

(2025) 04 SHI CK 1121
In the High Court Of Himachal Pradesh
Case No : Cr. MMO No. 208 Of 2024

Rakesh Sharma And Anr

APPELLANT

Vs

State Of Himachal Pradesh & Ors

RESPONDENT

Date of Decision : 24-04-2025

Acts Referred:

Code of Civil Procedure Act, 1908 — Section 115, Order 14 Rule 2, Order 41 Rule 22, Order 41 Rule 22(1)
Himachal Pradesh Urban Rent Control Act, 1987 — Section 2(d), 24(5)
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 20

Citation : (2025) 04 SHI CK 1121

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Dinesh K. Sharma, Y. Pal, Chandernarayan Singh, Anshul Gandhi

Final Decision : Dismissed

Judgement

Rakesh Kainthla, J

1. The petitioners have filed the present petition for quashing of FIR No. 40/2024 dated 10.03.2024 for the commission of offences punishable under Sections 171C, 171E and 120-B of Indian Penal Code (in short 'IPC') read with Sections 7 and 8 of Prevention of Corruption Act (in short 'PC Act') registered in Police Station Boileanganj, District Shimla and the consequential proceedings arising out of the FIR.

2. Briefly stated, the facts giving rise to the present petition are that the informants-Sunil Awasthy and Bhuvneshwar Gaur sent a complaint to the Police Station asserting that Budget Session 2024 was organized from 15.02.2024 to 28.02.2024. An election for the seat of Rajya Sabha was held, and the budget was also passed during the session. The votes were cast in favour of the candidate for the seat of Rajya Sabha in a pre-planned conspiracy by misusing huge funds and other resources in a corrupt manner by purchasing votes under illegal influence. The allurements and resources were given against the elected

Government by corrupt methods so that the budget could not be passed. There were big rumours/discussions in the different newspapers, electronic media and the general public regarding this incident. Sufficient evidence was available regarding negotiation/purchase and transaction of the money for achieving illegal goals. Transactions worth crores of rupees were made to get the candidate elected. The votes were purchased to topple the Government. Petitioner Ashish Sharma and some other MLAs were involved in the money transactions. Petitioner Rakesh Sharma also remained associated with the MLA. They purchased votes by illegal means and by use of money in a planned manner. Use of helicopters was made, and arrangements were made for staying in 5 to 7-star hotels. The police registered the FIR and conducted the investigation.

3. Being aggrieved by the registration of the FIR and the investigation, the petitioners have filed the present petition asserting that the petitioner No.1 is innocent and he was falsely implicated to put pressure upon his son, petitioner No.2, who is a member of the legislative assembly. The ruling party could not get its candidate elected for the Rajya Sabha elections. The FIR is politically motivated, and the petitioners have nothing to do with the acts alleged in the FIR. The informants did not have any personal knowledge regarding the allegations made by them, and they made allegations based on the newspaper reports without mentioning the details of such reports. No specific allegation was made regarding the demand/acceptance of a bribe. No disqualification of the MLA can be sought on the ground that the MLA has voted in a particular manner. The voting for the Rajya Sabha seat took place on 27.02.2024. 06 out of 40 MLAs belonging to the ruling party and 3 independent candidates cast their votes in favour of the rival candidate. Both candidates got 34 votes each, and after completing the process of elimination, the rival candidate was elected. The proceedings for disqualification of the MLAs were also started, which are under challenge before the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 156/2024. The FIR was registered to browbeat the petitioners. The police failed to conduct a preliminary inquiry, and the FIR was registered on the date of receipt of the complaint. The allegations in the FIR are vague. The offences punishable under Sections 171C and 171E are non-cognizable offences. The FIR was wrongly registered for the commission of offences punishable under Sections 7 and 8 of the PC Act. No specific role was attributed to the petitioners. There is no proof of demand and acceptance of gratification. The FIR is politically motivated and intended to wreak vengeance upon the petitioners. The petitioners never obtained or accepted any undue advantage. The procedure laid down under Section 17A of the PC Act was not followed before the registration of the FIR or the conducting of the investigation. The continuation of the proceedings amounts to an abuse of the process of the Court. The State machinery is being used to persecute the petitioners for settling the political score. Therefore, it was prayed that the present petition be allowed and the FIR be quashed.

4. The petition was opposed by filing a reply by respondent No.1/State, making a preliminary submission regarding the lack of maintainability. The contents of the

petition were denied on merits; however, it was admitted that respondents Nos 2 and 3/informants, made a complaint to the police. The police registered the FIR. Letters were written by the Superintendent of Police, Shimla, to the Director General of Police, Himachal Pradesh, on 11.03.2024, 19.03.2024 and 30.03.2024 for getting the approval under Section 17A of the PC Act to investigate the FIR. The matter is under consideration with the office of the Director General of Police, Himachal Pradesh. The petitioners threatened the Investigating Officer by saying that the Government was a guest of only two months and would topple thereafter. There was sufficient evidence of the use of the helicopter, payment by a pharmaceutical company of the bill against services and undue advantage to the petitioners. The investigation is continuing, and quashing of the FIR at this stage would interfere with the due process of law. The present case is not the one where the inherent powers of the Court should be exercised to quash the FIR. It was specifically denied that the FIR is the result of a political vendetta against the petitioners to browbeat them. The holding of a preliminary inquiry is not mandatory in all cases. Casting a vote by taking consideration amounts to a corrupt practice, and the police had rightly registered the FIR; hence, it was prayed that the present petition be dismissed.

