ORDER

S. SUNIL DUTT YADAV. J

THIS ORDER HAS BEEN DIVIDED INTO THE FOLLOWING SECTIONS TO FACILITATE ANALYSIS:

I. FACTS OF THE CASE:-

The petitioner has called in question the validity of the order dated 08.07.2021 passed by the Court of LXXXI Addl. City Civil and Sessions Judge, Bengaluru (CCH-82) in PCR No.40/2021, whereby the Private Complaint filed under Section 200 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for brevity) and the interim application filed by the Complainant under Section 156(3) of Cr.P.C. have been found to be not maintainable in the absence of valid sanction and accordingly, the complaint and the application have been dismissed.

2. The petitioner has been referred to as 'Complainant' and the respondents have been referred to as 'Accused' for the sake of convenience.

3. The Complainant has sought for restoration of the complaint and to register the First information

Report ('FIR') against the accused for the offences punishable under Sections 7, 8, 9, 10 and 13 of the Prevention of Corruption Act, 1988 ('P.C. Act' for brevity) and under Sections 383, 384, 415, 418, 420 read with Section 34 and Section 120B of the Indian Penal Code, 1860 ('IPC' for brevity).

4. The facts as made out in the complaint are that the Complainant had lodged information in accordance with Section 154 of Cr.P.C. on 19.11.2020 before the Anti Corruption Bureau, Bengaluru ('ACB' for brevity) against the accused alleging the commission of offence as referred to above.

5. It is further stated that the ACB had issued notice to the Complainant seeking for certain documents and clarification and despite such clarification, the information/complaint lodged before

the ACB came to be closed and an endorsement dated 15.12.2020 came to be issued in that respect.

6. Accordingly, the Private Complaint came to be filed before the Special Court seeking to take cognizance of the offences as follows:-

(i) Sections 7, 8, 9, 10 and 13 of the P.C. Act;
(ii) Sections 383, 384, 415, 418, 420 read with Sections 34 and 120B of IPC;
(iii) Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 ('PMLA' for brevity).

7. A further prayer was also sought to direct the Investigating Agency to register FIR under Section 156(3) of Cr.P.C. to conduct investigation and proceed in accordance with law.

8. It is submitted that the Complainant had approached Governor of Karnataka seeking sanction

for prosecuting Accused No.1 and had also approached the Chief Secretary, Government of Karnataka seeking sanction to prosecute Dr. G.C. Prakash, I.A.S., (Accused No.7) and had approached the Speaker of Karnataka Legislative Assembly seeking sanction for prosecuting Accused Nos. 1 and 6.

9. It is submitted that since the Authorities concerned have not responded regarding the grant of sanction, the Complainant, on the premise of deemed sanction, placing reliance on the judgment in **Vineet Narain and Others v. Union of India and Another**[1] ['Vineet Narain'] and the decision of Apex Court in **Subramanian Swamy v. Manmohan Singh and Another**[2] ['Subramanian Swamy'], has sought to proceed legally.

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[1] (1998) 1 SCC 226.
[2] (2012) 3 SCC 64.

10. The learned Special Judge has observed at para-18 of the impugned order as follows:-

> *"18. I have gone through the materials placed by the complainant and analyzed the submissions made by the complainant. No doubt, there are some material to refer the complaint for investigation under Section 156(3) of Cr.P.C. But before proceeding to refer the complaint for investigation under Section 156(3) of Cr.P.C., this Court has to examine the law laid down by the Hon'ble Apex Court with regard to the requirement of sanction. To appreciate these aspects, the following points arise for my determination:-*
>
> *(1) Whether an order for directing the investigation under Sec.156(3) of Cr.P.C., can be passed in relation to public servant in the absence of valid sanction?*
>
> *(2) Whether the sanction will be deemed to have been granted, if no decision is taken within a prescribed period for referring the case for investigation under section 156(3) of Cr.P.C.?*
>
> *(3) What order?*

11. The facts in the complaint make out three acts of criminality, viz.,

(a) That Work Order was issued in favour of M/s. Ramalingam Construction Company Pvt. Ltd., the Company owned by Accused No.5 and a sum of Rs.12.00 Crore was demanded by Accused No.7 on behalf of Accused No.1. That Accused No.5 had allegedly paid/delivered a sum of Rs.12.00 Crore in cash to Accused No.8. That Accused No.7 received that sum of Rs.12.00 Crore from Accused No.8 to be handed over to Accused No.1 through Accused No.2.

(b) Simultaneously Accused No.5 was also interacting and was involved in communications with Accused No.3 - the grandson of Accused No.1. Accused No.3 is stated to have represented to Accused No.5

that he would ensure that Accused No.1 uses his influence in obtaining the contracts in Government Departments, to release funds from the Government Departments and to expedite and speed up the file clearances/ movements in various Government Departments where the Company owned by Accused No.5 viz., M/s. Ramalingam Construction Company Pvt. Ltd., has dealings with. For this purpose, Accused No.5 had allegedly paid iliegal gratification/bribe money of Rs.12.50 Crore to Accused No.3 for influencing Accused No.1 to exert pressure on the Government Departments.

(c) That Accused Nos.1 to 4 had indulged in money laundering by using shell companies and an amount of Rs.5,01,08,677/- was transferred to a shell

company and a sum of Rs.3,41,00,000/- was transferred from the shell company to the bank account of other shell companies owned by the family members of Accused No.1.

