**IN THE HIGH COURT AT CALCUTTA**
**CRIMINAL REVISIONAL JURISDICTION**
**APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE TIRTHANKAR GHOSH**

**CRR 625 of 2016**

***Dr. Nazrul Islam***
***-vs.-***
***Basudeb Banerjee & Ors.***

Petitioner in person : Dr. Nazrul Islam

Heard on : 16.08.2021, 02.09.2021, 07.09.2021, 09.09.2021, 13.09.2021, 16.09.2021, 21.09.2021, 23.09.2021, 27.09.2021, 08.10.2021, 06.12.2021, 13.12.2021, 14.12.2021 &15.12.2021

**Judgment on : 25.01.2022**

**Tirthankar Ghosh, J:-**

The present revisional application has been preferred against the order dated 27.09.2013 passed by the learned Chief Metropolitan Magistrate, Calcutta, in connection with case no. C/31586/13.

By the said order the learned Chief Metropolitan Magistrate was pleased to reject the application under Section 156(3) of Code Criminal Procedure filed at the instance of the petitioner, wherein the offences referred to were under

Sections 166/167/218/219/463/464/465/466/471 of the Indian Penal Code, allegedly being committed by the opposite parties namely; (i) Basudeb Banerjee, Home Secretary, Govt. Of West Bengal; (ii) A. Sengupta, WBCS (Exe), Joint Secretary, Vigilance Cell, P&AR Department, Govt. Of West Bengal; (iii) Sanjay Mitra, Chief Secretary, Govt. Of West Bengal; (iv) Mamata Banerjee, Chief Minister and Minister in charge of Home Department and P&AR Department, Govt. Of West Bengal; (v) S.N. Haque, Additional Chief Secretary, ARD Department, Govt. Of West Bengal; (vi) Naparajit Mukherjee, DG&IGP WB Police Directorate. The learned Magistrate was pleased to observe that no offence under the said Sections were committed by the opposite parties and also observed that even if it is presumed that the offences were committed sanction would be required under Section 197 of the Code of Criminal Procedure.

The petitioner being aggrieved approached this Court against the order passed by the learned Magistrate. The first contention of the petitioner is that the substantive offences so alleged were committed by the opposite parties and for the purpose of investigation no sanction is required. In order to substantiate his argument the petitioner contended that in this case the opposite parties/accused entered into criminal conspiracy, prepared incorrect documents, prepared incorrect translation, forged the contents of his book, forged the Supreme Court judgment and used them as genuine for injuring him which by no stretch of imagination can be said to be work done in discharge of their official duties.

Petitioner appearing in person emphasized that sanction is required at the stage of cognizance and for the purpose of investigation no sanction is required. Additionally he submitted that even if sanction is required that can be made available at any stage but an offence cannot be deterred from being investigated for want of sanction, to this effect the petitioner relied upon P.K. Pradhan –Vs. – State of Sikkim, (2001)6 SCC 704; State of H.P. –Vs.– M.P. Gupta (2004) 2 SCC 349; Choudhury Parveen Sultana –Vs.– State of W.B. & Anr. (2009) 3 SCC 398; Inspector of Police & Anr.–Vs.–Battenapatla Venkata Ratnam & Anr. (2015) 13 SCC 87; Punjab State Warehousing Corporation–Vs.– Bhushan Chander & Anr., (2016) 13 SCC 44.

The main thrust of argument by relying upon the aforesaid judgments was that the principles decided by the Larger Benches of the Hon'ble Supreme Court do not require sanction to be granted particularly with reference to the acts committed by the accused persons and for the purpose of investigation of the same.

The next argument which was advanced by the petitioner is that even if it is presumed that sanction is necessary the same would be required at the time of taking cognizance and not at the time when the learned Magistrate considers an application on the issue of requirement of investigation under Section 156(3) of the Code of Criminal Procedure. It was contended that as the order was passed on 27.09.2013 the judgment of Anil Kumar & Ors. –Vs.–M.K. Aiyappa & Anr., (2013) 10 SCC 705 was not operating in the field and as such

the said law will not be applicable to the present case. Elaborating his argument the petitioner stated that if the order of the learned Magistrate is closely scrutinized it would be clear that there was no analysis regarding the application of the Sections for which the offences were allegedly committed and the learned Magistrate cryptically observed that no offence has been made out. On the point of sanction it was contended that learned Magistrate held that the provision of Section 197 of Cr.P.C. is applicable, which, however, is contrary to the law as the subject manner of the proceeding before the Magistrate related to requirement of investigation in respect of the offences alleged to have been committed by the accused/opposite parties.The order of the Magistrate was self-contradictory and the same being illegal should be set aside.

Petitioner reiterated that in his case the Supreme Court judgments were used in a manner for the purpose of preparing charges which are not available in the Supreme Court judgment and can be presumed to have been prepared, framed and used for the purpose of inflicting injury upon him. Contention of the petitioner regarding the translation of his book is that such contents were not available and they were cryptically taken from different pages and inserted within inverted comas for inflicting injury upon him. According to him the substantive sentences complained of under Sections 166/167/218/219/463/464/465/466/471 of the Indian Penal Code, clearly applies in the present case and accused/opposite parties knowing fully well in a concerted manner entered into a criminal conspiracy for depriving him of his promotion which he was entitled under the Law.

