
(2011) 11 P&H CK 0190

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M 14289 of 2011

Mrs. Nirmal Yadav

APPELLANT

Vs

Central Bureau of Investigation and another

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Constitution of India, 1950 — Article 12(2), 124, 14, 166, 166(1)
Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 173(2), 207, 207A
Delhi Special Police Establishment Act, 1946 — Section 5, 6
Penal Code, 1860 (IPC) — Section 120B, 190, 192, 193, 196
Prevention of Corruption Act, 1988 — Section 11, 12, 13, 13(1), 13(2)

Citation : (2011) 4 RCR(Criminal) 809

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—Inherent jurisdiction of this Court u/s 482 Cr.P.C. has been invoked seeking quashment of the sanction order dated 1.3.2011 passed by the President of India for prosecution of the petitioner in R.C.No.AC2/2008-A/004 with a further prayer for quashment of the charge-sheet dated 4.3.2011 presented against the petitioner in the court of Special Judge (CBI Court), Chandigarh as also the order of the Special Judge dated 18.4.2011 taking cognizance of the charge-sheet u/s 173 of the Cr.P.C.

2. The petitioner is a former Judge of this Court who was later transferred to the High Court of Uttarakhand. An FIR No.250 of 2008 was registered at Police Station, Sector 11, Chandigarh under Sections 11 and 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act"), Section 120-B read with Sections 192, 196, 199 and 200 of the Indian Penal Code on the complaint of one Amrik Singh, Peon of Hon'ble Ms. Justice Nirmaljit Kaur against Shri Sanjeev Bansal, an Advocate practising at Chandigarh, Shri Ravinder Singh resident of Delhi, Shri Rajiv Gupta, resident of Panchkula, Shri Nirmal Singh, resident of Panchkula and Justice Mrs. Nirmal Yadav, the then Judge of Punjab and Haryana High Court, petitioner herein. Initially, the case was investigated by

the Chandigarh Police, however, the case was transferred to CBI, pursuant to a DO letter dated 26.8.2008 from the then Governor of Punjab and Administrator of UT. Chandigarh.

3. The CBI conducted the investigation in the matter. During the course of investigation, the CBI claims to have collected material and evidence against the accused persons. Since the matter pertains to allegations against a sitting High Court Judge, the then Hon''ble Chief Justice of India, constituted a three members committee comprising of Hon''ble Mr. Justice H.L. Gokhale, the then Chief Justice of Allahabad High Court, presently Judge of Hon''ble Supreme Court, Justice K.S. Radhakrishnan, the then Chief Justice of Gujarat High Court, presently, Judge of Hon''ble Supreme Court and Justice Madan B. Lokur, the then Judge of Delhi High Court, presently Chief Justice Gauhati High Court in terms of In-House procedure adopted by Hon''ble Supreme Court on 7.5.1997. The order dated 25.8.2008 constituting the Committee also contains the terms of reference of the Committee. The Committee was asked to enquire into the allegations against Justice Mrs. Nirmal Yadav, Judge of Punjab and Haryana High Court revealed, during the course of investigation in the case registered vide FIR No.250 of 2008 dated 16.8.2008 at Police Station, Sector 11, Chandigarh and later transferred to CBI. The Committee during the course of its enquiry examined the witnesses and recorded the statements of as many as 19 witnesses, including Mrs. Justice Nirmal Yadav (petitioner), Ms. Justice Nirmaljit Kaur, Sanjiv Bansal, the other accused named in the FIR and various other witnesses. The Committee also examined various documents, including data of phone calls exchanged between Mrs. Justice Nirmal yadav and Mr. Ravinder Singh and his wife Mohinder Kaur, Mr. Sanjiv Bansal and Mr. Ravinder Singh, Mr. Rajiv Gupta and Mr. Sanjiv Bansal. On the basis of evidence and material before it, the Committee of Hon''ble Judges has drawn an inference that the money delivered at the residence of Hon''ble Ms. Justice Nirmaljit Kaur was in fact meant for Ms. Justice Nirmal Yadav.

4. Report of Committee of Judges was served upon the petitioner for her response by Hon''ble Chief Justice of India. The petitioner submitted her response vide letters dated 27/30 January, 2009 and June, 2009. The petitioner has also placed on record two more enquiry reports one conducted by the Government of Himachal Pradesh in respect of purchase of land by petitioner, alongwith Ravinder Singh, accused and various other persons at Solen. In this enquiry, it was concluded that no procedural irregularity was committed at any level for according permission by the Government of Himachal Pradesh for purchase of land by Mrs. Justice Nirmal Yadav and others nor there was any evasion of the stamp duty and registration fee. It was also found that the land purchased was also within the limits prescribed under the rules. The second report dated 11.11.2008 is by Income Tax Department in respect of valuation of the land purchased by Mrs. Justice Nirmal Yadav and others and again no irregularity or under valuation was found.

5. The CBI on completion of the investigation filed a closure report No.4/2009 dated 17.12.2009 before the learned Special Judge (CBI Court), Chandigarh. It may be relevant to note that the CBI concluded that the offence punishable u/s 12 of the PC Act is established against Ravinder Singh, Sanjiv Bansal and Rajiv Gupta whereas offence u/s 11 of the PC Act is established against Mrs. Justice Nirmal Yadav whereas offence punishable u/s 120-B of the IPC read with Sections 193, 192, 196, 199 and 200 IPC is also established against Shri Sanjiv Bansal, Rajiv Gupta and Mrs. Justice Nirmal yadav. The only reason for filing the closure report by the CBI was declining of sanction for prosecution. The relevant averments made in the closure report in this regard are reproduced here under :-

(xxiii) That as Mrs. Justice Nirmal Yadav was a sitting Judge of the Hon''ble High Court of Punjab and Haryana Chandigarh, request was made to the Secretary (Personnel), Ministry of Personnel, Public Grievances and Pensions, Govt. of India, New Delhi for obtaining prosecution sanction from the President of India in consultation with the Hon''ble Chief Justice of India. Vide letter D.O.No.2286/LS Office/09 dated 7.12.2009 of Shri D.R.Meena, Secretary Ministry of Law and Justice, Department of Legal Affairs, New Delhi addressed to Director, CBI, the sanction for prosecution has been declined on the grounds that after analysis of the available evidence, the Ld. Attorney General of India has observed that. "there is not a shred of evidence with the said alleged offences were committed by Sanjiv Bansal, Ravinder Singh and Nirmal Singh in conspiracy with Justice Yadav" and that "the matter had been discussed with the CJI, who had observed that no action was required for the present.

(xxiv) That, this closure report is, therefore, submitted before this Hon''ble Court for reasons of denial of prosecution sanction by the competent authority. It is, therefore, prayed that the Hon''ble Court may be pleased to order for the closure of this case and for the return of the seized/collected properties to the concerned persons from whom they were seized/collected. The disputed amount of Rs. 15 lakhs may be confiscated to the State as none of the suspects have claimed their rightful ownership of this amount during the investigation till date.

6. This opinion of the CBI regarding refusal of the sanction for prosecution is based upon a letter dated 7.12.2009 from Shri D.R.Meena, Secretary Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi addressed to Shri Ashwani Kumar, Director Central Bureau of Investigation. It may be relevant to reproduce the letter which reads as under:-

Dr. Meena,

Secretary

Government of India,

Ministry of Law & Justice

Department of Legal Affairs

Shastri Bhawan,

New Delhi-110001

D.O. No.2286/LS Office/09

Dated: 7th December, 2009

Dear Shri Ashwani Kumar

Please refer to your DO No.26/2/2009-PD/2940 dated 4.12.2009 regarding prosecution sanction in respect of Shri Sanjiv Bansal, Additional Advocate General.

In this connection, I may confirm that, as per our records we find no separate proposal for prosecution sanction has been received in this department in respect of the said Shri Sanjiv Bansal. So far as we recall, the proposal for prosecution was collectively received in respect of Mrs. Justice Nirmal Yadav, S/Shri Ravinder Singh, Sanjiv Bansal, Rajiv Gupta and Nirmal Singh U/S 120-B IPC r/w Section 193 r/w Sections 192, 196, 199 and 200 IPC and Sections 11 and 12 of PC Act, 1988 and Substantive Offices thereof. The matter was received by us for advice of the then Attorney General, as there was difference of opinion between the Director of Prosecution and the Director of CBI.

The then Attorney General after analysis of the available evidence in para 12 had observed that "there is not a shred of evidence with the said alleged offences were committed by Sanjiv Bansal, Ravinder Singh and Nirmal Singh in conspiracy with Justice Yadav". Upon further reference from the DOPT, the DOPT was informed that matter had been discussed by the Hon"ble Minister for Law and Justice with the CJI who had observed that no action was required for the present. The case papers relating to Justice Mrs. Yadav and others were returned back to DOPT on 19.10.2009.

It is again reiterated that this department has not received any proposal separately in respect of Shri Sanjiv Bansal regarding prosecution sanction.

With regards.

Yours Sincerely

sd/-

(D.R. Meena)

Shri Ashwani Kumar,

Director,

Central Bureau of Investigation

Room No. 114, North Block,

New Delhi.

7. On the basis of the aforesaid communication, CBI concluded that the sanction for prosecution has been declined.

8. Closure report was examined by the Special Judge (CBI Court), Chandigarh. On examination, the Special Judge refused to accept the closure report vide his detail order dated 26.3.2010 and directed the CBI to conduct further investigation. CBI carried out further investigation in due deference to the order of the Special Judge and approached the competent authority for grant of sanction for prosecution. The competent authority i.e. the President of India vide order dated 1.3.2011 granted sanction for prosecution of Mrs. Justice Nirmal yadav u/s 19 of PC Act for commission of offence punishable u/s 11 of the PC Act and other offences. As a consequence of the sanction for prosecution, a charge-sheet u/s 120-B of the IPC, Sections 11 and 12 of PC Act read with Sections 192, 193, 196, 199 and 200 of the IPC has been presented in the court of Special Judge (CBI Court), Chandigarh. The learned Special Judge took cognizance of the charge-sheet by passing order dated 18.4.2011 and summoned the petitioner.