12. After recording the above said facts, the learned Special Judge, referring to the judgment of Apex Court in **Anil Kumar and Others v. M.K. Aiyappa and Another**[3] ['Aiyappa'], has recorded a finding that an order of reference for investigation under Section 156(3) of Cr.P.C. cannot be made without valid sanction under Section 19(1) of the P.C. Act. Learned Special Judge also refers to the judgment in **L. Narayana Swamy v. State of Karnataka and Others**[4] ['L. Narayana Swamy']. The learned Special Judge then refers to the judgment in **Manju Surana v. Sunil Arora and Others**[5]

[3] (2013) 10 SCC 705.
[4] (2016) 9 SCC 598.
[5] (2018) 5 SCC 557.

['Manju Surana'] where ***Aiyappa*** (supra) has been referred to a larger Bench of the Apex Court and concludes that till the matter is decided by the larger Bench, it must be taken that prior sanction is mandatory to forward the complaint for investigation under Section 156(3) of Cr.P.C.

13. The Special Court records a finding at para-37 of the impugned order that the request for sanction has been turned down by the Hon'ble Governor vide order dated 23.06.2021 as regards Accused No.1. The learned Special Judge further concludes that sanction is necessary for directing investigation under Section 156(3) of Cr.P.C. for proceeding against Accused Nos. 1, 6 and 7, who are public servants. With the aforesaid reasoning, the Special Court held that the Complaint under Section 200 of Cr.P.C. as well as the interim application filed under Section 156(3) of Cr.P.C. are dismissed as not

being "maintainable in the absence of valid sanction...."

II. SUBMISSIONS OF PARTIES:-

II(A). SUBMISSIONS OF COMPLAINANT:

14. Following are the submissions made on behalf of the Complainant:-

14.1. The Complaint ought not to have been dismissed in its entirety as the proceedings against Accused Nos. 2 to 5, 8 and 9 are not affected by the aspect of sanction for prosecution, as they were private persons.

14.2. The aspect of deemed sanction has not been considered as regards Accused Nos. 6 and 7 and if according to law, the deemed sanction is to be accepted, the proceedings were to continue against all public servants (Accused Nos. 6 and 7), except Accused No. 1 as regards whom there is a specific

order of rejection of sanction. The deemed sanction is to be construed in light of the observations made by the Apex Court in ***Vineet Narain*** (supra) and ***Subramanian Swamy*** (supra).

14.3. **REQUIREMENT OF SANCTION WHILE MAKING REFERENCE UNDER SECTION 156(3) OF CR.P.C.**

(i) There is no requirement of sanction under Section 19(1) of P.C. Act at the stage of passing an order referring the matter for investigation under Section 156(3) of Cr.P.C. Reliance is placed on the judgment in **R.R.Chari v. State of Uttar Pradesh**[6] ['R.R.Chari'], wherein the Apex Court while dealing with the provisions of the Prevention of Corruption Act, 1947 held that there is no requirement for obtaining sanction for prosecution before making an order of reference for investigation under Section 156(3) of Cr.P.C. Reliance is also placed on the

[6] AIR 1951 SC 207.

judgment of Apex Court in **Devarapalli Lakshminarayana Reddy and Others v. V. Narayana Reddy and Others**[7] ['Devarapalli'].

(ii) The judgment of Apex Court in ***Aiyappa*** (supra) which holds that even for making an order of reference, sanction is required to be obtained, has been referred to a larger Bench in ***Manju Surana*** (supra). Pending such reference, the matter is to be decided as per the law prevailing as on date of reference, accordingly, the applicable law is the law laid down by the Apex Court consisting of Bench of Three Judges, in ***R.R.Chari*** (supra) and ***Devarapalli*** (supra).

(iii) The question of obtaining sanction by a private person does not arise by virtue of Proviso to Section 19(1) subsequent to 2018 Amendment to Section 19 of the P.C. Act.

[7] (1976) 3 SCC 252.

(iv) The distinction that is sought to be made, as regards the complaint filed before the Magistrate on refusal of Police Authorities to register the FIR on receiving the information under Section 154 of Cr.P.C. on the one hand, and an order of investigation under Section 156(3) of Cr.P.C. vis-à-vis information not acted upon by the Police Authorities under Section 154 of Cr.P.C., as regards the aspect of sanction, is legally untenable. Whereas, the Police Authorities acting on information may register FIR and investigate and place the Final Report before the Court for taking cognizance of offence and the restriction is only on the Court to insist for obtaining sanction before taking cognizance. On the other hand, where the Police Authorities had wrongfully refused to take action in registering the FIR upon information being made regarding the commission of cognizable offence, the private Complainant may approach the Magistrate

seeking reference of investigation under Section 156(3) of Cr.P.C. or may seek appropriate relief by filing a complaint under Section 200 of Cr.P.C. In such circumstance, when the Magistrate seeks to make an order of reference of investigation, insistence on sanction is not required and doing so, would be an arbitrary insistence on the private Complainant.

14.4. As regards the contention of accused public servants that approval under Section 17A of P.C. Act ought to be obtained prior to the Police Authorities being directed to investigate by order of the Magistrate under Section 156(3) of Cr.P.C., it is submitted that the bar under Section 17A is only on the Police Officer as regards enquiry, inquiry or investigation and not a bar on the Court to order the same.

14.5. It is further submitted that the question of obtaining sanction either under Section 19(1) or approval under Section 17A of the P.C. Act would not arise, where the acts constitute misuse of public offices and corruption, which has no nexus with the performance of public duties as in the present case. The bar under Section 17A as contended by the accused public servants would not extend to registration of FIR and may come into play only as regards enquiry, inquiry or investigation post registration of FIR.

