
(2013) 10 BOM CK 0173

In the Bombay High Court

Case No : Criminal Writ Petition No. 3654 of 2012

Vivek Batra

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 6 ABR 1249 : (2014) CriLJ 450

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Patel, J

Bench : Division Bench

Advocate : Amit Desai, Mr. Prakash Naik, Mr. Gopalkrishna Shenoy and Mr. Ganesh Bhujbal, for the Appellant; Vivek Bhatia for the Respondent No. 1/Union of India, Mr. D.N. Salvi for the Respondent No. 3/Income Tax, Mr. Kevic Setalwad, A.S.G. of India, Mr. Milind Sawant, Awais Ahmadji, B.B. Badami for the Respondent No. 4/CBI and Mrs. P.H. Kantharia, APP for the State, for the Respondent

Judgement

S.C. Dharmadhikari, J.—In the light of the earlier orders passed by this Court at the stage of issuance of notice, this Writ Petition is disposed of finally at the stage of admission. Hence, RULE. The Respondents waive service. By consent, Rule is made returnable forthwith.

2. By this Writ Petition under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, 1973, the Petitioner is challenging the grant of sanction vide order dated 09.10.2012. This order is passed by the Respondent No. 1.

3. The Petitioner before us is a citizen of India. He is an Indian Revenue Service Officer of 1992 batch (for short IRS officer). Presently, he is the Additional Commissioner of Income Tax, Mumbai.

4. It is stated that a case of Disproportionate Assets bearing RC No. BA1/2005/A0017 was registered by the Respondent No. 4 on 4th April, 2005 against the Petitioner who is the original accused, u/s 13(2) r/w 13(1)(e) of the Prevention

of Corruption Act, 1988. It is alleged in the complaint dated 04.04.2005 that the present Petitioner who is the original Accused while functioning as a public servant indulged in corrupt practices and thereby accumulated assets exceeding Rs. 01,27,38,353/- disproportionate to his known sources of income and in his name and in the name of his wife and minor son during the period from 04.01.1993 to 31.03.2004. According to the Petitioner, as a result of long investigation over almost 6 years, the prosecution could not find any alleged disproportionate assets in the hands of the Petitioner or his family members viz. his wife Mrs. Priyanka Batra and minor son Master Arjun Batra, but sought prosecution of the Petitioner by somehow linking two companies, namely, M/s. ARJ Impex Private Limited and M/s. Malik Hospitality Services Private Limited to the Petitioner, thereby computing the disproportionate assets at Rs. 56.30 lacs approximately in these two companies. The prosecution applied for sanction against the Petitioner before the Sanctioning Authority in October/November, 2010. Annexure A to the petition is a copy of the First Information Report.

5. The Petitioner states that despite almost 6 long years of investigation, the Central Bureau of Investigation (for short CBI) was unable to find any disproportionate assets in the hands of the Petitioner, his wife Mrs. Priyanka Batra and minor son Master Arjun Batra in personal capacity. The CBI, however, sought sanction for prosecution linking the Petitioner to the above two companies treating them as Benami companies of the Petitioner, claiming disproportionate assets of Rs. 56.30 lacs approximately in these two companies. According to the Petitioner, for no reason and after lapse of 5 years from the date of registration of offence, despite having appeared before the CBI more than 20 times, the Petitioner was arrested on pretext of interrogation on 02.09.2010 and kept in custody for 3 days. He was subsequently released on bail after he was produced before the learned Special Court at Mumbai.

6. The Petitioner complains that the matter was kept pending and therefore, he suspected that after the case was put up for sanction before the Sanctioning Authority, a decision would be taken expeditiously. However, his complaint is that he obtained the note sheet and documents available in the file seeking sanction for prosecution by taking recourse to the Right to Information Act, 2005. He has disclosed summary of notings approved by the Competent Authority. He has then contended that on a detailed and careful perusal of the Central Bureau of Investigation (for short CBI) inquiry report, the Sanctioning Authority took a view that the Department does not find sufficient evidence to link the above two companies to the Petitioner and therefore, does not agree with the CBI to grant sanction for prosecution. Thus, the remark "no sufficient evidence" and hence, no prima facie case to proceed, would denote that the sanction was not granted. In other words, the matter was not fit for grant of sanction, but it was considered as appropriate for administrative action. Yet, it is alleged that the matter was referred to the Central Vigilance Commission (for short CVC) for its first stage preliminary advice on 03.05.2011. The first stage advice of the CVC was received vide office memorandum dated 01.09.2011 and that recommended granting

sanction for prosecution of the Petitioner.

7. The Petitioner states that the Department concerned was convinced that there is no sufficient evidence and no prima facie case for prosecution. It having considered the CVC's advice, once again the Department concerned, namely, Finance Department endorsed on 01.10.2011 in the file that the matter may be referred to the CVC for reconsideration of its advice. This was because the competent/sanctioning authority was convinced that the CBI was not able to gather sufficient evidence for making a prima facie case for launching of criminal prosecution. The matter was then referred to the CVC for reconsideration of its advice. The CVC by its Office Memorandum dated 02.11.2011 did not agree for reconsideration of the advice and instead observed that the Competent Authority should proceed to grant sanction.

8. The Petitioner then submits that the Competent Authority was of the firm belief that there is no sufficient evidence and no prima facie case for criminal prosecution. It endorsed its earlier decision of not granting sanction for prosecution. However, on 18.02.2012 it referred the matter to the Department of Personnel & Training (for short DOP&T) for its views with observation that they will be willing to grant sanction for prosecution only in the event the CBI can provide further sufficient evidence. However, the DOP&T did not appreciate the conditional stand of the Competent Authority of granting sanction only if the CBI provides sufficient evidence and, therefore, returned the case to the Competent Authority requesting it to take a final categorical and unconditional decision. This was communicated vide letter dated 29.03.2012.

9. The Petitioner submits that on the advice of the DOP&T, the Competent Authority again applied its mind in detail and on 27.04.2012 the Competent Authority took a final decision in the matter that the evidence being not sufficient, no prima facie case for initiation of case for major penalty or prosecution was made out. It only recommended issuance of an administrative warning to the Petitioner for non intimation of one transaction. The Finance Department then referred the matter to the DOP&T for its views.