9. The petitioner accordingly filed this petition challenging the sanction order, charge-sheet and the proceedings initiated against her, including the order of taking cognizance by the Special Judge (CBI Court), Chandigarh before this Court. Though there are some averments in the petition alleging extraneous reasons against unnamed Judges, however, the principal ground for challenging the sanction order and the consequential proceedings is on the question of review of sanction by the competent authority. It is contended by Shri KTS Tulsi, learned Sr. Advocate appearing on behalf of the petitioner that earlier sanction was declined by the then Chief Justice of India, Justice Bala Krishnan and the present incumbent in office has reviewed the earlier decision of the CJI which is impermissible in law. Since the only question which is primarily debated is the review ability of sanction letter, vide order dated 20.5.2011, information was sought from Secretary to Government of India, Department of Law and Justice with the following directions :-

Secretary to Govt. of India, Department of Law & Justice will file an affidavit whether any opinion was formulated and any recommendation was made by Recommending Authority (the then Hon'ble the Chief Justice of India) to the Govt. refusing sanction in case of the petitioner and whether such opinion was placed before the Sanctioning Authority (President of India) and whether the Sanctioning Authority at any stage declined sanction for prosecution in respect to the present petitioner, if so, the necessary documents (copies) containing the opinion/consultation accorded by the Hon'ble the Chief Justice of India to the sanctioning authority and order of Sanctioning Authority be filed before this Court in a sealed cover alongwith the affidavit of the Secretary concerned.

List on 1.6.2011.

Copy of the affidavit shall be furnished to the opposite side by 31.5.2011.

10. Pursuant to the aforesaid directions, Secretary to government of India

Ministry of Law and Justice, Department of Justice filed her affidavit dated 11.7.2011. Reference to this affidavit shall be made at the appropriate stage. While requiring affidavit, a further direction was issued to produce necessary documents containing the opinion/consideration accorded by Hon''ble Chief Justice of India, the sanctioning authority and the order of sanctioning authority.

11. Mr. Kaushik, learned counsel appearing on behalf of UOI and Mr. Anupam Gupta, learned counsel appearing for CBI produced the record from the Departments of Ministry of Law and Justice Department of Justice and Ministry of Law Justice Department of Legal Affairs and Department of Personnel and Training New Delhi as also the CBI.

12. Mr. Tulsi, learned Sr. Counsel appearing for the petitioner, besides making oral submissions in detail also filed written submissions. Four points on which arguments have been addressed in detail have been summarized by Mr. Tulsi in his written submissions. The same are noticed here under :-

1. Keeping in view the object of Section 19 of the PC Act, review or reconsideration of the decision to grant or decline sanction, is impermissible.

2. In the instant case, closure report itself recites (at page 284 of the paper-book) that the prosecution sanction was denied and hence the closure report was being filed. This is supported by the letter of the Law Secretary (at page 247) that the CJI had observed that no action was required for the present. The letter dated 15.1.2009 further leaves no manner of doubt that what was forwarded to the CJI was the S.P.'s report containing details of facts, circumstances and evidence brought on record during investigation on basis of which prosecution sanction u/s 19 of PC Act was requested.

3. It is not only the CBI which interpreted the order as declining sanction but the collegium itself, including the present CJI, which accorded approval for transfer of petitioner from Punjab & Haryana High Court to Uttarakhand High Court in Nov./ Dec.2009. Thus, the collegium can be presumed to have been made aware of the CJI's order declining sanction.

4. The none of the documents and the files produced before this Hon''ble Court are entitled to any immunity from disclosure. Keeping in view the nature of proceeding (Criminal Trial) in which these documents are capable of establishing the illegality of the criminal proceeding initiated against the petitioner, the public interest of disclosure far outweighs immunity. There is no valid ground or basis on which disclosure of documents inspected by this Court can be denied to the petitioner.

13. The legal question relating to review or reconsideration of the grant or decline of sanction shall be dealt with after the points No. 2 and 3 raised by Mr. Tulsi, which inter alia includes the factual aspect are considered.

14. The allegations against the petitioner as contained in the charge-sheet presented u/s 173 of the Cr.P.C. are summarized hereinafter.

15. On 13th August, 2008 at 20.30 hours, Shri Parkash Ram came to the house of Ms. Justice Nirmaljit Kaur with one plastic bag in his hand and informed Shri Amrik Singh, peon of Justice Nirmaljit Kaur that papers have come from Delhi to be delivered to Justice Kaur. Shri Amrik Singh took the plastic bag inside. On being directed by Justice Kaur, Shri Amrik Singh opened the bag which was found containing currency notes. On being directed by Justice Kaur, the peon Amrik Singh caught hold Parkash Ram with the help of guard, Shri Gurvinder Singh and thereafter local police was called who detained Parkash Ram. A formal FIR was, however, registered on 16th August, 2008 on the complaint of Shri Amrik Singh, Peon. Initially, the case was investigated by the local police, however, subsequently, the matter was referred to CBI.

16. The CBI has concluded that one RSA No. 550 of 2007 was decided by Smt. Justice Nirmal Yadav, Judge of Punjab and Haryana High Court vide judgment dated 11.3.2008 under the influence of Ravinder Singh who had close association with her and Shri Sanjiv Bansal who was interested in Plot No.601, Sector 16, Panchkula, subject matter of the RSA. Sanjiv Bansal had issued cheque for Rs. 2.00 crores from his own account in the name of Rajiv Gupta, out of which Rs. 1.50 crores was paid to one Shri Vinod Tayal on account of property jointly purchased by Shri Sanjiv Bansal and Rajiv Gupta at Hissar. Another amount of Rs. 20 lacs was paid on 16.5.2007 and Rs. 15 lacs on 6.6.2007 to Shri Anand Jain, the owner of the plot. It has also been alleged that Shri Rajiv Gupta purchased this plot No. 601, Sector 16, Panchkula from Shri Anand Jain for a consideration of Rs. 60 lacs for which money was transferred by Shri Sanjiv Bansal from his account. Thus he had personal interest in the property, subject matter of RSA. Sanjiv Bansal, Advocate also appeared as a counsel after superseding a senior counsel Sh. Arun Jain engaged in the case. The CBI in its detailed report also concluded that even though when Rs. 15.00 lacs was delivered at the residence of Hon'ble Ms. Justice Nirmaljit Kaur on the evening of 13th August, 2008, Ms. Nirmal Yadav again demanded Rs. 15.00 lacs from Ravinder Singh. On the morning of 14th of August, 2008, an amount of Rs. 15.00 lacs was delivered to Mrs. Yadav by Rajiv Gupta, a close associate of Sanjiv Bansal, one of the accused in the case. It is also part of investigation that this amount of Rs. 15.00 lacs was received by Ms. Yadav as a consideration for deciding RSA No. 550 of 2007 pertaining to plot No. 601, Sector 16, Panchkula for which Sanjiv Bansal had acquired interest. It is stated that during investigation, it is also revealed that Sanjiv Bansal paid the fare of air tickets of Mrs. Yadav and Mrs. Yadav used matrix mobile phone card provided to her by Shri Ravinder Singh on her foreign visit. To establish the close proximity between Mrs. Yadav, Ravinder Singh, Sanjiv Bansal and Rajiv Gupta, CBI has given details of phone calls amongst these accused persons during the period when money changed hands and the incidence of delivery of money at the residence of Ms. Nirmaljit Kaur and even during the period of initial investigation.

17. On the basis of these allegations, CBI after investigation approached the competent authority vide letter dated 15.1.2009 for grant of sanction for

prosecution against Mrs. Justice Yadav. It seems that there was difference of opinion between the Director CBI and Director (Prosecution). The matter was accordingly referred to Attorney General of India for his opinion. Attorney General of India recorded his opinion on 20th April, 2009 saying that there is no shred of evidence to prosecute Mrs. Yadav. Based upon the opinion of the Attorney General of India and some discussion between Hon''ble Law Minister of India and Hon''ble CJI, D.R. Meena, Secretary, Govt. of India, Ministry of Law and Justice, Department of Legal Affairs, vide his letter dated 17.12.2009 communicated to the Director, CBI that upon further reference from the DOPT, the DOPT was informed that the matter had been discussed by the Hon''ble Minister for Law and Justice with the CJI who had observed that no action was required for the present. The case papers related to Justice Nirmal Yadav and others were returned back to DOPT on 19.10.2009. Treating this letter as refusal, CBI filed the closure report before the Special Judge(CBI Court), Chandigarh. Learned Special Judge vide his order dated 26.3.2010 refused to accept the closure report and issued directions for further investigation.

18. Both the sides have relied upon the judgment of Hon''ble Apex Court in case of K. Veeraswami Vs. Union of India (UOI) and Others, . This judgment relates to the prosecution of a sitting Judge of the superior Court and details the safeguards before any criminal action is initiated against the Judge of the High Court and Supreme Court. Relevant observations/directions contained in the judgment are noticed here under :-

60. The Chief Justice of India is a participatory functionary in the matter of appointment of Judges of the Supreme Court and the High Courts. (Articles 124(2) and 217(1).) Even for transfer of a Judge from one High Court to another the Chief Justice should be consulted by the President of India (Article 222). If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India (Article 217(3)). Secondly, the Chief Justice being the head of the judiciary is primarily concerned with the integrity and impartiality of the judiciary. Hence it is necessary that the Chief Justice of India is not kept out of the picture of any criminal case contemplated against a Judge. He would be in a better position to give his opinion in the case and consultation with the Chief Justice of India would be of immense assistance to the Government in coming to the right conclusion. We therefore, direct that no criminal case shall be registered u/s 154, Cr. P.C. against Judge of the High Court, Chief Justice of High Court or Judge of the Supreme Court unless the Chief Justice of India is consulted in the matter. Due regard must be given by the Government to the opinion expressed by the Chief Justice. If the Chief Justice is of opinion that it is not a fit case for proceeding under the Act, the case shall not be registered. If the Chief Justice of India himself is the person against whom the allegations of criminal misconduct are received the Government shall consult any other Judge or Judges of the Supreme Court. There shall be similar consultation at the stage of examining the question of granting sanction for prosecution and it shall be necessary and appropriate

that the question of sanction be guided by and in accordance with the advice of the Chief Justice of India. Accordingly the directions shall go to the Government. These directions, in our opinion, would allay the apprehension of all concerned that the Act is likely to be misused by the Executive for collateral purpose.

(Emphasis supplied)

19. These directions still hold the field in respect of the criminal prosecution of a judge of High Court/Supreme Court. The directions contained in the aforesaid judgment contemplate consultation with Hon''ble the Chief Justice of India at two stages, firstly at the stage of registration of a criminal case and secondly, at the stage of examining the question of granting sanction for prosecution. Compliance of the aforesaid directions is sine qua non for proceeding against a sitting Judge of the High Court/Supreme Court. Although the petitioner has not disputed the factum of consultation with Hon''ble the Chief Justice of India, both at the stage of registration of FIR against her and subsequent grant of sanction for prosecution, however, it is deemed appropriate to notice the circumstances, as are evident from the record produced before me.