II(B). <u>SUBMISSIONS OF ACCUSED NOS.1 AND 2:-</u>

15. Following are the submissions made on behalf of Accused Nos.1 and 2:-

15.1. The obtaining of sanction is a *sine qua non* for taking of cognizance by the Court of the alleged offence. An order of the Court making reference for investigation involves application of mind and is to be

construed as taking cognizance and accordingly, even while making an order for investigation under Section 156(3) of Cr.P.C., sanction is required to be obtained in terms of Section 19(1) of the P.C. Act, as held in ***Aiyappa*** (supra).

15.2. The Apex Court in ***Manju Surana*** (supra) has noticed the divergence of opinion between the law as laid down in ***R.R.Chari*** (supra) and ***Devarapalli*** (supra) on one hand, and that of ***Aiyappa*** (supra) on the other but has still not declared the judgment in ***Aiyappa*** (supra) *per incuriam* and accordingly, till the reference is answered, the law as laid down in ***Aiyappa*** (supra) needs to be followed.

15.3. Insofar as the complaints against the public servants under the provisions of the P.C. Act, the legal mandate under Section 17A would require a private Complainant to present the complaint only

after obtaining previous approval of the appropriate Government/Competent Authority.

15.4. As regards Accused No.2, who is a private individual, it is contended that where there is no sanction for prosecution as regards the offences made out against public servants, the question of proceeding against the private individuals with respect to offences under the P.C. Act or I.P.C does not arise.

II(C). SUBMISSIONS OF ACCUSED NO.5:-

16. In the absence of sanction for prosecution as against the Accused Nos. 1, 6 and 7, the question of proceeding against the private individual is impermissible as regards the offences under the P.C. Act and I.P.C. In light of the principle that cognizance is of the offences and not the offenders, the question of proceeding against the private accused in the absence of sanction of prosecution for the public servants is impermissible.

III. ANALYSIS:

17. In the present case, the following questions arise for consideration of this Court:-

(A) WHETHER SANCTION OF THE COMPETENT AUTHORITY IS REQUIRED BEFORE PASSING AN ORDER FOR INVESTIGATION UNDER SECTION 156(3) OF CR.P.C.?

(B) WHETHER REQUIREMENT OF PREVIOUS APPROVAL FROM THE REQUISITE AUTHORITY BEFORE CONDUCTING ANY ENQUIRY, INQUIRY OR INVESTIGATION INTO AN OFFENCE UNDER SECTION 17A OF P.C. ACT, WOULD ACT AS A BAR ON THE SPECIAL JUDGE FOR PASSING AN ORDER UNDER SECTION 156(3) OF CR.P.C. VIS-À-VIS THE PUBLIC SERVANTS, i.e., ACCUSED NOS.1, 6 AND 7?

(C) WHETHER IN THE ABSENCE OF ANY RESPONSE FROM THE COMPETENT AUTHORITY REGARDING GRANT OF SANCTION SOUGHT AGAINST ACCUSED NOS. 6 AND 7, OUGHT THE SPECIAL JUDGE HAVE PROCEEDED ON THE PREMISE OF DEEMED SANCTION AS CONTENDED?

(D) WHETHER THE SPECIAL JUDGE HAS ERRED IN DISMISSING THE COMPLAINT IN ITS ENTIRETY EVEN AS AGAINST THE ACCUSED OTHER THAN PUBLIC SERVANTS, VIZ., ACCUSED NOS. 2, 3, 4, 5, 8 AND 9 ONLY ON THE GROUND OF REJECTION OF SANCTION AGAINST ACCUSED NO.1 AND ABSENCE OF SANCTION FOR PROSECUTION OF ACCUSED NOS.6 AND 7?

III(A). WHETHER SANCTION OF THE COMPETENT AUTHORITY IS REQUIRED BEFORE PASSING AN ORDER FOR INVESTIGATION UNDER SECTION 156(3) OF CR.P.C.?

18. In the present case, the learned Special Judge has proceeded to dismiss the application seeking investigation by Police Authorities. The complaint has also been dismissed on the premise that without sanction for prosecution of the public servant, the question of making an order of reference for investigation by the Police Authorities does not arise. The learned Special Judge has relied on the

judgment of Apex Court in ***Aiyappa*** (supra) as regards the above aspect.

19. It is necessary to notice that when information is provided to the Police Authorities regarding commission of a cognizable offence, the Police Authorities may take note of the same in terms of Section 154 of Cr.P.C. and register FIR. Further proceedings would follow culminating in the Final Report under Section 173(2) of Cr.P.C. after completion of investigation. Both the above provisions are found in Chapter-XII of Cr.P.C.

20. Section 190 of Cr.P.C. provides for taking of cognizance of offence by the Magistrate as follows:-

(a) Upon receiving complaint of facts which constitutes the offence;

(b) Upon Police Report of such facts;

(c) Upon information received from any person other than Police Officer, or upon his own knowledge, that such offence has been committed;

21. It is relevant to note that where the Police Authorities have registered FIR and upon investigation, the Final Report is filed, further process is resumed by the Magistrate by taking cognizance of the offences on the basis of such report in terms of Section 190(1)(b) of Cr.P.C., which provision falls within Chapter XIV of Cr.P.C. The Magistrate then issues process under Section 204 of Cr.P.C. which falls in Chapter XVI as against the accused persons.