The petitioner thereafter joined issue in respect of the judgment of the Hon'ble Supreme Court in Anil Kumar (supra) and L. Narayana Swamy–Vs.– State of Karnataka & Ors., (2016) 9 SCC 598, and submitted that the ratio of the said judgments which states that no order for investigation under Section 156 (3) of the Code of Criminal Procedure can be ordered against a public servant without a valid sanction is not a good law, in view of the earlier judgments of the Supreme Court as also the subsequent judgment of the Supreme Court in Manju Surana –Vs.– Sunil Arora & Ors., (2018) 5 SCC 557. Drawing attention of this Court to the initial paragraphs of Anil Kumar (supra) and L. Narayana Swamy (supra) petitioner submitted that both the judgments were on the basic foundation of requirement of sanction under the Prevention of Corruption Act, as such the principles laid down therein may not be applicable to the present case. The petitioner also pointed out that the subject matter of the case originated from complaint under Section 200 of the Code of Criminal Procedure and the same is distinguishable as Section 200 of Cr.P.C. falls under Chapter XV of Cr.P.C. which is under the heading "Complaints to Magistrate" while Section 156(3) Cr.P.C. falls under Chapter XII of Cr.P.C. which is under the heading "Information to the police and their powers to investigate". The two Chapters operating in different fields have separate manner of application and a judgment delivered or a law pronounced in respect of the proceeding under Section 200 of Cr.P.C. cannot be applicable in respect of the proceeding under Section 156(3) Cr.P.C. It was further contended that Section 19 of the Prevention of Corruption Act and Section 197 of the Code of

Criminal Procedure are completely different and are to be considered in a separate perspective. To that effect the petitioner also tried to draw the analogy in respect of investigation to be conducted under Section 156(3) of the Code of Criminal Procedure and Section 202 of the Code of Criminal Procedure.

Petitioner relied upon several judgments of the Hon'ble Supreme Court, by referring to R.R. Chari v. State of Uttar Pradesh., AIR 1951 SC 207 he stressed on the issue that no illegal act can be said to bedone in discharge of any official duty.

Petitioner submitted that all the necessary requisites or compliances required for initiation of a case under Section 156(3) of the Code of Criminal Procedure were complied with according to the settled principles of law in Lalita Kumari –Vs.– Government of Uttar Pradesh and Ors., (2014) 2 SCC 1 case and Priyanka Srivastava & Anr. –Vs. –State of Uttar Pradesh and Ors., (2015) 6 SCC 287 case. It was thereafter contended that the provisions of Section 156(3) of Cr.P.C. are in the nature of reminder to the police authorities to do their work in accordance with law, it would be fallacy of the system if the Superintendent of Police can order an investigation under Section 154(3) of Cr.P.C. against public servants and the Officer-in-charge of a police Station can conduct investigation against public servants under Section 156(1) of Cr.P.C. but a Magistrate even after finding that the offences have been made out cannot proceed without a valid sanction. According to him sanction is never pre-requisite for initiation of investigation and the legislative object cannot be

diluted for the purpose of protecting the illegal acts of public servants, reference has been made to the judgment of the Hon'ble Supreme Court in Subramanian Swamy –Vs.– Director Central Bureau of Investigation & Anr., (2014) 8 SCC 682. By drawing the attention of the Court to paragraph 98 of the said judgment, which is as follows:

> ***"98.*** *Having considered the impugned provision contained in Section 6-A and for the reasons indicated above, we do not think that it is necessary to consider the other objections challenging the impugned provision in the context of Article 14.***"**

It has been submitted that no distinction can be created on ground of corruption or any illegal act of a public servant, however, how high he may be.

Petitioner reiterated that it is a settled principle of law that ordering investigation under Section 156(3) Cr.P.C. is pre-cognizance function and as such the question of sanction do not arise, to that effect reliance has been placed on R.R. Chari (supra); Gopal Das Sindhi & Ors. –Vs.– State of Assam & Anr., AIR 1961 SC 986; Jamuna Singh & Ors.–Vs.– Bhadai Shah, AIR 1964 SC 1541; Nirmaljit Singh Hoon–Vs.– State of West Bengal & Anr., (1973) 3 SCC 753; Devarapalli Lakshminarayana Reddy & Ors.–Vs.– V. Narayana Reddy & Ors., (1976) 3 SCC 252.