10. The Petitioner further submits that by the letter dated 28.05.2012, the DOP&T conveyed its views on the matter wherein it stated that it was convinced that the CVC in its brief reply has not given any plausible reason to rebut the points raised by the Finance Ministry about insufficiency of evidence. The DOP&T expressed a view that insufficiency of evidence could be tested in a court of law and that sanction for prosecution may be granted.

11. The Petitioner submits that he expected that the Competent Authority, in tune with the earlier consistent decisions of no sufficient evidence and no prima facie case for grant of sanction for prosecution, would take its final decision of not granting the same and would endorse its decision dated 27.04.2012. However, to his utter shock and surprise, the new incumbent acting as Competent Authority issued the order dated 09.10.2012 thereby granting the

sanction for prosecution. This decision amounts to review of the earlier decision without there being any fresh material, but on the same facts. In such circumstances when there is a complete non application of mind, the order granting sanction is vitiated.

12. Thus, it is this order which is challenged in this Writ Petition.

13. Mr. Amit Desai, learned Senior Counsel appearing for the Petitioner, submitted that the impugned decision is vitiated in law. The said decision amounts to review of the earlier decision dated 27.04.2012 refusing sanction. Mr. Desai submits that the test is whether a prima facie case is made out and whether the material is sufficient for grant of sanction. Mr. Desai submits that the scope of Sanctioning Authority's powers is fairly wide. It can consider the issue of adequacy and sufficiency of the material. It cannot be urged that sufficiency of evidence is a consideration or factor alien to the powers of the Sanctioning Authority. This is a valid consideration. Once that aspect can be looked into by the Sanctioning Authority and it refuses to grant sanction on meticulous analysis of the material produced, then, such decision or order is final. It could not have been reviewed or reconsidered save and except in exceptional circumstances. Mr. Desai submits that the test of prejudice would come at a later stage. In the present case when there is a decision endorsed in the file on 27.04.2012 and that is not to grant sanction, then, the subsequent order passed on 09.10.2012 deserves to be quashed and set aside.

14. Mr. Desai was at pains to urge that the argument that sufficiency of material/evidence can be considered only by the competent court and not by the Sanctioning Authority, is an improper and incorrect understanding of the ambit and scope of the powers conferred by Section 19 of the Prevention of Corruption Act, 1988. Mr. Desai submits that the objections taken by the CBI in the affidavit in reply, firstly to the maintainability of the Writ Petition and equally on merits, cannot be sustained and should be ignored or brushed aside by this Court. The stand is that the Sanctioning Authority cannot go into the issue of sufficiency or adequacy of the material/evidence against an officer or public servant like the Petitioner. This stand is only based on some advice given by the CVC. The role of the CVC is limited and it is advisory and recommendatory in nature. In these circumstances based on such advice of the CVC or some view or some opinion of the DOP&T, the Sanctioning Authority could not have reviewed its earlier decision. The argument that there is no earlier decision and therefore, there is no review, cannot be accepted in the teeth of the file notings. Mr. Desai submits that the further argument of the CBI that there was no decision taken prior to 09.10.2012 and there is no order of the earlier date, is factually incorrect. The term "advice or opinion" used by the CBI in its affidavit is not proper because the Sanctioning Authority consistently refused to grant sanction and endorsed that view or opinion. That has to be construed as an order refusing sanction. Once that order has been endorsed in the file, then, merely because the matter was carried to some other Department or recommendatory authority like the CVC,

does not mean that the Sanctioning Authority's decision is not final. The stand of the CBI that only consultative process was going on and there is no decision taken or order passed, is, therefore, contrary to the record.

15. Mr. Desai submits that the purpose of sanction and inserting a provision in that behalf is to protect the honest public servants. All such officers who are honest and hardworking are bound to face some resistance and from the interested quarters in their career. They are bound to come across cases where they refuse to grant favour or toe the line of seniors and others in the Department. In such circumstances when they are expected to work independently and fearlessly, they deserve to be protected against frivolous and vexatious prosecution. In these circumstances the order dated 09.10.2012 must be quashed and set aside.

16. Mr. Desai submits that once the Sanctioning Authority is of the opinion that the matter be closed by only giving a warning to the Petitioner which is in the form of minor penalty, then, such stand of the Sanctioning Authority and reflected in the file notings has to be treated as an order. Once it is treated as such, then, there is no scope for passing another order on the same grounds and on the same material, but reversing the earlier conclusion. The order dated 09.10.2012 is based on the circular dated 03.05.2012. That circular has been issued after the order dated 27.04.2012. Therefore, that circular is clearly inapplicable. Assuming that the said circular could have been applied, still on the basis of some unsolicited advice, the Sanctioning Authority could not have made another order of 03.05.2012. Thus, this order and the impugned order dated 09.10.2012 are both nothing but exercising the review jurisdiction. Such jurisdiction has to be specifically conferred in law. Even if it is so conferred, it cannot be exercised in the absence of any fresh material. There is no fresh material, but same advice as was given prior to 27.04.2012 which has been reiterated in the subsequent communications by either CVC or DOP&T. Based on such advice and opinion the Sanctioning Authority could not have reviewed its earlier order. Once the order in review is quashed and set aside, then, this is a case of absence of sanction for criminal prosecution. If the case is of absence of sanction, then, this Court in exercise of its writ jurisdiction and equally inherent powers can quash the criminal proceedings.

17. In support of his submissions, Mr. Desai has taken us through the file notings and particularly file notings at page 114-A dated 19.06.2012, 115-N dated 09.07.2012, 126-N, 127-N, 129-N, 132-N and 146-N. It is submitted by him that the above events will show as to how ultimately and eventually the impugned order came to be passed on 09.10.2012. It is nothing but exercise of powers in the nature of review. Once that power of review could not have been exercised, then, this is a case where cognizance has been taken by the Trial Court without sanction. Therefore, the trial is vitiated in law. Mr. Desai was at further pains to emphasize that errors of jurisdiction can be corrected by this Court in its above referred powers. Hence, the Writ Petition be allowed.