20. On registration of FIR No. 250 dated 16.8.2008 under Sections 8 and 9 of the P.C. Act read with Section 120-B and other offences under the IPC pertaining to the delivery of packet containing Rs. 15.00 lacs in cash at the residence of Hon''ble Ms. Justice Nirmaljit Kaur by Parkash Ram, Assistant Munshi of Shri Sanjiv Bansal, the then Addl. Advocate General, Government of Haryana and the matter being referred to the CBI for investigation, the CBI intended to examine the role of two sitting Judges of this Court, Ms. Nirmaljit Kaur and Mrs. Nirmal Yadav, on the basis of investigation conducted by the CBI. Director, CBI vide his D.O. letter dated 4.9.2008 requested the then Hon''ble the Chief Justice of India, Justice K.G.Batakrishnan for suitable guidance to enable CBI to proceed further in the matter to investigate the role of both the Judges of this Court and to examine them at a place and time of their convenience. This letter was responded to on the same date allowing the CBI to investigate the role of both the sitting Judges of Punjab and Haryana High Court in connection with the criminal case FIR No.250 with a caveat to give due regard to the dignity of the office held by the Hon''ble Judges. It was further observed that they should be examined by an Officer not below the rank of DIG of CBI. Pursuant to the permission accorded by Hon''ble the CJI to investigate the conduct and role of the two Hon''ble Judges of this Court, the CBI proceeded to investigate the matter. It seems that the thrust of the investigation of the CBI at the relevant time was in respect of the land deal conducted by Mrs. Nirmal Yadav (petitioner) at Solan in Himachal Pradesh. The Investigating Officer, CBI S.P. concluded the investigation and opined that offences u/s 13(2) read with Section 13(1)(d) of the PC Act, Section 120B of the IPC read with Section 420; 467, 468 and 471 of the IPC have been made out against Justice Nirmal Yadav and other accused persons, namely, Sanjiv Bansal, Rajiv Gupta, Nirmal Singh and Ravinder Singh. Investigating Officer further recommended prosecution of Mrs. Nirmal Yadav and

Ravinder Singh under Sections 11 and 12 of the P.C. Act on the ground that Mrs. Yadav obtained valuable things i.e. mobile phone, air tickets and matrix cards from Ravinder Singh. Report of investigation was examined by Director of Prosecution, CBI who opined that no case is made out against any of the accused. However, the Director, CBI was of the opinion that a case for prosecution is made out against the accused persons.

21. In view of the divergence of opinion of the Director of Prosecution, CBI and Director, CBI, the SP CBI vide his communication dated 15.1.2009 requested the Secretary (Personnel), Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi to seek opinion of the Attorney General in terms of paragraph 23.21 of CBI Manual, 2005. He further requested for consideration of the documents and statements of the witnesses by the sanctioning authority. A draft order for grant of sanction for prosecution was also enclosed. Aforesaid communication with the report of the Director of Prosecution, CBI and the Joint Director, AC (HQ), CBI was forwarded to the Ministry of Personnel, Public Grievances and Pensions. A copy of the same was also forwarded to the Secretary General, Supreme Court of India, New Delhi. Pursuant to the aforesaid letter, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India vide Office Memorandum dated 19.1.2009 requested the Ministry of Law and Justice Department of Legal Affairs to seek opinion of the learned Attorney General of India. Resultantly, the then Attorney General of India, Milan K. Banerji accorded his opinion dated 20.4.2009. The first Law Officer of the country noticed the gist of allegations in paragraph 6 of the opinion which reads as under :-

6. I have carefully perused the report of the SP along with the gist of witnesses and documents and also the notes of Shri Manohar Lal and Director of Prosecution. The CBI's allegations are two-fold, namely, (i) Mrs. Justice Nirmal yadav had made a demand of Rs. 15 lakhs from Shri Ravinder Singh in the evening of 13th August, 2008, who in turn requested Shri Sanjiv Bansal to deliver the said amount to Justice Yadav. Sanjiv Bansal in turn asked his wife to deliver the amount, which his munshi, Parkash Ram sought to deliver at the residence of Justice Nirmaljit Kaur and was apprehended.

(ii) The second allegation was that Justice Nirmal yadav asked accused Ravinder Singh to deliver Rs. 15 lakhs on 14th August, 2008 which was actually delivered at her residence by Sanjiv Bansal in the morning of 14th August, 2008.

On the basis of the aforesaid, it is contended that an offence u/s 11 and 12 of the PC Act were committed by Justice Yadav.

He thereafter formulated his following opinion :-

9. therefore, even assuming for the sake of argument that Justice Nirmal Yadav had demanded Rs. 15 lakhs, there is absolutely no evidence to prove that Shri Ravinder Singh was in any manner or was likely to be in any manner concerned in any proceedings or business transacted or about to be transacted by Justice

Yadav or that accused Ravinder Singh was having any connection with the official function of Justice Yadav. The amount had admittedly originated from Shri Ravinder Singh and was being merely delivered by Sanjiv Bansal. Therefore, the prosecution is required to establish that there was some connection between Ravinder Singh and Justice Yadav because of which this amount was demanded or delivered. Even if the entire evidence is to be believed, such a connection is not even remotely established. There may have been, as alleged by the CBI or may not have been some connection between Justice Yadav and Sanjiv Bansal in the past. This is a matter which cannot be a subject matter of investigation in the present FIR. In any event, that is absolutely no evidence to indicate, far less to prove that this amount was demanded or delivered for any official connection relating to the work of Justice Yadav or to confer a benefit on Ravinder Singh or Sanjiv Bansal or any other person. Therefore, on the material on record no offence under Sections 11 and 12 is made out against Justice Nirmal Yadav. Consequently, the charge u/s 120-B read with Sections 11 and 12 of the PC Act would be baseless.

10. At this stage I may indicate that from the notes it appears that the Deputy Legal Adviser was of the view that an offence u/s 11 is made out against Justice Yadav because she had received mobile phone, air ticket etc. from Ravinder Singh and Sanjiv Bansal. In my view, since there is no evidence of any official relations between Justice Yadav and Ravinder Singh, Section 11 is not attracted in the present case.

11. In so far as the alleged offences under the Indian Penal Code are concerned, there is not even an iota of allegation that Justice Yadav was involved in any manner in the statements made by accused S/Shri Sanjiv Bansal, Nirmal Singh, Rajiv Gupta or the documents which were tendered by them to the local Chandigarh Police. It appears that once Rs. 15 lakhs were seized, the said accused persons allegedly made up a story of delivery of Rs. 15 lakhs to accused Nirmal Singh. As rightly pointed out by the Additional Legal Adviser such statements or documents were given to the local police prior to the registration of FIR and therefore, the ingredients of Sections 192/193 IPC are not attracted. The Additional Legal Adviser has rightly pointed out that since the statements made to the police are not evidence in the eyes of law, Section 1991 PC also is not attracted. Therefore, there is grave doubt as to any offence under Sections 192 read with 193, 199 or 200 of IPC was committed by accused S/Shri Sanjiv Bansal, Rajiv Gupta and Nirmal Singh. In any event of the matter in so far as accused Justice Yadav is concerned, there is not a shred of evidence that the said alleged offences were committed by Sanjiv Bansal, Ravinder Singh and Nirmal Singh in conspiracy with accused Justice Yadav. There is definitely no material to prosecute Justice Yadav for a charge u/s 120-B far less for substantive offences under Sections 192/193 of IPC.

22. Attorney General's opinion was again examined at the level of CBI and detailed comments were recorded. The CBI was of the opinion that the entire

material has not been examined by the learned Attorney General of India. It also placed on record its disagreement on various aspects of the opinion of learned Attorney General and reiterated its stand that offence u/s 11 of the PC Act is made out, as is evident from the note of Shri H.C. Awasthy, HoZ/AC HQ, CBI, New Delhi dated 9.6.2009. The relevant observations of the CBI are noticed as under :-

The Ld. Attorney General has examined only those findings of the investigation which pertained to delivery of cash at the residence of Hon''ble Ms. Justice Nirmaljeet Kaur for the reason that no permission was sought by CBI for conducting investigation in the matters pertaining to purchase of land at Solan, Himachal Pradesh by Hon''ble Mrs. Justice Nirmal Yadav and certain judgments delivered by Hon''ble Mrs. Justice Nirmal Yadav. This is because in all probability, the Attorney General was not aware of the concurrence of CJI for such an investigation as communicated vide DO letter dated September 4, 2008 of Secretary General of the Supreme Court of India, Shri V.K.Jain in response to CBI request dated 4.9.2008.

23. It is further revealed that the CBI again approached the Secretary (Personnel), Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi for reconsideration of the matter by the successor Attorney General of India vide letter dated 19.11.2009. Further request was made regarding prosecution sanction u/s 19 of the PC Act and registration of another case against Mrs. Yadav and other officials for purchase of land in Solan District of Himachal Pradesh. On the basis of the comments recorded by the Investigating Agency on the opinion of the learned Attorney General, a further request was made by the CBI vide letter dated 24/25th June, 2009 to the Secretary (Personnel), Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi to convey its decision on the request of CBI conveyed vide letter dated 15.1.2009 for grant of sanction for prosecution which was followed by another DO letter dated 4.12.2009 from the CBI to Shri D.R. Meena, Secretary Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi. This letter was responded to by Shri Meena vide his DO letter dated 7.12.2009 referring to the opinion of the Attorney General and some discussion between Hon''ble Minister for Law and Justice with the Hon''ble CJI with the following observations :-

Upon further reference from the DOPT, the DOPT was informed that matter had been discussed by the Hon''ble Minister for Law and Justice with the CJI who had observed that no action was required for the person" (Extracted from letter dated 7.12.2009)

24. It is this communication which was understood and taken by CBI as "refusal" to grant sanction for prosecution. Resultantly, the CBI filed the closure report referred to above which was eventually declined by the Special Judge, (CBI Court), Chandigarh as noticed here-in-above. It is this letter and the observations recorded therein which is the sheet anchor of the entire argument

of the petitioner on the question of review ability of the sanction for prosecution. From the record of the Ministry of Law and Justice Department of Legal Affairs file No.228/3/2009-AVD-II produced before me, it has been revealed that request of the CBI for fresh opinion from the successor Attorney General of India was acceded to as is evident from the Note dated 7.1.2010 duly approved by Hon''ble the Minister for Law and Justice, Sh. Veerappa Moily. On the same date, the matter was referred to Shri Goolam E. Vahanvati, Attorney General of India who recorded his opinion on 30.1.2010. Learned Attorney General noticed the comments of the CBI on the opinion of Shri Milan K. Banerji which is as under :-

2. In the note dated 7.1.2010 it is stated as follows :

Pursuant to the opinion of the then Ld. Attorney General, the CBI vide its comments at page 40/C has observed that the Ld. Law Officer has examined only those findings of the investigation which pertained to delivery of cash at the residence of Hon''ble Ms. Justice Nirmal Jit Kaur. for the reason that no permission was sought by the CBI for conducting investigation in the matters pertaining to purchase of land at Solan, Himachal Pradesh by Hon''ble Justice Nirmal Yadav and certain judgments delivered by Hon''ble Justice Nirmal Yadav. The CBI has further observed that this conclusion by the then Ld. Law Officer, in all probability, is due to the fact that he was not aware of the concurrence of CJI for such an investigation.

