
(2003) 01 MP CK 0101

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 36/99 with L.P.A. No. 48/99

M.P. Special Police Establishment

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Constitution of India, 1950 — Article 163, 166
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 109, 120B

Citation : (2003) CriLJ 4610 : (2003) 3 MPHT 9 : (2003) 2 MPLJ 204 : (2004) 1 RCR(Criminal) 372

Hon'ble Judges : S.P. Khare, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : V.S. Shroti, N.S. Kale and A. Bhumik, for the Appellant; Ajay Mishra, Dy. A.G. for Respondent Nos. 1 to 3, S.C. Datt and Siddharth Datt, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh and Others, AIR 2005 SC 325 : (2004) 5 CTC 454 : (2004) 9 SCALE 302 : (2004) 8 SCC 788 : (2005) 1 UJ 165 : (2004) AIRSCW 6843 : (2004) 8 Supreme 147

S.P. Khare, J.

These are two Letters Patent Appeals by the M.P. Special Police Establishment challenging the order of the Single Bench by which the sanction for prosecution of the two Ministers u/s 197, Cr.PC accorded by the Governor for the offence punishable u/s 120B, IPC has been quashed.

Bisahu Ram Yadav and Rajendra Kumar Singh were Ministers in the Government of Madhya Pradesh. A complaint was made to the Lokayukta against them for releasing 7.5 acres of land illegally to its earlier owners which had been acquired by the Indore Development Authority from them. The case was registered on

31-3-1998 and investigated by the Special Police Establishment (SPE) constituted under the M.P. Special Police Establishment Act, 1947 and functioning under the Superintendence of the Lokayukta. After investigation the SPE was of the view that there is sufficient ground for prosecution of the two Ministers u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and also for the offence of "criminal conspiracy" punishable u/s 120B, IPC. The SPE sought sanction of the State Government u/s 197, Cr.PC in respect of the offence u/s 120B, IPC. By this time the two Ministers had resigned and ceased to occupy that position. The question of sanction for prosecution was considered by the Council of Ministers in its meeting on 3-9-1998 and the sanction was declined by a resolution giving detailed reasons. The ground for refusing the sanction was that in its opinion there was no prima facie case against them. It was stated in the resolution : "on going through the total material collected through investigation there is not an iota of material available against both the Ministers from which it could be faintly inferred that they entered into criminal conspiracy with anyone. Totality of the material that has been collected and which has been referred to above do not indicate prima facie establishment of ingredients of Section 120B, IPC". The question relating to grant of sanction was then considered by the Governor keeping in view the decision of the Cabinet and he expressed his view in the impugned order dated 23-9-1998 : "having perused the available documents and after careful scrutiny of the evidence put forth by the SPE I am satisfied that there is prima facie case for prosecution of Shri B.R. Yadav and Shri Rajendra Singh, Ex-Ministers of the Government of Madhya Pradesh, for offence u/s 120B, IPC". He accorded the sanction u/s 197, Cr.PC.

The two Ministers filed two separate writ petitions under Articles 226 and 227 of the Constitution assailing the order of the Governor. The Single Bench after considering the arguments of the eminent Counsel appearing from both the sides held that the sanction for the prosecution of the Ministers is not a function which could be exercised by the Governor "in his discretion" within the meaning of the words used in Article 163 of the Constitution and therefore he could not accord the sanction and thereby act contrary to the decision of the Council of Ministers. It has been observed that the principle of bias cannot be applied against the entire Council of Ministers and the doctrine of necessity cannot be invoked on the facts of the case to enable the Governor to act in his discretion in this matter.

In these appeals it has been argued by the learned Counsel for the appellant that Article 163 of the Constitution fully empowers the Governor to act in his discretion in granting the sanction for the prosecution of the Ministers and the decision of the Governor in his discretion in this respect is final and its validity cannot be called in question on the ground that he ought or ought not to have acted in his discretion. It is submitted that the function of grant of sanction for prosecution of a "Minister" falls within the exception in the latter part of Article 163(1) of the Constitution and the said function is a function requiring the Governor to act independently in exercise of his individual discretion. It is pointed out that as a matter of propriety and to rule out the likelihood of bias the

Governor should have the power to consider the question of the grant of sanction for prosecution of a Minister unaided by the Council of Ministers. It is emphatically contended that a contrary view would amount to conferral of immunity from prosecution on the Ministers in respect of the misconduct committed by them during their office. It is further submitted that the Constitutional provision should be interpreted in a manner to meet the new challenges and the Courts have a duty to innovate in this field. On the other hand the learned Counsel for the respondents has argued that the view taken by the Single Bench is legally and constitutionally correct and the Governor cannot act "in his discretion" in the matter of grant of sanction for prosecution of the Ministers and he is bound by the advice and the Council of Ministers even in this area.

