REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 721 OF 2016

L. NARAYANA SWAMY .....APPELLANT(S)

VERSUS

STATE OF KARNATAKA & ORS. .....RESPONDENT(S)

W I T H

CRIMINAL APPEAL NO. 722 OF 2016

J U D G M E N T

A.K. SIKRI, J.

Before adverting to the question of law that has been raised in these appeals (which is common to both the cases), we would like to traverse through the facts and the background which has led to the filing of the present appeals.

2. Respondent No.2 (hereinafter referred to as the 'complainant') filed a complaint on the basis of which a case has been registered against the appellants, who are accused Nos. 3 and 5, for the offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of

Corruption Act, 1947 (for short, 'P.C. Act') and Sections 120(b), 427, 447 and 506 read with Section 34 of the Indian Penal Code, 1860. The complaint of the complainant contained the following allegations:

3. One Smt. Amararnmal was the original owner of immovable property measuring 259.95 acres in Survey No. 597-B and an area measuring 57.30 acres in Survey No. 601-A of Bellari, having purchased the same from the Government of India under a registered sale deed dated January 19, 1940, registered in the office of the Sub-Registrar, Bellari. The complaint further states that one Smt. Akula Lakshmamma and her children had obtained money decree against one Pitarnbara Modaliyar and in the execution of the said decree the decree holder purchased the land measuring 27.25 acres through court and, thus, became owner of the said property which is situated at Survey No. 597-B. Out of this 27.25 acres of land, an area measuring 10 acres of land was later acquired by the Government for forming high level canal by Thungabhadra Project. However, the revenue authorities failed to demarcate the remaining extent of land measuring 17.25 acres which forced Smt. Akula Lakshmamma and her children to file a suit seeking mandatory injunction. In the meantime, they sold the said 17.25 acres of land to one Mr. Parameshwara Reddy, father-in-law of Mr. Gali Janardhana Reddy. On the same day, i.e. on October 24, 2002, Smt. Akula Lakshmamma and her family members also entered into an

agreement for sale with accused No.6 (Mr. B. Sriramulu) for an area measuring 27.25 acres, which included 10 acres of land that had already been acquired by the Government. Thus, accused No.6 entered into agreement for sale even in respect of the acquired land. More over, accused No.6 and Mr. Gali Janardhana Reddy are close friends and, therefore, there was no reason to hold that accused No.6 was not aware of the transaction between Smt. Akula Lakshmamma and Mr. Parameshwara Reddy. Accused No.6 filed a suit for specific performance based on the said agreement to sell in which *ex-parte* decree dated April 08, 2003 came to be passed. On April 21, 2003, Mr. Parameshwara Reddy (with whom the first agreement to sell was entered into) sought for change of land use (though in respect of this very land accused No.6 had filed a suit for specific performance). The then Deputy Commissioner accorded his permission for change of land use vide order dated June 17, 2003. After this conversion order, Mr. Parameshwara Reddy gifted the entire land measuring 17.25 acres in faour of his daughter, Smt. Gali Laxmi Aruna, w/o. Mr. Gali Janardhana Reddy vide gift deed dated March 21, 2006. It is alleged that accused No.6 was fully aware of these facts. Notwithstanding the same, on the basis of the *ex-parte* decree of specific performance obtained by him, he filed execution petition and obtained the sale deed from the court in respect of the entire 27.25 acres of land. It was notwithstanding the fact

that out of this 27.25 acres of land, in respect of which accused No.6 obtained the sale deed, 17.25 acres was claimed by Mr. Parameshwara Reddy as well and has been gifted to his daughter and the remaining 10 acres of land had been acquired by the Government. Not only this, accused No.6 also applied for conversion of use of this very land and the authorities passed the order of conversion in his favour as well. As on the date of the order of conversion, accused No.6 was holding the post of Cabinet Minister. It is alleged that because of this reason he could obtain the order of conversion by exerting influence on the revenue authorities. Accused Nos. 3 and 5 (appellants herein) are the Government officials working as Assistant Commissioner and Deputy Director of Land Records respectively. In respect of the Government officials, it is alleged that accused No.1, Revenue Inspector, had conducted spot inspection on January 17, 2011; accused No.3, who is the Tehsildar, had recommended case for conversion on the same day and accused No.5, who is the Assistant Commissioner, had given an endorsement to accused No.6 on the very next day to the effect that property in question is not the subject matter of acquisition. On this basis, it is alleged that all the officials aided accused No.6 by abusing their official position. We may state at this stage itself that the appellants cannot argue that there are no allegations against them in the complaint warranting taking cognizance *qua* them.