5. I have heard Mr. Randeep Singh Rai, learned Senior Counsel assisted by M/s Vikrant Thakur, Anurag Arora, Rubina Virmani, Sushant Vir Singh Thakur, Shubham Singh Guleria, Arjun Singh Rai, learned counsel for the petitioners and Mr. Anup Rattan, learned Advocate General with Mr. Jitender Sharma, learned Additional Advocate General, Ms. Swati Draik, learned Deputy Advocate General and Mr. Shalabh Thakur, learned Assistant Advocate General for respondent No.1/State.

6. Mr. Randeep Singh Rai, learned Senior Counsel for the petitioners, submitted that the contents of the FIR are vague and do not disclose the commission of any cognizable offence. The police failed to conduct the preliminary inquiry. The police registered the FIR within minutes of the receipt of the complaint, which is unheard of. Section 17A of the PC Act bars the enquiry, inquiry and investigation without the previous sanction. The sanction has not been obtained in the present case, and the matter regarding the grant of sanction is pending before the Director General of Police. The registration of the FIR and continuation of the investigation amount to an abuse of the process of the law. MLA is free to cast his vote in a manner deemed proper by him, and he cannot be subjected to any prosecution for the same. He relied upon the judgments of the Hon'ble Supreme Court in Kuldeep Nayyar versus Union of India, AIR 2006 SC 3127, Pashupati Nath Sukul versus Nem Chandra Jain, AIR 1987 SC 399, Yashwant Sinha versus Central Bureau of Investigation, 2020 (2) SCC 338, Cds. Amit Kumar Sharma vs. Union of India and ors, 2022 SC Online SC 1570, and Central Bureau of Investigation versus Santosh Karnani and Anr., 2023 SCC Online 427 in support of his submission.

7. Mr. Anup Rattan, learned Advocate General, for respondent No.1/State

submitted that there is no requirement to conduct a preliminary inquiry before registration of the FIR in cases under the PC Act. Section 17A of the PC Act does not apply to the demand and acceptance of bribes. The allegations in the FIR show that the money was exchanged and favours were bestowed to cast the votes in a particular manner, which is a corrupt practice; hence, he prayed that the present petition be dismissed. He relied upon the judgment of Pradeep Nirankarnath versus State of Gujarat, 2025 INSC 350 in support of his submission.

8. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

9. The law relating to quashing of FIR was explained by the Hon'ble Supreme Court in B.N. John v. State of U.P., 2025 SCC OnLine SC 7 as under: -

"7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in State of Haryana v. Ch. Bhajan Lal, 1992 Supp (1) SCC 335, wherein this Court has summarized some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of

the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge.” (emphasis added)

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed.”

10. This position was reiterated in *Ajay Malik v. State of Uttarakhand*, 2025 SCC OnLine SC 185, wherein it was observed:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the

Prosecution from building its case before the Trial Court. The grounds for quashing, inter alia, contemplate the following situations : (i) the criminal complaint has been filed with mala fides; (ii) the FIR represents an abuse of the legal process; (iii) no prima facie offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335)

11. It was held in *Somjeet Mallick v. State of Jharkhand*, (2024) 10 SCC 527: 2024 SCC OnLine SC 2820 that the Court has to take the allegations in the FIR as correct while deciding the question of quashing the FIR at the threshold. It was observed at page 531:

Analysis

15. Before we proceed to test the correctness of the impugned order, we must bear in mind that at the stage of deciding whether a criminal proceeding or FIR, as the case may be, is to be quashed at the threshold or not, the allegations in the FIR or the police report or the complaint, including the materials collected during investigation or inquiry, as the case may be, are to be taken at their face value so as to determine whether a prima facie case for investigation or proceeding against the accused, as the case may be, is made out. The correctness of the allegations is not to be tested at this stage.

12. It was further held that the FIR is not an encyclopaedia of all the imputations and the Court has to see whether prima facie some offence has been made out. It was observed at pages 531 and 532:

17. It is trite law that FIR is not an encyclopaedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence, what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, prima facie, some cognizable offence has been committed or not. At this stage, the court is not required to ascertain as to which specific offence has been committed.

18. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the court, the court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the court may even discharge the accused. Thus, when the FIR alleges dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR.