18. In support of his submissions noted above, Mr. Desai relies upon the following decisions:-

- 1) Mahender Singh Vs. State, .
- 2) Ram Kishan Singh Vs. Harmit Kaur and Another, .
- 3) Jaswant Singh Vs. The State of Punjab, .
- 4) State of Himachal Pradesh Vs. Nishant Sareen, .
- 5) State of Madhya Pradesh Vs. Jiyalal, .
- 6) State of Karnataka Vs. Ameer Jan, .
- 7) State of Bihar and Another Vs. P.P. Sharma, IAS and Another, .
- 8) R.S. Nayak Vs. A.R. Antulay, .
- 9) Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, .
- 10) Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, .
- 11) Ramanand Chaudhary v/s State of Bihar, reported in (2002) 1 SCC 153.
- 12) Gopikant Choudhary v. State of Bihar, (2000) 9 SCC 53 .
- 13) Ashok Kumar Aswal v/s Union of India, passed by Delhi High Court in Writ Petition (C) No. 578/2010 dated 11.01.2013.
- 14) Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, .

19. On the other hand, the learned Additional Solicitor General of India Mr. Setalwad appearing for the Respondent Nos. 1 to 4, would submit that this Writ Petition is not maintainable. The CBI has filed an affidavit and pointed out as to how this Writ Petition is abuse of the process of the Court. Mr. Setalwad submits that the factual matters cannot be raised in this jurisdiction. This Court cannot in exercise of its limited jurisdiction go into the issues and particularly whether, there was sufficient material/evidence to grant sanction for criminal prosecution. Mr. Setalwad submits that the matters of sufficiency and adequacy of evidence have to be dealt with by the competent criminal courts. At the stage of grant of sanction, the Sanctioning Authority is not empowered in law to consider as to whether the material collected or gathered would constitute an admissible evidence and withstand scrutiny and trial of the competent criminal court. Such matters are in the realm of the competent courts and the Sanctioning Authority cannot enter into the same.

20. Mr. Setalwad submits that the argument that sufficiency or adequacy of evidence is a matter which can be gone into by the Sanctioning Authority in order to find out whether there is a prima facie case, has no merit. That would unnecessary widen the ambit and scope of the powers of the Sanctioning Authority. That would mean usurpation of powers of the competent courts. The

grant of sanction by applying the test of prima facie case, does not mean that the Sanctioning Authority can go into sufficiency of evidence. In these circumstances if Mr. Desai's arguments are accepted, that would mean that the Sanctioning Authority can exceed its power in law.

21. Mr. Setalwad then submits that there is no merit in the submissions of Mr. Desai that on 27.04.2012 the Sanctioning Authority passed an order refusing the sanction for criminal prosecution of the Petitioner. Mr. Setalwad submits that there is no such order or decision. Therefore, there is no question of it being reviewed by the Sanctioning Authority. There is only one order on the point of sanction and that is the impugned order dated 09.10.2012 granting sanction to prosecute the Petitioner. Prior to this, there has been no order or decision, but the file notings would indicate that it was a continuing process of deliberations and discussions. Such deliberations and discussions at a departmental level is a usual and normal thing. The notings in the file during the course of departmental discussions and deliberations do not constitute an order or decision of the Government or the Competent Authority. At best, these notings are opinions of several officers in the concerned Department.

22. In this behalf, Mr. Setalwad invites our attention to the file notings and submits that the stand taken by these Respondents in their affidavit is accurate and correct. When there were differences within and between two Departments, it was decided to obtain an advice from the CVC. That is how the file movement began. Thereafter, there are and were number of circulars of the CVC. Hence, an attempt was made to resolve the dispute between two Departments, namely, Finance and DOP&T. The first stage advice of the CVC was that a sanction to prosecute should be granted because the Sanctioning Authority cannot evaluate the evidence collected. It has only to form a prima facie opinion. In these circumstances the Finance Department may hold some view, but it never passed any final orders until 09.10.2012. The file notings, on which the Petitioner relies, have to be read in their entirety and so read, what has been observed is that the clarifications have been sought. If the clarifications were sought and the file was referred to the CVC for its advice and later on to some other Department, does not mean that the Finance Department has refused the sanction. Mr. Setalwad laid emphasis upon the notings and proposals of the Finance Department to refer the case to the CVC for its first stage advice. This was essentially because the Finance Department did not agree with the recommendations of the CBI for prosecution and initiation of major penalty proceedings against the Petitioner, instead it recommended an administrative warning to be issued to him.

23. Thus, Mr. Setalwad would submit that at no stage prior to 09.10.2013 the Finance Department has concluded and held that the sanction be refused. Had that been so then there was no necessity to have on file an advice of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Government of India dated 28.05.2012. That is unequivocal and clear. Once that is on record, then, Mr. Desai cannot rely on the notings in the file and

particularly dated 27.04.2012. For all these reasons, it is submitted that there is no merit in the Writ Petition.

24. Mr. Setalwad submits that this is not a case of review of any earlier order. This is not, therefore, assumption of jurisdiction which never existed in law. This is a case of exercise of jurisdiction vested in the Competent Authority. The Sanctioning Authority was fully empowered to grant or refuse a sanction. That is undisputed by the Petitioner. That Sanctioning Authority has passed the order on 09.10.2012 and which alone can be said to be an order in terms of Section 19 of the Prevention of Corruption Act, 1988 and particularly under sub-section (1) clause (a) thereof. Inviting our attention to sub-section (3) of Section 19 of the Prevention of Corruption Act, 1988, Mr. Setalwad submits that any error, omission or irregularity in the order of sanction will never vitiate the proceedings unless failure of justice has been established. In any event the proceedings before the Competent Court pursuant to such sanction cannot be stayed by virtue of clause (b) of sub-section (3) of Section 19 of the Prevention of Corruption Act, 1988. Thus, this is not a case of absence of sanction as urged, but an order of sanction which is being termed as erroneous. There is nothing erroneous about it because the order recites as to how the Sanctioning Authority has applied its mind to the material collected and has arrived at a prima facie satisfaction that a sanction deserves to be granted to prosecute the Petitioner. This prima facie satisfaction has been recorded in paragraph 14 of the order granting sanction, copy of which is at pages 154 to 162 of the paper book. For all these reasons, Mr. Setalwad submits that the Writ Petition be dismissed.