It has also been submitted that during contemporary period there were other judgments of the Hon'ble Supreme Court which do not lay down similar proposition, to that effect petitioner has relied upon Madhao & Anr.–Vs.– State

of Maharashtra & Anr., (2013) 5 SCC 615. Attention has been drawn to paragraph 19 which is as follows:

> ***"19.*** *Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:*
>
> *(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.*
>
> *(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.*
>
> *(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.***"**

It was contended that in Jayant & Ors.–Vs.– State of Madhya Pradesh, (2021) 2 SCC 670, by referring to Anil Kumar (supra) the Hon'ble Supreme Court deviated from the findings made therein and observed that ordering investigation under Section 156(3) Cr.P.C. was a pre-cognizance function and stressed on paragraph 13 of the said judgment which is as follows:

> ***"13.*** *Applying the law laid down by this Court in the cases referred to hereinabove, it cannot be said that at this stage the learned Magistrate had taken any cognizance of the alleged offences attracting the bar under Section 22 of the MMDR Act. On considering the relevant provisions of the MMDR Act and the Rules made thereunder, it cannot be said that there is a bar against registration of a criminal case or investigation by the police agency or submission of a report by the*

*police on completion of investigation, as contemplated by Section 173 CrPC.*"

Petitioner summarized his argument in the backdrop of the factual circumstances and submitted that :

a) The accused persons forged part of the Supreme Court judgment as also different parts of his books and used the same as genuine in the charge-sheet for causing damage/injury to him and as suchhas made themselves liable for offences under Section 465/466/471 of the Indian Penal Code.

b) The accused persons being public servants translated different parts of his book for preparation of the charge-sheet in a manner which they knew to be incorrect and with the intention of causing injury to the petitioner,thus making themselves liable for offencespunishable under Section 167 of the Indian Penal Code.

c) As per the relevant laws (Rule 8, Rule 6(a) a summary of submission [Rule 8(6)(a) of AIS (D&A) rules 1969 read with DP & AR Letter No 11018/8/81-AIS (III) Dated 25-11-1981, and Para 34 of SC judgment in State of Punjab vs VK Khanna (AIR 2001 SC 343)], the authority was bound to apply its mind on written statement of defence submitted by a party for deciding whether further inquiry was necessary. The laws provide the opportunity to the petitioner to get the charges dropped by explaining thissatisfactorily in written statement of defence. Denying such

opportunity, the accused persons prepared incorrect documents/record for passing the orderfor injuring the petitioner,thereby committing the offencespunishable under Section 167/218 of the Indian Penal Code.

d) Though there was no charge and no statement of violation of Rule6 of AIS (Conduct) Rules 1968 in the charge-sheet the authorities prepared incorrect documents/record by alleging such violation and thereby committed cognizable offences under Sections 167/218 of the Indian Penal Code.

e) In the Memorandum dated 14th December, 2012 the accused persons being public servants prepared the documents/records in a manner which they knew to be incorrect for the purpose of causing injury to the petitioner, making them liable for cognizable offences under Section 167/218 of the Indian Penal Code.

f) The petitioner thereafter referred to the minutes of the Screening Committee meeting dated 05.12.12 and submitted that the observation made by the committee being “not received from the borrowing department/authority”, “not available for assessment”, was incorrect as the petitioner submitted his self-assessment for PAR for 2010-2011 in time and the same was in the custody of the accused persons. According to the petitioner the accused persons were bound to make assessment on self-assessment and overall record and the same was not done for the purpose of injuring him,

which makes them liable for offences under Section 167/218 of the Indian Penal Code.

g) The bench mark fixed by the Committee which is three outstanding PARs in last five years was with the purpose of injuring the petitioner as the same was against the AIS Rules, 2007. This assessment was more important because of the fact that the accused persons were working as members of the Screening Committee and for the purpose of deciding whether ADGP was fit to be promoted to the rank of DGP, this was purposely done and an incorrect document/record was prepared with the intention of injuring the petitioner making themselves liable for offences under Section 167/218 of the Indian Penal Code. There were other instances regarding act and action of the Screening Committee which have been detailed in the application under Section 156(3) of the Code of Criminal Procedure which according to the petitioner has made the members of the Committee liable for commission of offences under Section 167/218 of Indian Penal Code. Another contention of relevance is that one of the accused Basudeb Banerjee, IAS was not in the rank of Additional Chief Secretary or Chief Secretary and as such was not liable to be a member of the Screening Committee for promotion to DG Rank, his attendance in the meeting as a member, signing the minutes as Principal Secretary which is an

offence under Section 166 of the Indian Penal Code. Petitioner thereafter, narrated several acts of the Committee for substantiating the offences under Section 166 of the Indian Penal Code being made out, so far as the accused members are concerned.

h) The petitioner referred to Maneka Gandhi –Vs.– Union of India & Anr., (1978) 1 SCC 248 and also Maharashtra State Financial Corporation–Vs.– M/s. Suvarna Board Mills & Anr., (1994) 5 SCC 566 and submitted that he was denied the principles of natural justice and the foundation of the same makes out an offence under Section 166 of the Indian Penal Code. To that effect the petitioner also stated that the same offences are made out as no list of witnesseswere attached to the charge-sheet which is mandatory according to the rules.