22. On the other hand, when no action is taken by the Police Authorities on the basis of information received, the informant/complainant is at liberty to approach the Magistrate by filing a complaint and upon receiving complaint of facts which constitute

such offence in terms of Section 190(1)(a) of Cr.P.C., the Magistrate, before him, has choice between two courses of action, i.e.,

22.1. *Firstly,* the Magistrate may take cognizance under Section 190(1)(a) of Cr.P.C. and proceed in terms of Chapter-XV of Cr.P.C. to examine the Complainant and his witnesses under Section 200 of Cr.P.C. The Magistrate may then follow further procedure including, if required, enquire into the case himself or direct investigation either by the Police Officer or by such person as he thinks fit, in terms of Section 202 of Cr.P.C. The purpose of postponement of issue of process and inquiry or investigation as contemplated under Section 202 of Cr.P.C. is to enable the Magistrate to make up his mind whether case is made out for further proceeding for dismissal of the complaint under Section 203 of Cr.P.C. or by issuance of process under Section 204 of Cr.P.C.

The issuance of process under Section 204 is under Chapter-XVI of Cr.P.C. and this stage is a point of convergence as regards further proceeding to issue process against the accused persons either on the basis of a Final Report under Section 173(2) of Cr.P.C. in Chapter-XII of Cr.P.C. or by issuance of process to the accused persons preceded by procedure under Chapter-XV of Cr.P.C., where action was set into motion at the instance of a Private Complaint.

22.2. *Secondly*, where the Magistrate, on presentation of a complaint in terms of Section 190(1)(a) of Cr.P.C. is of the view that investigation into the offences alleged is required and which is to be followed by a police report to enable the Magistrate to make out a case to take cognizance under Section 190(1)(b) of Cr.P.C., 'may' make a reference for investigation by the Police Authorities under Section 156(3) of Cr.P.C.

Section 156(3) of Cr.P.C. further specifies that the order for investigation by the Police is to be made by the Magistrate empowered to take cognizance under Section 190 of Cr.P.C.

Upon order being made for investigation, the Police Authorities may proceed in terms of Chapter-XII of Cr.P.C and submit a Final Report under Section 173(2) of Cr.P.C, pursuant to which, if cognizance is taken under Section 190(1)(b) of Cr.P.C., process is issued to the accused persons under Section 204 of Cr.P.C.

23. As regards the procedure prescribed under the P.C. Act, Section 5(3) provides that provisions of Cr.P.C. shall, so far as they are not inconsistent with the P.C. Act, be applicable to the proceedings before the Special Court.

24. Section 19 of the P.C. Act provides for previous sanction being necessary for prosecution of a public servant at the stage where cognizance of the offence is taken. Relevant portion of Section 19(1) reads as follows:-

> *"19(1)No court shall take cognizance of offence punishable under Section 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction...."*

24.1. The proviso to Section 19(1) of P.C. Act which was inserted by way of amendment vide Act 16 of 2018, is relevant for the present case and is extracted herein below:-

> *"Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of*

any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant."

25. Simultaneously, it would be appropriate to refer to the requirement of sanction under the Code of Criminal Procedure, 1973 as regards any offence

alleged to have been committed by a public servant. Section 197 of Cr.P.C. provides that no Court shall take cognizance of such offence except with the previous sanction of the appropriate Government/ competent authority.

26. Accordingly, what emerges on a reading of Section 19(1) of P.C. Act and Section 197 of Cr.P.C. is that no Court can take cognizance of offences as regards a public servant except with previous sanction.

27. Where the Magistrate is seeking to take cognizance on Police Report in terms of Section 190(1)(b) of Cr.P.C., the sanction for prosecution is required. Section 19(1) of P.C. Act would also require sanction for prosecution before the Special Court takes cognizance of offences under Sections 7, 11, 13 and 15 of P.C. Act.

28. However, where the Special Court seeks to take cognizance of an offence under Section 19 of P.C. Act on the basis of complaint of facts under Section 190(1)(a) of Cr.P.C. and follows the procedure laid down in Chapter-XV of Cr.P.C., the requirement of sanction is only at the stage where the Special Court has not dismissed the complaint under Section 203 of Cr.P.C. and the Court directs the Complainant to obtain sanction for prosecution to enable further proceeding by issuance of process to the accused persons under Section 204 of Cr.P.C. This is the procedure as laid down by virtue of Amendment Act 16 of 2018 by insertion of the proviso to Section 19(1) of the P.C. Act, extracted supra.

29. Accordingly, the sanction for prosecution as contemplated under Section 19(1) of P.C. Act is required to be obtained where the Special Court takes cognizance of the offences on the basis of Police

Report or prior to issuance of process to the accused persons under Section 204 of Cr.P.C., where the Special Judge has proceeded under Chapter XV as regards a Private Complaint. Further, detailed discussion on the aspect of whether application of mind while passing an order under Section 156(3) of Cr.P.C. would amount to taking cognizance is discussed at para-31 onwards.

30. **CONSEQUENCES OF ORDER OF REFERENCE AND DECIDING THEREAFTER.**

30.1. The question then arises as to the course of action to be adopted in light of reference made in ***Manju Surana*** (supra). Both sides at the time of oral submissions have advanced arguments on merits. The Complainant has stated that the Court need not wait till the reference is answered and must decide as per the prevailing law. The respondents though on one hand have stated that the Court must stay its

hand, but nevertheless have submitted that various High Courts have disposed off matters even during the pendency of reference applying the law in ***Aiyappa*** (supra) and the same is to be applied in the present case also. Accordingly, the parties were heard at length and it was decided to adjudicate the matter on merits.

30.2. In light of the reference, the question remains as to the present law that is to be applied while deciding the matter till the reference is settled.