After noticing the aforesaid observations, Shri Goolam E. Vahanvati, recorded as under :-

3. This requires consideration of the letter which was sent to the Ld. Chief Justice of India for permission to investigate the case. A letter had been written to the Hon''ble Chief Justice of India by the Director, CBI on 4.9.2008. This letter sought permission to investigate the role of the two judges of the Punjab & Haryana High Court in relation to the delivery of a packet containing Rs. 15 lakhs in cash to the residence of Justice Nirmaljit Kaur. Paras 2, 3, 4 & 5 of that letter expressly deal with the cash amount of Rs. 15 lakhs. In para 6 the letter the purchase of land at Solan is incidentally mentioned. It is stated that one Ravinder Singh had purchased the plots of land at Solan jointly with Justice Nirmal Yadav, and this is linked to para 5 of that letter, where it is mentioned that according to Shri Sanjiv Bansal, an amount of Rs. 15 lakhs was to be delivered to Justice Nirmal Yadav at the instance of his close friend Shri Ravinder Singh. It therefore appears that the reference to Ravinder Singh and the purchase of land in para 6 of the letter is to show the connection between Ravinder Singh, and the cash of Rs. 15 lakhs with Justice Nirmal Yadav. I do not find any reference in the letter dated 4.09.2008 to any irregularities in relation to purchase of land at Solan. 4. The letter received from the Hon''ble Chief Justice of India in relation to grant of permission for investigation is not on the file. I assume that it was written with reference to the letter dated 04.09.2008. As mentioned above, there is nothing in the letter dated 04.09.2008 which seeks to investigate the alleged irregularities in relation to the purchase of land at Solan. It therefore cannot be

said that the learned Chief Justice had granted permission to investigate into alleged irregularities in the purchase of land at Solan.

5. Incidentally, this seems to be the understanding of the SP himself since in his report dated 13.01.2009 in para 15.12, the following has been stated:

15.12. The scrutiny of the files related to the grant of permission to Mrs. Justice Nirmal Yadav (A-6) and 17 others for purchase of land in District Solan, Himachal Pradesh reveals prima facie commission of offences of forgery, cheating and abuse of official position by Mrs. Justice Nirmal yadav (A-6), officers of Himachal Pradesh Government and others. As this is a separate offence, committed in different territorial jurisdiction, it requires to be investigated separate, for which permission of Hon''ble Chief Justice and Himachal Pradesh Govt. is required as laid down in K. Veeraswami v. Union of India 1991 (2) R.C.R.(Criminal) 559 : (1991 (3) SCR 189) as well as notification u/s 5 and 6 of the DSPE Act respectively.

6. This clearly shows that even according to the SP, the allegations relating to the alleged offences of forgery, cheating and abuse of official position with regard to purchase of land at Solan constitute a separate offence and committed in different territorial jurisdiction which was required to be investigated separately and for which the permission of the Hon''ble Chief Justice of India would be required in accordance with the judgment in K. Veeraswami''s case.

25. From the above, it seems that even after Mr. Meena''s letter dated 7.12.2009, a fresh opinion was sought from the successor Attorney General of India who has agreed with the opinion of Shri Milan K. Banerji on the question that permission of Hon''ble CJI was not obtained by the CBI for investigation into the Solan Land deal for which separate permission is required. It is pertinent to note that from the opinion of Shri Goolam E. Vahanvati, it also appears that no comment has been made with regard to the allegations of the CBI against Smt. Nirmal Yadav regarding abuse of her official position and alleged delivery of Rs. 15.00 lacs on 13.8.2008 at the residence of Ms. Justice Nirmaljit Kaur which was in fact meant for Mrs. Yadav and receipt of another amount of Rs. 15.00 lacs on the following date i.e. 14.8.2008.

26. Mr. Tulsi, learned Sr. Counsel appearing for the petitioner has referred to various judgments to support the proposition that once the sanction is declined, the sanctioning authority has no jurisdiction to review the same. It may be useful to notice the judgments relied upon by Shri Tulsi.

27. In the case of State of Himachal Pradesh v. Nishant Sareen, 2011 (1) R.C.R. (Criminal) 193 : , a case under Sections 7 and 13(2) of the P.C. Act, 1988 was registered against a public servant. Vigilance Department of the State of H.P. approached the Government for grant of sanction for prosecution u/s 19 of the PC Act which refused to grant sanction on 27.11.2007 with the following observations :-

Therefore, after thorough examination of the case taking all the aspects into consideration and scrutiny of the service records it has been concluded that Sh. Sareen in the course of his duties and responsibilities and impartial discharge of his duties (sic). It appears that the complainant has registered a case which appears to be frivolous and has resulted in unnecessary harassment and hindrance in the working of the Drug Inspector. In view of this, there appears to be no justification for launching prosecution against Sh. Nishant Sareen, Drug Inspector as it appears to be a case of Personal enmity.

28. The Vigilance Department, however, again took up the matter with the competent authority insisting for grant of sanction on the plea of sufficient evidence for prosecution. The competent authority on re-consideration of the matter granted sanction vide its order dated 15.3.2008 with the following observations :-

I agree with the contention of the Vigilance Department that in evaluating the evidence of criminal misconduct, his general conduct and behaviour as perceived by his superiors cannot secure precedence. I have been through the case file and facts of the case in detail. I find that the said Drug Inspector, Sh. Nishant Sareen has been caught red handed, with a bribe of Rs. 5000/-. There is nothing on record to show that this incident did not occur. The facts do not support the contention that Sh. Nishant Sareen was falsely implicated. In the circumstances, I am of the opinion that the prosecution sanction be granted in the instant case and accordingly do so.

29. Action of the competent authority was challenged before the High Court of Himachal Pradesh in the writ petition. The High Court allowed the writ petition and quashed the order granting sanction.

30 In SLP filed by State of Himachal Pradesh, the Hon"ble Supreme Court observed as under :-

12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power u/s 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same

materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

31. In the case of State of Punjab and Another Vs. Mohammed Iqbal Bhatti, 605: JT 2009 (13) SC 180, the question of review of sanction again came up for consideration before the Hon"ble Supreme Court. In this case. Vigilance Department, Punjab sought sanction for prosecution for offences under Sections 7, 13(2), 19 and 88 of PC Act, 1988 upon completion of investigation. By an order dated 15.12.2002, grant of sanction was refused. The matter was again placed before the competent authority on 14th September, 2004 whereupon sanction to prosecute was granted. Considering the legality and validity of the subsequent order granting sanction, Hon"ble Supreme Court observed as under :-

22. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon"ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to.

23. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise.

32. In the case of Gopikant Choudhary v. State of Bihar, (2000) 9 SCC 53 while considering a similar issue, Hon"ble Supreme Court observed as under :-

5 In the case in hand, the matter was initially placed before the Minister of Law who refused to accord sanction after applying his mind to the entire materials and an order to that effect was passed. Subsequent to the same, the appellant retired in the year 1994 and it is only in 1997, the Chief Minister appears to have passed the impugned order. The appellant assailed the legality of the aforesaid order in the High Court, but the High Court having not interfered, he has approached this Court. It is contended on behalf of the appellant that no fresh materials were collected subsequent to the earlier order refusing to sanction prosecution and the appropriate authority having applied its mind and having passed the said order, the subsequent order was wholly uncalled for and

unjustified. In the counter-affidavit filed by the State, it has been indicated that before passing the earlier order, the matter had not been referred to the Chief Minister who was the competent authority and, therefore, when the matter was referred to the Chief Minister, the Chief Minister having passed the order there is no infirmity with the order of sanction in question. He also produced the relevant file before us to indicate as to how the file has been processed after the earlier order refusing to sanction prosecution.

6. We find from the file that was produced that there has been no application of mind when the subsequent order was passed in the year 1997. It further appears that between the order refusing to sanction and the order that was passed in 1997, the investigating agency had not collected any fresh materials requiring a fresh look at the earlier order. It is also apparent that the alleged excess amount said to have been paid on account of nonperformance of the duty by the appellant is to the tune of Rs. 2750/- and, therefore, under the Rules of Business, the file pertaining to sanction would have been finally dealt with by the Law Minister and, in fact, he had done so. In this view of the matter, neither was there any necessity for the authorities concerned to place the file before the Chief Minister nor had the Chief Minister any occasion to reconsider the matter and pass fresh order sanctioning prosecution particularly when taking into account the loss sustained to the exchequer to the tune of Rs. 2750. That apart, the person concerned has already retired in the year 1994 and it is unthinkable that for a loss of Rs. 2750, the State would pursue the proceedings against such person. In this view of the matter, we set aside the impugned order of sanction dated 10.12.1997 passed by the Chief Minister for prosecuting the appellant.

33. From the careful perusal of the aforesaid judgments relied upon by Shri Tulsi, following propositions emerge :-

(i) Grant or refusal of sanction for prosecution is a statutory function of the competent authority.

(ii) Grant or refusal of the sanction for prosecution of a public servant is the prerogative of the appointing authority/authority competent to remove from service.

(iii) Once the competent authority on the basis of material before it decides to decline sanction, it is impermissible in law to review the question of grant of sanction without fresh material and valid reasons.

(iv) Due application of mind by the competent authority at every stage of consideration is sine qua non for a legal and valid order for grant or refusal of sanction.

34. The plea of the petitioner is to be examined and considered within the compass of ratio of above mentioned judgments, extracted above.