13. The present petition is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

14. It was submitted that the police could not have registered the FIR without conducting the inquiry. Reliance was placed upon the judgment of the Hon'ble Supreme Court in *Lalita Kumari versus Government of Uttar Pradesh*, 2014 (2)

SCC 1, in support of this submission. This judgment was considered by the Hon'ble Supreme Court in Pradeep Nirankarnath Sharma (supra), and it was held that there is no prohibition in registering the FIR without conducting the inquiry. The inquiry is essential where the information does not disclose the commission of a cognizable offence. It was observed:

"12. The scope of a preliminary inquiry, as clarified in the said judgment, is limited to situations where the information received does not prima facie disclose a cognizable offence but requires verification. However, in cases where the information discloses a cognizable offence, the police have no discretion to conduct a preliminary inquiry before registering an FIR. The decision in Lalita Kumari (supra) does not create an absolute rule that a preliminary inquiry must be conducted in every case before the registration of an FIR. Rather, it reaffirms the settled principle that the police authorities are obligated to register an FIR when the information received prima facie discloses a cognizable offence.

13. In the present case, the allegations against the appellant pertain to the abuse of official position and corrupt practices while holding public office. Such allegations fall squarely within the category of cognizable offences, and there exists no legal requirement for a preliminary inquiry before the registration of an FIR in such cases. The appellant's contention that successive FIRs have been registered against him with an ulterior motive is a matter that can be examined during the investigation and trial. The appellant has adequate remedies under the law, including the right to seek quashing of frivolous FIRs under Section 482 CrPC, the right to apply for bail, and the right to challenge any illegal actions of the investigating authorities before the appropriate forum."

15. In the present case, the information disclosed the misuse of money and other resources to purchase the vote under illegal influence and casting of votes in favour of the rival candidates. It was laid down by the Hon'ble Supreme Court in Sita Soren v. Union of India, (2024) 5 SCC 629: 2024 SCC OnLine SC 229 at page 701 that taking a bribe for casting a vote in a particular manner is not protected under the privileges of Parliament. It was observed:

"G. Bribery is not protected by parliamentary privilege Bribery is not in respect of anything said or any vote given

97. The question remains as to whether these privileges attract immunity to a Member of Parliament or of the Legislature who engages in bribery in connection with their speech or vote. The test of intrinsic relation to the functioning of the House and the necessity test evolved by this Court in the context of determining the remit of privileges under Articles 105(3) and 194(3) must weigh while delineating the privileges under clauses (1) and (2) of the provisions as well. When this Court is called upon to answer a question of interpretation of a provision of the Constitution, it must interpret the text in a manner that does not do violence to the fabric of the Constitution. This Court's opinion in P.V. Narasimha Rao [P.V. Narasimha Rao v. CBI, (1998) 4 SCC 626: 1998 SCC (Cri)

1108] hinged on two phrases in clause (2) of Article 105 of the Constitution. These phrases were "in respect of" and the following word "anything". Clause (2) of the Article reads as follows:

"105. (2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

98. In *State (NCT of Delhi) v. Union of India* [*State (NCT of Delhi) v. Union of India*, (2018) 8 SCC 501] Dipak Misra, C.J. observed that the Court should interpret a constitutional provision and construe the meaning of specific words in the text in the context in which the words occur by referring to the other words of the said provision. This Court held in that case that the meaning of the word "any" can be varied depending on the context in which it appears and that the words "any matter" was not to be understood as "every matter".

99. The decision in *Tej Kiran Jain* [*Tej Kiran Jain v. N. Sanjiva Reddy*, (1970) 2 SCC 272] interpreted the word "anything" in clause (1) of Article 105 to be of the widest amplitude and only subject to the words appearing after it which were "in Parliament". The clause does give wide freedom of speech in Parliament. The word "anything" cannot be interpreted to allow interference of the Court in determining if the speech had relevance to the subject it was dealing with at the time the speech was made. In *Tej Kiran Jain* [*Tej Kiran Jain v. N. Sanjiva Reddy*, (1970) 2 SCC 272] the followers of a religious head who had made a speech on untouchability filed a suit in the High Court seeking damages for defamation alleged to have been committed in the Lok Sabha during a calling attention motion on the speech. This Court held that the Court cannot dissect a speech made in Parliament and adjudicate if the speech has a direct relation to the subject matter before it. Parliament has absolute control over which matters it directs its attention towards, and thereafter, the Members or persons at liberty to speak may not be subjected to the fear of prosecution against anything that they may say in the House.

100. That context evidently changes in clause (2) of Article 105, which gives immunity to Members of the House and the Committees thereof in any proceeding in any court in respect of "anything" said or any vote given in the House. M.H. Beg, C.J. in *State of Karnataka* [*State of Karnataka v. Union of India*, (1977) 4 SCC 608] had foreseen a situation where a criminal act may be committed in the House and had observed that it could not be protected under the Constitution. The Chief Justice opined that : (SCC p. 656, para 63)

"63. ... A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the

due performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings. For example, the jurisdiction to try a criminal offence, such as murder, committed even within a House vests in ordinary criminal courts and not in a House of Parliament or a State Legislature.”

