

(2012) 11 AHC CK 0050

In the Allahabad High Court

Case No : Writ Petition No's. 2087 (M/B) , 2019 (M/B) of 2009, 700 (M/B) of 2011, 2795 (M/B) of 2009, 733 (M/B) of 2011, 701 (M/B) of 2011

Anupama Singh

APPELLANT

Vs

Central Bureau of Investigation and Others

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 356
Criminal Procedure Code, 1973 (CrPC) — Section 132, 156(3), 170, 173, 173(1)(d)
Evidence Act, 1872 — Section 114(e)
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 13(1)(d), 13(2)

Citation : (2012) 10 ADJ 663

Hon'ble Judges : Imtiyaz Murtaza, J; Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : S.M. Royekwar, Abhay Pratap Singh, Asim Kumar Singh, Brijesh Kumar Singh, Chandra Bhushan Pandey, H.S. Jain, Prince Lenin, Rohit Tripathi and Saurabh Shankar Srivastav, for the Appellant; Bireshwar Nath, Dhruv Mathur and Kapil Misra, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Imtiyaz Murtaza, J.—The above petitions have the complexion of Public Interest Litigation and have their genesis in the C.B.I. enquiry conducted pursuant to the orders rendered by the Apex Court in Writ Petition No 13381 of 1984, M.C. Mehta v. Union of India dated 27.11.2006 whereby the C.B.I. had filed police report u/s 173(2) Cr.P.C. alongwith the report of S.P. and entire related material against Ms. Mayawati, Sri Naseemuddin Siddiqui, Sri R.K. Sharma and Sri Rajendra Prasad u/s 120-B, 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. In the aforesaid petition filed by M.C. Mehta (supra), the Apex Court gave following direction which are excerpted below.

We accordingly, direct C.B.I. to place the evidence/material collected by the

investigating team alongwith the report of the SP as required u/s 173(2) Cr.P.C. before the Court/Special Judge concerned who will decide the matter in accordance with law. It is necessary to add that in this case we were concerned with ensuring proper and honest performance of duty by C.B.I. and our above observations and reasons are confined only to that aspect of the case and they should not be understood as our opinion on the merits of accusation being investigated. We do not wish to express any opinion on the recommendations of the SP. It is made clear that none of the other opinions/recommendations including that the Attorney General or India CVC shall be forwarded to the Court/Special Judge concerned.

It would appear that as a consequence of order of the Apex Court, the C.B.I. registered a case (R.C. No. 0062003 A 0018) u/s 120-B IPC read with Sections 420, 467, 468 and 471 I.P.C. and proceeded with investigation of the case. After completion of the investigation, the C.B.I. drew charge-sheet against Ms. Mayawati and Mr. Naseem Uddin Siddiqui arrayed as respondents under Sections 120-B, 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, but the same was placed before the Governor of U.P. for according sanction u/s 197 Cr.P.C. and 19 of the Prevention of corruption Act. By means of order dated 3.6.2007, the Governor declined to accord sanction for prosecution of Ms. Mayawati and Sri Naseemuddin Siddiqui. Thereafter, it would further transpire, Special Judge (C.B.I.), refused to take cognizance in the matter for want of sanction.

2. The petitions aforesaid have been knit together for being decided by a composite order as the reliefs sought in all the petitions are identical/common and have been preferred in the matter commonly known as "Taj Corridor Matter".

3. The contentions in all the petitions are identical and are two fold- firstly the impugned order of the designated Court is patently illegal and secondly, the C.B.I. despite knowing fully well that the aforesaid order is amenable to challenge, did not challenge the order. The further contention of the petitioners is that by means of the order of the Apex Court, the C.B.I. was required to submit charge-sheet in the Court and instead of complying with the order, the C.B.I. placed the charge-sheet before the Governor and it was thereafter that the charge-sheet was placed in the Court. It is submitted that by a stream of decisions of the Apex Court, the prior sanction would not extend its coverage to the offences under Sections 120-B, 420, 467, 468 and 471 IPC.

4. The relief sought in Writ petition No 2087 of 2009 (M/B) filed by Anupama Singh is quoted below:

(1) to issue a writ, order or direction of or in the nature certiorari quashing the impugned order of the designated Court, as mentioned in Paragraph-2 of this writ petition, after summoning the record and direct the designated Court to proceed in accordance with law; or

(2) to issue a writ, order of direction of or in the nature of mandamus

commanding the C.B.I. to challenge the impugned order of the designated Court, before the appropriate forum, after honestly and sincerely explaining the delay; or

(3) to issue a writ, order of direction of or in the nature mandamus commanding the C.B.I. to carry out further investigation or re-investigation in the present matter so that the prosecution of the accused persons is taken to its logical conclusion;

(4) to issue any other order or direction deemed fit and proper in the facts and circumstances of the case

(5) to allow this writ petition with costs.

5. The relief sought in Writ petition No. 2019 (M/B) of 2009, Kamlesh Verma v. Union of India and others, is quoted below:

(i) to issue a writ, order or direction of or in the nature of certiorari quashing the impugned order of the designated Court, as mentioned in Paragraph-2 of this writ petition, after summoning the record and direct the CBI Court to pass fresh order in accordance with law; or

(ia) issue a writ, order or direction or writ in the nature of mandamus directing the Special Judge, CBI, Lucknow to take cognizance against all the accused persons as if no sanction is required;

(ii) to issue a writ, order or direction of or in the nature of mandamus commanding the CBI to challenge the impugned order of the designated Court, before the appropriate forum, after honestly and sincerely explaining the delay; or

(iii) to issue a writ, order or direction of or in the nature of mandamus commanding the CBI to carry out further investigation or re-investigation in the present matter so that the prosecution of the accused persons is taken to its logical conclusion;

(iv) to issue any other order or direction deemed fit and proper in the facts and circumstances of the case.

(v) to allow this writ petition with costs.

6. The relief sought in Writ petition No. 700 (M/B) of 2011, Kashi Prasad Yadav v. Central Bureau of Investigation and others, is quoted below.

(1) to issue a writ, order or direction of or in the nature of certiorari quashing the impugned order, dated 5.6.2007, contained in Annexure 1 to this writ petition and direct the designated Court to proceed in accordance with law; or

(2) to issue any other order or direction deemed fit and proper in the facts and circumstances of the case to ensure that the prosecution in the Taj Corridor scam case is taken to its logical conclusion.

(3) to allow this writ petition with costs.

7. The relief sought in Writ petition No 2795 (M/B) of 2009, Mohd. Kateel Ahmad v. Union of India and others, is quoted below:

(1) a writ, order or direction in the nature of certiorari quashing the impugned order dated 5.6.2007, passed by the Special Judge, Anti Corruption (Central), C.B.I., Lucknow in case No. 11/2003 arising out of RC No. 0062003 A 0018, as contained in Annexure No. 1 to this writ petition.

(2) a writ, order or direction in the nature of mandamus commanding the Special Judge, Anti Corruption (Central), C.B.I., Lucknow to reconsider the case No. 11/2003 arising out of R.C. No. 0062003A0018, afresh in the light of Police report submitted by the Opposite Party No. 2.

(3) any other appropriate writ, order or direction as this Hon''ble Court deems appropriate.

(4) Allow the writ petition with costs.

8. The relief sought in Writ petition No. 733 (M/B) of 2011 (PIL) (Criminal), Sachindra Pratap Singh v. Union of India and others, is quoted below :

(1) to issue a writ, order or direction in the nature of certiorari quashing the impugned order, dated 5.6.2007, contained in Annexure No. 1 to this writ petition and direct the designated Court to proceed in accordance with law; or

(2) to issue any other order or direction deemed fit and proper in the facts and circumstances of the case to ensure that the prosecution in the Taj Corridor scam case is taken to its logical conclusion;

(3) to allow this writ petition with costs.

9. The relief sought in Writ petition No. 701 (M/B) of 2011 (PIL) Mamta Singh v. Union of India and others, is quoted below:

(1) to issue a writ, order or direction in the nature of certiorari quashing the impugned order, dated 5.6.2005, contained in Annexure 1 to this writ petition and direct the designated Court to proceed in accordance with law; or

(2) to issue any other order or direction deemed fit and proper in the facts and circumstances of the case to ensure that the prosecution in the Taj Corridor scam case is taken to its logical conclusion;

(3) to allow this writ petition with costs.

10. The matter came up before the Division Bench which after scrutiny of the facts on record, passed a detailed order on 18th Sept 2009 wherein the Bench framed points which crystallized for consideration. The same being germane are quoted below :

In view of the facts and circumstances of the case and in view of the aforesaid

points involved and the questions raised, whether a direction can be issued to the C.B.I. to challenge the order of Special Court C.B.I. in the higher forum or a direction can be issued to the Special Court C.B.I. to take cognizance and proceed with the matter, are very important and relevant questions for consideration, alongwith the plea whether it is a case where no sanction was required u/s 197 of the Cr.P.C. for taking cognizance require determination by the Court.