i) The next point which was argued by the petitioner related to criminal conspiracy and by referring to State –Vs.–Nalini & Ors., (1999) 5 SCC 253wherein it has been observed *"that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inference drawn from acts or illegal omission committed by the conspirators in pursuance of a common design".* The petitioner with reference to the observations of the Hon'ble Supreme Court referred to notification of the Home Department and certain orders

issued by the West Bengal Police Directorate, as also PressReports and submitted that the violation itself will speak that without any conspiracy the same is not possible. After not getting any remedy from DG and IGP, Home Secretary and Chief Secretary, petitioner sent his representation dated 01.07.2018 to the Chief Minister describing the offences committed against him by way of conspiracy. A draft information of the FIR was sent by the petitioner for initiation of a case, however, neither he was informed that there was any factual/legal error nor any communication was made to him from the higher Office and the same is not possible without any conspiracy. The petitioner, therefore, claims that it is well established that a conspiracy existed with the Senior Officers who were members of the Screening Committee and the Chief Minister and the same was with the purpose of injuring him. Petitioner added that the overall act and actions of all the opposite parties/accused persons taken as a whole has made out cognizable offences under Section 120B read with Section 167/218, 471/466 and 471/465 of the Indian Penal Code. The observation of the Magistrate that no offence is made out was without any reason and as a clear case of cognizable offences has been made out, the officer-in-charge was duty bound to respect the Constitution Bench judgment in Lalita Kumari (supra) and the Officer-in-charge or his superior Officer having not done the same,

the Magistrate was obliged to direct an order of investigation into the alleged act of the accused/opposite parties.

Learned Advocate General appearing on behalf of the State vehemently opposed the contents advanced by the petitioner and submitted that none of the Sections under the Indian Penal Code for which the petitioner claims that police investigation is required are maintainable or applicable. According to him the application under Section 156(3) of the Code of Criminal Procedure which was preferred before the learned Magistrate is without any substance and as such no offence can be said to be committed. Supporting the order passed by the learned Magistrate while rejecting the application under Section 156(3) of the Code of Criminal Procedure, it has been submitted that the learned Magistrate rejected the application of the petitioner on two counts firstly, for no offence being made out and secondly, sanction was required for passing direction for investigation.

In order to substantiate his contentions learned Advocate General firstly, relied upon a judgment delivered by the Coordinate Bench of this High Court in CRR No. 3493 of 2017 and submitted that a Coordinate Bench has already held that in respect of the same contentions that is the judgment of the Hon'ble Supreme Court and passages from the book written by the petitioner no offence has been made out. Additionally he submitted that if a charge has been framed against the petitioner by way of forgingthe Supreme Court judgment or from the paragraphs of a book written by the petitioner in that case the charges

would not stand but in this case the charges have been held to be proved against the petitioner. It has also been submitted that being aggrieved by the judgment in CRR No. 3493 of 2017 the petitioner appealed before the Hon'ble Supreme Court being Special Leave to appeal (Crl.) No. 3715/2021 which was dismissed on 24.09.2021 by the Hon'ble Supreme Court.

Learned Advocate General also drew the attention of this Court to the Judgment delivered by a Division Bench of this Court in W.P.C.T. 40-43 of 2014 with C.O.C.T. 1 of 2014, wherein it has been categorically observed *"We fail to reason, once the petitioner could not come within the zone of consideration his attack to the selection process is of no consequence."* Relying upon the appeal preferred in the Hon'ble Supreme Court by the petitioner in respect of the judgment delivered by the Division Bench in Special Leave to appeal (C) No.(s) 9724-9728/2014, Learned Advocate General submitted that the order passed therein on 08.09.2014 would reflect that the Special Leave petition was also dismissed and as such the Division Bench order of this Court stands to be correct.

The other issue which was strenuously contended by the learned Advocate General is that in Anil Kumar & Ors. –Vs. – M.K. Aiyappa & Anr., (2013) 10 SCC 705, the Hon'ble Supreme Court in paragraphs 17 and 21 observed as follows:

> ***"17.*** *We may now examine whether, in the abovementioned legal situation, the requirement of sanction is a precondition for ordering*

*investigation under Section 156(3) CrPC, even at a pre-cognizance stage.*

***21.*** *The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] and Subramanian Swamy [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] cases.***"***

Learned Advocate General also submitted that the said view was approved by the Hon'ble Supreme Court in a subsequent judgment of L. Narayana Swamy –Vs. – State of Karnataka &Ors., (2016) 9 SCC 598,to that effect reliance was placed in paragraphs 10.1, 15 and 16 which are as follows:

***"10.1*** *(i) Whether an order directing further investigation under Section 156(3) CrPC can be passed in relation to public servant in the absence of valid sanction and contrary to the judgments of this Court in Anil Kumar v. M.K. Aiyappa [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC*

*705 : (2014) 1 SCC (Cri) 35] and Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218] ?*

***15.*** *The above view taken by the High Court is contrary to the judgments of this Court in Manharibhai Muljibhai Kakadia [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218] and Anil Kumar [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] . In Manharibhai Muljibhai Kakadia [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218] , the facts were that the respondent filed before the CJM a criminal complaint alleging that the appellant had, by doing the acts stated, committed the offences punishable under Sections 420, 467, 468, 471 and 120-B IPC. The CJM, in exercise of his power under Section 202 CrPC by his order dated 18-6-2004 directed an enquiry to be made by a police inspector. The investigating officer investigated into the matter and submitted a complaint summary report opining that no offence was made out. The CJM on 16-4-2005 accepted that report and dismissed the complaint. The respondent complainant filed a criminal revision petition thereagainst under Section 397 read with Section 401 CrPC before the High Court. The appellants then made an application seeking their impleadment as respondents in the revision proceedings so that they could be heard in the matter. On 5-8-2005 [Manharbhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, 2005 SCC OnLine Guj 280] , the High Court dismissed that application. Against that order, appeal was heard by special leave. This Court set aside [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218] the order of the High Court permitting the appellants to be impleaded in the revision*