(emphasis supplied)

101. In *K. Ajith [State of Kerala v. K. Ajith, (2021) 17 SCC 318]*, a Member of the Kerala Legislative Assembly was accused of climbing over the Speaker's dais and causing damage to property during the presentation of the Budget by the Finance Minister of the State. The question which arose before this Court was whether the Member could be prosecuted before a court of law for his conduct inside the House of the Legislature. This Court, speaking through one of us (D.Y. Chandrachud, J.), after exploring the evolution of law in this regard in the UK, observed that : (SCC p. 356, para 36)

“36. ... It is evident that a person committing a criminal offence within the precincts of the House does not hold an absolute privilege. Instead, he would possess a qualified privilege, and would receive the immunity only if the action bears nexus to the effective participation of the Member in the House.” (emphasis in original)

102. This Court further held that privileges accruing inside the legislature are not a gateway to claim exemption from the general application of the law: (*K. Ajith case [State of Kerala v. K. Ajith, (2021) 17 SCC 318]*, SCC p. 367, para 65)

“65. Privileges and immunities are not gateways to claim exemptions from the general law of the land, particularly as in this case, the criminal law which governs the action of every citizen. To claim an exemption from the application of criminal law would be to betray the trust which is impressed on the character of elected representatives as the makers and enactors of the law. The entire foundation upon which the application for withdrawal under Section 321 was moved by the Public Prosecutor is based on a fundamental misconception of the constitutional provisions contained in Article

194. The Public Prosecutor seems to have been impressed by the existence of privileges and immunities which would stand in the way of the prosecution. Such an understanding betrays the constitutional provision and proceeds on a misconception that elected Members of the Legislature stand above the general application of criminal law.”

(emphasis supplied)

103. In *Lokayukta [Lokayukta v. State of M.P., (2014) 4 SCC 473]*, criminal proceedings were initiated against administrative officers of the Madhya Pradesh Legislative Assembly for allegedly engaging in corruption and financial irregularity. The Speaker of the Assembly initiated proceedings for breach of privilege against the Lokayukta and Vigilance Authorities. This Court, while

holding that initiation of criminal proceedings for corruption may not amount to a breach of privilege, had opined that : (SCC p. 496, paras 48-49)

"48. It is clear that in the matter of the application of laws, particularly, the provisions of the Lokayukt Act and the Prevention of Corruption Act, 1988, insofar as the jurisdiction of the Lokayukt or the Madhya Pradesh Special Establishment is concerned, all public servants except the Speaker and the Deputy Speaker of the Madhya Pradesh Vidhan Sabha for the purposes of the Lokayukt Act fall in the same category and cannot claim any privilege more than an ordinary citizen to whom the provisions of the said Acts apply. ...

49. As rightly submitted by Mr K.K. Venugopal, in India, there is the rule of law and not of men, and, thus, there is primacy of the laws enacted by the legislature, which do not discriminate between persons to whom such laws would apply. The laws would apply to all such persons unless the law itself makes an exception on a valid classification. No individual can claim privilege against the application of laws and for liabilities fastened on the commission of a prohibited act."

(emphasis supplied)

104. The principle which emerges from the above cases is that the privilege of the House, its Members and the Committees is neither contingent merely on location nor is they merely contingent on the act in question. A speech made in Parliament or the Legislature cannot be subjected to any proceedings before any court. However, other acts, such as damaging property or criminal acts, may be subject to prosecution despite being within the precincts of the House. Clause (2) of Article 105 grants immunity "in respect of anything" said or any vote given. The extent of this immunity must be tested on the anvil of the tests laid down above. The ability of a Member to speak is essentially tethered to the collective functioning of the House and is necessary for the functioning of the House. A vote, which is an extension of the speech, may itself neither be questioned nor proceeded against in a court of law. The phrase "in respect of" is significant to delineate the ambit of the immunity granted under clause (2) of Article 105.

105. In P.V. Narasimha Rao [P.V. Narasimha Rao v. CBI, (1998) 4 SCC 626: 1998 SCC (Cri) 1108], the majority judgment interprets the phrase "in respect of" as having a broad meaning and referring to anything that bears a nexus or connection with the vote given or speech made. It therefore concluded that a bribe given to purchase the vote of a Member of Parliament was immune from prosecution under clause (2) of Article 105. By this logic, the majority judgment concluded that a bribe-accepting Member who did not comply with the quid pro quo was not immune from prosecution as his actions ceased to have a nexus with his vote. As we have noted above, the interpretation of a phrase which appears in a provision cannot be interpreted in a way that does violence to the object of the provision. The majority in P.V. Narasimha Rao [P.V. Narasimha Rao v. CBI, (1998) 4 SCC 626: 1998 SCC (Cri) 1108] has taken the object of Article

105 to be that Members of Parliament must have the widest protection under the law to be able to perform their function in the House. This understanding of the provision is overbroad and presumptive of enhanced privileges, translating to better functioning of Members of the House.