The point for determination, therefore, is whether the Governor can act "in his discretion" and against the advice of the Council of Ministers in the matter of grant of sanction for prosecution of the Ministers u/s 197, Cr.PC. It is necessary to refer to the relevant Articles of the Constitution for determination of this point. Article 154(1) provides that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Articles 163 and 166(1) and (3) are as under :--

"Article 163 : (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court.

Article 166 : (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution to act in his discretion."

The position and power of the Governor vis-a-vis the Council of Ministers has been the subject of intense debate and discussion before and after the advent of the Constitution of India. That has also been the subject-matter of several judicial decisions. All this has been extensively considered by the Constitution

Bench of seven learned Judges of the Supreme Court in *Samsher Singh Vs. State of Punjab and Another*, There are two judgments in this case--one is of Ray, C.J., and the other is of Krishna Iyer, J., construing the Articles referred above and other relevant provisions. It is necessary to examine in detail the laid down in these judgments to have an idea when the Governor has to act in his discretion and when he has to do so on the advice of the Council of Ministers. Our Constitution embodies generally the Parliamentary or Cabinet System of Government of the British model both for the Union and the States. Under this system the President is the Constitutional or formal head of the Union and he exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of the Council of Ministers (Para 27). Under the Cabinet system of Government as embodied in our Constitution the Governor is the Constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion (Para 28). Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the Constitutional sense in the Cabinet system of the Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or Officer under the rules of business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively (Para 48). The allocation of business of the Government is also the decision of the President or the Governor on the aid and advice of the Council of the Ministers.

It is again said that the provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in Articles to which reference has been made. To illustrate, Article 239(2) states that where a Governor is appointed an Administrator of an adjoining Union Territory he shall exercise his functions as such Administrator independently of his Council of Ministers. The other Articles which speak of the discretion of the Governor are Paragraphs 9 (2) and 18 (3) of the Sixth Schedule and Articles 371A(1)(b) 371A(1)(d) and 371A(2)(b) and 371A(2)(f). The discretion conferred on the Governor means that as the Constitutional or formal head of the State the power is vested in him. In this connection, reference may be made to Article 356 which states that the Governor can send a report to the President that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution. Again Article 200 requires the Governor to reserve for consideration any bill which in his opinion if it became law, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill under the Constitution (Para 54). In making a

report under Article 356 the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the Constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the Governor to enable him to report to the President who, however, must act on the advice of his Council of Ministers in all matters. In this context Article 163(2) is explicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matter. The President acts on the advice of his Council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers (Para 55). For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vest in the executive whether those functions are executive or legislative in character (Para 57).

The law declared by Krishna Iyer, J.--in the separate judgment is to the same effect but in his usual eloquent style. He posed the question : "does our legal-political system approximate to the Westminster style Cabinet Government or contemplate the President and Governor, unlike the British Crown, being real repositories of and actually exercising power in its comprehensive constitutional signification ?" (Para 92). He proceeds to observe that "in essaying this task we must keep away from ideological slants and imaginary apprehensions and should not import personal predilections but inform ourselves of the grand design of our Constitution and the great models inspiring it. (Para 93). President and Governor, a replica of a constitutional monarch and a Cabinet answerable to Parliament, substantially embodying the conventions of the British Constitution - not a turn-key project imported from Britain, but an edifice made in India with the knowhow of British Constitutionalism. If this theory be sound, Government is carried on by the Ministers according to the rules of allocation of business and, the Governor, not more than the Queen, need know or approve orders issued in his name. The core of the Westminster system is that the Queen reigns, but the Ministers rule, except in a few special, though blurred areas. (Para 99). If the "inner voice" of the founding fathers may be any guide, it is proved beyond reasonable doubt that the President and, a fortiori, the Governor, enjoy nothing more and nothing less than the status of constitutional head in a Cabinet-Type Government - a few exceptions and marginal reservations apart. (Para 112). Of course, there is some qualitative difference between the position of the President and the Governor. The former, under Article 74 has no discretionary powers; the latter too has none, save in the tiny strips covered by Articles 163(2) 371A(1)(b) and (d) 371A(2) (b) and (f), VI Schedule Para 9 (2) [and VI Schedule Para 18 (3), until omitted recently with effect from 21-1-1972]. These discretionary powers exist