On the basis of the aforesaid allegations, prayer was made in the complaint to secure the presence of accused persons and the complaint be referred to the Karnataka Lokayukta Police for investigation under Section 156(3) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') since the case required investigatory powers to unearth several other documents relating to the case.

4. The District and Sessions Judge, Bellari passed order dated June 14, 2003 on the said complaint thereby referring the same to the Police Inspector, Karnataka Lokayukta Police, Bellary for further investigation under Section 156(3) of Cr.P.C. The jurisdictional police registered the aforesaid case as Crime No. 9/2013 under Section 13(1)(d) read with Section 13(2) of the P.C. Act and Sections 120(b), 427, 447 and 506 read with Section 34 of the Indian Penal Code, 1860. The appellants herein, along with four other persons, filed Criminal Petition No. 10864 of 2013 before the High Court of Karnataka seeking quashing of the said proceedings. In this petition, order dated July 08, 2013 was passed observing that during the pendency of the matter, since the Police had filed a final report, those petitioners were at liberty to challenge the final report before the trial court.

5. According to the appellants, this order was passed by the High Court on erroneous statement made by the counsel as neither the investigation

was completed nor final report was filed in the court. Therefore, these appellants filed another Criminal Petition No. 101017 of 2014 seeking quashing of the entire proceedings. In the petition, the grounds taken by the appellants were that there was no allegation of any corrupt practice in the entire complaint insofar as they are concerned. It was further submitted that before directing further investigation under Section 156(3) of Cr.P.C. and taking cognizance of the complaint, the trial court should have satisfied itself that due sanction, as required under Section 19 of the P.C. Act read with Section 190 of the Cr.P.C., has been obtained and since no such sanction was obtained, such an order for further investigation could not have been passed by the trial court.

It may be mentioned that at the time of filing the complaint, the appellants had been transferred from the offices which they were holding by virtue of their promotion. However, they submitted that even on transfer they continued to hold the public office and, therefore, requirement of obtaining sanction was mandatory.

6. The High Court has, however, brushed aside the aforesaid contentions taken by the appellants and dismissed the petition filed by them. Though the petition before the High Court was filed jointly by the appellants, they had chosen to file separate appeals in this Court challenging the said judgment. That is how these two appears filed by them are aimed at same impugned judgment passed by the High Court.

7. With this factual background, we advert to the questions of law that arise for consideration:

> (1) Whether an order directing further investigation under Section 156(3) of the Cr.P.C. can be passed in relation to public servant in the absence of valid sanction and contrary to the judgments of this Court in ***Anil Kumar & Ors.*** v. ***M.K. Aiyappa & Anr.***[1] and ***Manharibhai Muljibhai Kakadia and Anr.*** v. ***Shaileshbhai Mohanbhai Patel and Ors.***[2]?
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> (2) Whether a public servant who is not on the same post and is transferred (whether by way of promotion or otherwise to another post) loses the protection under Section 19(1) of the P.C. Act, though he continues to be a public servant, albeit on a different post?

8. Since requirement of obtaining sanction is contained in Section 19(1) of the P.C. Act, it would be proper to reproduce the same. For our purposes, reproduction of sub-section (1) of Section 19 of the P.C. Act shall suffice which we reproduce hereinbelow:

> "19. **Previous sanction necessary for prosecution.**— (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]—
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> (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;