11. Before we proceed further in the matter, it would be apt to advert to the background facts in detail. The Apex Court in *M.C. Mehta v. Union of India*, had outlined certain directions vide its order dated 30.12.1996, with the avowed object of protecting the national and world fame heritage monument namely, "Taj Mahal" situated in Agra and for observance of such directions, a Monitoring Committee was also constituted by the Apex Court which was required to report whether the directions issued by the Apex Court were observed in compliance or not. On 25.3.2003, it would appear, Monitoring Committee preferred an application bearing I.A. No 376 of 2003, the substance of which was that U.P. Government had chalked out a project which included diversion of the river Yamuna and reclamation of land for constructing food plazas shops, amusement activities like Appu Ghar on the lines of one in Delhi in terms of development of Heritage Corridor for T.T.Z. (Taj Trapezium Zone) area at Agra. On that application, notices were issued to all the parties concerned. Be that as it may, the Apex Court by means of its order dated 16.7.2003 enjoined the C.B.I. to ensure that enquiry with regard to any illegality/irregularity committed by the officers/persons be embarked upon at the earliest. Pursuant to the direction aforesaid, the C.B.I. put forth a report having complexion of preliminary enquiry report on 11.9.2003 captioned "Taj Corridor matter". It was as a sequel to the said report that the Apex Court vide its order dated 18.9.2003 reported in (2003) 8 SCC 696, directed the C.B.I. to lodge a First Information Report and to investigate in accordance with law against the officers and persons who had their complicity in the matter. It was in this perspective that FIR RC No. 0062003A0018 of 2003 came to be registered on 5.10.2003 u/s 120-B read with Section 420, 467, 468 and 471 and substantive offences u/s 420, 467, 468, 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act nominating therein Ms. Mayawati and ten other persons. It was in the light of the aforesaid order of the Apex Court, the C.B.I. submitted its report u/s 173 Cr.P.C. before the Special Judge C.B.I. Lucknow on 15.2.2007 followed by an application made by the C.B.I. whereby it sought time to obtain sanction u/s 197 Cr.P.C. as it was of the view that prior sanction was essential apparently and obviously because in the opinion of the C.B.I. the offence as alleged was committed in the exercise of the official duties. The case, it would further appear, was fixed for 15.5.2007 and again on 5.6.2007 before the designated Court. It would further transpire that the Governor vide its order dated 3.6.2007 declined sanction to prosecute Ms. Mayawati and Naseemuddin u/s 197 Cr.P.C. and also u/s 19 PC Act. On 5.6.2007, the Special Judge rendered an order which was to the

effect that it had no jurisdiction to proceed with the matter in the absence of sanction for prosecution. It was in this conspectus that the petitions afore-stated, came to be filed in tandem for the reliefs as excerpted above.

12. We have heard the learned counsel appearing for the petitioners, learned counsel for the CBI and Union of India and learned counsel for other respondents at prolix length. The counsel of the parties also filed written submissions in the case and relevant case laws.

13. Learned counsel for the petitioners have placed credence on the directions issued by the Apex Court in the case of M. C. Mehta (supra) wherein it was directed that the Central Bureau of Investigation after investigation, shall file police report before the Court (designated C.B.I. Court) and the Court shall proceed in accordance with law. It is contended that the sanction for the prosecution was not required inasmuch as charge-sheet has been submitted in observance of the order passed by the Apex Court. The learned counsel for the petitioner further placed reliance on "Prakash Singh Badal's case" in aid of his contentions.

14. Ms. Kamini Jaiswal, Senior Advocate and Sri Rohit Tripathi representing petitioner Mamta Singh have canvassed at length and put forth their contentions emphatically, firstly that the designated Court had no jurisdiction to direct the prosecuting agency to obtain sanction u/s 197 (1) Cr.P.C. for prosecution of Ms. Mayawati and Naseemuddin Siddiqui and to accept the final report without coming to a definite conclusion as to the requirement of such sanction u/s 197 (1) Cr.P.C. with respect of offences charged and merely on the ipse dixit of the prosecuting agency in the police report. The second submission advanced across the bar is that the prosecuting agency had no jurisdiction to canvass for sanction u/s 197 Cr.P.C. in the final report submitted u/s 173 (2) Cr.P.C. or orally before the Designated Court. Thirdly the submission is that the designated Court has no jurisdiction to give time to the prosecuting agency purportedly on its admission of requirement of sanction u/s 197(1) Cr.P.C. without ex-facie recording any finding as to the requirement of sanction u/s 197 (1) Cr.P.C. and thereafter refusing to take cognizance of substantive offences under Sections 120-B, 420, 467, 468 and 471 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. To elucidate the points under arguments, the learned counsel delved into the provisions of Section 197(1) Cr.P.C. submitting that the expression "acting or purporting to act in the discharge of his official duty" is referable to every such offence provided in the Penal Code or only such class of offences or offence provided in the Penal Code which has a reasonable connection with the "discharge of official duty" of the public servant. On the arguments advanced on the question of maintainability of the petition, it is submitted that delay or laches cannot be reckoned with in the facts and circumstances which have been detailed in the rejoinder-affidavit in which allegation of misuse of authority has been leveled involving exerting of pressure by way of harassment for not pursuing the writ petition. It is quintessentially

submitted that question of maintainability of writ petition does not arise when there is treacherous misuse of public office and authority for undue gain, embezzlement of funds, corruption which actions of such public servants demean public confidence in the rule of law and in connection with this submission, he relied on the decision of the Apex Court in M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and and District Board, Shahabad and others, .

15. To prop up his submission, the learned counsel relied upon following decisions.

1. Vineet Narain and Others Vs. Union of India (UOI) and Another,
2. Baijnath Gupta and Others Vs. The State of Madhya Pradesh,
3. Parkash Singh Badal and Another Vs. State of Punjab and Others, .
4. Bholu Ram Vs. State of Punjab and Another,
5. Raj Kishore Roy v. Kamleshwar Pandey and another, 2002 (45) ACC 788
6. Sarbananda Sonowal Vs. Union of India (UOI) and Another,
7. M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and and District Board, Shahabad and others,
8. A.V. Papayya Sastry and Others Vs. Government of A.P. and Others,
9. Kunhayammed and Others Vs. State of Kerala and Another,
10. Fakhruddin Ahmad Vs. State of Uttaranchal and Another, .

16. The submission of Sri C.B. Pandey appearing for the petitioners proceeds on similar lines as argued by the counsel mentioned supra. The quintessence of submission is that in extraordinary case, this Court under Article 226 of the Constitution of India may interfere and pass suitable order for the following reasons:

(1) That the factual background, how this case arose, are narrated in M.C. Mehta v. Union of India, in which the Apex Court directed C.B.I. to lodge FIR and investigate the case and that the investigation of the case had been monitored by the Apex Court.

(2) That the C.B.I. collected the materials and evidence against the accused persons but on extraneous consideration, the report of the C.B.I. was placed before the Attorney General of India for his advice.

(3) That after submission of report u/s 173(2) Cr.P.C. again an effort was made to scuttle the prosecution and for that purpose, sanction was sought while the fact remains that the sanction was not needed. Further submission of Sri C.B. Pandey is that in this case, in view of decision of a Division Bench of this Court in the case of Vishwanath Chaturvedi v. Union of India, 2011(29) LCD 454, sanction

was not required.

17. In support of his submission, the learned counsel referred to the following decisions.

1. Vishwanath Chaturvedi v. Union of India, 2011 (29) LCD 454.

2. The State of Maharashtra Vs. Farook Mohammed Kasim Mapkar and Others, .

18. Sri Bireshwar Nath, counsel for CBI and Sri Jayant Singh Tomar for Union of India were also heard at length. Sri Bireshwar Nath counsel for the C.B.I. has filed written submissions and sum and substance is that the act of Ms Mayawati and Sri Naseemuddin was in the discharge of official duty and it is in this perspective that sanction was required.

19. Per contra, learned counsel representing Ms. Mayawati and Sri Naseemuddin Siddiqui namely, Sri Satish Chandra Mishra, Senior advocate, put forth objections having complexion of preliminary objection riveted on maintainability of the writ petition predicated on the ground that all the petitioners are political personages and the writ petitions have been filed without following the High Court Rules. It is further submitted that the order of granting sanction for the prosecution was assailed in the Apex Court and the writ petitions so filed climaxed with dismissal. Lastly, it is submitted that an alternative remedy was available for assailing the order of the Court refusing to take cognizance and a criminal revision had also been filed in this Court.