25. Mr. Setalwad has relied upon the following decisions in support of his contentions:-

- 1) Dinesh Kumar Vs. Chairman, Airport Authority of India and Another, .
- 2) Dinesh Kumar v/s Chairman, Airport Authority of India, of the Delhi High Court in W.P. (cri) No. 1754/2009 and Cri.M.A. No. 14370/2009, decided on 19.07.2010. (2011 (2) JCC 733).
- 3) Jasbir Singh Chhabra and Others Vs. State of Punjab and Others, .
- 4) Ashok Tshering Bhutia Vs. State of Sikkim, .
- 5) Parkash Singh Badal and Another Vs. State of Punjab and Others, .
- 6) Satya Narayan Sharma Vs. State of Rajasthan, .
- 7) State of Bihar and Another Vs. P.P. Sharma, IAS and Another, .
- 8) Sri. Sirajin Basha Vs. Sri. B.S. Yediyurappa .

26. For properly appreciating the rival contentions, it would be useful to refer to Section 19 of the Prevention of Corruption Act, 1988. That section reads thus:-

19. Previous sanction necessary for prosecution.-

(1) No court shall take cognizance of an offence punishable u/s 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

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

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

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

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

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

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

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

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

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

Explanation.-For the purposes of this section,-

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

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

sanction of a specified person or any requirement of a similar nature.

27. In the case of Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, , the Honourable Supreme Court has discussed the ambit and scope of powers conferred by Section 19 and the parameters within which the said powers have to be exercised. The Honourable Supreme Court holds thus:-

18. The next question which requires consideration is whether the appellant has the locus standi to file a complaint for prosecution of respondent No. 2 for the offences allegedly committed by him under the 1988 Act. There is no provision either in the 1988 Act or the Code of Criminal Procedure, 1973 (CrPC) which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence. Therefore, the argument of the learned Attorney General that the appellant cannot file a complaint for prosecuting respondent No. 2 merits rejection. A similar argument was negated by the Constitution Bench in A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, . The facts of that case show that on a private complaint filed by the respondent, the Special Judge took cognizance of the offences allegedly committed by the appellant. The latter objected to the jurisdiction of the Special Judge on two counts, including the one that the Court set up u/s 6 of the Criminal Law Amendment Act, 1952 (for short, "the 1952 Act") was not competent to take cognizance of any of the offences enumerated in Section 6(1)(a) and (b) upon a private complaint. His objections were rejected by the Special Judge. The revision filed by the appellant was heard by the Division Bench of the High Court which ruled that a Special Judge is competent and is entitled to take cognizance of offences u/s 6(1)(a) and (b) on a private complaint of the facts constituting the offence. The High Court was of the opinion that a prior investigation u/s 5A of the Prevention of Corruption Act, 1947 (for short, "the 1947 Act") by a police officer of the designated rank is not sine qua non for taking cognizance of an offence u/s 8(1) of the 1952 Act. Before the Supreme Court, the argument against the locus standi of the respondent was reiterated and it was submitted that Section 5A of the 1947 Act is mandatory and an investigation by the designated officer is a condition precedent to the taking of cognizance by the Special Judge of an offence or offences committed by a public servant. While dealing with the issue relating to maintainability of a private complaint, the Constitution Bench observed:

It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. Numerous

statutory provisions, can be referred to in support of this legal position such as (i) Section 187A of Sea Customs Act, 1878 (ii) Section 97 of Gold Control Act, 1968 (iii) Section 6 of Import and Export Control Act, 1947 (iv) Section 271 and Section 279 of the income tax Act, 1961 (v) Section 61 of the Foreign Exchange Regulation Act, 1973, (vi) Section 621 of the Companies Act, 1956 and (vii) Section 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the CrPC. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straitjacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far fetched implication, cannot be a substitute for an express statutory provision.

(Emphasis supplied)

The Constitution Bench then considered whether the Special Judge can take cognizance only on the basis of a police report and answered the same in negative in the following words:

In the matter of initiation of proceeding before a Special Judge u/s 8(1), the Legislature while conferring power to take cognizance had three opportunities to unambiguously state its mind whether the cognizance can be taken on a private complaint or not. The first one was an opportunity to provide in Section 8(1)

itself by merely stating that the Special Judge may take cognizance of an offence on a police report submitted to it by an investigating officer conducting investigation as contemplated by Section 5A. While providing for investigation by designated police officers of superior rank, the Legislature did not fetter the power of Special Judge to take cognizance in a manner otherwise than on police report. The second opportunity was when by Section 8(3) a status of a deemed public prosecutor was conferred on a private complainant if he chooses to conduct the prosecution. The Legislature being aware of a provision like the one contained in Section 225 of the CrPC, could have as well provided that in every trial before a Special Judge the prosecution shall be conducted by a Public Prosecutor, though that itself would not have been decisive of the matter. And the third opportunity was when the Legislature while prescribing the procedure prescribed for warrant cases to be followed by Special Judge did not exclude by a specific provision that the only procedure which the Special Judge can follow is the one prescribed for trial of warrant cases on a police report. The disinclination of the Legislature to so provide points to the contrary and no canon of construction permits the court to go in search of a hidden or implied limitation on the power of the Special Judge to take cognizance unfettered by such requirement of its being done on a police report alone. In our opinion, it is no answer to this fairly well-established legal position that for the last 32 years no case has come to the notice of the court in which cognizance was taken by a Special Judge on a private complaint for offences punishable under the 1947 Act.

(Emphasis supplied)

The Court then referred to Section 5A of the 1947 Act, the provisions of the 1952 Act, the judgments in H.N. Rishbud and Inder Singh Vs. The State of Delhi, , The State of Madhya Pradesh Vs. Mubarak Ali, , Union of India (UOI) Vs. Mahesh Chandra Sharma, and held:

Having carefully examined these judgments in the light of the submissions made, the only conclusion that unquestionably emerges is that Section 5-A is a safeguard against investigation of offences committed by public servants, by petty or lower rank police officer. It has nothing to do directly or indirectly with the mode and method of taking cognizance of offences by the Court of Special Judge. It also follows as a necessary corollary that provision of Section 5-A is not a condition precedent to initiation of proceedings before the Special Judge who acquires power u/s 8(1) to take cognizance of offences enumerated in Section 6(1)(a) and (b), with this limitation alone that it shall not be upon commitment to him by the Magistrate.