30.3. When the matter is referred to a larger Bench for the purpose of settling the legal position, either for laying down the law in light of an important legal issue having significant implication or where there are divergent opinions emanating from judgments of Co-ordinate Benches, how the matters

are to be decided in the interregnum, requires consideration.

30.4. It is the settled position that adjudication of an issue which is a subject matter of reference is to be made in terms of the prevailing law without waiting for answering of the reference unless the Court making reference indicates otherwise. The Apex Court, in the passing, in **Harbhajan Singh and Another** v. **State of Punjab and Another**[8] at para-15 has observed that the Court need not wait till the larger Bench decides the matter when judgment of the Court is referred, to adjudicate on the correctness of the concerned issue.

30.5. The Apex Court in the case of **State of Maharashtra and Another** v. **Sarva Shramik Sangh, Sangli and Others**[9] has reiterated at

[8] (2009) 13 SCC 608.
[9] (2013) 16 SCC 16.

para-27 that when a reference is pending before the larger Bench, the dispute will have to be decided in terms of the 'interpretation of law presently holding the field'.

30.6. The question as to the prevailing law to be applied would require an enquiry into the divergent views, if any, and the judgment of larger Bench would be binding. The Apex Court in **Mattulal** v. **Radhe Lal**[10] has observed at para-11 that it is the judgment of the larger Bench that requires to be followed. The same view has been expressed unequivocally by a Bench of Five Judges of the Karnataka High Court in **Govindanaik G. Kalaghatigi** v. **West Patent Press Co. Ltd. and Another**[11] while answering the question as to which judgment has to be followed, has held that the judgment of the larger Bench would be binding. This position of law is merely the reiteration

[10] (1974) 2 SCC 365.
[11] ILR 1979 KAR 1401 (FB).

of the law laid down in **Union of India and Another** v. **K.S.Subramanian**[12] ['K.S.Subramanian'], the observations in para-12 is of relevance and is as follows:-

> "***12.*** *... But, we do not think that the High Court acted correctly in skirting the views expressed by larger benches of this Court in the manner in which it had done this. The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court. If, however, the High Court was of opinion that the views expressed by larger benches of this Court were not applicable to the facts of the instant case it should have said so giving reasons supporting its point of view."*

[12] (1976) 3 SCC 677.

30.7. The above legal position would however have to yield to the terms of the order of reference. The reference in ***Manju Surana*** (supra) is made in the words of the Apex Court as follows:-

> *"35. The complete controversy referred to aforesaid and the conundrum arising in respect of the interplay of the PC Act offences read with Cr.P.C., 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."*

30.8. In ***Manju Surana*** (supra), the Court notices the stand in ***Aiyappa*** (supra); that even at the stage of 156(3) of Cr.P.C., the passing of order for investigation by Police Authorities involves application of mind and accordingly, considering the consequences it could be construed that such an order could amount to taking of cognizance and accordingly, sanction would be required.

30.9. The Court in the order making reference in ***Manju Surana*** (supra) has noticed the similar stand in ***Maksud Saiyed v. State of Gujarat and Others***[13]['Maksud Saiyed'] at para-25 while referring to the view in the above two judgments and observes as follows:-

> *"25. Despite the aforesaid catena of judgments, a different path has been traversed in two judgments of this Court where the offences alleged are under the PC Act read with IPC."*

The Apex Court at para-21 refers specifically to the contention of the then learned Additional Solicitor General regarding the consequences of starting investigation under Section 156(3) of Cr.P.C. resulting in FIR being registered and in light of the same, addressing the contention that higher evaluation standard would be required while exercising power to

[13](2008) 5 SCC 668.

refer for investigation under Section 156(3) and observes as follows:-

> ***"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.***
>
> *(emphasis supplied)*
>
> ***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."***

(emphasis supplied)

30.10. Thus a proper reading of the order of reference would reveal the following:-

(i) While passing an order at the stage of 156(3) of Cr.P.C., there would be consequences, more so, where a Magistrate may act in a mechanical and mindless manner. However, that cannot be a test as noted in para-32.

(ii) The aspect of prior sanction to prosecute a public servant for the offences under the P.C. Act is a

provision under Chapter XIV of Cr.P.C. (see para-33). Accordingly, the Court has voiced its opinion that for the purposes of Section 19 of the P.C. Act the question of sanction would arise only as regards stage at Chapter XIV of Cr.P.C.

(iii) Reference is made only to decide whether requirement of prior sanction required as regards the stage at Chapter XIV can be imported even as regards the stage at Chapter-XII [where order directing investigation is passed under Section 156(3) of Cr.P.C.] merely because a public servant is involved.

30.11. Accordingly, it is very clear and is an accepted position that, prior sanction contemplated under Section 19(1) of P.C. Act is at the stage of Chapter XIV, i.e. cognizance under Section 190 of Cr.P.C. Whether it could be extended to order under Section 156(3) of Cr.P.C. is the question that is

referred to be decided by the larger Bench. Accordingly, there is no ambiguity that prior sanction is required only at the stage of taking cognizance in terms of Section 190 of Cr.P.C. for the purpose of Section 19(1) of P.C. Act. This is however subject to the caveat that the Amendment in 2018 to the P.C. Act subsequent to ***Manju Surana*** (supra) would prescribe that sanction is required where the Special Judge proceeds under Chapter XV as regards a Private Complaint only at the stage of issuance of notice under Section 204 of Cr.P.C. in terms of proviso to Section 19 of the P.C. Act introduced by way of amendment.