20. To lend cogency to his submissions on the maintainability of the writ petitions, Sri Satish Chandra Mishra, Senior Advocate has adverted attention to various decisions which are as follows:

1. State of Madhya Pradesh Vs. Sheetla Sahai and Others,

2. Rajiv Ranjan Singh "Lalan" and Another Vs. Union of India (UOI) and Others,

3. Common Cause (A Regd. Society) Vs. Union of India (UOI) and Others,

4. Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, at page 593

5. Kamini Kumar Das Choudhury Vs. State of West Bengal and Others,

6. Yunus (Babooobhai) A Hamid Padvekar Vs. State of Maharashtra through its Secretary and Others,

7. State of Orissa and Another Vs. Mamata Mohanty,

8. M.C. Mehta Vs. Union of India (UOI) and Others,

9. State of Karnataka and Another Vs. All India Manufacturers Organization and Others,

10. Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, .

11. Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another, , at page 462
12. State of U.P. and another Vs. Labh Chand,
13. U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others,
14. Rambhai Nathabhai Gadhvi and Others Vs. State of Gujarat,
15. Lalu Prasad Yadav and Another Vs. State of Bihar and Another,
16. State of Uttaranchal Vs. Balwant Singh Chauhal and Others,
17. K.D. Sharma Vs. Steel Authority of India Ltd. and Others,
18. Divine Retreat Centre Vs. State of Kerala and Others,
19. Dr. B. Singh Vs. Union of India (UOI) and Others,
20. Welcom Hotel and Others Vs. State of Andhra Pradesh and Others,
21. Dr. D.C. Saxena, Contemnor Vs. Hon"ble the Chief Justice of India,
22. Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju and Others,
23. Suraj Prakash Gupta v. State of J & K, (2002) 10 SCC 158
24. Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes,
25. Durga Prasad Vs. Naveen Chandra and Others,
26. Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others,
27. Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, .

21. It is also submitted that in three writ petitions, notices were not issued to the respondents.

22. In connection with the above submission, it would suffice to say that since in all the writ petitions, reliefs sought were identical, we feel called to dispense with the formality of issuing fresh notices to respondents at this stage and would prefer to decide the matter on the basis of counter and rejoinder-affidavits exchanged between the parties in other writ petitions.

23. It would transpire from the record that the writ petition No. 2019 (MB) 2009 was already admitted after a detailed order passed by this Court and notices were issued to respondent nos. 6 and 7 and the case was fixed for final hearing in the month of Nov 2009. It needs hardly be said that counter and rejoinder-affidavits have already been exchanged.

24. The question pertaining to maintainability of the petitioner has already been considered by a Division Bench of this Court and it is rendered otiose.

25. In the instant case, as mentioned in the earlier part of this judgment, the investigation was conducted by the C.B.I. on the direction of the Apex Court and the C.B.I., after conclusion of investigation, submitted charge-sheet before the Special Court C.B.I. From a perusal of the order dated 5.6.2007, it would be eloquent that since sanction to prosecute was not filed on 15.2.2007 as the C.B.I. had sought time to file sanction u/s 197 Cr.P.C. and Section 19(1) of the Prevention of Corruption Act, the case was adjourned for 15.5.2007. The case was again adjourned to 15.5.2007 on the application of C.B.I. because the order of sanction for the prosecution against accused persons was still awaited. It was in this perspective that the Special Court had fixed 5th June 2007 and on the said date, passed the impugned order.

26. It would be useful to excerpt below the conclusions arrived at by the C.B.I. after conclusion of investigation in the case.

47. The aforesaid facts disclose commission of offences punishable u/s 120-B read with Sections 420, 467, 468, 471 IPC and 120-B read with Section 13(2) read with Section 13(1)(d) of PC Act, 1988 and substantive offences thereof against Ms. Mayawati, the then Chief Minister, UP, Shri Naseemuddin Siddiqui, the then Minister, Government of U.P. Shri R.K. Sharma, the then Principal Secretary Environment Department U.P., Shri Rajendra Prasad, then then under secretary Environment Department U.P. Shri Mahendra Sharma, Additional General Manager (Retired), and Shri Kanial Radhu, Managing Director M/S Ishvakoo (India) Private Limited (HPL).

48. That it is further submitted that requirement of prosecution sanction against each accused u/s 19 of PC Act/ 197 of Cr.P.C. is indicated as below in the table.

49. It is submitted that this report is being filed pursuant to the direction of the Hon"ble Supreme Court vide judgment dated November 27, 2006 in IA No 431 in Writ Petition (Civil) No. 13381 of 1984 of M.C. Mehta (Petitioner) v. Union of India and others (copy enclosed), as per which it was directed inter alia as below.

We, accordingly, direct the C.B.I. to place the evidence/material collected by the investigating team alongwith the report of the SP as required u/s 173(2) Cr.P.C. before the concerned Court/Special Judge who will decide the matter in accordance with law.

50. It is further submitted that in accordance with the aforesaid directions of the Hon"ble Supreme Court. Report of the SP is also enclosed. The Report of the SP (SP's Report) is a document prepared in accordance with Para 19.14 of C.B.I. Crime Manual. It gives the result of enquirers/investigation as required to be sent to Ministries or other departmental authorities for the following purposes

(a) for getting sanction for prosecution

(b) for obtaining a complaint for prosecution as required under the relevant provisions of different Acts

(c) for taking Regular Department Action

(d) for taking such action as may be considered appropriate by the Department

(e) for information (This includes the report about close of a case)"

51. The report of the SP, being enclosed herewith, can be sent to the concerned competent authorities to obtain sanctions for prosecution u/s 19 of PC Act, 1988 and u/s 197 Cr.P.C. in respect of the aforementioned Public Servants (as discussed at Para 18). The said Report of the SP may kindly be treated as confidential document and not a part of 173(2) Cr.P.C. report. It is requested that the said SP's Report should not be provided to the accused persons in the instant case since it is not a relied upon document.

52. It is, therefore, prayed that the accused persons namely Ms. Mayawati, the then Chief Minister, S.P. Shri R.K. Sharma, the then Secretary/Principal Secretary, Environment Department, UP, Shri Rajendra Prasad, the then Additional General Manager, M/s NPCC and Shri Kamal Radhu, Managing Director, M/s Ishvakoo (India) Private Limited (IIPL) may kindly be dealt with in accordance with law in the light of orders of the Hon'ble Supreme Court dated 27.11.2006.

27. After submission of the charge-sheet, the C.B.I. approached His Excellency, the Governor of the Uttar Pradesh for obtaining sanction for the prosecution of the respondents and the order passed by His Excellency, the Governor which is annexed as Annexure P-2 to the Suppl. affidavit filed in Writ petition No 700 (MB) 2011, is quoted below:

The C.B.I. has charged Ms Mayawati with the offences u/s 120-B (conspiracy) read with 420 (cheating), 467, 468, 471 (forgery) and substantive offences of all these as well as under Sections 113(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Alongwith Ms. Mayawati, her Minister of Environment Mr. Naseemuddin Siddiqui has also been charged for similar offences. In view of the facts dealt with in detail in the preceding paragraphs of this order, I hold that there is no prima facie case to charge Ms. Mayawati with the offences charged against her. There was no forgery either. There was also no element of corruption on her part. What was attributed to her was a reported approval, as claimed by her Principal Secretary Mr. P.L. Punia, for release of funds for certain project work. Soon after, there was release of funds by the CCEA of Government of India for this project and other projects connected with the Taj Trapezium Zone. The fact that she wrote to the Union Minister Mr. T.R. Balu for sanction of the project, the fact that the MMB consisting of officers of both the State and the Central Government regularly met and discussed the project and the fact that even a sum of Rs. 17 crores was spent through the Central Government Public Sector Undertaking, NPCC, all go to show that the serious offence with which Ms. Mayawati and the Minister were charged do not stand scrutiny.

I therefore decline to give sanction u/s 197 Cr.P.C. and Section 19(1) Prevention of Corruption Act for prosecution of Ms. Mayawati and Mr. Naseemuddin Siddiqui for the offences u/s 120-B read with 420, 467, 468, 471 and substantive offences thereof alongwith Section 120-B IPC read with Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act 1988.

28. At this juncture, it would be useful to quip here that challenge to the validity of order refusing sanction is not before us. This Court in the writ petition No 2019 (MB) of 2009 Kamlesh Verma, had rejected the amendment application on the premises that petitioner did not want to propose relief (1-B) namely; for quashing the order passed by His Excellency the Governor refusing sanction.

29. Sri Satish Misra Senior Advocate drew attention of the Court to the fact that order of His Excellency, the Governor was subject-matter of challenge in various petitions filed in the Apex Court but the Apex Court did not interfere with the order passed by his Excellency the Governor, refusing sanction.

30. It may also be noted here that Criminal Misc Petition No 8587 of 2007 Ram Mohan Garg v. State of U.P. and another and writ petition No (C) No 434 of 2007 Rohtash Singh Nagar v. Union of India were dismissed as withdrawn.