*proceedings. The Court took note of the provisions of CrPC i.e. Section 202, which does not permit an accused person to intervene in the course of inquiry by the Magistrate. However, it was held that even while directing inquiry, the Magistrate applies his judicial mind on the complaint and, therefore, it would amount to taking cognizance of the matter. In this context, the Court explained the word "cognizance" in the following manner: (Manharibhai Muljibhai Kakadia case [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218] , SCC p. 533, para 34)*

*"34. The word "cognizance" occurring in various sections in the Code is a word of wide import. It embraces within itself all powers and authority in exercise of jurisdiction and taking of authoritative notice of the allegations made in the complaint or a police report or any information received that an offence has been committed. In the context of Sections 200, 202 and 203, the expression "taking cognizance" has been used in the sense of taking notice of the complaint or the first information report or the information that an offence has been committed on application of judicial mind. It does not necessarily mean issuance of process."*

***16.*** *The second judgment in Anil Kumar [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] referred to above is directly on the point. In that case, identical question had fallen for consideration viz. whether sanction under Section 19 of the PC Act is a precondition for ordering investigation against a public servant under Section 156(3) CrPC even at pre-cognizance stage? Answering the question in the affirmative, the Court discussed the legal position in the following manner: (SCC pp. 711-12 & 713-14, paras 13-15 & 21)*

*"13. The expression "cognizance" which appears in Section 197 CrPC came up for consideration before a three-Judge Bench of this Court in State of U.P. v. Paras Nath Singh [State of U.P. v. Paras Nath*

*Singh, (2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] and this Court expressed the following view: (SCC p. 375, para 6)*

*'6. … "10. … And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty." [Ed.: As observed in State of H.P. v. M.P. Gupta, (2004) 2 SCC 349, 358, para 10 : 2004 SCC (Cri) 539] '*

*14. In State of W.B. v. Mohd. Khalid [State of W.B. v. Mohd. Khalid, (1995) 1 SCC 684 : 1995 SCC (Cri) 266] , this Court has observed as follows:*

*'13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.' [Ed.: As considered in State of Karnataka v. Pastor P. Raju, (2006) 6 SCC 728, 734, para 13 : (2006) 3 SCC (Cri) 179]*

*The meaning of the said expression was also considered by this Court in Subramanian Swamy case [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .*

*15. The judgments referred to hereinabove clearly indicate that the word "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.*

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*21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh [State of U.P. v. Paras Nath Singh, (2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] and Subramanian Swamy [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] cases."*

*Having regard to the ratio of the aforesaid judgment [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , we have no hesitation in answering the questions of law, as formulated in para 10 above, in the negative. In other words, we hold that an order directing further investigation under Section 156(3) CrPC cannot be passed in the absence of valid sanction."*

It has been pointed out on behalf of the State that in the case of Manju Surana –Vs. – Sunil Arora & Ors., (2018) 5 SCC 557, the judgment of Anil Kumar (supra) and L. Narayana Swamy (supra) felt for consideration and in the said case the Hon'ble Supreme Court referred the case to a Larger Bench for

settling the issue. Reliance has been placed on paragraphs 32, 33 and 35 which are set out below:

> ***"32.*** *We have examined the rival contentions and do find a divergence of opinion, which ought to be settled by a larger Bench. There is no doubt that even at the stage of Section 156(3), while directing an investigation, there has to be an application of mind by the Magistrate. Thus, it may not be an acceptable proposition to contend that there would be some consequences to follow, were the Magistrate to act in a mechanical and mindless manner. That cannot be the test.*
>
> ***33.*** *The catena of judgments on the issue as to the scope and power of direction by a Magistrate under Chapters XII & XIV is well established. Thus, the question would be whether in cases of the PC Act, a different import has to be read qua the power to be exercised under Section 156(3) CrPC i.e. can it be said that on account of Section 19(1) of the PC Act, the scope of inquiry under Section 156(3) CrPC can be said to be one of taking "cognizance" thereby requiring the prior sanction in case of a public servant? It is trite to say that prior sanction to prosecute a public servant for the offences under the PC Act is a provision contained under Chapter XIV CrPC. Thus, whether such a purport can be imported into Chapter XII CrPC while directing an investigation under Section 156(3) CrPC, merely because a public servant would be involved, would beg an answer.*
>
> ***35.*** *The complete controversy referred to aforesaid and the conundrum arising in respect of the interplay of the PC Act offences read with CrPC is, thus, required to be settled by a larger Bench. The papers may be placed before the Hon'ble the Chief Justice of India for being placed before a Bench of appropriate strength.****"***

