was contended that since a departmental proceeding was initiated against the petitioner, the criminal proceeding was not maintainable. In the said order, learned Special judge has recorded that stage was not appropriate to go into the merit of the prosecution case and for that matter culpability of the accused petitioner. It has also been observed that said aspect of the matter could be cleared only after taking into account all the evidence. It will be pertinent to mention here that in the instant case, prosecution evidence has already been closed after examining 18 witnesses and the case was fixed for defence statement. It was at that stage, the petitioner questioned the sanction for prosecution order referring to the provisions of Section 19(3) of the P.C. Act. Learned Special Judge has held that merely because that the petitioner was exonerated in the departmental proceeding, it cannot be said that the prosecution sanction order is bad in law.

122. As discussed above, the principle underlying both the proceeding i.e. departmental and criminal being quite distinct and different, I do not find any infirmity in the order passed by the learned Special Judge. Accordingly, the criminal petition is dismissed with the vacation of the

interim order.

123. In all the criminal petitions, the prayer is to quash the respective proceedings in reference to the impugned orders by which the learned Special Judge has taken cognizance of the offences against each one of the petitioners as discussed above. The findings against the respective cases have been recorded above. It was contended by the learned counsel for the petitioners that the materials on record do not justifying framing of charges against the petitioners. Under Section 227, if after consideration of the case record and after hearing the submissions of the accused and the prosecution, the Judge considers that there is no sufficient ground to proceed against the accused, he shall discharge the accused and record his reasons for doing so. But under Section 228, if after such consideration and hearing, the Judge is of the opinion that there is ground for presuming that the accused has committed the offence, which is exclusively triable by the Court of Session, he shall frame a charge in writing against the accused. When such a charge is framed, it shall be read and explained to the accused, who shall be asked as to whether he pleads guilty to the offence charged or claims to be tried.

124. On a total reading of the said two provisions, it is seen that in case of discharge, reasons are required to be recorded but in case of framing of charge, there is no such requirement. At the time of framing charge, the Court is to see as to whether the materials on record would justify trial against the accused. At that stage, the probative value of the materials on record cannot be gone into. On perusal of the impugned orders involved in this batch of criminal petitions, it cannot be said that the learned Special Judge proceeded mechanically in framing the charges. I may gainfully refer to the decision of the Apex Court in Sajjan Kumar Vs. Central Bureau of Investigation reported in (2010) 9 SCC 368 in which the Apex Court recorded thus :-

> "21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-
>
> (i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
>
> ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.
>
> iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

> iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
>
> v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
>
> vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence.

For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

125. In the present batch of criminal petitions, having regard to the nature of the offences and the modus operandi adopted by the accused persons as projected in the charge sheet and briefly referred to against each one of the cases, I am of the considered opinion that it is not a fit case for exercise of jurisdiction under Section 482 Cr.P.C.. This view I have taken, gets fortified by the decision of the Apex Court in Rumi Dhar Vs. State of West Bengal reported in (2009) 6 SCC 364, in which the Apex Court observed thus :-

> "24. The jurisdiction of the Court under Article 142 of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstances of each case. The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, and this Court, in terms of Article 142 of the Constitution of India, would not direct quashing of a case involving crime against the society particularly when both the learned Special Judge as also the High Court have found that a prima facie case has been made out against the appellant herein for framing the charge."

126. In CBI Vs. Ravishankar Prasad reported in (2009) 6 SCC 351 dealing with the inherent powers of the High Court under Section 482 Cr.P.C., the Apex Court has observed thus :-

> "17. Undoubtedly, the High Court possesses inherent powers under Section 482 of the Code of Criminal Procedure. These inherent powers of the High Court are meant

> to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court.
>
> 19. This Court time and again has observed that the extraordinary power under Section 482 CrPC should be exercised sparingly and with great care and caution. The Court would be justified in exercising the power when it is imperative to exercise the power in order to prevent injustice. In order to understand the nature and scope of power under Section 482 CrPC it has become necessary to recapitulate the ratio of the decided cases.
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> 20. Reference to the following cases would reveal that the Courts have consistently taken the view that they must use the court's extraordinary power only to prevent injustice and secure the ends of justice. We have largely inherited the provisions of inherent powers from the English jurisprudence, therefore the principles decided by the English courts would be of relevance for us. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective.
>
> 39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice."