[1] (2013) 10 SCC 705
[2] (2012) 10 SCC 517

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

9. As is clear from the plain language of the said Section, the Court is precluded from taking "cognizance" of an offence under certain sections mentioned in this provision if the prosecution is against the public servant, unless previous sanction of the Government (Central or State, as the case may be) has been obtained. What is relevant for our purposes is that this Section bars taking of cognizance of an offence. The question is whether it will cover within its sweep order directing investigation under Section 156(3) of the Cr.P.C? High Court has taken the view, in the impugned judgment, that bar is from taking cognizance which would not apply at the stage of investigation by investigating officer. It is observed that sanction is required only after investigation and that too when, after investigation, it is found that there is substantial truth in the investigation report as to what amounts to cognizance of offence. The High Court has referred to Section 190 of the Cr.P.C. which stipulates that cognizance of an offence is to be taken under three contingencies viz. (a) upon receiving a complaint of facts which constitute such offence, or (b) on the basis of police report stating such facts which constitute an offence or upon information received from any

person other than police officer, or (c) *suo moto* when Magistrate acquires that such an offence has been committed. This position is clearly discernible from the reading of Section 190 of the Cr.P.C. and we extract the same hereinbelow:

> "**190. Cognizance of offences by Magistrates.-** (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-
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> 1. upon receiving a complaint of facts which constitute such offence;
> 2. upon a police report of such facts;
> 3. upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
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> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

10. When a complaint is received, the Court records preliminary evidence of the complainant on the basis of which it satisfies itself as to whether sufficient evidence is placed on record which may *prima facie* constitute such offence. Likewise, Police report is filed under Section 173(2) of the Cr.P.C. on the completion of investigation and on perusal thereof, the Magistrate satisfies himself about the facts which constitute such offence. Similar is the position in the third contingency. On this basis, the High Court has opined that since prior sanction is required only at the time of taking cognizance which stage comes much after the investigation is ordered under Section 156(3) of Cr.P.C. at the stage of

giving direction to investigate into the complaint, such a sanction is not required.

11. The above view taken by the High Court is contrary to the judgments of this Court in ***Manharibhai Muljibhai Kakadia*** and ***Anil Kumar***. In ***Manharibhai Muljibhai Kakadia***, the facts were that the respondent filed before the CJM a criminal complaint alleging that the appellant had, by doing the acts stated, committed the offences punishable under Sections 420, 467, 468, 471 and 120-B IPC. The CJM, in exercise of his power under Section 202 CrPC by his order dated 18.06.2004 directed an enquiry to be made by a police inspector. The investigating officer investigated into the matter and submitted a compliant summary report opining that no offence was made out. The CJM on 16.04.2005 accepted that report and dismissed the complaint. The respondent complainant filed a criminal revision petition thereagainst under Section 397 read with Section 401 CrPC before the High Court. The appellants then made an application seeking their impleadment as respondents in the revision proceedings so that they could be heard in the matter. On 05.08.2005, the High Court dismissed that application. Against that order, appeal was heard by special leave. This Court set aside the order of the High Court permitting the appellants to be impleaded in the revision proceedings. The Court took note of the provisions of Cr.P.C. i.e. Section 202, which does not permit an accused person to intervene

in the course of inquiry by the Magistrate. However, it was held that even while directing inquiry, the Magistrate applies his judicial mind on the complaint and, therefore, it would amount to taking cognizance of the matter. In this context, the Court explained the word "cognizance" in the following manner:

> "34. The word "cognizance" occurring in various sections in the Code is a word of wide import. It embraces within itself all powers and authority in exercise of jurisdiction and taking of authoritative notice of the allegations made in the complaint or a police report or any information received that an offence has been committed. In the context of Sections 200, 202 and 203, the expression "taking cognizance" has been used in the sense of taking notice of the complaint or the first information report or the information that an offence has been committed on application of judicial mind. It does not necessarily mean issuance of process."