30.12. The Court while making reference has clarified as regards the particular case that was being dealt with by observing at para-45 as follows:-

> *"45. ...We, however, make it clear that if a situation arises where investigation is*

directed under Section 156(3) CrPC and some material comes to light to array Respondent 1 as an accused, our order would not come in the way."

Thus the Court has clarified that the order of reference would not come in the way of ordering investigation under Section 156(3) of Cr.P.C. i.e., the question of sanction for passing an order under Section 156 would not arise, as it is that very question that has been referred to the larger Bench and is still to be determined.

30.13. Accordingly, the order of reference is clear as to the purpose and scope of the reference.

31. COGNIZANCE AND ORDER FOR INVESTIGATION UNDER SECTION 156(3) OF CR.P.C.

At the outset, it is to be noted that following discussion would arise if the legal position is to be ascertained in the absence of the order of reference.

31.1. In light of the scheme contained in the Code of Criminal Procedure, 1973 reference to cognizance of offences is found under Section 190 of Cr.P.C. A question has often cropped up as to whether an order for investigation under Section 156(3) would also constitute an act of taking cognizance?

31.2. The Courts have held that an act of taking cognizance as envisaged under Section 190(1)(b) of Cr.P.C., constitutes cognizance. On the other hand, an order of the Court under Section 156(3) of Cr.P.C. referring the matter for investigation under Chapter-XII of Cr.P.C., being at an intermediary stage, and culminating in the Final Report under Section 173(2) of Cr.P.C. to be submitted to the Court for further consideration under Section 190(1)(b) of Cr.P.C. has been held as not constituting an act of taking cognizance.

31.3. An order referring the complaint for investigation under Section 156(3) of Cr.P.C. would also require application of mind in light of consequences that would follow, viz., registration of FIR.[14]

31.4. As the term ***'cognizance'*** in common parlance and usage literally means "*taking note of*" and accordingly, any act whereby the Court applies its mind including ordering investigation, is also asserted by the Accused as being sufficient to constitute taking of cognizance of the offence.

31.5. An extension of such reasoning has resulted in Courts in some instances insisting on requirement of previous sanction even at the stage where order is passed for investigation under Section 156(3) of Cr.P.C.

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[14] This position has been referred to by the Apex Court in ***Maksud Saiyed*** (supra) ¶13.

31.6. The Apex Court in ***Aiyappa*** (supra) has held that an order under Section 156(3) of Cr.P.C., being a product of application of mind, would require obtaining of sanction. In ***Manju Surana*** (supra), the Apex Court has noticed the divergent views on the same aspect and has referred the matter to be settled by a larger Bench.

31.7. The Apex Court in ***Manju Surana*** (supra) has noticed in ***L. Narayana Swamy*** (supra), wherein the judgment in ***Aiyappa*** (supra) was followed holding that an order directing investigation under Section 156(3) of Cr.P.C., would amount to taking cognizance of offence.

The Apex Court has also noticed the other view that an order passed under Section 156(3) of Cr.P.C. would not constitute taking of cognizance. In this

regard, the Apex Court has referred to the following judgments:-

(a) **R.R. Chari v. State of Uttar Pradesh**[15] [R.R.Chari'] *(three-Judge Bench)*;

(b) **Gopal Das Sindhi and Others v. State of Assam and Another**[16] ['Gopal Das Sindhi'] *(three-Judge Bench)*;

(c) **Jamuna Singh and Others v. Bhadai Shah**[17] ['Jamuna Singh'] *(three-Judge Bench);*

(d) **Nirmaljit Singh Hoon v. State of West Bengal and Another**[18] ['Nirmaljit Singh Hoon'] *(three-Judge Bench).*

All of the above referred decisions hold that application of mind for ordering investigation under Section 156(3) of Cr.P.C. would not constitute taking cognizance of offences, unlike an order taking cognizance under Section 190(1)(b) of Cr.P.C. As the Magistrate while passing order under Section 156(3) of Cr.P.C. has applied his mind, for the purposes of

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15 AIR 1951 SC 207.
16 AIR 1961 SC 986.
17 AIR 1964 SC 1541.
18 (1973) 3 SCC 753.

proceeding under Chapter XII and not Section 190 (Chapter XIV of Cr.P.C.), which alone constitutes taking cognizance of offences.

31.8. If the legal position is to be discerned *sans* the order of reference, the question as to whether application of mind at the stage of an order being passed under Section 156(3) of Cr.P.C. could be construed to be cognizance, in light of the protection conferred upon public servants under Section 19(1) of P.C. Act, is an aspect to be considered in light of the prevailing law. It is in this context that the string of judgments which state that cognizance is taken only as contemplated under Sections 190(1)(a), 190(1)(b) and 190(1)(c) of Cr.P.C. and if that were to be so, the sanction would arise only at such stage which falls within Chapter-XIV of Cr.P.C. and would not arise where an order is made under Section 156(3) falling under Chapter-XII of Cr.P.C., requires to be noticed.

31.9. It must be noted that the order of reference for investigation under Section 156(3) of Cr.P.C. also would culminate in a Final Report under Section 173(2) of Cr.P.C. This Final Report is placed before the Magistrate and cognizance in terms of Section 190(1)(b) of Cr.P.C. is taken upon such Report. If that were to be so, the question of taking cognizance for making an order of reference under Section 156(3) of Cr.P.C. technically would be premature, as the order would be at a stage under Chapter-XII of Cr.P.C.