31. Sri Krishna Mahajan filed an I.A. No 465 of 2007 in Writ (C) No 13381 of 1984 on 30.6.2007 challenging order dated 3.6.2007 passed by His Excellency, the Governor before the Hon. Supreme Court citing various grounds. The aforesaid I.A. No. 465 of 2007 was not entertained by the Apex Court and dismissed. It was further pointed out that one more writ petition namely, Writ Petition (Crl.) No 29 of 2009 Satish Kumar v. Union of India, was filed before the Apex Court for quashment of the order dated 3.6.2007 rendered by His Excellency and also the order dated 5.6.2007 passed by the Special Judge and the same was also dismissed studded with the phraseology "Heard the petitioner in per-"son. The Writ Petition is dismissed."

32. The Special Judge after refusal of the sanction proceeded to pass the impugned order which is excerpted below :

5.6.2007.

In compliance of order of Hon"ble Supreme Court in Writ Petition No. 13381/1984 M.C. Mehta v. Union of India, dated 27.11.2006, the CBI has filed police report u/s 173 (2) Cr.P.C. alongwith report of SP and entire related material against Ms. Mayawati, Sh. Naseemuddin Siddiqui, Sh. R.K. Sharma and Sh. Rajendra Prasad under Sections 120B, 420, 467, 468 and 471 I.P.C. and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 on 15.2.2007.

Since the sanction to prosecute was not filed on that date i.e. 15.2.2007 the accused persons being public servants, CBI sought time to file sanction u/s 197 Cr.P.C. and Section 19(1) of Prevention of Corruption Act, alleging that the process for obtaining sanction may entail three months time. Thereafter Court

passed an order stating that in the absence of sanction to prosecute u/s 197 Cr.P.C. and Section 19(1) of Prevention of Corruption Act, 1988 it is not possible for the Court to take cognizance against the accused persons and posted the case for 15.5.2007 for taking cognizance.

On 15.5.2007 CBI moved an application alleging that sanction against accused persons is still awaited, further date may be fixed accordingly.

Today the CBI has filed an application stating in para 3 of the same that H.E the Governor of U.P. who is competent authority to accord sanction for prosecution in respect of Ms. Mayawati and Sh. Naseemuddin Siddiqui has declined to give sanction u/s 197 Cr.P.C. and Section 19(1) of Prevention of Corruption Act, 1988 for the prosecution of Ms. Mayawati and Sh. Naseemuddin Siddiqui for the offences u/s 120-B read with 420, 467, 468, 471 IPC and substantive offences thereof alongwith Section 120-B IPC read with 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 vide order dated 3.6.2007.

The order of competent authority alongwith opinion of Additional Solicitor General of India has also been submitted by the CBI.

As observed earlier by the Court in the order dated 15.2.2007 that in the absence of sanction to prosecute Ms. Mayawati and Sh. Naseemuddin Siddiqui, this Court has no jurisdiction either to take cognizance or to proceed further in respect of Ms. Mayawati and Sh. Naseemuddin Siddiqui in this case.

An adjournment application has been moved on behalf of Sh. R.K. Sharma seeking time to file supplementary replication which is granted and the case is fixed on 5.7.2007 for filing of supplementary replication/disposal and for further proceedings in respect of other accused persons.

33. The first and foremost submission canvassed across the bar by the counsel for the petitioners is that there was a categorical direction of the Apex Court to the effect that after submission of police report, the matter would be placed before the Magistrate (Designated Court), which it was further observed, would proceed in the matter in accordance with law. Expatiating further on his submission, it was argued, the matter (Taj Corridor) came into being pursuant to the directions of the Apex Court and even the investigation in the matter was closely monitored by the Apex Court. The learned counsel also drew our attention to the direction of the Apex Court which was to the effect that after conclusion of the investigation, the C.B.I. would put forth the report u/s 173 Cr.P.C. before the Magistrate (Designated Court), which it was further directed, would decide the matter in accordance with law. The precise submission is that in view of the categorical direction of the Apex Court, it was not open for the Magistrate/Designated Court to have put aside the police report.

34. We have bestowed our anxious consideration to the above submission. It is worthy of notice here that the Apex Court had closely monitored the investigation being conducted by the C.B.I. in order to lend assurance that fair and proper

investigation is not scuttled at any stage and it cannot be said that the Apex Court had ever delved into the merit of the accusations or matter relating to prosecution. In connection with it, the observation of the Apex Court in *Jakia Nasim Ahesan and Another Vs. State of Gujarat and Others*, may be noticed and the same being germane is excerpted below.

We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report u/s 173(2) of the Code to the Court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in *M. C. Mehta (Taj Corridor Scam) v. Union of India*, in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent Court, according to the ordinary procedure prescribed by law.

.....Having so directed, the next question is whether this Court should continue to monitor the case any further. The legal position on the point is made clear by this Court in *Union of India v. Sushil Kumar Modi*, wherein, relying on the decision in *Vineet Narain v. Union of India*, a Bench of three learned Judges had observed thus: (*Sushil Kumar Modi case*, SCC p. 662, para 6)

6... that once a charge-sheet is filed in the competent Court after completion of the investigation, the process of monitoring by this Court for the purpose of making C.B.I. and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the Court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive.

In *M.C. Mehta v. Union of India*, a question arose as to whether after the submission of the final report by C.B.I. in the Court of Special Judge, pursuant to this Court's directions, this Court should examine the legality and validity of C.B.I.'s action in seeking a sanction u/s 197 of the Code for the prosecution of some of the persons named in the final report. Dismissing the application moved by the learned amicus curiae seeking directions in this behalf, a three-Judge Bench, of which one of us (D.K. Jain, J.) was a member, observed thus: (SCC p. 412, para 9)

9.... The jurisdiction of the Court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his

judicial junctions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior Court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any Court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If he errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may be a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in.

Recently, similar views have been echoed by this Court in *Narmada Bai v. State of Gujarat*. In that case, dealing with the question of further monitoring in a case upon submission of a report by C.B.I. to this Court, on the conclusion of the investigation, referring to the earlier decisions in *Vineet Narain*, *Sushil Kumar Modi* and *M.C. Mehta (Taj Corridor Scam)*, speaking for the Bench, one of us, (P. Sathasivam, J.) has observed as under: (*Narmada Bai* case, SCC p. 102, para 70)

70. The above decisions make it clear that though this Court is competent to entrust the investigation to any independent agency, once the investigating agency complete their function of investigating into the offences, it is the Court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8) of the Code. Thus, generally, this Court may not require further monitoring of the case/investigation. However, we make it clear that if any of the parties including C.B.I. require any further direction, they are free to approach this Court by way of an application. (Emphasis supplied)

35. It would thus transpire that the distillate of the above observation of the Apex Court is that there could be no doubt that the monitoring of the investigation is for fair and impartial investigation. After the conclusion of the investigation and the submission of the report before the magistrate, only magistrate alone can take appropriate decision in the matter.

36. Now the precise question that surfaces for consideration before us is whether the Magistrate ought to have proceeded further in the matter qua the fact that the police report submitted by the C.B.I. before the Magistrate was not accompanied with any sanction order?

PREVIOUS SANCTION

37. Now in connection with the submission under scrutiny, we feel called to examine the provisions of Section 197 Cr.P.C. which deals with previous sanction. It being relevant is quoted below :

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 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:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

(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.

[(3-A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(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.

38. On the question whether previous sanction for prosecution is required in the case in hand u/s 19 of the P.C. Act when both Ms. Mayawati and Sri Naseemuddin were not holding the office, which they were alleged to have misused, we would like to scrutinize the intendment of provisions of Section 19 of the Prevention of Corruption Act and it being germane, is quoted below.

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

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

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

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

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

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

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

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

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the... powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.--For the purposes of this section,--

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

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

39. From a punctilious reading of the above, it would be clear that both the Sections 197 Cr.P.C. and 19 of the P.C. Act afford protection to public servants for acts done in discharge of official duties.

40. Having traversed upon the provisions of both the sections as stated supra, we now proceed to delve into the question before us in juxtaposition of the decisions rendered from time to time by the Apex Court on the point. By a catena of decisions, it is settled position of law that the protection given u/s 197 Cr.P.C. and Section 19 of the Prevention of corruption Act 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 duty 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 is hedged with certain limitation 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 with the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question here 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. The legal position remains that 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 initial 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 significant 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 where there is a reasonable connection with the act done and the official duty, nor is it possible to lay down any such rule. (See *Bakhshish Singh Brar Vs. Gurmej Kaur and Another*,).

41. Section 197 falls in Chapter XIV of the Code of Criminal Procedure dealing with conditions requisite for initiation of proceedings i.e. if the conditions mentioned are not made out or are absent, then no prosecution can be set in motion. 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 appropriate authority, if the offence, alleged to have been committed was in the discharge of official duty. To rephrase it, this section not only specifies the person to whom the protection is afforded, but it also specifies the conditions and circumstances in which it shall be available with 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", in our opinion, 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 i.e. the complaint cannot be taken notice of. (See- *P. Arulswami Vs. The State of Madras*,).