35. It has been strenuously argued by Shri Tulsi that then Hon''ble CJI whose consultation was imperative for referring the matter to the Hon''ble President of

India for final sanction, formulated his opinion to decline sanction on the basis of the material and the opinion of the Attorney General. The question of grant of sanction thus attained finality and the successor CJI had no authority or jurisdiction to reconsider the same with fresh inputs and to arrive at a different conclusion or formulate an opinion contrary to the earlier opinion of the then CJI (Justice K.G. Balakrishnan)

36. Mr. Tulsi has also debated at length the binding nature of opinion of Attorney General upon the CBI in terms of paragraph 23.21 of the Central Bureau of Investigation (Crime) Manual-2005 which is reproduced here under :-

Disagreement between Prosecution and
Investigating Wing.

23.21- In important cases where the Director, CBI disagrees with the advice of the Director of Prosecution, the matter shall be referred to the Attorney General of India for his views. Thereafter, the decision taken by the Director, CBI, keeping in view the opinion of the Attorney General, would be deemed final.

37. To support his above contention, he has referred to Union of India and others v. Sushil Kumar Modi and others, (1996) 6 Supreme Court Cases 500 wherein it has been observed as under :-

13. We make it clear that in case of any difference of opinion between the officers of the CBI in relation to the implication of any individual in the crimes or any other matter relating to the investigation, the final decision in the matter would not be taken by the Director, CBI himself or by him merely on the opinion of the Legal Department of the CBI; and in such a situation, the matter would be determined according to the opinion of the Attorney General of India for the purpose of the investigation and filing of the charge-sheet against any such individual. In that event, the opinion would be sought from the Attorney General after making available to him all the opinions expressed on the subject by the persons associated with the investigation as a part of the materials.

38. It is accordingly submitted that learned Attorney General formulated his opinion on the basis of the report of the CBI which included entire evidence/material against the petitioner. It is accordingly submitted that having regard to the opinion of the first Law Officer of the country that there is not even a shred of evidence, Hon"ble CJI rightly declined the sanction for prosecution.

39. Mr. Anupam Gupta, learned counsel appearing for CBI, however, seriously and vehemently countered the proposition sought to be projected by Mr. Tulsi. According to him judgment in Sushil Kumar Modi's case (supra) has been reconsidered by Hon"ble Supreme Court in subsequent judgment of the Supreme Court. His further contention is that it is the opinion of the Investigating Agency which acquires supremacy over the opinion of the Law Officer in the matter of investigation.

40. In Sushil Kumar Modi's case (supra), Hon''ble Supreme Court has discussed the responsibility and role of the CBI in the matter of investigation. Relevant observations are contained in paragraphs 7 and 9 as under.

7. At the hearing of the matter we had (sic) pressed our plain view that the CBI with its Director at the helm of affairs is duty bound to make a fair, honest and complete investigation into the accusations and to identify all the culprits involved in the scam and to take the necessary steps in accordance with law for the trial of all accused. The ultimate responsibility to ensure a fair, honest and complete investigation into the accusations is that of the Director, CBI and he is expected to discharge his duty and functions faithfully towards this end. It is also necessary that Director is not merely to perform his own duty in this manner but he is also to ensure that every officer of the CBI works honestly to achieve this end. This is imperative under the "rule of law". The Learned Attorney General unhesitatingly accepted this and assured us of the same. It is not necessary for us to elaborate this obvious point any further.

9. The first question on merits relates to the exclusion of the Director CBI from participation in the investigation being conducted by the CBI. In our opinion, it is not only appropriate but necessary that the Director, CBI should continue to remain the person ultimately responsible for proper conduct of the investigation and its early completion. The Director, being the Head of the agency, should be the person accountable for the entire functioning of the CBI and in that capacity answerable and accountable to the Court for a proper investigation into the alleged crimes.

41. In the case of Union of India (UOI) and Others Vs. Sushil Kumar Modi and Others, considering the role of the Investigating Agency, Hon''ble Supreme Court observed as under :-

5. According to the Code of Criminal Procedure, 1973 the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigating and the final step in the investigation is to be taken only by the police and by no other authority, see *Abhinandan Jha v. Dinesh Mishra*....

42. In the case of Vineet Narain and Others Vs. Union of India (UOI) and Another, popularly known as Hawala Case, it has been observed by Hon''ble Supreme Court in para 28 that Minister's general power to review the work of the agency is subject to the contention that it would not extend to permit the Minister to interfere with the course of investigation and prosecution in any individual case and in that respect, the officers concerned are to be governed entirely by the mandate of law and statutory duty cast upon them, In the case of *M.C. Mehta Vs. Union of India (UOI) and Others*, , a case FIR was directed to be registered by the court pursuant to writ petition filed before it. There was difference of opinion between the Investigating Officer of CBI and the Director (Prosecution) and the matter was referred to learned Attorney General of India

to resolve the controversy who opined that evidence is not sufficient to launch prosecution. The Investigating Agency, however, persisted with its opinion that a case for criminal prosecution is made out. On the basis of the Attorney General's opinion, Director CBI also declined to proceed ahead for prosecution. Hon'ble Supreme Court formulated following question :-

19. The key issue which arises for determination in this case is: whether on the facts and the circumstance of this case, the Director, CBI, who has not given his own independent opinion, was right in referring the matter for opinion to the Attorney General of India, particularly when the entire investigation and law officers' team was ad idem in its opinion on filing of the charge-sheet and only on the dissenting opinion of the Director of Prosecution, whose opinion is also based on the interpretation of the legal evidence, which stage has not even arrived. The opinion of the Director, CBI is based solely on the opinion of the Attorney General after the reference." Referring to various provisions of Cr.P.C. and the judgments of Hon'ble Supreme Court, Hon'ble Supreme Court noticed as under :-

20.....This Court had categorically stated in the above judgment that, the final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is to be of the officer in charge of the police station and this function cannot be delegated. This Court unequivocally observed that, there is no provision for delegation of the above function regarding formation of the opinion but only a provision entitling the superior officers to supervise or participate u/s 551 (corresponding to Section 36 of the present Code). This Court further held that, a police report which results from an investigation as provided for in Section 190 of the Code is the material on which cognizance is taken. But from that it cannot be said that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance.

43. Hon'ble Supreme Court also took note of the judgments in Sushil Kumar Modi's case (supra) and Vineet Narain's case (supra). Hon'ble Supreme Court made following observations in respect of the reference of matter for the opinion of the Attorney General :-

32.....As stated by this Court in the case of R. Sarla (supra), the formation of opinion, whether or not there is a case to place the accused on trial has to be of the officer in charge of the police station. One fails to understand why an opinion of Sr. P.P. had been taken in the present case. He is not a member of the hierarchy. The S.P. is not legally obliged to take his opinion. In the circumstances, when there was no difference of opinion in the concerned team, the question of seeking opinion of the Attorney General did not arise.....

44. Hon'ble Supreme Court accordingly while rejecting the status report based upon the opinion of the Attorney general issued following directions :-

34. We, accordingly, direct the CBI to place the evidence/material collected by the investigating team along with the report of the S.P. as required u/s 173(2)

Cr.PC before the concerned court/Special Judge 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 the CBI 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 S.P.. It is made clear that none of the other opinions/recommendations including that of the Attorney General of India, CVC shall be forwarded to the court/Special Judge concerned.

45. Again considering the Taj Corridor matter in subsequent judgment in case of M.C. Mehta Vs. Union of India (UOI) and Others, Hon''ble Supreme Court ruled as under;-

12. It is one thing to say that this Court will not refrain from exercising its jurisdiction from issuing any direction for protection of cultural heritage and the ecology and environment; but then in discharge of the said duty, this Court should not take upon itself the task of determining the guilt or otherwise of an individual involved in the criminal proceeding. It should not embark upon an enquiry in regard to the allegations of criminal misconduct so as to form an opinion one way or the other so as to prima facie determine guilt of a person or otherwise....

46. No doubt in Sushil Kumar Modi's case (supra), Hon''ble Supreme Court observed that the Attorney General's opinion in the event of difference of opinion between the Officers of the CBI binds the Investigating Agency, however, while discussing the entire spectrum of law in subsequent judgment in Taj Corridor-II case (supra), it has been clearly and categorically ruled that primacy has to be accorded to the opinion of the Investigating Agency/Officer and no other opinion including that of the Attorney General or the CVC can prevent the criminal proceedings against a delinquent, if in the opinion of the Investigating Agency, a prima facie case is made out. Hon''ble Supreme Court has even emphasized that superior court should refrain itself in formulating an opinion on the basis of the evidence collected by the Investigating Agency one way or the other.

47. In view of the legal position based upon interpretation of provisions of Cr.P.C., it was impermissible for any authority to formulate an opinion that no case is made out for prosecution when the Investigating Agency was of the consistent opinion that the case for prosecution is made out. Even Mr. Tulsi has refrained himself from arguing that no case is made out for prosecution on the basis of the evidence collected by the CBI. It is not a case of no evidence where this Court could exercise the inherent jurisdiction for quashment of the criminal proceedings u/s 482 Cr.P.C. nor is this view projected by the petitioner in the present proceedings. It is in this context that Mr. Meena's letter is to be construed and examined.

48. From File No. 228/3/2009-AVD-II from the Ministry of Personnel, Public

Grievances and Pensions, it appears that reference to discussion between Hon''ble Ministry for Law and Justice and Hon''ble CJI finds mention in Note dated 12.10.2009. The relevant note is extracted as under :-

As a further development, the Hindustan Times in its edition dated 6th June, 2009 carried the news item under the title "CBI denied nod to prosecute High Court Judge.

In view of this news item Hon''ble MLJ desired that in view of the serious nature of the matter, Law Secretary may examine the matter and submit a report. Accordingly, Law Secretary examine the matter and put his views before the Hon''ble Minister vide note dated 15.6.09. The Hon''ble Minister minuted as under :-

The allegations made herein are quite serious in nature. These allegations cannot be brushed aside only on technical grounds. The case in question, if not pressed will erode the faith of people in the judiciary. In view of the above, I strongly feel that the matter may be referred to the present Attorney General for opinion and examine the matter on merits. "The Minutes of the Hon''ble Minister were brought to the notice of the CBI who provide their comments on the opinion of the then Ld. AG and intimated that they had no objection to the matter being referred to the present Attorney General of India. The matter was again put up to the Hon''ble Minister who minuted as under :-

This matter has been discussed with CJI. Hence no action is required for the present.

Now we have received the main file from the DOPT wherein the Secretary, DOPT has desired that in view of the Minutes of Hon''ble MLJ, Law Ministry may seek the advice of the present Attorney General in the matter. Law Secretary may please see.