106. Privileges are not an end in themselves in a parliamentary form of Government, as the majority in *P.V.Narasimha Rao v. CBI*, (1998) 4 SCC 626: 1998 SCC (Cri) 1108] has understood them to be. A Member of Parliament or the Legislature is immune in the performance of their functions in the House or a Committee thereof from being prosecuted because the speech given or vote cast is functionally related to their performance as Members of the Legislature. The claim of a Member to this immunity is its vital connect with the functioning of the House or Committee. The reason why the freedom of speech and to vote have been guaranteed in Parliament is because without that, Parliament or the legislature cannot function. Therefore, the extent of privilege exercisable by a Member individually must satisfy the two-fold test laid down in Part F of this judgment (see paras 65 to 96, above), namely, its tether to the collective functioning of the House and its necessity.

107. The words "in respect of" in clause (2) of Article 105 apply to the phrase "anything said or any vote given", and in the latter part to a publication by or with the authority of the House. We may not interpret the words "anything" or "any" without reading the operative word on which it applies, i.e. "said" and "vote given", respectively. The words "anything said" and "any vote given" apply to an action which has been taken by a person who has the right to speak or vote in the House or a Committee thereof. This means that a Member or person must have exercised their right to speak or abstained from speaking inside the House or Committee when the occasion arose. Similarly, a person or Member must have exercised their option of voting in favour, against, or in abstention to claim immunity under Articles 105(2) and 194(2).

108. The words "anything" and "any", when read with their respective operative words, mean that a Member may claim immunity to say as they feel and vote in a direction that they desire on any matter before the House. These are absolutely outside the scope of interference by the courts. The wide meaning of "anything" and "any" read with their companion words connotes actions of speech or voting inside the House or Committee, which are absolute. The phrase "in respect of" applies to the collective phrase "anything said or any vote given". The words "in respect of" means arising out of or bearing a clear relation to. This may not be overbroad or be interpreted to mean anything which may have even a remote connection with the speech or vote given. We, therefore, cannot concur with the majority judgment in *P.V. Narasimha Rao v. CBI*, (1998) 4 SCC 626: 1998 SCC (Cri) 1108].

16. Therefore, the taking of bribes to cast a vote in a particular manner will attract the provisions of ordinary criminal law as was held in *Sita Soren* (supra). Once the allegations of exchange of money and resources to cast the vote in a

particular manner were made, these allegations disclosed the commission of a cognizable offence and the police were justified in the registration of the FIR.

17. It was submitted that a person is free to cast a vote according to his conscience, irrespective of his party. In the present case, the allegations in the FIR are that the votes were cast for extraneous consideration and not according to conscience. Therefore, this submission will not help the petitioners. However, a caution was sounded by the Hon'ble Supreme Court in *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1: 2006 SCC OnLine SC 853 that cross-voting in the garb of conscience voting will weaken the party discipline. It was observed at page 153:

"451. It cannot be forgotten that the existence of political parties is an essential feature of our parliamentary democracy and that it can be a matter of concern for Parliament if it finds that electors were resorting to cross-voting under the garb of conscience voting, flouting party discipline in the name of secrecy of voting. This would weaken the party discipline over the errant legislators. Political parties are the sine qua non of parliamentary democracy in our country, and the protection of party discipline can be introduced as an essential feature of the purity of elections in the case of indirect elections."

18. Much was made out of the fact that the FIR was registered within the minutes of the receipt of the complaint, that too through the special messenger. This fact by itself is not sufficient to quash the FIR. The Police may be overzealous in the registration of the FIR, but their overzealousness will not invalidate the FIR disclosing the commission of a cognizable offence.

19. It was submitted that the police could not have registered the FIR without obtaining sanction under Section 17A of the PC Act. This submission is not acceptable. It was held in *CBI v. Santosh Karnani*, 2023 SCC OnLine SC 427, that prior approval of investigation mandated under Section 17A of the PC Act is not necessary when the public servant is charged with acceptance of undue advantage or any attempt thereof and when the investigation related to demand of bribe, no previous approval was required. It was observed:

"33. The contention that prior approval of investigation, as mandated under Section 17A of the Prevention of Corruption Act, has not been obtained and thus, the proceedings initiated against Respondent No. 1 stand vitiated, has no legal or factual basis. Section 17A merely contemplates that police officers shall not conduct any enquiry, inquiry or investigation into any offence alleged to have been committed by a public servant where the alleged offence is relatable to any recommendation made or decision taken in discharge of official functions or duties, without the previous approval of the competent authority. The first proviso to the section states that such approval is not necessary in cases involving the arrest of the person on the spot on the charges of accepting undue advantage.

34. As may be seen, the first proviso to Section 17A refers to cases wherein a public servant is charged with acceptance of an undue advantage or attempt

thereof. A prior approval or sanction to investigate such an officer in a trap case is likely to defeat the very purpose of the trap and the investigation, which is not the underlying intention of the legislature. The investigation against Respondent No. 1, being an accused of demanding a bribe, did not require any previous approval of the Central Government. That apart, the accusation against Respondent No. 1 does not revolve around any recommendations made or decisions taken by him in his quasi-judicial or administrative capacity.”

