complaint made by the person aggrieved by the offence. The word 'complaint' used therein is always understood to mean only as defined in Section 2 clause (d) Cr.PC. When so considered, it goes to show that an offence under Section 494 IPC can be taken cognizance of only on such a private complaint. At this juncture it may be recalled that Section 2 Cr.PC opens with a concessional clause that if context otherwise requires the definition contained in Section 2(d) can be ignored. Taking cue from this, it was held that the word 'complaint' used in Section 198 Cr.PC does not connote the meaning assigned to it under Section 2 clause (d) Cr.PC and it has been used in the ordinary sense of the terms *i.e.,* the expression of grief, statement of injury suffered by the victim. It was further held that it is easy for a house-wife to lodge a report at the police station and leave the investigation to the police rather than to file a written complaint. It was also held in the judgment that the Legislature do not appear to have thought anything otherwise than what was held above. This new air of thought came from the Honourable Allahabad High Court in *Mahendra Kumar Jain v. State of U.P.,* 1998 Crl.LJ 544. Whether the destitute first wife files a complaint in the Court or lodges a written information with the police or the complaint filed by her is referred to the police under Section 156(3) Cr.PC by the Magistrate, all this is only with reference to her grievance. In which way her grievance can be taken cognizance of is circumscribed by Section 198 Cr.PC. The judgment just referred seeks sans of these legal nonsenses and wants to address her problems for the sake of justice.

The cordinal principle of interpretation is that Law must change with the changing society, keeping in view various problems facing the society from time to time. Interpretation must keep pace with the new developments in the society and it must be in that time frame. While a paradigm which is victim oriented could certainly change the legal scene; the permanent panacea lies with the legislative amendment to Section 198 Cr.PC in a manner that is more suited to the contemporary needs in the society. Triumph of justice being the motto of law hoping for a change is not a hope against hope.

POWERS OF JUDICIAL MAGISTRATES TO ORDER INVESTIGATION AND TAKING COGNIZANCE IN PREVENTION OF CORRUPTION ACT AND OTHER ACTS

By

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I like to discuss the scope and object of the prevention of Corruption Act, 49 of 1988 and the Powers of Judicial Magistrates in ordering Investigation and taking cognizance of the offences under the Act. The P.C. Act, 88 was enacted with the objects and reasons to make the existing Anti-Corruption Law more effective by widening their coverage and by strengthening the provisions. The long title of the PC Act reads as follows :

> "An Act to consolidate and amend the law relating to the law prevention of corruption and for matters connected therewith".

The Act further reads as follows:

> "An Act for the more effective prevention of bribery and corruption.

The title given to the Act is undoubtedly part of the Act itself and the same can be used for the purpose of interpreting the Act as a whole, to ascertain its scope. Preamble is regarded as guidance for constructed to set out the fact or states law for which it is proposed to legislate by the Statute and it is a key to open the minds of makers of the Act. The mischief which they intended to redressal. If the words in the enactment are plain and clear capable of giving only one meaning effort should be given to them irrespective of the consequences that may follow from it.

The intention and purpose of the enactment was discussed in the following judgments by the Honourable Supreme Court, 2000 (8) SCC 571 para 18.

When corruption was sought to be eliminated from the polity all possible stringent methods are to be adopted within the bounds of law.

As per *J. Jayalalitha's* case, AIR 1999 SC 1912, observed as follows in para 15.

> "Moreover the Legislature has enacted the P.C. Act provided for a speedy trial of offences under the Act in public interest as it has become aware of rampant corruption amongst the public servants. Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society *i.e.*, also harmful to the national economy, national interest as the persons occupying high posts in Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and interest of country".

Shirish Kumar Ranga Rao Patil's case, 1997 (6) SCC 339, observed as follows:-

> (Para 16) 16. Corruption, appears to have spread everywhere. No facet of public function has been left unaffected by the putrefied stink of corruption. Corruption, they name is depraved and degraded conduct. Dishonesty is thine true colour; thine corroding effect is deep and pervasive; spreads like lymph nodes, cancerous cells in the human body spreading as wild fire eating away the vital veins in the efficacy of public functions. It is a sad fact that corruption has its roots and ramifications in the society as a whole. In the widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office. The root of corruption is nepotism and apathy in control on narrow considerations which often extend passive protection to the corrupt officers.

Ramsingh's case, 2000 (5) SCC 88

> (Para 10) "The Act was intended to make effective provisions for the prevention corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act this Court in *R.S.Nayak v. A.R.Antulay* held: SCC Page-200, (Para 18)
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> "The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the Court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is

the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self defeating. The Court is entitled to ascertain the intention of the Legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the Legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the Court to adopt that construction which would advance the object underlying the Act, namely to make effect provision for the prevention of bribery and corruption and at any rate not defeat it."