Sd/- 12.10.2009

49. Except the above note, no other material is available on record to indicate that Hon''ble CJI at any point of time recorded his opinion for closure of the matter. In view of Mr. Meena's letter which is the sole document relied upon by the petitioner on the question of refusal of sanction, this vide inter locutory order dated 20.5.2011 asked Secretary to Government of India, Department of Law and Justice to file affidavit whether any opinion was formulated or any recommendation made by Hon''ble CJI to the Government for refusing sanction. In response to the aforesaid order, Ms. Neela Gangadharan, Secretary to Government of India, Ministry of Law and Justice, Department of Justice filed affidavit dated 11.7.2011 responding to the queries of this Court which reads as under :-

(b) That with regard to the directions that whether such opinion was placed before the Sectioning Authority, it is submitted that the competent authority to issue the sanction for prosecution is the President of India and the proposal for

sanction of prosecution of Smt. Justice Nirmal Yadav was placed before the competent authority only once in February, 2011, after obtaining the concurrence of the Hon''ble Chief Justice of India in July, 2010. The Hon''ble Chief Justice of India directed that the revised report dated 16.6.2010 could be considered for the purposes of according sanction by President of India.

(c) That with regard to the matter that the Sanctioning Authority had at any stage declined the sanction for prosecution, it is submitted that proposal for prosecution sanction was sent to President of India only in February, 2011 as mentioned in above para and accordingly, having due regard to the provision of Section 19 of the Prevention of Corruption Act, the Sanction Order dated 1.3.2011 has been issued. Thus, there is no question of declining the prosecution sanction on any earlier occasion. The letter dated 7.12.2009 (Annexure P-7); expresses that the Hon''ble Chief Justice of India had only observed that no action was required for the present and he had not commented on the issue of sanction of prosecution.

50. From the perusal of para (b) above, it is evident that proposal for sanction of prosecution of the petitioner was placed before the competent authority only once in February, 2011 after obtaining the concurrence of Hon''ble CJI in July, 2010 who had opined that the revised report dated 16.6.2010 could be considered for the purpose of according sanction. Para (c) further reveals that proposal for sanction for prosecution was sent to the Hon''ble President of India only once in February, 2011 where upon sanction order dated 1.3.2011 was issued and sanction was never declined at any earlier occasion. This affidavit is corroborated by the record produced.

51. Special Judge (CBI), Chandigarh vide his order dated 26.3.2010 had directed for further investigation, in view of the various observations made in the above mentioned detailed order. It is pertinent to note that even the Special Judge had noticed the opinion of the Attorney General in para 32 and Mr. Meena's letter while directing the further investigation. Thus, both the contentions raised by the petitioner in the present petition were not acceded to as can be conveniently and safely inferred from the order of the learned Special Judge. This order was never appealed against or assailed in any manner:

52. Pursuant to the directions for further investigation, CBI has carried out further investigation. This fact is revealed from two reports of the CBI, one filed at the time of filing the closure report and the second with the charge-sheet. From the two final reports of the CBI, copies whereof have also been placed on record before this Court, it appears that the first report is dated 5.1.2010 whereas the second report is dated 7.7.2010. First report contains list of as many as 65 witnesses and 106 documents which were relied upon in support of the prosecution case whereas in the second final report, as many as 80 witnesses and 116 documents were relied upon. Mr. Anupam Gupta has referred to para (xxiii) of the fresh charge-sheet to indicate that fresh facts have come on record during further investigation. He also pointed out that witness no.48- Raj

Kumar Jain was examined again during further investigation. Similarly, witness Nos. 57 to 70 are the additional witnesses whose statements were recorded on further investigation.

53. To the contrary, Mr. Tulsi in his written submissions has referred to chart to indicate that there is no material difference between the statements of the witnesses. His contention is that further investigation has not improved the case of the prosecution. Suffice it to say that this is not within the purview of this Court to appraise the evidence and find out the adequacy or deficiency of the material collected by the Investigating Agency. Otherwise also, it is not the case of the petitioner before this court that no offence is made out, on the basis of the evidence on record. It is thus impermissible in law to examine the evidence in the context of the issue before me. The fact remains that there has been further investigation. On the basis of the further investigation, a fresh proposal dated 16.6.2010 was forwarded by the CBI to the Ministry of Law and Justice, Department of Justice, seeking sanction for prosecution. This proposal was examined by the Joint Secretary on 30.6.2010 and the Secretary (Justice) Ms. Neela Gangadharan, on 9.7.2010 and recommended to Hon''ble CJI for his consultation, in view of the judgment in the case of K. Vecraswami (supra). Hon''ble CJI recorded his opinion on the basis of the revised report pursuant to fresh investigation on 28.7.2010 recommending grant of sanction. On the opinion of Hon''ble CJI, the Hon''ble Minister for Law and Justice ordered for the process of the matter on the same date. The entire record was accordingly sent to Prime Minister's Office. Prime Minister's Office, however, made certain queries. On seeking response from the CBI, the matter was again placed before the competent authority in the Prime Minister's Office. On receipt of the approval of the proposal from Hon''ble Prime Minister, the proposal for grant of sanction was forwarded to Her Excellency, the President of India, the competent authority who granted sanction vide order dated 1.3.2011 for prosecution of the petitioner which is under challenge before this Court.

54. One of the issues that needs a thoughtful consideration by this Court is the sanctity, validity, legality and propriety of the Mr. Meena's letter dated 7.12.2009 and its impact on the order of grant of sanction by the President of India, the competent authority. 55. From the record, it appears that even though letter dated 15.1.2009 was forwarded by the CBI to the Ministry of Personnel, Public Grievances and Pensions, Govt. of India, New Delhi and a copy of the same was also sent to the Secretary General, Supreme Court of India, however, no material is available on record which may even remotely suggest that DOPT or the Ministry of Law and Justice ever forwarded any proposal to Hon''ble CJI for consideration/consultation. No consultation seems to have been accorded by the Hon''ble CJI on the first proposal of(sic)BI except a reference in the note dated 12.10.2009 and the letter of Mr. Meena. This letter in fact throws many questions rather shedding any light. Even no opinion of Hon''ble Law Minister is available on record. During the course of hearing, Mr. Anupam Gupta has placed on record copy of a letter dated 10.2.2010 said to be issued from the office of Shri

M.P.Bhadran, Secretary General, Supreme Court of India addressed to the Editor-in-chief, the Pioneer newspaper denying the factum of refusal of sanction at the level of Hon''ble CJI. The contents of the letter are reproduced here under :-

10th February, 2010

To

The Editor in Chief

The Pioneer, IInd Floor, Link House,

3, Bahadur Shah Zafar Marg,

New Delhi.

Sub : News item captioned "Cash-at-door Scame: Bar association slams CJI" published in the Pioneer, New Delhi on 10th February, 2010.

Sir,

In respect of today's news item in your newspaper under the caption "Cash-at-door Scame: Bar association slams CJI", this is to clarify that no such request for sanction to prosecute a Judge of the Punjab & Haryana High Court, has been made by the CBI to Hon''ble the Chief Justice of India regarding the alleged delivery of cash. Even the final report in this regard has not been shown to Hon''ble the Chief Justice of India by CBI. So it is incorrect to say that Hon''ble the Chief Justice of India has denied sanction to prosecute the Judge. Hence I request you to publish a clarification in your newspaper at a prominent place.

Thanking you,

Yours faithfully

Sd/- M.P.Bhadran

55. It is stated that on the basis of the news item published in various newspapers, Office of Hon''ble CJI clarified that the matter was never placed before the then Hon''ble CJI, Justice K.G. Balakrishnan and thus question of refusal does not arise. Admittedly, this letter is not part of the investigation or record of the trial court. Hence no reliance can be placed upon the same. Thus, the question whether the proposal of CBI dated 15.1.2009 was examined at the level of Hon''ble the then CJI is to be looked independent of the aforesaid letter. In the record produced, as noticed above, there is absolutely no reference to the proposal having been forwarded by the competent authority i.e. the DOPT/ Ministry of Law and Justice to the Hon''ble CJI for consultation/opinion for grant of sanction. The note of Hon''ble Minister that the matter has been discussed with the Hon''ble CJI seems to be based upon some oral discussion with the Hon''ble CJI. Even if the note is taken at its face value, it does not indicate that Hon''ble CJI has considered the issue of grant of sanction for prosecution, it could be any other question which may, inter alia, include the question of initiating

administrative action on the basis of the allegations. The note "the matter had been discussed with the CJI, who had observed that no action was required for the present" cannot be read to support the case of the petitioner that this note pertains to the question of grant of sanction. Even if it is presumed that Hon"ble the CJI was apprised of the issue regarding grant of sanction, the note simply says that "no action was required for the present". It is neither an affirmative nor an active/positive opinion in any respect whatsoever. It cannot be read to mean that Hon"ble CJI declined the sanction for prosecution in any manner. In K. Veeraswami's case (supra), expression "consultation" has been used by Hon"ble Supreme Court. The word "consultation" finds mention in Articles 124 and 217 of the Constitution of India in regard to appointment of Judges of Hon"ble Supreme Court and High Courts, respectively. The true purport, import and meaning of the. "consultation" used in the Constitution has invited debate in various judgments of the Hon"ble Apex Court. Reference can be made to (1) S.P. Gupta Vs. President of India and Others, Samsher Singh Vs. State of Punjab and Another,) Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, (4) Subhash Sharma and Others and Firdaus Taleyarkhan Vs. Union of India (UOI) and Another, Supreme Court Advocates-on-Record Association and another Vs. Union of India, and (6) In the Supreme Court of India (In Re: Appointment and Transfer of Judges, It has been observed that the "consultation" amongst the constitutional functionaries must be full and effective consultation. In the later judgment, it is desired that the consultation even amongst the members of Collegium must be in writing.

56. Mr. Meena's letter simply refers to noting by Hon"ble Minister for Law and Justice. No such noting under the signature of Hon"ble the Minister is available on record produced from the Ministry of Law and Justice/DOPT. Thus the letter of Mr. Meena which has been construed to be refusal of sanction by the petitioner and the CBI at the initial stage, raises another question, whether it can be construed to be an order of Government of India much less an order passed by the competent authority viz. Hon"ble CJI or the President of India declining sanction. It has been forcefully argued by Mr. Anupam Gupta, learned counsel appearing on behalf of the CBI that the letter cannot be construed to be an order contemplated under Article 77 of the Constitution of India and the Rules of Business framed by the President of India. To buttress his argument, reliance is placed upon following:

57. In the case of Ghaio Mall and Sons Vs. The State of Delhi and Others, , a liquor licence was not granted to the writ petitioner. To the contrary, a communication was issued by the Government stating therein that the Chief Commissioner is pleased to approve the grant of licence of L-II to the respondents in the writ petition. The question which came up for consideration before the Court is whether the letter can be construed to be grant of licence under the rules. Hon"ble Supreme Court, while considering the communication held that inter-departmental communication was only in reference to a letter of the addressee and cannot be termed as an order granting sanction of licence. It

was also observed that the matter was never placed before the competent authority. The relevant observations are as under :-

9.....A document which conveys the sanction can hardly be equated with the sanction itself. Finally the document does not purport to have been authenticated in the form in which authentication is usually made. There is no statement at the end of the letter that it has been written " by order of the Chief Commissioner". For all these reasons it is impossible to read this document as the order of the Chief Commissioner.