Once the contention on behalf of the appellant that investigation u/s 5-A is a condition precedent to the initiation of proceedings before a Special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line of decisions commencing from AIR 1936 253 (Privy Council) and ending with Chettian Veetil Ammad and Another Vs. Taluk Land Board and

Others, , laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

Once Section 5-A is out of the way in the matter of taking cognizance of offences committed by public servants by a Special Judge, the power of the Special Judge to take cognizance of such offences conferred by Section 8(1) with only one limitation, in any one of the known methods of taking cognizance of offences by courts of original jurisdiction remains undented. One such statutorily recognised well-known method of taking cognizance of offences by a court competent to take cognizance is upon receiving a complaint of facts which constitutes the offence. And Section 8(1) says that the Special Judge has the power to take cognizance of offences enumerated in Section 6(1)(a) and (b) and the only mode of taking cognizance excluded by the provision is upon commitment. It therefore, follows that the Special Judge can take cognizance of offences committed by public servants upon receiving a complaint of facts constituting such offences.

It was, however, submitted that even if it be held that the Special Judge is entitled to entertain a private complaint, no further steps can be taken by him without directing an investigation u/s 5-A so that the safeguard of Section 5-A is not whittled down. This is the selfsame argument under a different apparel. Accepting such a submission would tantamount to saying that on receipt of the complaint the Special Judge must direct an investigation u/s 5-A, There is no warrant for such an approach. Astounding as it appeared to us, in all solemnity it was submitted that investigation of an offence by a superior police officer affords a more solid safeguard compared to a court. Myopic as this is, it would topsy turvy the fundamental belief that to a person accused of an offence there is no better safeguard than a court. And this is constitutionally epitomised in Article 22 that upon arrest by police, the arrested person must be produced before the nearest Magistrate within twenty-four hours of the arrest. Further, numerous provisions of the Code of Criminal Procedure such as Section 161, Section 164, and Section 25 of the Indian Evidence Act would show the Legislature's hesitation in placing confidence on police officers away from court's gaze. And the very fact that power is conferred on a Presidency Magistrate or Magistrate of the first class to permit police officers of lower rank to investigate these offences would speak for the mind of the Legislature that the court is a more reliable safeguard than even superior police officers.

(Emphasis supplied)

19. In view of the aforesaid judgment of the Constitution Bench, it must be held that the appellant has the right to file a complaint for prosecution of respondent No. 2 in respect of the offences allegedly committed by him under the 1988 Act.

27. We may also observe that grant or refusal of sanction is not a quasi judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the Competent Authority before it takes a decision in the

matter. What is required to be seen by the Competent Authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investigating agency prima facie disclose commission of an offence by a public servant. If the Competent Authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the Competent Authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail appropriate legal remedy.

29. After examining various facets of the matter in detail, the three Judge Bench in its final order reported in Vineet Narain and Others Vs. Union of India (UOI) and Another, observed (Paras 56 and 57 of AIR, AIR SCW):

These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: R. v. Secy. of State for Foreign and Commonwealth Affairs.

In paragraph 58 (of SCC): (Para 59 of AIR, AIR SCW) of the judgment, the Court gave several directions in relation to the CBI, the CVC and the Enforcement Directorate. In para 58 (I)(15), the Court gave the following direction:

Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

30. The CVC, after taking note of the judgment of the Punjab and Haryana High

Court in Jagjit Singh Vs. The State of Punjab and Others, , State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , Superintendent of Police (C.B.I) Vs. Deepak Chowdhary and others, , framed guidelines which were circulated vide office order No. 31/5/05 dated 12.5.2005. The relevant clauses of the guidelines are extracted below:

2(i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would prima-facie constitute the offence.

(ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.

(vii) However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

(viii) If the Sanctioning Authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the Sanctioning Authority to adhere to the time limit allowed by the Supreme Court in Vineet Narain's case.

31. The aforementioned guidelines are in conformity with the law laid down by this Court that while considering the issue regarding grant or refusal of sanction, the only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The Competent Authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true.

45. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and

worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.

51. The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the Court in order to set the criminal law in motion against a corrupt public official. This right of access, a Constitutional right should not be burdened with unreasonable fetters. When a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindication of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the rule of law. It was pointed out by the Constitution Bench of this Court in *Sheonandan Paswan Vs. State of Bihar and Others*, :

...It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is for this reason that in *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, this Court pointed out that (SCC p. 509, para 6): (Para 6, at p. 723 of AIR) "punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi....

52. Keeping those principles in mind, as we must, if we look at Section 19 of the P.C. Act which bars a Court from taking cognizance of cases of corruption against a public servant under Sections 7, 10, 11, 13 and 15 of the Act, unless the Central or the State Government, as the case may be, has accorded sanction, virtually imposes fetters on private citizens and also on prosecutors from approaching Court against corrupt public servants. These protections are not available to other citizens. Public servants are treated as a special class of persons enjoying the said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was extended in public interest cannot become a shield to protect corrupt officials. These provisions being exceptions to the equality provision of Article 14 are analogous to provisions of protective discrimination and these protections must be construed very narrowly. These procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption. Therefore, in every case where an application is made to an appropriate authority for grant of prosecution

in connection with an offence under P.C. Act it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue without being influenced by any extraneous consideration. In doing so, the authority must make a conscious effort to ensure the rule of law and cause of justice is advanced. In considering the question of granting or refusing such sanction, the authority is answerable to law and law alone. Therefore, the requirement to take the decision with a reasonable dispatch is of the essence in such a situation. Delay in granting sanction proposal thwarts a very valid social purpose, namely, the purpose of a speedy trial with the requirement to bring the culprit to book. Therefore, in this case the right of the sanctioning authority, while either sanctioning or refusing to grant sanction, is coupled with a duty. The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of rule of law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecution and is adversely viewed in public mind that in the name of considering a prayer for sanction, a protection is given to a corrupt public official as a quid pro quo for services rendered by the public official in the past or may be in the future and the sanctioning authority and the corrupt officials were or are partners in the same misdeeds. I may hasten to add that this may not be factual position in this case but the general demoralizing effect of such a popular perception is profound and pernicious. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny and determination of the allegations against corrupt official and thus the legitimacy of the judicial institutions is eroded. It, thus, deprives a citizen of his legitimate and fundamental right to get justice by setting the criminal law in motion and thereby frustrates his right to access judicial remedy which is a constitutionally protected right. In this connection, if we look at Section 19 of the P.C. Act, we find that no time limit is mentioned therein. This has virtually armed the sanctioning authority with unbridled power which has often resulted in protecting the guilty and perpetuating criminality and injustice in society.