20. This Court also held in *Ajay Kumar Gupta v. State of H.P.*, 2024 SCC OnLine HP 4692 that the demand of a bribe cannot be in the discharge of official duty because it is no function of any public servant to demand a bribe for doing any official act. Such a demand is not covered under Section 17 of the PC Act, and the police are free to register the FIR and carry out the investigation when the case relates to the demand for a bribe. It was observed:-

“31. In the present case, it was submitted that, as per the prosecution, the petitioner had decided to purchase the PPE Kits from Bioaide. The prosecution further asserted that the money was demanded for the clearance of the bill related to the purchase made by the petitioner. Hence, the requirement that the offence alleged is relatable to any recommendation or decision taken by the public servant is satisfied. It is difficult to agree with this submission. The word relatable refers to an act closely connected to the recommendation or the decision that affects the recommendation or the decision, and cannot refer to any extraneous act that would not have any impact on the recommendation or the decision. The demand for a bribe can influence the decision in the sense that further orders can be placed, but that would not be in the discharge of the official duties because it is no function of any public servant to demand a bribe for doing any official act. A public servant is expected to do the official act uninfluenced by any extraneous consideration solely on the merits of the matter pending before him. The word relatable cannot be so stretched to include everything that does not have any relation to the decision or recommendation made by the public servant.

32. As was pointed out by the Hon'ble Supreme Court, if two interpretations are possible, the interpretation that prevents corruption has to be preferred rather than the one that encourages corruption. Even, if two interpretations are possible namely (i) that the demand for a bribe is relatable to the recommendation made or decision taken by the public servant and (ii) that the demand for a bribe is not relatable to a recommendation made or decision taken by the public servant, the second interpretation has to be preferred because it will protect an honest public servant and discourage the dishonest public servant demanding bribe, whereas the first interpretation will encourage the public servants to demand bribe with impunity. Such an interpretation would defeat the very purpose of the enactment of the Prevention of Corruption Act.

33. Therefore, with due respect, it is difficult to agree with the judgments of the Rajasthan and Gujarat High Court that the demand for a bribe would be covered

under Section 17A of the Prevention of Corruption Act and it is held that when the demand for bribe is made for doing any official Act, the protection under Section 17A will not apply to such a demand because such a demand is not relatable to the discharge of the official function of the public servant. It is pertinent to mention here that the Gauhati High Court had also differed from the views of the Rajasthan and Gujarat High Courts in Rounak (supra) and held:

XXIII. In Himangshu Yadav (supra), decided by the Rajasthan High Court the fact of the case was that the petitioner therein, who was a Village Development Officer, demanded a sum of Rs. 7,000/- for clearing the bill of the informant of Rs. 32,000/-, and in the aforesaid factual backdrop it was held that allegation of demanding illegal gratification relates to discharge of official duties. Therefore, it cannot be said that a proposition was laid down that in all cases, the approval under Section 17(A) of the PC Act shall be required, inasmuch as the allegation made in the aforesaid case is relatable to a decision of releasing a bill on payment of illegal gratification. That being the position, such a decision shall not help the petitioner herein, in the given facts of the present case.

XXIV. In Yogesh Nayyar (supra), the high court of Madhya Pradesh held in the given facts of the said case that lodging of FIR in the absence of approval is not barred under section 17A of the PC; however, said provision prohibits investigation by a police officer without approval. This court is in respectful disagreement with such a view, for the reasons as discussed and recorded hereinabove.

21. It was submitted that the facts of this case are distinguishable because in the cited case, the calls were made, which showed that the demand was made, whereas there is no evidence of any demand for a bribe in the present case. This submission is not acceptable. The Court had laid down the proposition of law that if a demand for a bribe is made, the same would not be covered under the provisions of Section 17A of the PC Act, and it is not dependent upon the fact whether the demand was made by calls or in any other manner. In the present case, specific allegations were made in the FIR that the money was exchanged, favours were bestowed for casting the votes in a particular manner, therefore, the allegations in the FIR show that the vote was cast not as per the conscience of the voter but due to the other considerations like money and undue favours; hence, these allegations will be covered in the judgment of Dr. Ajay Kumar Gupta (supra) and the registration of the FIR and continuation of the investigation is not barred.

22. The judgment in Yashwant Sinha (supra) was considered by this Court in Ajay Gupta (supra) and was held to apply to an offence relatable to any recommendation made or decision taken by a public servant in discharge of his official functions. Since an act of demanding of bribe is not relatable to the discharge of official function or duties, therefore, this judgment will not help the petitioners.

23. The allegations against petitioner No.1 are that he helped petitioner No.2 in the acceptance of the extraneous consideration. He remained associated with petitioner No.1 in the illegal transaction of money as well as criminal conspiracy. The petitioners purchased the votes by illegal means and by use of money in a planned manner against the Government. These allegations prima facie constitute a conspiracy to purchase the votes, and it cannot be said that they do not constitute any offence against the petitioner No.1.