31.10. The Apex Court in ***R.R.Chari*** (supra) has approved the observations of the Calcutta High Court and concluded the correct position of law in the following words:-

> *"10. After referring to the observations in Emperor v. Sourindra Mohan Chuckerbutty it was stated by Das Gupta, J. in Superintendent and Remembrancer of Legal Affairs, West*

Bengal v. Abani Kumar Banerjee [AIR 1950 Cal 437] as follows: "What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter—proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind e.g. ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence". In our opinion that is the correct approach to the question before the court."

31.11. The same position of law has been reiterated by the Apex Court in ***Gopal Das Sindhi*** (supra), ***Nirmaljit Singh Hoon*** (supra) and ***Jamuna Singh*** (supra).

31.12. The Apex Court in ***Manju Surana*** (supra) also notices the judgment of ***L. Narayana Swamy*** (supra) (Bench of Two Judges) which follows the judgment in ***Aiyappa*** (supra) and concludes that even while directing an investigation under Section 156(3) of Cr.P.C., the Magistrate applies his judicial mind to the complaint and therefore the question whether it could be construed as taking cognizance of the offence, is a matter to be decided while answering the reference.

31.13. The judgments in the line of ***R.R.Chari*** (supra) on one hand and that of ***Aiyappa*** (supra) on the other now requires a detailed analysis. At the

outset, it is to be noticed that the judgment in ***R.R.Chari*** (supra) and other judgments[19] in the same line are by Benches of three Judges. Since the judgments in ***Aiyappa*** (supra) and ***L. Narayana Swamy*** (supra) are delivered by Bench of two Judges, it would be the former judgments that would be binding, which could be the position in terms of the law laid down in ***K.S.Subramanian*** (supra).

31.14. However, it ought to be noticed that the line of judgments following ***R.R.Chari*** (supra) lay down the law, that taking cognizance of offence would only be where cognizance is taken under Section 190 under Chapter-XIV of Cr.P.C. and that an order of reference for investigation under Section 156(3) under Chapter-XII of Cr.P.C., would not amount to an act of taking cognizance of the offence. Whereas, the judgments in ***Aiyappa*** (supra) and ***L. Narayana***

[19] ***Gopal Das Sindhi*** *(supra);* ***Jamuna Singh*** *(supra)*; ***Nirmaljit Singh Hoon*** *(supra);*

Swamy (supra) are based on the premise that an order of reference for investigation under Section 156(3) of Cr.P.C. would involve the application of mind by the Magistrate, which by itself would fall within the expanded meaning of taking cognizance and accordingly, sanction under Section 19(1) of the P.C. Act would be required even at that stage.

31.15. Accordingly, the questions raised in the above referred two sets of judgments are in fact not an identical question, though both converge at a common point as to at what stage the sanction is to be obtained. In ***Aiyappa*** (supra), the Court concludes that prior to passing an order under Section 156(3) of Cr.P.C., sanction is required to be obtained.

31.16. The Apex Court in ***Manju Surana*** (supra) also notices the arguments relating to consequences of registering an FIR soon after

reference is made under Section 156(3) of Cr.P.C. and it is in that context the question as to equating order of taking cognizance vis-à-vis the order at the stage of reference for investigation under Section 156(3) of Cr.P.C. in light of Section 19(1) of P.C. Act and it is observed that the requirement of sanction at such stage may also require consideration.

31.17. At the cost of repetition, the Apex Court while referring to the judgments in the line of ***Aiyappa*** (supra) and ***L. Narayana Swamy*** (supra) specifically observes that law laid down in the said two judgments is divergent to the line of judgments in ***R.R.Chari*** (supra). The observations at para-25 of ***Manju Surana*** (supra) reads as follows:-

> *"25. Despite the aforesaid catena of judgments, a different path has been traversed in two judgments of this Court where the offences alleged are under the PC Act read with IPC."*

31.18. It must be noticed that the judgment in ***R.R.Chari*** (supra) is the law laid down by the larger Bench and ought to be followed.

31.19. Insofar as offences under Sections 8, 9 and 10 of P.C. Act, in light of the Amendment in 2018 to Section 19(1) of the P.C. Act, no previous sanction is required and if the Special Judge were to proceed against the accused as regards such offence, the question of previous sanction will not arise.

31.20. If that were to be so, the question of insisting sanction for prosecution at the stage of passing the order under Section 156(3) of Cr.P.C. would not arise. Accordingly, the bar as noticed in ***Aiyappa*** (supra) as regards such stage cannot be read in as a restriction on the power of the Court.

31.21. The same legal position has been reiterated by the Apex Court in **Jayant and Others v.**

State of Madhya Pradesh[20] while considering the question of whether an order for investigation under Section 156(3) of Cr.P.C. would be hit by the bar of taking cognizance under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 ['MMRD Act' for brevity'].

Section 22 of MMRD Act reads as follows:-

> *"**22. Cognizance of offences.**—No court shall take cognizance of any offence punishable under this Act or any Rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."*

The Apex Court finally concludes at paras-12 to 15 as follows:-

> *"**12.** Having heard the learned counsel for the parties and having perused the relevant provisions of the law as also the judicial pronouncements, we are of the view that the High Court has not committed*

[20] (2021) 2 SCC 670

any error in not quashing the order passed by the learned Magistrate and not quashing the criminal proceedings for the offences under Sections 379 and 414. It is required to be noted that the learned Magistrate in exercise of the suo motu powers conferred under Section 156(3) CrPC directed the In-charge/SHO of the police station concerned to lodge/register the crime case/FIR and directed initiation of investigation and directed the In-charge/SHO of the police station concerned to submit a report after due investigation.