28. A bare perusal of Section 19 and these conclusions of the Honourable Supreme Court leave us in no manner of doubt that at the stage of grant of sanction, the Sanctioning Authority does not exercise any quasi-judicial power nor does it perform any quasi-judicial function. The Sanctioning Authority is not obliged to grant any personal hearing to persons like the Petitioner. Its duty is to record a prima facie satisfaction and after perusal of the relevant material. It is not expected to deliver a reasoned judgment. It is not empowered to consider whether the evidence collected would prove the guilt. Once the Sanctioning Authority is competent to remove a public servant and it fully and carefully examines the material placed before it and having regard to the same, considers the matter as fit for grant of sanction, then, its order is not liable to be interfered with in exercise of writ jurisdiction. This Court cannot sit in judgment over such prima facie views and conclusions of the Sanctioning Authority. Once the opinion is based on relevant and germane considerations and materials, then, such prima

facie opinion cannot be interfered with on the ground of any error or irregularity or omission therein. This is the mandate flowing from sub-sections (3) and (4) of Section 19 of the Prevention of Corruption Act, 1988.

29. If any reference on this point is needed, one can usefully make the use of law laid down by the Honourable Supreme Court in the case of Kootha Perumal Vs. State Tr. Inspector of Police, Vigilance and Anti Corruption, . The Honourable Supreme Court has observed as under:-

13. We may first consider the issue as to whether sanction was duly obtained prior to the prosecution of the appellant. It is the case of the appellant that the order for sanction of the prosecution produced in this case is signed by the Municipal Commissioner of Pudukottai. According to him, a perusal of the same would show that it suffers from non application of mind. According to the learned counsel, the sanction order must disclose that the sanctioning authority has duly applied its mind and the same must be stated in the sanction order. In support of this submission, learned counsel has relied on a judgment of this Court in the case of Jaswant Singh Vs. The State of Punjab, . Undoubtedly, in the aforesaid judgment, this court observed as follows:-

The sanction under the Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness; AIR 1945 16 (Federal Court) . The object of the provision for sanction is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. In AIR 1948 82 (Privy Council) the Judicial Committee of the Privy Council also took a similar view when it observed:

In their Lordships' view, to comply with the provisions of clause 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction.

It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case. In AIR 1949 264 (Privy Council) it was held

that a valid sanction on separate charges of hoarding and profiteering was essential to give the Court jurisdiction to try the charge. Without such sanction the prosecution would be a nullity and the trial without jurisdiction.

14. Keeping in view the aforesaid statement of law, it would not be possible to conclude that the sanction order in the present case was not valid. Ex. P2 with the present appeal is the copy of the sanction order. A perusal of the same would show that the sanctioning authority has adverted to all the necessary facts which have been actually proved by the prosecution in the trial. Upon examination of the material facts, the sanctioning authority has certified that it is the authority competent to remove the appellant from the office. It is specifically stated that the statements of the witnesses have been duly examined. Sanction order also states that the other materials such as copy of the FIR as well as other official documents such as the different mahazars were carefully examined. Upon examination of the statements of the witnesses as also the material on record, the sanctioning authority has duly recorded its satisfaction that the appellant should be prosecuted for the offences, as noticed above. We, therefore, find no merit in the submissions of the learned counsel that the sanctioning order to prosecute the appellant was not legal.

30. To our mind, we have to apply these very tests and to the facts of the present case. If they are so applied, then, what one notices is that in the order of sanction, the Sanctioning Authority has referred to the acts of the Petitioner and thereafter, held that the Under Secretary to the Government of India in the Department of Finance is competent to remove the Petitioner from office. After fully and carefully examining the materials, namely, copies of First Information Report, statements of witnesses and relevant copies of relied documents placed before it with regard to the allegations and circumstances of the case, that Authority considers the case to be fit to grant the sanction for prosecution of the Petitioner for offences punishable u/s 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. Therefore, it proceeds to accord the sanction u/s 19(1)(a) of the Prevention of Corruption Act, 1988 and for prosecution of the Petitioner for the aforementioned offences and any other offences punishable under the provisions of law in respect of the acts noted and for taking cognizance of the said offences by the court of competent jurisdiction. These prima facie findings of the Sanctioning Authority are in complete accord with the law laid down by the Honourable Supreme Court in the aforementioned two decisions. Hence, Mr. Desai rightly does not urge that the sanction order is vitiated by non application of mind or that it does not take into consideration the materials produced or that materials have not been examined fully and carefully. He bases his argument on the premise that the Sanctioning Authority can go into the sufficiency and adequacy of the evidence based on which the sanction is sought. He rather emphasized that it is the Sanctioning Authority alone which can go into this aspect.

31. We are afraid that this is not the correct position in law. There is difference

between fully and carefully examining the materials such as First Information Report, statements of witnesses and documents placed before the Sanctioning Authority with regard to the allegations and circumstances in which the same are made, but it is another thing to say whether this constitutes legally admissible evidence and whether it would be sufficient and adequate to establish and prove the case. That comes within the functions and duties of the Court as enumerated above. The later duty is that of the competent court. It is the competent court which would weigh the materials so as to arrive at a definite conclusion as to whether it constitutes legally admissible evidence and based on which any conviction can be recorded. That is a duty of the competent criminal court which it must perform at a full fledged trial. The materials collected can be termed as evidence or can be termed as proof after it is brought on record by examining the witnesses. Such witnesses ought to be offered for cross-examination by the defence. Thereafter, the depositions would be evaluated by the competent criminal court. The law is well settled, it is only such materials and documents, which are produced by the witnesses and which stand the scrutiny of cross-examination, can be relied upon by the court of law. That alone constitutes the evidence. We do not see how the Sanctioning Authority can undertake this exercise unless empowered in law. That it is not so empowered in law because whenever its sanction is sought, there is no lis before it. At the stage of seeking the sanction, there is no adjudication contemplated in law. The Sanctioning Authority is not required to weigh the materials produced and to such an extent as to whether they would withstand a scrutiny by the court of competent jurisdiction. In these circumstances the CVC and the DOP&T were wholly right in opining that the Sanctioning Authority is not concerned with sufficiency or adequacy of evidence. Whether that would be enough to prove the allegations or not is a matter to be decided by the competent criminal court and not by the Sanctioning Authority. The Sanctioning Authority must not concern itself with these matters or else it would transgress its jurisdiction, is the caution and advice given by the CVC. We see that advice as based on a correct and proper understanding of legal position. If the Sanctioning Authority was capable of undertaking this exercise, then, the law would have endowed it with quasi-judicial functions and necessary powers in that behalf. In that event it would have to hear the affected party and only thereafter grant or refuse the sanction. In these circumstances Mr. Desai's argument is based on an incorrect and erroneous foundation of law and therefore, cannot be accepted. We would end this discussion with a very terse but clear and binding statement of law pronounced in the case of Matajog Dobey v/s H.C. Bhari by the Constitution Bench of the Honourable Supreme Court. That decision is reported in Matajog Dobey Vs. H.C. Bhari, . At page 48 in paragraph 15, it is held as under:-