42. We also receive reinforcement to our view by a decision of the Apex Court in the case of *Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh and Another*, , in which the quintessence of what has been held is that Section 19 of the Prevention of Corruption Act creates a complete bar on the Court to take cognizance of offences punishable under Sections 7, 10, 11, 13 and 15, alleged to have been committed by a public servant except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this subsection. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and it is only after sanction has been granted that the Court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15, alleged to have been committed by such public servant.

43. Another decision on the point which supports us in our view is the decision of the Apex Court in *Balakrishnan Ravi Menon v. Union of India*, (2007) 1 SCC 45, in which the quintessence of what the Apex Court has held is quoted below;

Further, u/s 19 of the PC Act, sanction is to be given by the Government or the authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed. The question of obtaining sanction would arise in a case where the offence has been

committed by a public servant who is holding the office and by misusing or abusing the powers of the office, he has committed the offence. The word "office" repeatedly used in Section 19 would mean the "office" which the public servant misuses or abuses by corrupt motive for which he is to be prosecuted.

It is further provided that Clauses (a) and (b) of sub-section (1) specifically provide that in case of a person who is employed and is not removable from his office by the Central Government or the State Government, as the case may be, sanction to prosecute is required to be obtained either from the Central Government or the State Government. The emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In case where the person is not holding the said office as he might have retired, superannuated, be discharged or dismissed then the question of removing would not arise. Admittedly, when the alleged offence was committed, the petitioner was appointed by the Central Government. He demitted his office after completion of five years' tenure. Therefore, at the relevant time when the charge-sheet was filed, the petitioner was not holding the office of the Chairman of Goa Shipyard Ltd. Hence, there is no question of obtaining any previous sanction of the Central Government.

(Emphasis supplied)

44. Thus, it would crystallize that what is enumerated in Section 197 Cr.P.C. is mandatory in nature and by this reckoning, the Court is barred from taking cognizance of the case provided that the act in question is done by the public servant in the discharge of official duty or purported to have been done in the discharge of official duty.

45. The next submission advanced across the Bar is that since the respondents (Ms Mayawati and Naseemuddin) were not holding the office which is alleged to have been abused or misused, they were not entitled to protection u/s 19 of the P.C. Act. The further submission is that It is forthcoming only when the person is holding the public office. In connection with this submission, we would like to refer to the decisions of the Apex Court in State of Madhya Pradesh Vs. Sheetla Sahai and Others, , in which para 55 being relevant is quoted below:

55. This leaves us with the question as to whether an order of sanction was required to be obtained. There exists a distinction between a sanction for prosecution u/s 19 of the Act and Section 197 of the Code of Criminal Procedure. Whereas in terms of Section 19, it would not be necessary to obtain sanction in respect of those who had ceased to be a public servant, Section 197 of the Code of Criminal Procedure requires sanction both for "those who were or are public servants. (Emphasis supplied)

46. The substance distilled from the above decision is that that the sanction u/s

19 of P. C. Act is not required if the person is not holding the office. The word "office" used in the Section 19 would mean the "office" which the public servant misuses or abuses. Here in the instant case, the moot point is that the C.B.I. has sought sanction for prosecution u/s 197 Cr.P.C. and not u/s 19 PC Act.

47. The learned counsel for the respondents countenanced in approval that protection of Section 19 of the Prevention of Corruption Act was not available to the respondents. The legal position cited across the bar on the above question has not been called in question.

48. It is further submitted by the learned counsel for the petitioners that the police had submitted charge-sheet under Sections 120-B, 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and submitted that no sanction was required. In connection with the submission, the learned counsel referred to para 50 of the decision rendered in *Parkash Singh Badal and Another Vs. State of Punjab and Others*, . The para 50 being relevant is quoted below.

50. The offence of cheating u/s 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B 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.

49. The observation made in para 50 of *Prakash Singh Badal (supra)* it is further submitted, receives reinforcement in the decision of *Bholu Ram Vs. State of Punjab and Another*, .

We express our inability to agree with the learned counsel. It is settled law that offences punishable under Sections 409, 420, 467, 468 and 471, etc. can by no stretch of imagination by their very nature be regarded as having been committed by a public servant while "acting or purporting to act in discharge of official duty

50. We have scrutinised the submission in all its pros and cons and with all care and concern in the light of the materials on record. In the instant case, it is worthy of mention that the C.B.I. after completing the investigation had submitted the charge-sheet under Sections 120-B, 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and applied for sanction for the prosecution which was refused by His Excellency, the Governor of U.P.

51. Before considering the submissions of the counsel for the parties, it is necessary to deal with some legal issues involved in the matter to yield reply to the vexed question.

COGNIZANCE

52. Before we proceed further while dealing with the submission advanced across

the bar as stated supra, it would be appropriate to delve into expression "cognizance" and its after-effects in a particular case vis-a-vis the argument that Section 197 Cr.P.C. bars cognizance of the offence. The term "cognizance" is nowhere defined under the Code of Criminal Procedure. The meaning of the word "cognizance" has been considered by the Apex Court in various decisions and one of the cases in which the Apex Court has dealt with the meaning of the word "Cognizance" is S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others, . The above case has been relied upon by the Apex Court with approval in the case of Bhushan Kumar and Another Vs. State (NCT of Delhi) and Another, , and para 11 of the report being germane, is extracted below.

11. In Chief Enforcement Officer v. Videocon International Ltd., the expression "cognizance" was explained by this Court as "it merely means "become aware of and when used with reference to a Court or a Judge, it connotes "to take notice of judicially". It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." 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. u/s 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process u/s 204 of the Code.

53. The next case on the point is State of West Bengal and another Vs. Mohammed Khalid and others, , in which the Apex Court, observed as under:

44. Cognizance is defined in Wharton's Law Lexicon 14th Edn., at page 209. It reads:

Cognizance (Judicial), knowledge upon which a judge is bound to act without having it proved in evidence: as the public statutes of the realm, the ancient history of the realm, the order and course of proceedings in Parliament, the privileges of the House of Commons, the existence of war with a foreign State, the several seals of the King, the Supreme Court and its jurisdiction, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries.

54. Again in the case of Tula Ram and Others Vs. Kishore Singh, , the Apex Court has observed that the "question as to what is meant by taking cognizance is no longer res integra as it has been decided by several decisions of this Court. As far back as 1951, this Court in the case of R.R. Chari Vs. The State of Uttar Pradesh, , observed as follows:

Taking cognizance does not involve any formal action or indeed action of any

kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence.

55. Thus, it would crystallize as an established fact that if the Magistrate applies his judicial mind in any direction, it would amount to "cognizance". It also remains a fact that u/s 197 Cr.P.C. cognizance has been barred without sanction for prosecution.

POLICE REPORT AND ITS VALUE

56. Coming to the question of police report, Section 173 Cr.P.C. postulates for submission of police report after conclusion of the investigation. Section 173 (1) and (2) Cr.P.C. being under scrutiny for consideration is quoted below.

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

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

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

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

(e) whether the accused has been arrested;

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

(g) whether he has been forwarded in custody u/s 170.

57. We now feel called to delve into the case of Prakash Singh Badal in which it is substantially observed in para 44 and 47 that "mere non description of the offences in detail is not material. At the stage of framing of charge, it can be urged that no offence is made out..."

In para 47, it has been observed that "Law requires that before the sanctioning authority material must be placed so that the sanctioning authority can apply his mind and take a decision."

58. In the case of Hardeep Singh Vs. State of Punjab and Others, , it has been held that the report contemplated by Section 173 should contain information required by the said provision. The Investigating Officer is neither expected to record findings of fact nor to give clean chit by exercising power of a Court or judicial authority.

59. In the case of Fakhruddin Ahmad Vs. State of Uttaranchal and Another, , the Apex Court has held that it is trite that the Magistrate is not bound by the opinion of the Investigating Officer and he is competent to exercise his discretion in this behalf, irrespective of the view expressed by the police in their report and to decide whether an offence has been made out or not. It was further mentioned that the purpose of the police report u/s 173 (2) of the Cr.P.C., which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material referred therein, a case for cognizance is made out or not.