58. In the case of *Bachhittar Singh Vs. The State of Punjab*, a noting on the record was held not conformed to the order contemplated and authenticated under Article 166(1) of the Constitution of India which is *pari materia* to Article 77 of the Constitution of India for Government of India. The relevant observations are contained in para 9 which read as under :-

9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by (sic). (1) of Art. 166 and then it has to be communicated....

59. In the case of *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, Hon''ble Supreme Court has categorically held that a noting or recorded decision on the file cannot be construed to be an order of the Government which is always subject to reconsideration and review by the competent authority and no cognizance can be taken on the basis of such noting in exercise of power of judicial review. Relevant observations are contained in following para :-

43. A noting recorded in the file is merely a noting *simpliciter* and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Article 77(1) and (2) or Article 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.

60. In the case of *M.R.F. Ltd. Vs. Manohar Parrikar and Others*, Hon''ble Supreme Court has held that Business Rules framed under Articles 77 and 166 of the Constitution are mandatory and must be strictly adhered to. Any decision by the Government in breach of these rules will be a nullity in the eyes of law.

61. Reference to so-called opinion of Hon"ble the CJI in Mr. Meena's letter is to be judged on the anvil and the bench-mark of the law laid down by the Supreme court in the above mentioned judgments.

62. Section 19 of the Prevention of Corruption Act, 1988 prescribes that sanction for prosecution by competent authority is necessary to prosecute a public servant accused of commission of offences under Prevention of Corruption Act, 1988.

63. Power to grant of sanction includes power to refuse. It being a statutory function, law envisages due application of mind on the material placed before the competent authority entrusted with the responsibility of granting sanction. The sanctioning authority has to arrive at the conclusion for refusal or grant of sanction by taking into consideration the material placed before it. There may be doubts in the mind of the sanctioning authority and to clear such doubts, the sanctioning authority may formulate even a tentative opinion. However, any such noting on the record or even a tentative opinion cannot be a substitute for an order of the competent authority, unless such opinion is translated into a final, well-thought of decision and the decision is communicated to the concerned in the prescribed mode and form, if so prescribed under law. Articles 77 and 166 empowers the President or the Governor, as the case may be, to frame the rules of business for authentication of the orders of the Government. It also specifically provides that all orders of the Government have to be issued in the name of the "President" or the "Government of India" in case of Central Government and in the name of "Governor" or the "Government of State" in the matters relating to State. In view of Section 19 of the P C Act, the competent authority to grant sanction for prosecution in case of a judge of the High Court is his/her appointing authority i.e. the President of India under Article 217(b) of the Constitution of India and thus, the President of India alone is the sanctioning authority. However, in case of K.Veeraswami (supra), Hon"ble Supreme Court has only prescribed a mode and placed a caveat for exercise of power by the President and consultation with the CJI has been made compulsory being head of the Judicial Family. Thus unless it is proved and established that the President of India in consultation with Hon"ble the CJI ever declined the grant of sanction, the petitioner cannot succeed in her attempt to seek quashment of the sanction order. Even it is admitted case of the petitioner that the matter was never considered by Hon"ble President of India, prior to the grant of impugned sanction dated 1.3.2011. The entire case of Mr. Tulsi is that since the consultation with the CJI is a compulsory phenomenon, the decision of the CJI must be construed to be the final word on the question of grant of sanction. It is argued that where the CJI refuses to agree for the grant of sanction for prosecution of a High Court Judge, the matter need not be placed before the competent authority i.e. Hon"ble President of India. Strength in this regard is drawn from the judgment of K.Veeraswami (supra). Referring to K. Veeraswami's judgment, Mr. Tulsi has attempted to argue that once the CJI decides not to accord sanction for prosecution, the matter ends then and there and need not be pursued further. His contention is that the view of the CJI being binding in the consultative

process so far as the criminal prosecution against a High Court Judge is concerned, it was not required or even desired to refer the matter to the President of India for consideration. I have carefully gone through the judgment in K. Veeraswami's case. At the cost of repetition, the relevant extract in this regard is quoted as follows :-

There shall be similar consultation at the stage of examining the question of granting sanction for prosecution and it shall be necessary and appropriate that the question of sanction be guided by and in accordance with the advice of Chief Justice of India.

64. It is thus wrong to suggest that the question of sanction in case of refusal by the Hon''ble CJI was not required to be considered by the President of India.

65. Indubitably, Hon''ble Supreme Court has made the consultation with the CJI imperative for the President of India, the competent authority for the purpose of grant of sanction for prosecution in case of a Judge of the superior judiciary. However, the final dictum to grant or refuse the sanction vests with the President of India, though the view of Hon''ble the Chief Justice must carry weight. It cannot be ruled out that even if Hon''ble CJI has any reservation in regard to grant of sanction, but the competent sanctioning authority (President of India) has a right to seek further consultation/clarification on the basis of the material, if placed before her/him and in such an eventuality, the Hon''ble CJI could possibly agree with the opinion of the competent authority and accord affirmative consultation accordingly. Thus, to say that where the CJI declines to grant sanction or has any reservation, the matter should not be placed before the competent authority may not be a safe proposition. In the process of consultation, there is possibility of difference of opinion amongst the constitutional authorities, but finally, the authorities may arrive at a common conclusion/decision. This situation, in my humble opinion cannot be ruled out.

66. Be that as it may. In the present case, neither the petitioner has placed on record any material except the letter of Mr. Meena nor the record produced by all the concerned departments reveal that the proposal dated 15.1.2009 was placed before the Hon''ble CJI by the competent authority viz. Ministry of Law and Justice for consultation in respect of the sanction for prosecution of the petitioner. Record also does not disclose any consideration by the Hon''ble CJI prior to July 28, 2010. Suffice it to say that the consideration inheres in itself due application of mind. Reference to a note of Hon''ble Minister for Law and Justice in Mr. Meena's letter thus, by no para meter of law, can assume the status of a consultation in law. It may also be noticed that since the competent authority i.e. the Hon''ble President of India and Hon''ble CJI are required to perform statutory function while granting sanction u/s 19 of the PC Act, it cannot be imagined that such consultation can be oral and without adopting a proper procedure. Under Articles 124 and 217 of the Constitution of India, consultation for appointment of a Judge of Supreme Court or a High Court must be in writing as ruled by Hon''ble Supreme Court in the cases of Supreme Court Advocates-on-Record Association

and another Vs. Union of India, and In the Supreme Court of India In Re: Appointment and Transfer of Judges, It is beyond pale of any imagination that where the consultation for appointment of Judges which is only a privilege to be conferred is needed in writing and the sanction for prosecution which is far more a serious matter relating to the liberty of a public servant can be oral. It is in this context that the affidavit of Ms. Neela Gangadharan assumes significance.

67. It is also argued by Mr. Tulsi that not only the Hon''ble CJI, but even the Collegium understood that the sanction has been declined. To formulate his argument, it is argued that judicial work was withdrawn from the petitioner by the then Chief Justice of Punjab and Haryana High Court, however, later she was transferred by the President of India on the recommendation of Collegium of Hon''ble Supreme Court from Punjab and Haryana High Court to Uttarakhand High Court by restoring her judicial functioning. It is accordingly contended that this establishes that no prima facie case for criminal prosecution of the petitioner was made out. This argument is far fetched and it will not be wrong if, I may say fallacious as no material has come on record in this regard. The transfer of a High Court Judge is purely an administrative decision. What weighs with the competent authority (Collegium) (on the administrative side) while considering the transfer of a Judge of the High Court cannot be imported into statutory function to be discharged by the competent authority. This argument thus deserves outright rejection.

68. It has been argued by Mr. Anupam Gupta that grant or refusal of sanction is an affirmative action. Whether refusal or grant it must be by a valid order. He has relied upon the case of S.A. Venkataraman Vs. The State, . In this case, a report u/s 173 Cr.P.C. was presented before the competent court wherein it was submitted that although prosecution was recommended, the Government decided to deal with the accused departmentally. The Magistrate accordingly ordered closing of the investigating and discharged the accused. Later on prosecution of the accused was recommended on the same material and same allegation by filing a fresh complaint. It was pleaded on behalf of the accused that once sanction has been declined, it cannot be reconsidered and it amounts to abuse of the process of the court to allow prosecution to be recommended after it has been withdrawn. On examination of the issue, Hon''ble Supreme court held as under :-

(19). We have examined the correspondence which has been referred to in the petition for special leave and which is to be found on the record of this case. There is nothing in them to establish the allegation that a sanction for the prosecution of the appellant was positively refused. All that is indicated is that the Government chose to proceed against the appellant departmentally. It can hardly be said that in doing so the Government had positively refused to grant sanction for the prosecution of the appellant. Indeed, it may be legitimately said that the Government preferred to & wait the result of a departmental enquiry. If that enquiry exonerated the appellant the occasion for granting a sanction may

not arise. If, on the other band, the departmental enquiry established the allegation against the appellant, the Government might find itself in possession of more material than that disclosed by the police investigation on which to decide whether a sanction should or should not be granted. We cannot read into the correspondence, as was suggested on behalf of the appellant, that there was a promise on the part of the Government not to prosecute the appellant,

XXX XXX XXX

(21) It is unnecessary for us to say whether once a sanction is positively refused a fresh sanction cannot be granted, because we are satisfied, on the materials before us, that, in fact, there was no positive refusal to sanction the prosecution of the appellant.

69. From the ratio of the aforesaid judgment, it emerges that even if a formal order of refusal of sanction may not be necessary, however, a positive order of refusal must exist to attract the bar of review. In the present case, there is absolutely no material on record to indicate that there is a positive refusal even at the level of Hon''ble CJI with due application of mind what to say of the final sanctioning authority i.e. the President of India.