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

32. Once we take care of the above argument of Mr. Desai, then, the only thing that remains for our determination is as to whether there was any order passed refusing the sanction. Mr. Desai's argument is that the sanction was refused by the Sanctioning Authority and there is an order made on 27.04.2012 in that behalf. That is a file noting and we have been taken through all the file notings by Mr. Desai and Mr. Setalwad. What we find from reading of the relevant notings is that the matter was being deliberated and discussed. The file notings based in which the endorsement of the Finance Minister is stated to be recorded and that is construed by the Petitioner as an order refusing the sanction, therefore, needs to be perused in its entirety. That file noting starts from page 107. From paragraphs 1 onwards, the facts are noted. Paragraph 3 notes the contents of the report of the CBI and after completely setting out that report, what is then recorded is the opinion of the concerned Department, namely, Finance. In the file itself there is an important endorsement that the Chairman of the Central Board of Direct Taxes gave the approval to refer the case to the CVC for its first stage advice with the comment that the Department does not agree with the recommendation of the CBI for prosecution and initiation of major penalty proceedings against the Petitioner, but instead recommended that an administrative warning be issued to him. Accordingly, the note dated 03.11.2011 was sent to the CVC for its first stage advice.

33. A careful perusal of paragraph 7 of this note at internal page 84-N and running page 113 of the paper book, would denote that it was the comment of the Department of Finance that it does not agree with the recommendation of the CBI. It made its own recommendation. The word "comment" and "recommendation" would go to show that far from intending to take a final decision, the Department of Finance was seeking an advice and opinion. This aspect would become further clear from the subsequent paragraphs of this file note because it refers to a joint meeting with the CBI and DGIT so also the CVC held on 16.06.2011. It refers to the first stage advice of the CVC dated 01.09.2011 and which is categorical and clear. The CVC advised that considering the facts and circumstances of the case and after discussions with the CBI and the Central Board of Direct Taxes in the joint meeting, the CVC is in agreement with the recommendations of the CBI for launching prosecution and regular departmental proceedings for major penalty against the Petitioner.

34. The CVC had given this advice based on its own circulars. The Department of Finance then considered this advice of the CVC. It re-examined the matter and once again opined that the CBI did not have sufficient evidence to make a prima facie case for sanction of prosecution against the Petitioner and gave some reasons in that behalf. The Department of Finance is careful and cautious in its notings in the file though it is its opinion that there is no sufficient evidence to make a prima facie case for grant of sanction. In the ultimate analysis all that it sought was an approval to refer the case to the Committee of Experts constituted by the CVC. Thus, it decided not to go by the advice of the CVC alone, but sought an opinion of the Experts in the CVC. It then made reference to the

CVC's office memorandum dated 02.11.2011. The CVC opined that there is no case for referring the matter to the Committee of Experts as there is no difference of opinion. Therefore, the CVC would advise the Central Board of Direct Taxes to communicate sanction for prosecution without any further delay.

35. The file then proceeds to analyze this advice of the CVC in juxtaposition to the report of the CBI and finally the Department of Finance seeks intervention of the DOP&T. It seeks that intervention to resolve disagreement between the Department of Finance and CVC with the recommendation that the Department of Finance will have no objection in according the sanction for prosecution and initiating the regular departmental proceedings for major penalty against the Petitioner, provided the CBI conducts further investigation to corroborate with evidence, the statement of Karan Singh.

36. It is apparent that this step and attempt of the Department of Finance did not go well with the DOP&T. It was emphatic in rejection of this attempt and exercise of the Department of Finance. In its opinion there is nothing in law which empowers the Department of Finance to insist on corroboration and supporting evidence. It emphasized as to why the sanction is sought and to protect a public servant reasonably from unnecessary harassment or undue hardship. Beyond that it has no powers. Therefore, it returned the file to the Ministry of Finance with request that categorical and unconditional decision in the case on the basis of available facts and records as submitted by the CBI in its investigation report of 2010 may be taken and conveyed to the DOP&T. It is this note of this DOP&T at page 76N which was placed before the Department of Finance and once again the Department of Finance recorded in the file its opinion and view, namely, that there is no sufficient evidence submitted by the CBI to make a prima facie case for prosecution and regular departmental inquiry for major penalty against the Petitioner. It then sought approval of the Finance Minister for not accepting the advice of the CVC for launching prosecution and regular departmental inquiry for major penalty against the Petitioner and referring the case to the DOP&T for resolving the disagreement between the Department of Finance and the CVC with the recommendation to issue an administrative warning for his administrative lapse of not intimating the Department of Finance about the explained receipts and investments of his minor son. It is this view of the Department which was placed before the Finance Minister and who agreed with it. It was not a decision as urged by Mr. Desai. The endorsement made by the Finance Minister on 27.04.2012 is expressing his agreement and approval for referring the case to the DOP&T for resolving the disagreement between the Finance Department and CVC. Paragraph 24 of this note is read by Mr. Desai in isolation. It must be read with the previous paragraphs and file notings perused as a whole do not reveal any order in terms of Section 19(1) of the Prevention of Corruption Act, 1988 refusing the sanction. Far from there being any order made on 27.04.2012 it is apparent that the matter was still being discussed and deliberated upon. There was difference of opinion and an attempt was made to resolve it departmentally and by seeking

intervention of another Department prior thereto by the CVC. There is no order of the Sanctioning Authority refusing the sanction and as urged by Mr. Desai. Mr. Desai deduces or infers such refusal from the file notings and there is substance in the contention of Mr. Setalwad that the file notings recording the opinions and views of the officials in the Department do not constitute an order or decision of the Sanctioning Authority. That only demonstrates as to how the discussions and deliberations went on and on and as to how different views and opinions were expressed by the officers operating at distinct levels. Beyond that the file notings cannot be of any assistance. Ultimately, an order has to be passed and in the present case in terms of Section 19(1)(a) of the Prevention of Corruption Act, 1988 by the Central Government. That order as noted in the instant case is to be in the name of the President of India. The executive power vesting in the Central Government is exercised in his name. That has been exercised only once and on 09.10.2012. That the order of this date of grant of sanction is the only order.