12. Second judgment in the case of ***Anil Kumar*** referred to above is directly on the point. In that case, identical question had fallen for consideration viz. whether sanction under Section 19 of the P.C. Act is a pre-condition for ordering investigation against a public servant under Section 156(3) of Cr.P.C. even at pre-cognizance stage? Answering the question in the affirmative, the Court discussed the legal position in the following manner:

> "13. The expression "cognizance" which appears in Section 197 CrPC came up for consideration before a three-Judge Bench of this Court in *State of U.P.* v. *Paras Nath Singh* [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200], and this Court expressed the following view: (SCC pp. 375, para 6)
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> "*6*. … '*10*. … And the jurisdiction of a Magistrate to take

cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to *Black's Law Dictionary* the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.' [**Ed.**: As observed in *State of H.P.* v. *M.P. Gupta*, (2004) 2 SCC 349, 358, para 10 : 2004 SCC (Cri) 539.] "

14. In *State of W.B.* v. *Mohd. Khalid* [(1995) 1 SCC 684 : 1995 SCC (Cri) 266] , this Court has observed as follows:

"*13*. 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." [**Ed.**: As considered in *State of Karnataka* v. *Pastor P. Raju*, (2006) 6 SCC 728, 734, para 13 : (2006) 3 SCC (Cri) 179.]

> The meaning of the said expression was also considered by this Court in *Subramanian Swamy case* [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .
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> 15. The judgments referred to hereinabove clearly indicate that the word "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.
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> xxx xxx xxx
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> 21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in *Paras Nath Singh* [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] and *Subramanian Swamy* [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] cases."

Having regard to the ratio of the aforesaid judgment, we have no hesitation in answering the question of law, as formulated in para 7

above, in the negative. In other words, we hold that an order directing further investigation under Section 156(3) of the Cr.P.C. cannot be passed in the absence of valid sanction.

13. With this, we now address the second question i.e. whether the public servant not being in the same post, when the offence was allegedly committed, though continuing as a public servant, loses the protection under Section 19(1) of the P.C. Act? Contention of the respondents was that sanction under Section 19 of the P.C. Act is not required as the appellants have been transferred from the post which they were holding at the relevant time. In support of their plea that even on transfer/promotion, the appellants remain public servant, such a sanction was required, it was submitted that the object of Section 19 of the P.C. Act is to protect public servant from harassment and, therefore, exercise of powers under Section 19 of the P.C. Act is not empty formality. Since the Government, as a sanctioning authority, is supposed to apply its mind to the entire material and evidence placed before it and on examination thereof, it is to reach the conclusion as to whether the sanction is accorded or not. It was also argued that sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty. In support of the aforesaid arguments, reliance was placed on

State of Himachal Pradesh v. ***Nishant Sareen***[3] and ***Mansukhlal Vithaldas Chauhan*** v. ***State of Gujarat***[4].

14. The aforesaid judgments referred to by the appellants state the general proposition of law and purpose behind Section 19 of the P.C. Act. On the other hand, the question that needs to be answered is concerned, we find that it had same very question came up for consideration in ***Abhay Singh Chautala*** v. ***Central Bureau of Investigation***[5]. In that case, the appellants were MLAs when charges under the P.C. Act were framed against them. However the charges pertained to wrongdoing committed during earlier periods of time during which they had also been MLAs or MPs. The charges did not pertain to their current tenure as MLAs during which the charges were framed and trial initiated. On the date when charges were framed no sanction under Section 19, P.C. Act was obtained. An objection regarding the absence of sanction was raised before the Special Judge, who in the common order held that the charge-sheet did not contain the allegation that the appellants had abused their current office as MLAs and, therefore, no sanction was necessary. The High Court by the impugned order under Section 482 Cr.P.C. did not interfere with the said prosecution. This Court put its imprimatur to the aforesaid view of the High Court thereby dismissing the appeals. After discussing catena of judgments, it was held that even

[3] (2010) 14 SCC 527
[4] (1997) 7 SCC 622
[5] (2011) 7 SCC 141

when the appellants in that case held more than one offices during the check period which they are alleged to have abused; however, there will be no requirement of sanction if on the date when the cognizance is taken, they are not continuing to hold that very office. It was held that the relevant time is the date on which the cognizance is taken. If on that date, the appellant was not a public servant, there was no question of any sanction. It was also held that even if he continues to be a public servant but in a different capacity or is holding a different office than the one which is alleged to have been abused, still there would be no question of sanction. This can be found from the reading of paragraphs 54 and 56 of the judgment which we reproduce below:

> "54. The learned Senior Counsel tried to support their argument on the basis of the theory of "legal fiction". We do not see as to how the theory of "legal fiction" can work in this case. It may be that the appellants in this case held more than one offices during the check period which they are alleged to have abused; however, there will be no question of any doubt if on the date when the cognizance is taken, they are not continuing to hold that very office. The relevant time, as held in *S.A. Venkataraman* v. *State* [AIR 1958 SC 107 : 1958 Cri LJ 254], is the date on which the cognizance is taken. If on that date, the appellant is not a public servant, there will be no question of any sanction. If he continues to be a public servant but in a different capacity or holding a different office than the one which is alleged to have been abused, still there will be no question of sanction and in that case, there will also be no question of any doubt arising because the doubt can arise only when the sanction is necessary. In case of the present appellants, there was no question of there being any doubt because basically there was no question of the appellants' getting any protection by a sanction.
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> 56. Thus, we are of the clear view that the High Court was absolutely right in relying on the decision in *Prakash Singh Badal* v. *State of Punjab* to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19 of the Act as held in *K. Karunakaran* v. *State of Kerala* and the later decision in *Prakash Singh Badal* v. *State of Punjab*. The appeals are without any merit and are dismissed."

15. In the aforesaid extracted paragraph 54 there is a reference to the judgment of this Court in ***S.A. Venkataraman***. In that case, the issue was considered in the context of the P.C. Act wherein the relevant provision, corresponding to Section 19 of the present P.C. Act, was Section 6. Interpreting the provisions of Section 6, this Court held that even when a purported offence is committed by a person at the time he was a public servant, but he ceases to be a public servant on the date when cognizance of the offence alleged to have been committed is taken by the Court, no such sanction was required.

16. Likewise, in the case of ***Prakash Singh Badal & Anr.*** v. ***State of Punjab & Ors.***[6], the contention of the appellant in that case that permission to obtain sanction throughout service was necessary, was negatived in the following manner:

> "24. The plea is clearly untenable as Section 19(1) of the Act is time and offence related.
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> Section 19(1) of the Act has been quoted above.

[6] (2007) 1 SCC 1

> 25. The underlying principle of Sections 7, 10, 11, 13 and 15 have been noted above. Each of the above sections indicates that the public servant taking gratification (Section 7), obtaining valuable thing without consideration (Section 11), committing acts of criminal misconduct (Section 13) are acts performed under the colour of authority but which in reality are for the public servant's own pleasure or benefit. Sections 7, 10, 11, 13 and 15 apply to aforestated acts. Therefore, if a public servant in his subsequent position is not accused of any such criminal acts then there is no question of invoking the *mischief rule*. Protection to public servants under Section 19(1)(*a*) has to be confined to the time-related criminal acts performed under the colour or authority for public servant's own pleasure or benefit as categorised under Sections 7, 10, 11, 13 and 15. This is the principle behind the test propounded by this Court, namely, the test of abuse of office."

17. It clearly follows from the reading of the judgments in the cases of ***Abhay Singh Chautala*** and ***Prakash Singh Badal*** that if the public servant had abused entirely different office or offices than the one which he was holding on the date when cognizance was taken, there was no necessity of sanction under Section 19 of the P.C. Act. It is also made clear that where the public servant had abused the office which he held in the check up period, but had ceased to hold *'that office'* or was holding a different office, then sanction would not be necessary. Likewise, where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction. However, one discerning factor which is to be noted is that in both these cases the accused persons were public servants in the capacity of Member of Legislative Assembly / by virtue of political office. They were not public servants as government

employees. However, detailed discussion contained in these judgments would indicate that the principle laid down therein would encompass and cover the cases of all public servants, including government employees who may otherwise be having constitutional protection under the provisions of Article 309 and 311 of the Constitution. To illustrate, we may quote the following passage from the judgment of this Court in the case of ***R.S. Nayak*** v. ***A.R. Antulay***[7], which is reproduced along with other paragraphs from the judgment in ***Prakash Singh Badal***:

> "23. Offences prescribed in Sections 161, 164 and 165 IPC and Section 5 of the 1947 Act have an intimate and inseparable relation with the office of a public servant. A public servant occupies office which renders him a public servant and occupying the office carries with it the powers conferred on the office. Power generally is not conferred on an individual person. In a society governed by rule of law power is conferred on office or acquired by statutory status and the individual occupying the office or on whom status is conferred enjoys the power of office or power flowing from the status. The holder of the office alone would have opportunity to abuse or misuse the office. These sections codify a well-recognised truism that power has the tendency to corrupt. It is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This interrelation and interdependence between individual and the office he holds is substantial and not severable. Each of the three clauses of sub-section (1) of Section 6 uses the expression "office" and the power to grant sanction is conferred on the authority competent to remove the public servant from his office and Section 6 requires a sanction before taking cognizance of offences committed by public servant. The offence would be committed by the public servant by misusing or abusing the power of office and it is from that office, the authority must be competent to remove him so as to be entitled to grant sanction. The removal would bring about cessation of interrelation

[7] (1984) 2 SCC 183

between the office and abuse by the holder of the office. The link between power with opportunity to abuse and the holder of office would be severed by removal from office. Therefore, when a public servant is accused of an offence of taking gratification other than legal remuneration for doing or forebearing to do an official act (Section 161 IPC) or as a public servant abets offences punishable under Sections 161 and 163 (Section 164 IPC) or as public servant obtains a valuable thing without consideration from person concerned in any proceeding or business transacted by such public servant (Section 165 IPC) or commits criminal misconduct as defined in Section 5 of the 1947 Act, it is implicit in the various offences that the public servant has misused or abused the power of office held by him as public servant. The expression "office" in the three sub-clauses of Section 6(1) would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. This interrelation between the office and its abuse if severed would render Section 6 devoid of any meaning. And this interrelation clearly provides a clue to the understanding of the provision in Section 6 providing for sanction by a competent authority who would be able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider. By a catena of decisions, it has been held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants. (See *Mohd. Iqbal Ahmad* v. *State of A.P.* [(1979) 4 SCC 172 : 1979 SCC (Cri) 926 : AIR 1979 SC 677 : (1979) 2 SCR 1007]) The Legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the

> obvious reason that that authority alone would be able, when facts and evidence are placed before him to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the Legislature clearly provided that that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office."

18. In the case of the present appellants, there was no question of the appellants' getting any protection by a sanction. The High Court was absolutely right in relying on the decision in ***Prakash Singh Badal*** to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19, P.C. Act. Where the public servant had abused the office which he held in the check period but had ceased to hold "that office" or was holding a different office, then a sanction would not be necessary. Where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance,

there will be no necessity to take the sanction.

19. Insofar as argument of the appellants that there is no specific averment in the complaint for having committed the alleged act by them is concerned, we are unable to agree with this argument. As already pointed out above, allegations against these two appellants are that after conducting spot inspection by accused No.1 on 17.01.2003, first appellant (accused No.3) who was working as Tehsildar had recommended it on same day and thereafter second appellant (accused No.6) who was working as Assistant Commissioner had given an endorsement on the very next day to the effect that property is not the subject matter of acquisition. On this basis, it is alleged that these officials have abused their official position. We may record that learned counsel for the appellants have contended that they merely acted on the court decree. However, it may be two innocent explanation on the facts of this case as alleged in the case inasmuch as it is alleged that these two appellants did not bother to find out that there were two decrees in two different names in respect of same land and further that 10 acres of land in question had already been acquired and could not be the subject matter of decree. These were the aspects which were, *prima facie*, to be looked into by these appellants. On the basis the aforesaid purported defence, therefore, the proceedings cannot be quashed. It would be a matter of evidence on the basis of which culpability of the appellants

shall be judged.

20. The aforesaid discussion leads us to the conclusion that the judgment of the High Court though on the issue of obtaining the sanction at the time of taking cognizance may not be correct insofar as question No.1 formulated above is concerned, in the facts of the present case, insofar as question No.2 is concerned, it is rightly decided. Effect thereof would be to hold that sanction was not needed as the appellants, at the time of taking cognizance, were not holding the post which is alleged to have been misused.

21. As a consequence, these appeals fail and are, accordingly, dismissed with no order as to costs.

.....J.
(A.K. SIKRI)

.....J.
(N.V. RAMANA)

NEW DELHI;
SEPTEMBER 06, 2016.