(Emphasis supplied)

60. In the case of M.C. Mehta Vs. Union of India (UOI) and Others, :

Lastly, the term "investigation" u/s 173(2) of the Criminal Procedure Code includes opinion of the officer in charge of the police station as to whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the Court concerned or not. This opinion is not legal evidence. At the stage of Section 173(2) the question of interpretation of legal evidence does not arise. In any event, that function is that of the Courts. (Emphasis supplied)

61. In K. Veeraswami Vs. Union of India (UOI) and Others, , it has been held in para 76 as under;

76. The charge-sheet is nothing but a final report of police officer u/s 173(2) of the Criminal Procedure Code. Section 173 provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody u/s 170. As observed by this Court in Satya Narain Musadi and Others Vs. State of Bihar, that the statutory requirement of the report u/s 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the Magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the Court to inquire into the offence and the necessary information is being sent to the Court. In fact, the report u/s 173(2) purports to be an opinion of the investigating officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the Court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the investigating officer. It is also not necessary that all the details of the offence must be stated

The details of the offence are required to be proved to bring home the guilt of the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence. (Emphasis supplied)

62. Section 173 (2) (1) (d) Cr.P.C. postulates that whether any offence appears to have been committed and, if so, by whom. It is clear from punctilious reading of the provision of Section 173 Cr.P.C. that after completing the investigation, he has to submit only a report to the Magistrate and in accordance with Section 173 (2) (1)(d), he has to mention the offences which may appear to have been committed. The very nature of the police report as provided u/s 173 is the satisfaction of the Investigating Officer. The value of the police report has been considered by the Apex Court in catena of decisions. In *India Carat Pvt. Ltd. Vs. State of Karnataka and Another*, , the Apex Court in para 13 observed as under.

13. From the provisions referred to above, it may be seen that on receipt of a complaint a Magistrate has several courses open to him. The Magistrate may take cognizance of the offence at once and proceed to record statements of the complainant and the witnesses present u/s 200. After recording those statements, if in the opinion of the Magistrate there is no sufficient ground for proceeding, he may dismiss the complaint u/s 203. On the other hand if in his opinion there is sufficient ground for proceeding he may issue process u/s 204. If, however, the Magistrate thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by the police officer or such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. Yet another course open to the Magistrate is that instead of taking cognizance of the offence and following the procedure laid down u/s 200 or Section 202, he may order an investigation to be made by the police u/s 156(3). When such an order is made, the police will have to investigate the matter and submit a report u/s 173(2). On receiving the police report the Magistrate may take cognizance of the offence u/s 190(1)(b) and issue process straightway to the accused. The Magistrate may exercise his powers in this behalf irrespective of the view expressed by the police in their report whether an offence has been made out or not. This is because the police report u/s 173(2) will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom. If the Magistrate is satisfied that upon the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence and issue process, the Magistrate may do so without reference to the conclusion drawn by the Investigating Officer because the Magistrate is not bound by the opinion of the police officer as to whether an offence has been made out or not. Alternately the Magistrate, on receiving the police report, may without issuing process or dropping the proceeding proceed to act u/s 200 by taking cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statement upon oath of the complainant and the witnesses present

and thereafter decide whether the complaint should be dismissed or process should be issued. (Emphasis supplied)

63. In *Minu Kumari and Another Vs. The State of Bihar and Others*, , the Apex Court in para 11 observed as under:

When a report forwarded by the police to the Magistrate u/s 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation u/s 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). The position is, therefore, now well-settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers u/s 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case u/s 190(1)(a) though it is open to him to act u/s 200 or Section 202 also. [See *India Carat Pvt. Ltd. Vs. State of Karnataka and Another*,]. (Emphasis supplied)

64. In *Uma Shankar Singh Vs. State of Bihar and Another*, , the Apex Court in para 19 observed as under:

19. The law is well-settled that even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers u/s 190(1)(b) Cr.P.C. (Emphasis supplied)

65. In *Dr. Mrs. Nupur Talwar Vs. C.B.I., Delhi and Another*, , the Apex Court held

as under:

16. Section 190 of the Code lays down the conditions which are requisite for the initiation of a criminal proceeding. At this stage the Magistrate is required to exercise sound judicial discretion and apply his mind to the facts and materials before him. In doing so, the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion irrespective of the views expressed by the police in its report and may prima facie find out whether an offence has been made out or not. (Emphasis supplied)

66. In view of the decisions mentioned herein above, it would transpire that the police report carries the complexion of only an opinion of the Investigating Officer. Therefore, at this stage it cannot be said that offence under Sections 420, 467 and 468 etc or offences under the P.C. Act have been committed by the respondents. The Magistrate u/s 190 Cr.P.C. takes cognizance of the offence and not of the offenders. At this stage, if the sanction is requisite, in the absence of sanction, cognizance cannot be taken by the Magistrate as the Sections in which offences have been committed are to be considered at the time of framing of charge. The magistrate can disagree with the opinion of the Investigating Officer. He has to exercise his discretion irrespective of the views expressed by the police in its report.

ISSUING PROCESS u/s 204 Cr P.C.

67. Now we come to deal with the stage for Section 204 Cr.P.C. We have also to consider what is the precise test to be applied in relation to Section 204 Cr.P.C. Section 204 Cr.P.C. being relevant is quoted below.

204. Issue of process.--(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be--

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87.

68. Having delved into the provisions of Section 204, now It would be useful to delve into decisions of the Apex Court on the point and the first decision on the point is Helios and Matheson Information Technology Ltd. and Others Vs. Rajeev Sawhney and Another, at page 703 which is excerpted below.

12. We have gone through the averments made in the complaint and are of the view that the complaint does contain assertions with sufficient amount of clarity on facts and events which if taken as proved can culminate in an order of conviction against the accused persons. That is precisely the test to be applied while determining whether the Court taking cognizance and issuing process was justified in doing so. The legal position in this regard is much too well-settled to require any reiteration. (Emphasis supplied)

69. The next case on the point is Shivjee Singh Vs. Nagendra Tiwary and Others, at page 585. The Observation of the Apex Court is quoted below.

18. The expression "Sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI Cr.P.C. finds adequate support from the judgments of this Court in Ramgopal Ganpatrai Ruia and Another Vs. The State of Bombay, , Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, , Chandra Deo Singh Vs. Prokash Chandra Bose and Another, . Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, , Piara Singh v. State of Punjab, (1980) 2 SCC 401 , Mohinder Singh Vs. Gulwant Singh and others, and S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others, . (Emphasis supplied)

70. Thus, at the stage of Section 204 Cr.P.C. Magistrate applies his judicial mind to find out whether prima fade case is made out against the person accused. At the stage of cognizance u/s 190 Cr. P.C. Magistrate takes the cognizance of the offence and not of an offender.

PRE AND POST COGNIZANCE STAGE.

71. In connection with the above, we would like to refer the case of Prakash Singh Badal and Bholu Ram (supra), all over again. In the case of Prakash Singh Badal, learned Magistrate had taken cognizance of the offence and summoned the accused persons. Thereafter, an objection was raised by the accused that the offence has been committed in discharge of the official duty. The Apex Court rejected the submission of learned counsel for the petitioner in view of the fact that the offences under Sections 420, 467 and 468 could not be said to have been committed in the discharge of official duty. In the case of Bholu Ram (supra) the magistrate had summoned the accused u/s 319 Cr.P.C. In this conspectus, the case of Prakash Singh Badal (supra) and Bholu Ram (supra) cannot be imported for application to the present case inasmuch as the

Magistrate had not taken cognizance of the offence in this case and therefore, it cannot be said with certainty that ex-facie offences u/s 420 etc were made out against the respondents at this stage. The submission of learned counsel for the petitioners that the sanction is not required, hinges only on the opinion verbalized by the investigating officer at the time of submission of police report.

72. At this risk of repetition, we may mention that the case of Prakash Singh Badal (supra) and Bholu Ram were on different stage of the trial. In the instant case, the stage is pre-cognizance while the ratio laid down in Prakash Singh Badal and Bholu Ram relates to post cognizance stage. In Prakash Singh Badal's case the Court had summoned the accused u/s 204 Cr.P.C. and in Bholu Ram's case, summons were issued u/s 319 Cr.P.C. which provides that where, in the course of any inquiry into, or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed and by this reckoning, the above case has got no application to the facts of the present case regard being had to the fact that the Magistrate in the instant case had not taken cognizance of the offence. It is for this reason that it cannot be said that prima facie offences under Sections 420, 467 and 468 etc are made out against the respondents because at this stage, there was no application of judicial mind.

73. It may be noted that in Prakash Singh Badal's case, proceedings were challenged for want of sanction after cognizance was taken by the Court and accused were summoned u/s 204 Cr.P.C., while in the case of Bholu Ram, summoning order u/s 319 Cr.P.C. was challenged. The stage of summoning is after cognizance of the offence by the magistrate; therefore, there is application of mind by the magistrate. Section 204 Cr.P.C. says that if in the opinion of the magistrate, while taking cognizance of an offence, there is sufficient ground for proceeding, he can issue process. The language used in the section itself shows that stage of Section 204 Cr.P.C. comes after Section 190 Cr.P.C. when the magistrate takes cognizance of an offence and when in his opinion, there is sufficient ground for proceeding, then he issues summons u/s 204 Cr.P.C. The submission of charge-sheet is merely an opinion verbalized by the investigating officer that any offence appears to have been committed. In our firm view, the opinion of the Investigating Officer cannot be equated with the satisfaction of the magistrate; and by this reckoning, at this stage, it cannot be said with certainty that the offences under Sections 420, 467, 468, 471 IPC and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act prima facie have been committed. The duty of the investigating officer is to collect the material and place the same before the magistrate in a form prescribed u/s 173 Cr.P.C. The decisions cited across the bar by the learned counsel for the petitioner, in our opinion, pertain to a different stage i.e. the post cognizance stage. We have scrutinised the decisions in all its ramifications and we find that none of the decisions cited by the counsel for the petitioner is of pre-cognizance stage when only police report has been submitted on the basis of investigation conducted by

the investigating officer.