37. The position in law, in this regard, is too well settled and to require any reiteration. In the decision of the Honourable Supreme Court in the case of Bachhittar Singh Vs. The State of Punjab, , a Five Judge Bench of the Honourable Supreme Court held 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 cl. (1) of Art. 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a larger number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of Pepsu provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be

completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the *The State of Punjab Vs. Sodhi Sukhdev Singh*, :

Mr. Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent.

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over against and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.

38. To the same effect are the observations of the Honourable Supreme Court in the case of *Jasbir Singh Chhabra and Others Vs. State of Punjab and Others*, . Nothing contrary to the above legal position is brought to our notice by Mr. Desai. In view thereof, we are not in agreement with Mr. Desai that there is any order refusing the sanction and made on 27.04.2012.

39. Then, Mr. Desai would refer to page 128 of the paper book, which is the note dated 28.05.2012 from the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India, and urge that this is an exercise based on which the Petitioner can urge that the earlier decision of 27.04.2012 was being reviewed.

40. We have seen this note and very carefully. What we find from perusal thereof is that the DOP&T has not agreed with the views of the Department of Finance. Rather it cautions and once again reiterates the position that insufficiency of evidence collected by the CBI is a matter which can be tested in a court of law. That is not within the province of the Sanctioning Authority. The views of the DOP&T are conveyed to the Department of Finance and the Department of Revenue in order to enable the Disciplinary Authority i.e. Minister of Finance to take a final decision in the matter and pass a final speaking order. This communication far from directing any review or seeking to review a decision or order earlier made, reiterates the legal position. It outlines the procedure for passing an order or taking a decision in the matter. It is nothing but a view of the DOP&T expressed in writing and communicated to the Department of Finance.

Thus, from the available record one cannot find any order refusing the sanction, but only issuing an administrative warning or imposing minor penalty on the Petitioner. There is no such order as is claimed. Therefore, it is not as if the circular dated 03.05.2012 being issued by the DOP&T that an exercise in reviewing the earlier decision or order particularly refusing the sanction commenced. There was no order and hence, no question arises of its review. The only order that we find is the order granting the sanction and that is made on 09.10.2012. It is duly communicated. Once this is the only order, then, there is no question of reviewing any earlier order or decision. If the order dated 09.10.2012 is the original order and not an order in review as claimed, then, the whole foundation for the argument of absence of sanction must fail. This edifice is built upon only the file notings and which according to Mr. Desai culminate in a final order refusing the sanction. Once we have found on perusal of all files that there are several notings, views and opinions and there is no order as claimed and particularly dated 27.04.2012, then, the order of sanction dated 09.10.2012 is the only order. It is not an order made in review. In our view, it is an order made after considering all views and opinions and carefully and fully examining the materials.

41. Once it is not an order in exercise of the review jurisdiction, then, none of the decisions that Mr. Desai would rely upon and particularly with regard to the power of review, need to be noticed or referred to in detail. We also need not go into and decide the wider and larger controversy raised for our consideration and namely, that the Sanctioning Authority exercises statutory powers and any statutory power once exercised, one way or other, and resulting or culminating in a decision or order, cannot embark or initiate a course of review thereof. Unless there is a specific power of review conferred by the statute in the statutory authority, it is not permissible for it to review its own decision. The submission and the power u/s 19 of the Prevention of Corruption Act, 1988 is one such power, according to Mr. Desai. Having noted all decisions in the field and finding that the decisions of the Honourable Supreme Court hold in terms that the power to grant sanction may be conferred by the statute, but its exercise cannot be termed as quasi-judicial, then, in the facts and circumstances of the present case, it is not necessary for us to find out whether there is any divergence in the view of the Honourable Supreme Court in later decisions. We have referred to the latest decision in *Dr. Subramaniam Swamy* (supra) and in our view, it is not necessary to decide the controversy raised before us.

42. The sheet anchor of the submissions of Mr. Desai is the decision of the Honourable Supreme Court in the case of *State of Himachal Pradesh Vs. Nishant Sareen*, . There the factual distinction is the Principal Secretary (Health) was the Sanctioning Authority. In terms of the Business Rules, he made an order dated 27th November, 2007 refusing sanction. That was sought to be changed only on the ground of change of opinion and it was held impermissible in law. Thus, this decision is distinguishable on facts. In our case, as noted, there was no earlier order. Once we are of the view that the order dated 09.10.2012 is the only order

on record and that the same is not vitiated for want of application of mind nor can it be termed as perverse or based on no material, then, in our discretionary, equitable and extra ordinary jurisdiction under Article 226 of the Constitution of India, so also, inherent powers u/s 482 of the Code of Criminal Procedure, 1973, we cannot interfere with the same. We find that there is no jurisdictional error nor this is a case of absence of sanction enabling us to exercise our writ jurisdiction and our inherent powers. The learned Additional Solicitor General rightly relied upon the judgment of the Honourable Supreme Court in the case of Ashok Tshering Bhutia Vs. State of Sikkim, .

43. As a result of the above discussion, the Writ Petition fails. Rule is discharged. At this stage, Mr. Naik, learned counsel appearing for the Petitioner, prays that the ad-interim order passed on this Writ Petition be continued for some time to enable the Petitioner to challenge this judgment in the higher court. The learned Additional Solicitor General of India opposes this request and invites our attention to Section 19 of the Prevention of Corruption Act, 1988. Having found that the Writ Petition has no merit and the matter is pending for a long time, so also, this Court has stayed the further proceedings before the competent criminal Court, we are of the opinion that this is not a fit case to continue the ad-interim order. The request is refused.