only where expressly spelt out and even these are not left to the sweet will of the Governor but are remote-controlled by the Union Ministry which is answerable to Parliament for those actions. In all his constitutional "functions" it is the Ministers who act; only in the narrow area specifically marked out for discretionary exercise by the Constitution, he is untrammelled by the State Ministers' acts and advice. Of course, a limited free-wheeling is available regarding choice of Chief Minister and dismissal of the Ministry, as in the English practice adapted to Indian conditions. (Para 138). We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various Articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House; (b) the dismissal of a Government which has lost its majority in the House but refuses to quite office; (c) the dissolution of the House where an appeal to the country is necessitous, although in this area the Head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step. (Para 153).

Now coming to the case in hand it is undeniable that the sanction for the prosecution of a public servant, including a Minister, is the executive function of the State Government. The Governor is not required to exercise this function in his discretion "by or under" the Constitution. There is no specific Article in the Constitution which requires the Governor to act "in his discretion" in the exercise of this executive function. It is well settled that unless a particular Article expressly so provides, an obligation of the Governor to act "in his discretion" cannot be inferred by implication. (*Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, and *A. Sanjeevi Naidu, etc. Vs. State of Madras and Another*, The area in which the Governor has to act "in his discretion" is earmarked in various Articles and if the question arises whether the Governor should exercise his discretionary power in that area then his decision in that respect attains finality as per Article 163(2). It is not that he can arrogate to himself any executive function of the State and then say that his decision in this respect is final. That approach would be contrary to the legal position settled by the Supreme Court in *Samsher Singh's case* (supra). Therefore, Article 163(1) does not enable the Governor to grant the sanction for prosecution in his discretion. Article 163(2) does not attach finality to the decision of the Governor in such a matter. It is outside the purview of the latter part of Article 163(1) as it is not "expressly spelt out" in any provision of the Constitution. It is also not covered by any exceptional situations as indicated in Para 153 of the judgment in *Samsher Singh's case*. These exceptions have gained recognition because of the Constitutional conventions in England adopted to the Indian conditions. In the

absence of any source of power emanating from specific provision in the Constitution or any Constitutional conventions it is not possible for the Courts to concede to the Governor the power to sanction prosecution of a Minister.

In *U.P. Public Service Commission at Allahabad Vs. Suresh Chandra Tewari and Another*, following *Samsher Singh's* case, it has been held that though the regulation provides for appeal to the "Governor" the function of hearing an appeal against an order passed by the Commission in a disciplinary proceeding held against any member of its staff is an executive function and not "one of the functions which the Governor is required to exercise "in his discretion" under any provision of the Constitution" and therefore he has to act on the advice of the State Government.

In *State of Madhya Pradesh and others Vs. Dr. Yashwant Trimbak*, it has been held that Rule 9 (2) (b) (i) of the M.P. Civil Service Pension Rules, 1976, provides that departmental proceedings against a retired employee shall not be instituted save with the sanction of the Governor. However, the Rule does not require the sanction of the Governor himself. The Council of Ministers in whose favour the Governor under the Rules of Business has allocated the matter, can grant sanction. The order of sanction for prosecution of a retired Government servant is undoubtedly an executive action of the Government. A Governor in exercise of his powers under Article 166(3) of the Constitution may allocate all his functions to different Ministers by framing rules of business except those which the Governor is required by the Constitution to exercise his own discretion. The expression "business of the Government of the State" in Article 166(3) of the Constitution, comprises of functions which the Governor is to exercise with the aid and advice of the Council of Ministers including those which he is empowered to exercise on his subjective satisfaction and including statutory functions of the State Government. Excepting the matters with respect to which the Governor is required by or under the Constitution to act in his discretion, the personal satisfaction of the Governor is not required and any function may be allocated to Ministers. "The power to sanction is, nothing but an executive action of the Government provided under the Rules. This is not a matter with respect to which the Governor is required under the Constitution to act in his discretion". In this view of the matter when the Governor has framed rules of business under Article 166(3) of the Constitution allocating his functions and it is the Council of Ministers which has taken the decision to sanction prosecution of the delinquent there is no legal infirmity in the same.