According to the State the issue which could not be decided by the Hon'ble Supreme Court and has been referred to Larger Bench, the petitioner has called upon this Court to decide i.e. whether in an application under Section 156(3) of the Code of Criminal Procedure, the Magistrate is empowered to direct investigation without a valid sanction againstthe public servants. It has been contended that in case a reference has been made on a point of law then in that case last of the judgment which is an authority on the point would be followed till the reference is decided by a Larger Bench. To that effect reliance has been placed on M.S. Bhati –Vs. – National Insurance Company Ltd., (2019) 12 SCC 248, and the attention of the Court has been drawn to paragraphs 10 and 11 which are as follows:

> ***"10.*** *The learned counsel further submitted on the alternative plea that the decision in Mukund Dewangan [Mukund Dewangan v. Oriental Insurance Co. Ltd., (2017) 14 SCC 663] has been reserved for reconsideration by a larger Bench in Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi [Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi, (2019) 12 SCC 816] by a two-Judge Bench of this Court on 3-5-2018.*
>
> ***11.*** *The law which has been laid down by a three-Judge Bench of this Court in Mukund Dewangan [Mukund Dewangan v. Oriental Insurance Co. Ltd., (2017) 14 SCC 663] binds this Court. As a matter of judicial discipline, we are duty-bound to follow that decision which continues to hold the field.***"**

The learned Advocate General concluded his argument by submitting that the revisional application is not maintainable on the questions of law as raised by the petitioner and as such is liable to be dismissed.

On an overall appreciation of the points canvassed by both the sides the issues which are required to be dealt with are:

a) Whether the allegations made in the application under Section 156(3) of the Code of Criminal Procedure taken in its entirety makes out any offence for investigation;
b) Whether a valid sanction is required prior to an order of investigation being passed under Section 156(3) of the Code of Criminal Procedure against public servants;
c) Lastly if an issue has been referred to a Larger Bench of the Hon'ble Supreme Court by way of a reference what would be the consequences in respect of pending proceedings.

So far as the first point is concerned the petitioner tried to emphasize before this Court that the substance which was inserted within inverted comas by relying upon the Supreme Court judgment was never there in the said form in the referred judgment and as such it can be said that the Supreme Court judgment was forged and the same was intentionally prepared with the ulterior object of inflicting injury upon him. The other factual aspect of the allegations made by the petitioner related to the books authored by him, wherein within inverted comas insertions were made which were not available in the book and

the translation so prepared were purposely done for the purpose of inflicting injury upon him. It would not be out of place to state that the foundation of such allegation were in respect of charges which were brought against the petitioner and on an entire evaluation of the facts laid down by both the sides it is transparent that the said charges were subject matter of challenge before all the forum including the Hon'ble Supreme Court of India and were never interfered with. The subject matter of charge(s), its language, its contents are part of a proceedings relating to the service/promotion of the petitioner. The said charges would either stand to be correct or are to be dropped if they are incorrect. The issue of such charges and its contents are exclusively for the purpose of determining the issues relating to the service/promotion of the petitioner, until and unless the petitioner is able to show that such charges have been interfered with, it is very difficult for a criminal Court to presume that the charges so brought against him were prepared, forged for the purpose of inflicting injury upon him. To that extent, the emphasis of the petitioner on Section 167 and Section 218 of the Indian Penal Code relating to preparing of incorrect document or record cannot overcome the preliminary test as a Division Bench of the Hon'ble High Court had decided the issue and which was subsequently affirmed by the Hon'ble Supreme Court in appeal. No materials have been enclosed to show that the public servants who have been named in the application under Section 156(3) Cr.P.C. authored such documents. Further a charge is usually framed in the language, mode and manner by the authority who brings accusation against the delinquent. It is for the answering

party to dislodge such claim. As the petitioner has failed to dislodge such claim of the enquiring authority, disciplinary authority or the Screening Committee it can be concluded that there are no substance to justify any offence alleged to have been committed by them either under Section 167 of I.P.C or under Section 218 of I.P.C. For the same reasons it can be held that the allegations of forgery under Sections 465/466/471 of the Indian Penal Code which were made against the officials of the State who were part of the Committee as also the Chief Minister of the State have no manner of application in the present case. The petitioner also tried to implicate some of the officers by alleging that they were not competent to be in the Screening Committee or the Board as their seniority and designation did not permit them to be considering the promotion for the rank and designation of the petitioner or other participants for which it was being considered. A specific allegation under Section 166 of the Indian Penal Code has been made to that effect. It would be trite to state that under the Indian Penal Code there are specific provisions stating "*Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.*"

Petitioner while making the allegations failed to take into account that the Board or the Screening Committee was constituted by an administrative order and they have taken a decision, the constitution of the body of persons who acted as a Board or a Screening Committee were never interfered with either by the Division Bench of this Court or by the Hon'ble Supreme Court

and as such by any stretch of imagination it cannot be held that the individuals were acting with a guilty mind for any purpose of inflicting injury upon the petitioner, far less to say that their act and action can be foundation of a criminal case inviting an investigation to be conducted against them.