"1. Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it".

From the date of passing P.C. Act, 1988 till today the bribery and corruption of public servants who occupied high positions enormously increased as observed by the Supreme Court in the supra stated judgments.

The above judgments clearly reveal the intention of the Legislature, objects reasons for passing the enactment and this Act was passed to curb the corruption and bribery.

In this context I would like to discuss some provisions of the Act.

Section 4 deals with cases triable by Special Judges.

Sub-section (1) "Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force the offences specified in sub-section (1) of Section 3 shall be tried by Special Judges only.

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

Section 5, Procedure and Powers of Special Judge:

Section 5(1) A Special Judge may take cognizance of offences without the accused being committed to him for trial and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973, for the trial of warrant cases by Magistrates.

Section 5(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3) the provisions of Sections 326 and 475 of the Code of Criminal Procedure, 1973, shall so far as may be apply to the proceedings before a Special Judge and for the purpose of the said provisions, a Special Judge shall be deemed to be a Magistrate.

Section 17: Persons authorised to investigate:-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank—

(a) In the case of the Delhi Special Police establishment an Inspector of Police;

(b) In the Metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan areas notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 of an Assistant Commissioner of Police;

(c) Elsewhere, of a Deputy Superintendent of Police or a Police Officer of equivalent rank shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate, a Magistrate of the First Class as the case may be, or make any arrest therefore without a warrant :

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the First Class as the case may be, or make arrest therefore without a warrant:

Section 28 reads as follows:-

"The provisions of this Act shall be in addition to, and not in derogation of any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act be instituted against him."

Section 39 of Cr.PC reads as follows:- (Public to give information of certain offences).

Section 39 of Cr.PC reads as follows:- (Public to give information of certain offences).

Section 39, sub-section (1) Every person aware of the commission of, or of the intention of any other persons to commit any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860) namely:

(iii) Sections 161 to 165-A both inclusive (that is offences relating to illegal gratifications) and other offences prescribed therein shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police Officer of such commission or intention.

In addition to the above legal provisions the following judgments of the Honourable Supreme Court reported in 1999 (8) SCC 686—

Trisuns Chemical Industry Appellant

v.

Rajesh Agarwal and others Respondents

The power of the Court to take cognizance of the offence is laid in Section 190 of the Code. Sub-sections (1) and (2) read thus:

"190(1) subject to the provisions of this chapter any Magistrate of the First Class and any Magistrate of the Second Class specially empowered in this behalf under sub-section (2) may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received form any person other than a police officer; or upon his own knowledge, that such offence has been committed.

The only restriction contained in Section 190 is that the power to take cognizance is "subject to the provisions of this Chapter". There are 9 Sections in

Chapter XIV most of which contain one or other restriction imposed on the power of a First Class Magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. In the corresponding provision in the old Code of Criminal Procedure (1898) the commencing words were like these: "Except as hereinafter provided..... "Those words are now replaced by "subject to the provisions of this Chapter". Therefore, when there is nothing in Chapter XIV of the Code to impair the power of a Judicial Magistrate of the First Class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a Magistrate of the power to take cognizance of an offence - Of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such Acts. But such provisions are protected by *non-obstante* clauses. Anyway that is a different matter.

14. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.

On perusal of the above legal position the intention of the Legislature in enacting a Act is clearly discussed by the Honourable Supreme Court in the judgment stated supra.

As per Section 4 every offence specified in Section 1 of sub-section (3) shall be tried by the Special Judge. Under Section 5 a Special Judge may take cognizance of offences without actually being committed to him for trial.

Section 17 the Magistrate can order investigation by an officer below the rank of Dy. Superintendent of Police under Section 28 the Prevention of Corruption Act to be in addition and not in derogation of any other law for the time being in force.

In view of the above legal position the Judicial First Class Magistrate and other Magistrates are vested with the powers of ordering investigation under Section 156 (3) Cr.PC and also can take cognizance of the offence though they have no territorial jurisdiction.

The Parliament passed the enactment to curb corruption it is also convenient for the public to report the matter to the nearest Magistrate or police as directed under Section 39 Cr.PC and the public are forced to approach a Special Court or ACB, police which are situated at far off places it amounts to discouraging them from giving report and they may not approach the special Court or ACB, police due to inconvenience and hardship caused to them.

After taking cognizance of the offence if the Magistrate is of the opinion the case is exclusively triable by a particular Court it can send it to the concerned Court for enquiry or trial. It is also convenient to the public to approach the nearest Magistrate or police as a result of which there is possibility of curbing bribery and corruption.

The above legal position applicable to other enactments where there is no provision impairing or restricting the powers of Magistrate in that Act.