The order dated 23-9-1998 passed by the Governor sanctioning the prosecution does not indicate the source from which his power springs. It is not stated in the order that it has been passed in exercise of the power given by Article 163(2) of the Constitution. It is the SPE and the Counsel engaged by it who are trying to bring it within its ambit. As already demonstrated this power has not been conferred on the Governor by any specific provision of the Constitution or by any Constitutional convention. Therefore, the general rule must prevail and the

Governor must act in this sphere as per advice of the Council of Ministers and not contrary to it. If this power is conceded to the Governor it would open the flood gates for the exercise of the discretionary power by the Governor in all cases where the decision of the Council of Ministers is considered inept or inappropriate by the Governor. That would amount to conferring the power of review on the Governor in respect of the decisions taken by the Council of Ministers which is answerable to the Legislative Assembly and the people. That would be against the spirit of the Constitution which has established the Cabinet form of the Government in the States also. That would bring diarchy as indicated in the case of Samsheer Singh (supra). That would establish another centre of power where there may be many perils and pit falls which may be difficult to imagine and recount. The interpretation of a provision of the Constitution would not differ or deflect simply because of the possibility of abuse of power by the Council of Ministers in a given case. The Constitution has reposed greater faith in the Council of Ministers answerable to the people and it is expected that it would consider even the question of grant of sanction for prosecution of its Minister in a detached and dispassionate manner upholding the rule of law and cause of justice. There is a presumption that the decisions of the Council of Ministers have been arrived at rightly and regularly and not to shield the guilty.

The sheet anchor of the appellant's case is the decision of the Supreme Court in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, In that case R.S. Nayak filed a complaint in the Court against A.R. Antulay who was the Chief Minister of the State making allegations of corruption against him. The Metropolitan Magistrate refused to take cognizance on the ground of absence of sanction for prosecution u/s 6 of the Prevention of Corruption Act, 1947. The matter was brought to the High Court by filing a revision petition against that order. During the course of pendency of this revision A.R. Antulay resigned his position as the Chief Minister. The High Court upheld that order of the Metropolitan Magistrate to the effect that the sanction was necessary. While dismissing the revision the High Court noticed that an application had been made to the Governor of Maharashtra for grant of the requisite sanction and observed that the application should not be decided by the Law Minister or any other Minister, but that "it deserved to be decided by the Governor in his individual discretion". The State of Maharashtra filed a SLP under Article 136 of the Constitution before the Supreme Court against this part of the order of the High Court. It was contended before the Supreme Court on behalf of the State that it was not for the Court to decide whether in respect of a particular matter, the Governor should act in his discretion or with the aid and advice of the Council of Ministers. The Supreme Court observed : "The question posed by the learned Attorney General is no doubt an important question, probably worthy of serious consideration by this Court under Article 136 of the Constitution. But, in the present case, we do not propose to grant special leave under Article 136 of the Constitution, solely in order to consider this question firstly because the Criminal Revision Application itself has been dismissed by the High Court and secondly -

and this is important - there was an express concession made in the High Court by the respondents that in the situation presented by the facts of the present case, the Governor should act in the exercise of his individual discretion". (Para 1). Then the Supreme Court dealt with the concession and held that in fact such a concession was made. The Supreme Court further proceeded to observe in Para 9 : "The statement in the judgment that such a concession was made is conclusive and, if we may say so, the concession was rightly made. In the facts and circumstances of the present case, we have no doubt in our mind that when there is to be a prosecution of the Chief Minister, the Governor would, while determining whether sanction for such prosecution should be granted or not u/s 6 of the Prevention of Corruption Act, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Ministers". Then in Para 10 it has been observed : "The question then is whether we should permit the State of Maharashtra to resile from the concession made before the High Court and raise before us the contention now advanced by the learned Attorney General. We have not the slightest doubt that the cause of justice would in no way be advanced by permitting the State of Maharashtra to now resile from the concession and agitate the question posed by the learned Attorney General. On the other hand we are satisfied that the concession was made to advance the cause of justice as it was rightly thought that in deciding to sanction or not to sanction the prosecution of a Chief Minister, the Governor would act in the exercise of his discretion and not with the aid and advice of the Council of Ministers. The application for grant of special leave is, therefore, dismissed".