SATISFACTION OF SANCTIONING AUTHORITY

74. The power of granting sanction for the prosecution or refusing sanction for the prosecution is in the exclusive domain of the sanctioning authority.

75. The submission of the counsel for the petitioner substantially is that no sanction is required for offences under Sections 467, 468, 471 and 120-B IPC and 19 of the Prevention of Corruption Act when the public servant ceases to hold the office which he is alleged to have misused, in view of the law laid down by the Apex Court in the cases of Prakash Singh Badal and Bholu Ram. The submission has been considered extensively supra. It may be noted here that If the offence has been committed by a public servant in the discharge of official duty, for a certain class of public servants obtaining sanction from competent authority is a pre-requisite. It is a sine qua non before taking cognizance. In connection with the above submission, we feel called to refer to a decision of the Apex Court in Matajog Dube's case, (1956 CrL LJ 140) in which it was observed "that 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."

(Emphasis supplied)

76. The counsel for the petitioner again placed reliance on the decisions of the Apex Court in Baijnath Gupta and Others Vs. The State of Madhya Pradesh, , wherein it was held, "It is not every offence committed by a public servant that requires sanction for prosecution u/s 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 Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

77. In the case of Rqjkishore Roy v. Kamlesh Pandey, (2002) 45 ACC 788, it has been held as under:

7. The law on the subject is well-settled. It has been held by this Court in the case of P.P. Unnikrishnan and Another Vs. Puttiyottil Alikutty and Another, that u/s 197 of the Criminal Procedure Code no protection has been granted to the public servant if the act complained of is not in connection with the discharge of his duty or in exercise of his duty.

8. In the case of P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, it has been held that the legislative mandate engrafted in sub-section (1) of Section 197 is a prohibition imposed by the statute from taking cognizance. It has been held that the offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. It has been held that the only point for determination is whether the act was committed in discharge of official duty. It has been held that there must be a reasonable connection between the act and the official duty. It has been held that for invoking protection u/s 197 of the Code, the acts of the accused, complained of, must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, and the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. It has been held that if the case as put forth by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is held that the question of sanction u/s 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. It is held that there can be cases when it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. It has been held that the claim of the accused, that the act that he did was in course of the performance of his duty, was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. It has been held that in such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.

(emphasis supplied)

78. For granting or withholding the sanction, the satisfaction of the sanctioning authority is sufficient. In the case of Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, , the Apex Court held as under.

44. We may also observe that grant or refusal of sanction is not a quasi judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the competent authority before it takes a decision in the matter. What is required to be seen by the competent authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investigating agency prima facie disclose commission of an offence by a public servant. If the competent authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the competent authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail of appropriate legal remedy.

(emphasis supplied)

79. In the case of Matajog Dobey Vs. H.C. Bhari, , the Apex Court observed as under:

Whether sanction is to be accorded or not is a matter for the Government to consider. The absolute power to accord or withhold sanction and foreign to the duty cast on the Court, which is the ascertainment of the true nature of the act.

80. In Army Headquarters v. CBI, (2012) 6 SCC 228, the Apex Court in para 83 observed as under:

If the law requires sanction, and the Court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio for want of sanction. Sanction can be obtained even during the course of trial depending upon the facts of an individual case and particularly at what stage of proceedings, requirement of sanction has surfaced. The question as to whether the act complained of, is done in performance of duty or in purported performance of duty, is to be determined by the competent authority and not by the Court. The legislature has conferred "absolute power" on the statutory authority to accord sanction or withhold the same and the Court has no role in this subject. In such a situation the Court would not proceed without sanction of the competent statutory authority. (Emphasis supplied)

Now we have to consider the question whether sanction can be considered at any later stage.

81. Another submission of the counsel for the petitioner is that it is not necessary to obtain sanction for the prosecution at the initial stage. The question of sanction can be decided at a later stage. In support of his submissions, the counsel for the petitioner has placed reliance on the decision of Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, , wherein, it has been held that accused after appearing before the magistrate raised an objection or produced some documents to show that sanction was necessary. The Apex Court has held, "The question of sanction can be considered at any stage of proceedings." In the case of Matajog Dube, it has been held that the necessity for sanction may surface during the course of trial and it would be open to the accused to place the material on record for showing what his duty was and also the acts complained of were so interrelated or inseparably connected with his official duty so as to attract the protection accorded by law.

82. The Sanction of the appropriate authority, as discussed above, is necessary to protect a public servant from unnecessary harassment or prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be borne in mind that the cognizance is taken of the offence and not of the offender. After taking cognizance of the offence, the magistrate u/s 204 Cr.P.C. is empowered to issue process. This is to save the public servant from the harassment which may

be caused to him if each and every aggrieved or disgruntled person is allowed to institute a criminal complaint against him. The protection is extended against prosecution by State agency but the protection is not absolute or unqualified. If the authority competent to remove such public servant accords previous sanction, such prosecution can be instituted and proceeded with. Sometimes complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty but facts subsequently coming to light may establish the necessity of sanction. The necessity may reveal itself in the course of the progress of the case. In the case of Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, , it has been held as under:

The legislative mandate engrafted in sub-section (1) of Section 197 debarring a Court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the Court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the Court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the Court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings. (Emphasis supplied)

83. In the case of Matajog Dobey Vs. H.C. Bhari, , decided by the constitutional Bench of Apex Court it has been held as under:

The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. 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. (Emphasis supplied)

In the case of Prakash Singh Badal Apex Court has held as under:

The question relating to the need of sanction u/s 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. (Emphasis supplied)

In the case of P.K. Pradhan v. State of Sikkim (supra) it has been held that "It is well-settled that question of sanction u/s 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well."

84. Thus, it brooks no dispute that the requirement of sanction can be considered at any stage of the trial or even thereafter. The counsel for petitioner relied upon those cases to buttress his submission that cognizance can be taken at a later stage of the trial in which after summoning accused appeared before the magistrate and placed material to show that the act in question was in the discharge of official duty and without a valid sanction for the prosecution case cannot proceed against him. The Apex Court in the case of Abdul Wahab Ansari Vs. State of Bihar Another, , considered the question as to when the plea that sanction was required to be obtained u/s 197(1) of Code can be raised. It is held that previous sanction of the competent authority being a pre-condition for the Court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed.

85. In a recent decision of the Apex Court in Crl. Appeal No. 1491 of 2012, Om Prakash and others v. State of Jharkhand, decided on 26.9.2012, it has been held in paragraph 37 that "The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given u/s 197 of the Code. It is not possible for us to hold that in such a case, the Court cannot look into documents produced by the accused or the concerned public servant at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea."

(emphasis supplied)

86. The counsel for the petitioner could not cite a single decision where sanction for the prosecution was refused by the competent authority and trial proceeded. In the instant case, the competent sanctioning authority has already declined to grant the sanction for the prosecution. The refusal to grant sanction for the prosecution means that the act was done by the public servant in the discharge of official duty or in the exercise of purported discharge of official duty. When the Government refused sanction, Section 114(e) of the Evidence Act raises presumption that the official acts have been regularly performed.

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

88. In the case of Rambhai Nathabhai Gadhvi and Others Vs. State of Gujarat, , it was observed as under:

Taking cognizance is the act which the Designated Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for the former. Sanction contemplated in the sub-section is the permission to prosecute a particular person for the offence or offences under TADA. We must bear in mind that sanction is not granted to the Designated Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the Court concerned for enabling it to take cognizance of the offence and to proceed to trial against the persons arraigned in the report Thus a valid sanction is sine qua non for enabling the prosecuting agency to approach the Court in order to enable the Court to take cognizance of the offence under TADA as disclosed in the report. The corollary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the Court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction. (emphasis supplied)

Thus, we are of the view that in the instant case sanctioning authority has already refused to grant sanction for the prosecution, therefore, the magistrate is barred from taking cognizance in the matter.