So far as the issue of sanction is concerned petitioner from the inception emphasized that it cannot be a duty of a public servant to commit forgery in discharge of his official duty, to that effect petitioner relied upon the following judgments of the Hon'ble Supreme Court, P.K. Pradhan –Vs. – State of Sikkim, (2001)6 SCC 704; State of H.P. –Vs.– M.P. Gupta, (2004) 2 SCC 349; Choudhury Parveen Sultana –Vs.– State of W.B. & Anr., (2009) 3 SCC 398; Inspector of Police & Anr.–Vs.–Battenapatla VenkataRatnam & Anr. (2015) 13 SCC 87; Punjab State Warehousing Corporation–Vs.–Bhushan Chander & Anr., (2016) 13 SCC 44, wherein it has been settled that corruption or any illegal act cannot be done in discharge of official duty and as such sanction may not be warranted in such cases.

The factual foundation on which the petitioner has approached the learned Magistrate for invoking its jurisdiction under Section 156(3) of the Code of Criminal Procedure invites this Court to refer and rely upon some of the judgments wherein the Hon'ble Apex Court was pleased to hold the necessity of Section 197 of the Code of Criminal Procedure.

In Baijnath –Vs.– State of Madhya Pradesh, AIR 1966 SC 220 it was observed: *"It is the quality of the act that is important and if it falls within the*

*scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."*

While approving the requirement of Section 197 of the Code of Criminal Procedure the Hon'ble Apex Court in Rizwan Ahmed Javed Shaikh & Ors. –Vs. – Jammal Patel & Ors., (2001) 5 SCC 7 relying upon the earlier judgment of B. Saha & Ors. –Vs. – M.S. Kochar, (1979) 4 SCC 177 referred to the following paragraphs:

> ***"18.*** *In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.*
>
> ***20.*** *Speaking for the Constitution Bench of this Court, Chandrashekhar I Aiycr, J., restated the same principle, thus: [ Matogoj Dobey case (Supra), p 49]*
>
> *[I]n the matter of grant of sanction under Section 197, the offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty .... There must be a reasonable connection between the act and the dis-charge of official duty; the act must bear such*

*relation to the duty that the accused could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. (emphasis supplied).***"**

Similarly, in Sankaran Moitra –Vs. – Sadhna Das & Anr., (2006) 4 SCC 584 by a majority judgment the Hon'ble Supreme Court was pleased to approve in favour of the public servants for requirement of sanction under Section 197 (1) of the Code of Criminal Procedure and in paragraph 21 it has been observed as follows:

***"21.*** *In Bakhshish Singh Brar v. Gurmej Kaur [(1987) 4 SCC 663 : 1988 SCC (Cri) 29] this Court stated that it was necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, and that is the rationale behind Section 196 and Section 197 of the Code. But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted. Protection of public officers and public servants functioning in discharge of their official duties and protection of private citizens have to be balanced in each case by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. In the recent decision in Rakesh Kumar Mishra v. State of Bihar [(2006) 1 SCC 557 : (2006) 1 SCC (Cri)*

*432] this Court after referring to the earlier decisions on the question stated: (SCC p. 564, para 12)*

*"The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned."*

A similar authority on this point regarding the requirement of Section 197 of the Code of Criminal Procedure in respect of public servant was held in Abdul Wahab Ansari -Vs. – State of Bihar & Anr. (2000) 8 SCC 500.

Thus, the requirement of Section 197 of the Code of Criminal Procedure or a valid sanction is not alien in its applicability according to the facts of the case. The present case is one wherein the averments in the application under Section 156(3) of the Code of Criminal Procedure, primarily expresses all the grievance of the petitioner regarding the decision of the public servants and the manner in which he has been deprived of his promotion. The aforesaid judgments of the Hon'ble Supreme Court makes it transparent that the want of sanction is not

restricted to any act done by the public servant only in discharge of his official duty but also in purport of such official duty. The test to be applied for the Court is whether it is a fanciful claim or a bona fide claim. The facts of the case itself reflect that the public servants were working in discharge of their official duties as such they are entitled to the benefit of Section 197 of the Code of Criminal Procedure and for this reasons the judgments relied upon by the petitioner Madhao & Anr.–Vs.– State of Maharashtra & Anr., (2013) 5 SCC 615and Jayant & Ors. –Vs.– State of Madhya Pradesh, (2021) 2 SCC 670are not applicable to the facts of the present case.

A further contention which wasadvanced on behalf of the petitioner is that even if sanction is required the same can be granted at any stage and for the purpose of consideration of an application under Section 156(3) of the Code of Criminal Procedure sanction is not at all required, as it has been settled that sanction is a consideration prior to taking cognizance of the offence and not at the stage when the investigation commences. To that effect petitioner relied upon the judgments of the Hon'ble Supreme Court in Manju Surana (supra) and the decisions relied upon by the Hon'ble Supreme Court being R.R. Chari (supra), Gopal Das Sindhi & Ors. (supra), Jamuna Singh & Ors. (supra), Nirmaljit Singh Hoon (supra), Devarapalli Lakshminarayana Reddy & Ors. (supra), Tula Ram & Ors. –Vs. – Kishore Singh, AIR 1977 SC 2401; Srinivas Gundluri & Ors. –Vs. –Sepco Electric Power Construction Corporation & Ors.,

(2010) 8 SCC 206 and Subramanian Swamy (supra) to arrive at its finding of a divergent view with the previous judgments being Anil Kumar (supra) and L. Narayana Swamy (supra).