The question is whether the Supreme Court declared the law as per Article 141 of the Constitution that in case of the prosecution of the Chief Minister the question of sanction should be considered by the Governor "in his discretion" and not on the advice of the Council of Ministers. As mentioned above the Supreme Court did not entertain the SLP and specifically refrained from considering the question. That is clear from the observation : "We do not propose to grant special leave under Article 136 of the Constitution, solely in order to consider this question". The subsequent observations of the Supreme Court are to some extent based on the "express concession" made before the High Court. But the words used in Para 9 of the judgment "if we may say so, the concession was rightly made" and the subsequent observations, in Paras 9 and 10, as noted above, do indicate that the Supreme Court gave its stamp of approval to the practice or convention that when there is to be a prosecution of the Chief Minister, the Governor would, while determining whether sanction for such prosecution should be granted or not, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Minister. The same approval is discernible from the observations made in Para 10 to the effect "We are satisfied that the concession was made to advance the cause of justice as it was rightly thought that in deciding to sanction or not to sanction the prosecution of a Chief Minister, the Governor would act in the exercise of his discretion and not with the aid or advice of the Council of Ministers".

Though the SLP was not admitted to decide the Constitutional question posed before the Supreme Court, the observations made by it serve as a beacon beam and throw umber light on the point raised before it. Even the observations of the Supreme Court or obiter dicta carry great weight and are treated with profound respect by the High Court. (Sarwan Singh Lamba and others Vs. Union of India and others, and Commissioner of Income Tax, Hyderabad-deccan Vs. Vazir Sultan and Sons, The observations are not based on "concession" alone but there is explicit expression of the view of the Supreme Court on the point which was raised before it. It is true that such a view has not been expressed in the traditional way of adopting the interpretative process by tracing the source of power in the Governor to act in his discretion in such a matter by examining the relevant Articles in the Constitution or resorting to any Constitutional convention. The Supreme Court has not specifically dealt with the question whether the exceptions mentioned in Para 153 of the judgment in Samsher Singh's case (supra). Should be expanded and an additional exception should be added or engrafted where the Governor should act in his discretion unaided by the advice of the Council of Ministers but in effect it has done so.

The observations of the Supreme Court should, however, be confined to the case of the "Chief Minister". He occupies a dominating position in the Council of Ministers. He is the leader of the majority in the Legislative Assembly. The other Ministers are appointed by the Governor on his advice. They hold office "during the pleasure of the Governor" as per Article 164 but virtually they hold office during the pleasure of the Chief Minister. A Minister remains in office so long as he enjoys the confidence of the Chief Minister. He has to resign or face dismissal if he disagrees with the Chief Minister because of the collective responsibility of the Council of Ministers to the Legislative Assembly of the State. The Chief Minister enjoys the position of great eminence in the Cabinet and, therefore, the question of the sanction of his prosecution should be considered by the Governor by invoking the doctrine of necessity or the principle of propriety as clarified by the Supreme Court. The Chief Minister would not in the normal course allow his Council of Ministers to sanction his own prosecution. If there are grave and serious charges against the Chief Minister and there is sufficient evidence to support them then the Governor would have to decide the question of sanction of his prosecution. If this power is not conceded to the Governor then a situation may arise "in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution" as envisaged in Article 356 and may impell the Governor to report to the President that such situation has arisen requiring the imposition of the President rule in the State and then the Governor may be empowered to decide the question of sanction of prosecution of the Chief Minister. But such a crisis would not arise in the case of other Ministers and the Council of Ministers can decide the question of sanction of prosecution of a Minister or a former Minister dispassionately and impartially without any element of bias as it does in the case of any other public servant and the decision of the Council of Ministers in such matter cannot be assumed to be biased,

tainted or with a view to shield anyone. The Council of Ministers would act in order to uphold the rule of law and it is not expected to be led away by any ulterior consideration. The chances of abuse of power by this collective body answerable to the people are minimal. Therefore, the observations of the Supreme Court in R.S. Nayak's case dealing with the case of Chief Minister cannot be stretched to include the case of other Ministers. The Governor in the case of other Ministers would not consider the question of grant of sanction for prosecution "in his discretion" without or contrary to the advice of the Council of Ministers.

The record shows that the charge-sheet has been filed in the Court alleging the commission of offences by the two Ministers u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 120B, IPC. No sanction has been sought u/s 19 of the Act of 1988 presumably for the reason that no sanction thereunder is required as they have ceased to be public servants. The sanction for prosecution u/s 197, Cr.PC for the offence punishable u/s 120B, IPC, a distinct offence, has been quashed. We are not considering the question whether resort can be had to Section 109, IPC in place of Section 120B, IPC. That is a question which can be considered by the Court before which the charge-sheet has been filed if Section 109, IPC is invoked by the prosecution.

In view of the above discussion the Single Bench has rightly quashed the order of the Governor sanctioning the prosecution of the two Ex-Ministers and therefore these appeals are dismissed.