24. It was submitted that the FIR mentions discussions/rumours regarding the entire incident. Learned Advocate General has fairly conceded that the use of the term big rumour/discussion is not sufficient to attract the provisions of criminal law, but he submitted that even if this line is taken out of consideration, the rest of the FIR discloses that the money was exchanged and resources were shared. Corrupt practices were employed to purchase the votes, which constitutes an illegal gratification. This submission is acceptable. Mere use of the term discussion/rumour in one line of the FIR is not sufficient to quash it when the rest of the FIR deals with the allegations of the exchange of favours for casting the votes.

25. It was submitted that the name of the person who had advanced the money was not mentioned, and the FIR is bad. This submission is not acceptable. It is not essential that the name of the offender should have been mentioned in the FIR. The FIR can also be registered against an unknown person, whose name is to be ascertained by the process of investigation. In the present case, the investigation is continuing, and the police are to ascertain the name of the person who had paid the bribe. Therefore, the FIR cannot be quashed because the name of the bribe giver was not mentioned in it.

26. It was submitted that the FIR is the result of a political vendetta and is liable to be quashed on this ground. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in State of Chhattisgarh vs Amar Kumar Singh 2023(6) 559 that when an investigation was conducted and a charge sheet was filed, the question of mala fide would become meaningless. It was observed:

"78. Thirdly, it must be remembered that when information is lodged at the police station and an offence is registered in respect of a disproportionate assets case, it is the material collected during the investigation and evidence led in court that is decisive for determining the fate of the accused. To our mind, whether the first information report is the outcome of mala fides would be of secondary importance. In such a case, should the allegations of mala fides be of some prima facie worth, they would pale into insignificance if sufficient materials are gathered for sending the accused up for a trial; hence, the plea of mala fide may not per se form the basis for quashing the first information report/complaint.

79. Finally, following the above, what is of substantial importance is that if criminal prosecution is based upon adequate evidence and the same is otherwise justifiable, it does not become vitiated on account of significant political

overtones and mala fide motives. We can say without fear of contradiction that it is not in all cases in our country that an individual, who is accused of acts of omission/commission punishable under the PC Act but has the blessings of the ruling dispensation, is booked by the police and made to face prosecution. If, indeed, in such a case (where a prosecution should have been but has not been launched) the succeeding political dispensation initiates steps for launching prosecution against such an accused but he/she is allowed to go scot-free, despite there being materials against him/her, merely on the ground that the action initiated by the current regime is mala fide in the sense that it is either to settle scores with the earlier regime or to wreak vengeance against the individual, in such an eventuality we are constrained to observe that it is criminal justice that would be the casualty. This is because it is difficult to form an opinion conclusively at the stage of reading a first information report that the public servant is either in or not in possession of property disproportionate to the known sources of his/her income. It would all depend on what is ultimately unearthed after the investigation is complete. Needless to observe, the first information report in a disproportionate assets case must, as of necessity, prima facie, contain ingredients for the perception that there is fair enough reason to suspect the commission of a cognizable offence relating to "criminal misconduct" punishable under the PC Act and to embark upon an investigation."

27. It was laid down by the Hon'ble Supreme Court in *Ramveer Upadhyay v. State of U.P.*, 2022 SCC OnLine SC 484, that a complaint cannot be quashed because it was initiated due to enmity. It was observed:

"30. The fact that the complaint may have been initiated by reason of political vendetta is not in itself grounds for quashing the criminal proceedings, as observed by Bhagwati, CJ in *Sheonandan Paswan v. State of Bihar* (1987) 1 SCC 2884. It is a well-established proposition of law that a criminal prosecution, if otherwise justified and based upon adequate evidence, does not become vitiated on account of mala fides or political vendetta of the first informant or complainant. Though the view of Bhagwati, CJ in *Sheonandan Paswan* (supra) was the minority view, there was no difference of opinion with regard to this finding. To quote Krishna Iyer, J., in *State of Punjab v. Gurdial Singh* (1980) 2 SCC 471, "If the use of power is for the fulfilment of a legitimate object, the actuation or catalysation by malice is not legicidal."

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39. In our considered opinion, criminal proceedings cannot be nipped in the bud by the exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such a possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after the closure of the earlier criminal case, cannot be ruled out. The allegations in the complaint constitute an

offence under the Atrocities Act. Whether the allegations are true or untrue would have to be decided in the trial. In the exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No. 19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C.”