70. Mr. Tulsi has also challenged the order of sanction on various other grounds and reasoning. It is argued that the impugned sanction order does not refer to an earlier order or opinion of CJI to decline sanction. It does not refer to any fresh material while granting the sanction. To examine the veracity of this argument, reference needs to be made to the record. It is even admitted case of the petitioner that Special Judge vide his order dated 26.3.2010 directed further investigation. The present charge-sheet has been filed on the basis of second investigation report of the CBI dated 7.7.2010. On the result of the further investigation, a fresh proposal dated 16.6.2010 was made by the CBI to the Ministry of Law and Justice. Revised S.P''s report has been considered by the Ministry of Law and Justice and forwarded to Hon''ble CJI where upon Hon''ble CJI recorded his opinion/consideration and recommended grant of sanction for prosecution on 28.7.2010 as is evident from File No. K11017/9/2009- VS-II produced before me. Copy of the revised investigation report was also placed before Hon''ble CJI for consideration. Thus the argument that no reference is made to the fresh material is contrary to record and without any substance which deserves rejection. The next argument of Mr. Tulsi that no reference is made to earlier opinion of the CJI declining sanction, also deserves to be rejected in view of the detailed discussion made here in above as no such opinion/consultation of the Hon''ble CJI declining the sanction is available on record.

71. Now coming to the principal question argued by Mr. Tulsi regarding review ability of the sanction order, in the case of Nishant Sareen (supra), Hon''ble Supreme Court has held that review on the basis of the same material is impermissible. In the same judgment in para 12, it has been said that it is not an absolute rule that sanction once refused in exercise of statutory power cannot be

reconsidered at a subsequent stage. While acknowledging the power of review, it has been held that power is not unbridled or unrestricted. The embargo for review is on the same material and without any fresh inputs. Similarly, in case of Mohammed Iqbal Bhatti (supra), it has been noticed that no fresh material was produced at the time of reconsideration and no reason has been recorded for such reconsideration. Similar is the ratio in the case of Gopikant Choudhary (supra). However, in the present case, at the first place, there was no refusal at any stage or at least a positive view or order for refusal to grant sanction and thus, the question of review or reconsideration does not arise. Even if it is assumed that the note recorded in the letter of Mr. Meena, is to be construed as a refusal, indubitably further investigation was carried out which persuaded the Hon''ble CJI and the sanctioning authority to grant sanction. As per the affidavit of Ms. Neela Gangadharan, file was placed before the competent authority only once in February, 2011, after obtaining the concurrence of Hon''ble CJI in July, 2010. At no earlier stage, the file seems to have been produced before Hon''ble CJI or before the sanctioning authority (President of India). Since there was no earlier refusal, there was no occasion for review or reconsideration. In view of the dictum of various judgments referred to above, review is permissible on the basis of fresh inputs and even for other valid reasons. Assuming in a given case, the sanctioning authority makes an order of declining sanction, even without looking to any material and without due application of mind and subsequently, such authority reviews its own opinion on consideration of material produced and application of mind, this definitely falls within the purview of other valid reasons providing an occasion to the sanctioning authority to review its earlier decision and grant sanction. Such an order would be legally valid and has the sanction of law.

72. A long debate has been made by Mr. Tulsi seeking disclosure of the documents pleading that this would enable the petitioner to effectively argue the case before this Court. He claimed disclosure of all documents relied upon by the CBI, which, inter alia, include statements of witnesses, opinion of CBI, opinion of Attorney Generals, opinion of Hon''ble CJI. It is submitted that no document is immune from disclosure as no privilege is claimed by the CBI or Government of India. It is further argued that the petitioner has a fundamental right to access to all documents which have been relied upon by the investigating agency against her otherwise it amounts to denial of justice. According to Mr. Tulsi, the public interest of disclosure far outweighs immunity. He has referred to the Constitution Bench judgment in the case of S.P. Gupta Vs. President of India and Others, in particular reference to paragraphs 63 to 66, 69, 70, 72, 75 to 85. Issue debated before Hon''ble Supreme Court in the above judgment was transfer and non-confirmation of High Court Judges. It is in this context that Hon''ble Supreme Court desired to examine the correspondence between the Law Minister, Chief Justice of High Court and Chief Justice of India for which privilege was claimed by the State. After referring to and reading the above mentioned paragraphs, the sum and substance of Mr. Tutsi's argument is that none of the documents and

files produced before this Court are entitled to any immunity from disclosure. It is submitted that keeping in view the nature of proceedings being criminal, any document capable of establishing the illegality of the criminal proceedings initiated against the petitioner, public interest of disclosure outweighs immunity. According to Mr. Tulsi, any document which may be inspected by this Court from the record produced necessarily requires disclosure to the petitioner who is facing a criminal charge. Non-disclosure offends Article 21 of the Constitution of India which guarantees right to liberty to a citizen of this country and particularly, to a person accused of criminal offence which ultimately leads to curbing liberty, if finally convicted. He has also debated that openness of the Government is the foundation of democracy. Referring to observations of the Hon"ble Supreme Court, it is stated that secrecy encourages oppression, corruption and misuse. It is further contended that documents relating to the question of sanction by the competent authority are not documents belonging to noxious class.

73. There is no dispute in the contentions raised by Mr. Tulsi in regard to the right of the accused to disclosure of any incriminating document which may be basis for his/her prosecution for a criminal offence. It is unfettered constitutional and fundamental right of an accused to ask for any document relied upon by the investigating agency and which is the basis of a criminal charge/trial of an accused. However, the moot question arises as to at what stage, in what manner and the forum where the accused can exercise such a right. Another allied question is can the accused ask for inspection and disclosure of unspecified documents and files of the investigation/government. All documents and evidence relied upon by the prosecution is part of the charge-sheet u/s 173 of the Cr.P.C., a copy whereof has been furnished to the petitioner which, inter alia, includes the copy of the sanction order, statement of witnesses and the record collected by the Investigating Agency during the course of investigation. If the Investigating Agency or the prosecution relies upon any other further material, they are bound to produce the same in the trial court with its leave or if the trial court may so direct for the purpose of trial in terms of Section 91 of the Cr.P.C. Disclosure of unspecified document has been asked for by the petitioner. In fact it is a sweeping statement that all documents and the nothings of the record of the government be disclosed to the petitioner in the present quashing petition. While acknowledging the right of the accused for disclosure of the material sought to be used against his/her, the accused cannot claim a right for disclosure of unspecified material, irrespective of the fact whether it has any bearing on the case or not. Such a disclosure is not envisaged under any law. The accused has a right to specify any document to be summoned by the court whether in defence or even may be otherwise and the trial court in such an eventuality is bound to consider the request of the accused, if the material/document is relevant and has nexus with the trial of the case, be it in the nature of a defence of the accused or to demolish the prosecution case. However, no such right can be exercised by the accused while seeking quashment invoking jurisdiction u/s 482 Cr.P.C. The

accused cannot adopt any short-circuit method to ask for documents and materials which may be part of the defence of the accused and plead for its production/disclosure in quashing petition. The inherent powers of this Court are to be exercised to scrutinised the material relied upon by the prosecution/investigating agency for the criminal prosecution of an accused to arrive at a conclusion whether the criminal prosecution is to be allowed to continue or scuttled at the budding stage. In my humble view, recourse sought to be adopted by the petitioner is unwarranted in law.

74. The plea of the petitioner is also to be weighed in the light of the observations made here-in-above. On the basis of the record examined by this Court. It has been found that there exists no opinion of the then Hon''ble CJI on the proposal of the CBI dated 15.1.2009 declining prosecution. Thus, the question of disclosing such non-existent material does not arise. Otherwise whatever material is available on record is even relied upon by the petitioner herself in this petition and is part of the trial court record. What has been in fact examined by this Court is the sequence of events leading to the final consideration by the competent authorities for grant of sanction or if the prosecution has withheld any relevant material having bearing on the innocence or legality of criminal proceedings against her. I have no doubt in my mind that this Court has not relied upon any incriminating material not disclosed to the petitioner during the trial which constitutes the basis for charge against the petitioner. In so far as the opinion of the Attorney General is concerned on which heavy reliance is placed by the petitioner, in view of the ratio of the judgment in Taj Corridor case (supra), such opinion is irrelevant and is not to be forwarded to the trial court with the charge-sheet and thus possibly the petitioner cannot claim its disclosure. Opinion depicts only thought process of an expert on any issue and does not constitute a substantive evidence or material. In any case, relevant part of the opinions formulated by the two learned Attorney Generals of India have also been extracted here-in-above just to test the veracity of the petitioner''s contention made before this Court and cannot be relied upon either by the prosecution or the defence as a substantive piece of evidence during the trial. In the case of State of Orissa Vs. Debendra Nath Padhi, , the question arose whether the accused has a right to seek production of documents to prove his innocence at the time of framing of charge, in addition to the material/documents submitted by the Investigating Agency. The accused claimed right for production of such documents invoking Articles 14 and 21 of the Constitution of India. On consideration of the right of the accused in the light of the provisions of Section 227 of the Code of Criminal Procedure, Hon''ble Supreme Court held as under :-

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207 (A) omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a

mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the sub-mission of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police."

75. The petitioner thus has undisputed right to ask for any documents not disclosed in the charge-sheet, if she desires so and ask for the same, subject to its relevance to the trial. However, at the pre-trial stage before this Court, the petitioner cannot ask for disclosure of unspecified and wholesome of documents. It is settled law that jurisdiction of civil and criminal courts is unlimited whereas the jurisdiction of the High Court in exercise of inherent power is only confined to the scrutiny of the existing material and legal infirmity, if any, to sustain the criminal charge. Thus powers of this Court are circumscribed by law. In view of the law laid down by Hon''ble Supreme Court in the case of Debendra Nath Padhi (supra) and other related factors discussed here-in-above, in my humble opinion, the plea of the petitioner is not only unwarranted, but unreasonable and irrational too. The contention of the petitioner is accordingly rejected.

76. In the case of Vineet Narain and others Vs. Union of India and another, , it has been observed by Hon''ble Supreme Court "Be you ever so high, the law is above you".

77. Merely because the petitioner has enjoyed one of the highest constitutional offices, she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual. Taking a panoptic view of all the factual and legal issues, I find no valid ground for judicial intervention in exercise of inherent jurisdiction vested with this Court. Consequently, this petition is dismissed.

78. Nothing expressed here-in-above shall be construed to be an expression of opinion on merits of the case pending before the trial court nor any observation made in this judgment shall preclude the petitioner from seeking production of relevant record during the trial, if permissible in law.

79. I will be failing in my duty If I do not place on record my appreciation for the learned counsel for the parties who took a lot of pains to argue this matter for number of days.

80. Record produced by the counsel for the CBI and Union of India be returned to learned counsel against proper receipt.