89. Sri C.B. Pandey, counsel for the petitioners further placed reliance upon a decision of this Court in the case of Vishwanath Chaturvedi v. State of U.P., 2011 (29) LCD 454, and submitted that in those cases where the trial has been monitored by the Court or are of great public importance, sanction is not required. Reliance was placed on paragraph 137 where it is held that in every case, sanction for prosecution is not necessary. Cases where investigation is done under the supervision of High Court or Supreme Court and report is prepared and investigating agency records a finding with regard to abuse of public office in a planned, deliberate manner, then sanction u/s 19 of the Prevention of Corruption Act or Section 197 of the Cr.P.C. shall not be required. The Courts may proceed with the trial expeditiously in accordance with statutory provisions after receipt of charge-sheet.

90. We have considered the submission and there is no dispute that if the offence has been committed by a public servant and not connected with the discharge of official duty no sanction is required. It is also relevant to point out that in para 155 of the decision Vishwanath Chaturvedi, certain directions were issued and direction No. (iii) of para 155 is relevant, which is quoted hereinbelow:

(iii) It shall not be necessary for the CBI or State Agencies to obtain sanction under the statutory provisions with regard to present controversy where from initial stage, prima facie intentionally, deliberately and in a planned manner, the food grains were lifted from godown for sale either in open market or to smuggle outside the State of U.P. or to other countries.

The said decision was challenged in Apex Court in Civil Appeal No. _____ of 2011, cc 5927 of 2011, where at ad interim stay of the direction No. 3 in para 155 and the second part of direction No. (viii) in para 155 requiring the reports to be submitted to the High Court in regard to every investigation at intervals of two months. In regard to direction No. (iv) in para 155 of the impugned order, the period of three months mentioned therein was substituted by the period of six months.

91. Sri C.B. Pandey further submitted that it is settled law that where allegations contain commission of various offences, in which one requires sanction and others not, then "The Court can take cognizance of all the offences" and in support of his submission, he placed reliance upon a decision (2012) 6 SCC 353. We have delved into the ratiocination of the said decision and we are afraid, the said case is not attracted for application to the present case, because that case was related to Sections 498-A and 494 IPC. It may be explained here that Section 494 provides for taking cognizance on the basis of complaint and in that respect, the Court had held that where there are two offences, one requiring cognizance on the basis of police report and the other requiring cognizance on the basis of complaint, then cognizance can be taken on the basis of charge-sheet.

92. Per contra, learned counsel for the respondent submitted that the said decision has no application in this case. The Apex Court had considered the explanation of Section 2(d) of Cr.P.C. which provides that if after investigation of a cognizable offence police finds that non cognizable offence is found to have been committed and in that event said police report shall be treated as complaint. It is further submitted that u/s 198 Cr. PC there is a bar in taking cognizance of offence under Chapter XX of the Code. The cognizance can be taken on the basis of a complaint filed by an aggrieved person and further submitted that police officer cannot be treated as an aggrieved person u/s 198 Cr.P.C.

93. We are not deciding the controversy as supra as we have already stated in earlier part of the judgment that the sanctioning authority considers the facts and materials of the case which are collected by the investigating officer during

investigation. In this case, sanctioning authority has already refused to accord sanction for the prosecution and the order of sanctioning authority is not challenged before us.

94. Next submission of the counsel for the petitioners is that this Court should direct the CBI to challenge the order of the magistrate of refusal to take cognizance or direct the designated Court to proceed in accordance with law. In connection with this submission, it is necessary to point out that in the absence of sanction for the prosecution magistrate or designated Court cannot proceed in accordance with law. Therefore, this Court cannot issue any such direction which is not in accordance with law. The protection given u/s 197, Cr.P.C. is to protect responsible public servants against the institution of possible vexatious criminal proceedings for offenses 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 servant to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause and power to grant or refuse sanction is the exclusive jurisdiction of the sanctioning authority. As observed by the Apex Court in the case of *Army Head quarter v. CBI* (supra) "the legislature has conferred "absolute power" on the statutory authority to accord sanction or withhold the same and the Court has no role in this subject. In such a situation the Court would not proceed without sanction of the competent statutory authority." In the case of *Rambhai Nathabhai Gadhai v. State of Gujarat* (supra) it has been held, "If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without Jurisdiction and any proceedings adopted thereunder will also be without jurisdiction. "

95. In view of the above, there cannot be any such direction to trial Court to proceed after refusal of sanction for the prosecution.

96. Another submission of the counsel for the appellant is that the designated Court should direct the CBI to carry out further investigation. We fail to understand as to why this prayer has been made when the CBI after investigation found sufficient material for prosecution. The counsel for the appellants could not point out any infirmity in the investigation or that it was not done properly. Only grievance of the counsel for the petitioners was that the CBI should not have approached sanctioning authority after submission of the charge-sheet in the Court on the ground that the Apex Court had directed that after the completion of the investigation report shall be placed before the magistrate and he shall proceed in accordance with law. We have considered the submission and from a perusal of the charge-sheet quoted in earlier paragraph of the judgment it is clear that the investigating officer was of the opinion that sanction for the prosecution was required in the case and he also applied for the sanction for the prosecution after filing of the report. We are of the opinion that there is no illegality in applying for obtaining sanction for the prosecution when investigating officer was of the opinion that the offence alleged to have been committed are in

the discharge of official duty and we are of the view that the action of the investigating officer cannot be said to be wrong because the sanctioning authority refused to accord sanction. Another aspect of the matter is that at the stage of conclusion of the investigation, the investigating officer has to apply for sanction in case investigating officer is of opinion that offence has been committed by the accused. However, in case he comes to the conclusion that no offence is made out he need not approach the sanctioning authority to accord sanction for filing the report. It is also necessary to mention the decision of State Through CBI Vs. Raj Kumar Jain, , the Apex Court considered the question whether CBI was required to obtain sanction from the authority before approaching the Court for accepting the report u/s 173 (2) Cr.P.C. This question was considered in the backdrop of the fact that CBI which had investigated the case registered against the respondent u/s 5(2) read with Section 5(1)(e) of the 1947 Act found that the allegation made against the respondent could not be substantiated. The Special Judge declined to accept the report submitted u/s 173 (2) Cr.P.C. by observing that CBI was required to place materials collected during investigation before the sanctioning authority and it was for the authority concerned to grant or refuse sanction. The Special Judge opined that only after the decision of the sanctioning authority, CBI could submit the report u/s 173 (2). The High Court dismissed the petition filed by CBI and confirmed the order of the Special Judge. (See para 4 of the decision).

In para 5 of the said decision the Apex Court observed as under:

5. From a plain reading of the above section, it is evidently clear that a Court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the above section, the legislature thought of providing a reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary prosecutions. Viewed in that context, CBI was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if CBI had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge-sheet (challan) against him, then only the question of obtaining sanction of the authority u/s 6(1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the charge-sheet. It must therefore, be said that both the Special Judge and the High Court were patently wrong in observing that CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report u/s 173 (2) Cr.P.C... (Emphasis supplied)

In the case of Matajog Dobey, the Apex Court has held that 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.

97. The counsel for the appellant also challenged the order dated 5.6.07 whereby the designated Court refused to proceed against Ms Mayawati and Naseemuddin. It is submitted that the designated Court did not pass any order regarding prosecution of Ms Mayawati and Sri Naseemuddin and in consequence, it violated the direction of the Apex Court. All that was stated by the Apex Court was that after the conclusion of investigation report shall be placed before the magistrate who shall proceed in accordance with law. The law is well-settled that when the police report is placed before the Court, the Court can accept, reject or direct further or re-investigation but as we have pointed out earlier, such an order can be passed only when magistrate takes cognizance of the case. Section 197 Cr.P.C. bars the cognizance in the absence of a valid sanction for the prosecution, if the offence has been committed by the public servant in the discharge or purported discharge of official duty. In the absence of sanction for the prosecution the magistrate had to ignore the police report or reject the police report.

98. In *Nagraj Vs. State of Mysore*, , the Apex Court in para 18 observed as under:

18. The last question to consider is that if the Court comes at any stage to the conclusion that the prosecution could not have been instituted without the sanction of the Government, what should be the procedure to be followed by it, i.e., whether the Court should discharge the accused or acquit him of the charge if framed against him or just drop the proceedings and pass no formal order of discharge or acquittal as contemplated in the case of a prosecution under the Code. The High Court has said that when the Sessions Judge be satisfied that the facts proved bring the case within the mischief of Section 132 of the Code then he is at liberty to reject the complaint holding that it is barred by that section. We consider this to be the right order to be passed in those circumstances. It is not essential that the Court must pass a formal order discharging or acquitting the accused. In fact no such order can be passed. If Section 132 applies, the complaint could not have been instituted without the sanction of the Government and the proceedings on a complaint so instituted would be void, the Court having no jurisdiction to take those proceedings. When the proceedings be void, the Court is not competent to pass any order except an order that the proceedings be dropped and the complaint is rejected. (Emphasis supplied)

In view of the discussion made hereinabove, the order passed by the designated Court is perfectly in accordance with law. The petitioners are not entitled to any relief as claimed. All the writ petitions being devoid of merit are hereby dismissed.