28. Thus, it is impermissible to quash the FIR on the ground of political vendetta.

29. The F.I.R. was registered for taking bribes under the provisions of the P.C. Act. It was laid down by the Hon’ble Supreme Court in *State of Chhattisgarh v. Aman Kumar Singh*, (2023) 6 SCC 559, that corruption is eroding public life, and it is the constitutional duty of the Courts to show zero tolerance to corruption. It was observed:-

“47. We preface our discussion, leading to the answers to the above two questions, taking note of a dangerous and disquieting trend that obviously disturbs us without end. Though it is the preambular promise of the Constitution to secure social justice to the people of India by striving to achieve equal distribution of wealth, it is yet a distant dream. If not the main, one of the more prominent hurdles for achieving progress in this field is undoubtedly “corruption”. Corruption is a malaise, the presence of which is all-pervading in every walk of life. It is not now limited to the spheres of activities of governance; regrettably, responsible citizens say it has become a way of one's life. Indeed, it is a matter of disgrace for the entire community that not only on the one hand is there a steady decline in steadfastly pursuing the lofty ideals which the Founding Fathers of our Constitution had in mind, but degradation of moral values in society is rapidly on the rise on the other. Not much debate is required to trace the root of corruption.

48. “Greed”, regarded in Hinduism as one of the seven sins, has been overpowering in its impact. In fact, unsatiated greed for wealth has facilitated corruption to develop like cancer. If the corrupt succeed in duping the law enforcers, their success erodes even the fear of getting caught. They tend to bask under a hubris that rules and regulations are for humbler mortals and not them. To get caught, for them, is a sin. Little wonder, an outbreak of scams is commonly noticed. What is more distressing is the investigations/inquiries that follow. More often than not, these are botched and assume the proportion of bigger scams than the scams themselves. However, should this state of affairs be allowed to continue? Tracking down corrupt public servants and punishing them appropriately is the mandate of the PC Act.

49. “We the People”, with the adoption of our Constitution, had expected very high standards from people occupying positions of trust and responsibility in line with the constitutional ethos and values. Regrettably, that has not been possible

because, inter alia, a small section of individuals inducted in public service for "serving the public" appears to have kept private interest above anything else and, in the process, amassed wealth not proportionate to their known sources of income at the cost of the nation. Although appropriate legislation is in place to prevent the cancer of corruption from growing and developing, wherefor maximum punishment by way of imprisonment for ten years is stipulated, curbing it in adequate measure, much less eradicating it, is not only elusive but unthinkable in present times.

50. Since there exists no magic wand as in fairy tales, a swish of which could wipe out greed, the constitutional courts owe a duty to the people of the nation to show zero tolerance to corruption and come down heavily against the perpetrators of the crime while at the same time saving those innocent public servants, who unfortunately get entangled by men of dubious conduct acting from behind the screen with ulterior motives and/or to achieve vested interests. The task, no doubt, is onerous, but every effort ought to be made to achieve it by sifting the grain from the chaff. We leave the discussion here with the fervent hope of better times in future."

30. It was further held that ordinarily, the Court should not quash the F.I.R. related to the corruption except in exceptional cases where there is absolutely no material or even a reasonable suspicion to support the case. This would harm innocent public servants, but it is a small price to pay to ensure probity in society. It was observed:-

80. Having regard to what we have observed above in paras 47 to 50 (supra) and to maintain probity in the system of governance as well as to ensure that societal pollutants are weeded out at the earliest, it would be eminently desirable if the High Courts maintain a hands-off approach and not quash a first information report pertaining to "corruption" cases, especially at the stage of investigation, even though certain elements of strong-arm tactics of the ruling dispensation might be discernible. The considerations that could apply to the quashing of first information reports pertaining to offences punishable under general penal statutes *ex proprio vigore* may not be applicable to a PC Act offence. Majorly, the proper course for the High Courts to follow, in cases under the PC Act, would be to permit the investigation to be taken to its logical conclusion and leave the aggrieved party to pursue the remedy made available by law at an appropriate stage. If at all, interference in any case is considered necessary, the same should rest on the very special features of the case.

81. Although what would constitute the special features has necessarily to depend on the peculiar facts of each case, interference could be made in exceptional cases where the records reveal absolutely no material to support even a reasonable suspicion of a public servant having intentionally enriched himself illicitly during the period of his service and nothing other than mala fide is the basis for subjecting such servant to an investigation.

82. We quite appreciate that there could be cases of innocent public servants being entangled in investigations arising out of motivated complaints and the consequent mental agony, emotional pain and social stigma that they would have to encounter in the process, but this small price has to be paid if there is to be a society governed by the rule of law. While we do not intend to fetter the High Courts from intervening in appropriate cases, it is only just and proper to remind the courts to be careful, circumspect and cautious in quashing first information reports resting on mala fide of the nature alleged herein.

31. In the present case, the allegations in the F.I.R. and the material collected by the prosecution show that the bribe was accepted for voting in the Rajya Sabha elections. Therefore, the F.I.R. cannot be quashed as per the judgment of the Hon'ble Supreme Court.

32. The investigation is continuing, and the FIR discloses the commission of a cognizable offence. It is premature to quash the same at this stage without allowing the Investigating Officer to conclude the investigation; hence, the present petition fails, and the same is dismissed.

33. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the case's merits.