The Hon'ble Supreme Court while laying down the ratio relating to requirement of sanction prior to an order being passed under Section 156(3) of the Code of Criminal Procedure in respect of public servants interpreted the word 'cognizance' appearing in the Code of Criminal Procedure and to that effect it has been held that there is a mandatory character of the protection afforded to a public servant and the word 'cognizance' has a wider connotation and is not merely confined to the stage of taking cognizance under Section 190 of the Code of Criminal Procedure. The following paragraphs which are relevant for consideration on the issue in Anil Kumar (supra) are referred as follows:

> ***"11.*** *The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the*

*Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.*

***12.*** *We will now examine whether the order directing investigation under Section 156(3) CrPC would amount to taking cognizance of the offence, since a contention was raised that the expression "cognizance" appearing in Section 19(1) of the PC Act will have to be construed as post-cognizance stage, not pre-cognizance stage and, therefore, the requirement of sanction does not arise prior to taking cognizance of the offences punishable under the provisions of the PC Act.*

***13.*** *The expression "cognizance" which appears in Section 197 CrPC came up for consideration before a three-Judge Bench of this Court in State of U.P. v. Paras Nath Singh [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] , and this Court expressed the following view: (SCC pp. 375, para 6)*

*"6. … '10. … And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court*

*shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.' [Ed.: As observed in State of H.P. v. M.P. Gupta, (2004) 2 SCC 349, 358, para 10 : 2004 SCC (Cri) 539.] "*

***14.*** *In State of W.B. v. Mohd. Khalid [(1995) 1 SCC 684 : 1995 SCC (Cri) 266] , this Court has observed as follows:*

*"13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out." [Ed.: As considered in State of Karnataka v. Pastor P. Raju, (2006) 6 SCC 728, 734, para 13 : (2006) 3 SCC (Cri) 179.]*

*The meaning of the said expression was also considered by this Court in Subramanian Swamy case [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .*

***15.*** *The judgments referred to hereinabove clearly indicate that the word "cognizance" has a wider connotation and is not merely confined*

*to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.*

***16.*** *A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options: he may take cognizance of the offence under Section 190 CrPC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) CrPC. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) CrPC.*

***21.*** *The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous*

> *sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] and Subramanian Swamy [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] cases.***"***

Thus, it has been categorically observed by the Hon'ble Supreme Court that if it is noticed there was no previous sanction the Magistrate cannot order investigation against the public servant while invoking powers under Section 156(3) of Cr.P.C. This issue felt for consideration in L. Narayana Swamy (supra) case and in paragraph 16 of the said judgment after taking into account the observations, finding, ratio of Anil Kumar (supra) it has been held *"In other words be held that an order directing further investigation under Section 156(3) of Cr.P.C. cannot be passed in the absence of valid sanction."* The aforesaid two judgments has settled the ratio in respect of valid sanction and an application under Section 156(3) Cr.P.C. The subsequent judgment in Manju Surana (supra) case has referred the issue to a Larger Bench but did not declare the ratio laid down in the earlier two judgments as either *per incuriam* or a bad law. To that extent the submission of the learned Advocate General that an issue which could not be decided subsequently by the Hon'ble Supreme Court cannot be decided by a High Court on the mere asking of the petitioner, cannot be brushed aside. The submission of the learned Advocate General that in case

a reference has been made on a point of law then the last of the judgment which is authority on the point would be valid is the correct proposition to be followed by this Court, as was held in M.S. Bhati –Vs. – National Insurance Company Ltd., (2019) 12 SCC 248; P. Sudhakar Rao & Ors. –Vs. – U. Govinda Rao & Ors, (2013) 8 SCC 693; Ashoke Sadarangani & Anr. –Vs. – Union of India and Ors., (2012) 11 SCC 321; Harbhajan Singh & Anr. –Vs. – State of Punjab & Anr., (2009) 13 SCC 608.

Having regard to the subject matter by way of which the petitioner has attempted to invoke the provisions of Section 156(3) of the Code of Criminal Procedure against the public servants this Court is of the opinion that as the provision of Section 197 of the Code of Criminal Procedure has been incorporated in the statute, the same has been for a meaningful purpose of allowing the public servants to discharge their duties without fear or favour or without any anticipation of being harassed because of the rigours of law. Therefore, ordinarily a valid sanction would be required in a proceeding where the provisions of Section 156(3) Cr.P.C. are invoked against public servants. However, in this casesubstantive offences as alleged have not been made out, so the issue of sanction is an additional consideration.

Accordingly there is no illegality in the order dated 27.09.2013 passed by the learned Chief Metropolitan Magistrate, Calcutta and as such no interference is called for.

Hence, the Revisional Application fails.

Thus, CRR 625 of 2016 is dismissed.

Pending application, if any, is consequently disposed of.

Department is directed to communicate this order to the Ld. Trial Court and sendthe LCR forthwith to the Court below.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Tirthankar Ghosh, J.)**