127. In the instant case, the learned Special Judge has passed the impugned orders considering the matters in their entirety and took cognizance of the offences for the reasons recorded in the said order. As already discussed above, the provisions relating to sanction for prosecution cannot be misused as a seal towards protecting the public servants from facing the legal proceedings which are required to be brought to their logical conclusion, in our legal system founded on rule of law. The guidelines in Vineet Narain (Supra) cannot remain symbolic, in terms of which the time limit of 3 (three) months towards granting prosecution sanction must be strictly adhered to. It is in such circumstances, the above quoted observations and directions have been made by the apex Court in Subramonium Swamy (Supra) case.

128. We have already examined the facts and merits of the present batch of criminal petitions. It may not be out of place to discuss as to the ambit and scope of the power which the Courts including the High Court can exercise under Section 482 read with Section 401 and 397 of the Code. As discussed in Amit Kapoor Vs. Ramesh Chander and another reported in (2012) 9 SCC 460, Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of the Apex Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous,

there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

129. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex-facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the Cr.P.C.

130. The revisional jurisdiction exercised by the High Court, needless to say is to be exercised on a question of law. However, when factual appreciation is involved, this must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the Court. Merely an apprehension or suspension of the same would not be a sufficient ground for interference in such cases.

131. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of State of Bihar v. Ramesh Singh (1977) 4 SCC 39:

> "4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-- ... (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section
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> 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the

accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section

227."

132. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or proprietary of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, proprietary or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the

Court is not permitted to be abused.

133. In Amit Kapoor (Supra), the Apex Court making a comparative examination of the powers exercisable by the Court under Section 397 and 482 Cr.P.C., observed thus :-

> "21. It may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to Raj Kapoor & Ors. v. State of Punjab & Ors. [AIR 1980 SC 258 :
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> (1980) 1 SCC 43]}. In this very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions.

In this very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the Court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction."

134. In Amit Kapoor (Supra) discussing the scope of interference under any of the aforesaid provisions in relation to quashing the charge, the Apex Court has made the following observations :-

"25. Having examined the inter-relationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the Court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the Court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

26. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In the case of Indian Oil Corporation v. NEPC India Ltd. & Ors. [(2006) 6 SCC 736], this Court took the similar view and upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties was pending."

135. In paragraph 27 of the judgement after discussing the scope and jurisdiction under Section 397 and 482 of the Code, the Apex Court while enlisting the principles with reference to which the Courts should exercise such jurisdiction under Section 397 or 401 or Section 482 of the Code or altogether laid down, inter alia, the following principles :

"27.1 Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3 The High Court should not unduly interfere.

No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting

some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal.

The Court has to consider the record and documents annexed with by the prosecution.

27.13 Quashing of a charge is an exception to the

rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.15 Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

136. As discussed above, in the instant batch of criminal petitions, the petitioners have questioned the particular jurisdiction exercised by the learned Special Judge towards passing the impugned orders. When tested in the touchstone of the principles enumerated above including the discussions made above, it is to be borne in mind that the task of upholding the rule of law may require the Court to step in to removing the injustice resulted due to inaction on the part of the legislature and when and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligation under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislature to cover the field.

137. For all the aforesaid reasons I am not inclined to quash the criminal proceedings launched against the petitioners involved in this batch of criminal petitions. The learned Special Judge may conclude the proceedings as expeditiously as possible.

138. All the criminal petitions are dismissed and the stay orders operating therein stand vacated.

139. The Registry is directed to transmit the case records forthwith to the Court of learned Special Judge, Guwahati along with a copy of this judgement and order.

JUDGE Mkk/Sukhamay