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.*

14. *At this stage, it is required to be noted that as per Section 21 of the MMDR Act, the offences under the MMDR Act are cognizable.*

> ***15.*** *As specifically observed by this Court in Anil Kumar [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , 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."*

31.22. Accordingly, the question of insisting on sanction while passing orders on reference for investigation under Section 156(3) of Cr.P.C. would not arise and accordingly, the dismissal of complaint itself on such ground is impermissible.

32. PARI MATERIA PROVISIONS OF P.C. ACT, 1947 AND P.C. ACT, 1988

32.1. As regards the contention that ***R.R.Chari*** (supra) was decided in the context of Section 6 of the Prevention of Corruption Act, 1947, while the present case concerns the provisions of Section 19 of the Prevention of Corruption Act, 1988, it must be noted

that the judgments pronounced with respect to *pari materia* provisions under different statutes, are still binding. The Apex Court in the case of **Madras Bar Association** v. **Union of India and Another**[21]['Madras Bar Association, 2015'] *(Bench of five Judges),* while dealing with the challenge to the constitution of NCLT and NCLAT under the Companies Act, 2013, referred to the judgment in **Union of India** v. **R. Gandhi, President, Madras Bar Association**[22] ['Madras Bar Association, 2010'] as regards to the constitution of NCLT and NCLAT under the Companies Act, 1956.

32.2. The Apex Court while dealing with the challenge relating to qualification for appointment of Members of the Tribunal under the Companies Act, 2013 stated that the provisions were analogous to

[21] (2015) 8 SCC 583.
[22] (2010) 11 SCC 1.

Sections 10-FD, 10-FE, 10-FF, 10-FL, 10-FR and 10-FT under the Companies Act, 1956.

32.3. Noticing the judgment in ***Madras Bar Association, 2010*** (supra) wherein the analogous provisions of the Companies Act, 1956 was considered and attack as regards the constitutional validity was rejected, the Court in ***Madras Bar Association, 2015*** (supra) decided a similar attack as regards *pari materia* provisions in Companies Act, 2013 following the reasoning in ***Madras Bar Association, 2010.***

32.4. The extension of interpretation of *pari materia* provisions in P.C. Act, 1947 to the provisions of P.C. Act, 1988 is not without earlier precedent. The Apex Court in **Kalicharan Mahapatra** v. **State of Orissa**[23] has held that Section 19(1) of the P.C. Act, 1988 is in *pari materia*

[23] (1998) 6 SCC 411.

to the provisions of Section 6(1) of P.C. Act, 1947 and had extended and applied the ratio in **S.A.Venkataraman** v. **State**[24] to the interpretation of Section 19(1) though in the context of requirement of sanction as regards the prosecution of a retired official.

32.5. In the present case, Section 6 of the P.C. Act, 1947 and Section 19 of P.C. Act, 1988 are identical as regards to the bar to taking of cognizance and are extracted as hereinbelow:-

Prevention of Corruption Act, 1947	**Prevention of Corruption Act, 1988**
6. Previous sanction necessary for prosecutions.- (1) No Court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Indian Penal Code or under sub-section (2) or sub-section (3A) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction. *(emphasis supplied)*	19. Previous sanction necessary for prosecution. - (1) No court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014) - *(emphasis supplied)*

[24] AIR 1958 SC 107.

32.6. The words "no court shall take cognizance of an offence" is found in both the statutes and being *pari materia* provisions, the interpretation in ***R.R.Chari*** (supra) is applicable on all fours to Section 19(1) of the Prevention of Corruption Act, 1988.

33. CONSIDERATION OF JUDGMENTS RELIED UPON BY RESPONDENTS AND CITED BY AMICUS CURIAE

33.1. The respondent Nos.1 and 2 have filed a memo dated 30.05.2022 and have enclosed copies of the judgment in **Anil Kumar B.H. v. Lokayukta Police**[25] ['Anil Kumar B.H.'] *[judgment of this Court];* **Dr.Nazrul Isiam v. Basudeb Banerjee and Others**[26] ['Dr.Nazrul Islam'] *(judgment of Calcutta High Court);* **Muhammed V.A. v. State of Kerala, represented by the Chief Secretary and Others**[27] ['Mohammed V.A.'] *(judgment of Kerala High Court);*

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[25] W.P.No.24574/2013 [GM-RES] dated 25.11.2021.
[26] (2022) SCC Online Cal 183.
[27] (2018) SCC Online (Ker) 7417.

33.2. Reliance is placed on the above judgments to contend that in all of the judgments referred to above, the High Courts have referred to the law laid done in ***Aiyappa*** (supra) despite the same having been referred to a larger Bench and have decided the matter and accordingly, it is contended that the same requires to be adopted in the present case also.

33.3. At the outset, it must be noted that in all the above judgments, the Courts have failed to take note of the express and plain reading of the order of reference as noted in the discussion supra at paras - 30.10 to 30.13.

33.4. That apart, the judgments referred to are dealt with as follows:-

(i) Insofar as the judgment in ***Anil Kumar B.H.*** (supra), the judgment of Co-ordinate Bench has failed to take note of the earlier judgment on the

identical aspect in **Sri N.C. Shivakumar and others v. State by Lokayuktha Police, Hassan District**[28] ['N.C.Shivakumar']. The Court in ***N.C.Shivakumar*** (supra) dealing with a batch of matters has considered all the aspects in detail and has unequivocally held that an order for investigation under Section 156(3) of Cr.P.C. cannot be construed that the Court has taken cognizance and accordingly, no order of sanction is required while referring to the judgment in ***R.R.Chari*** (supra).

(ii) In the case ***Dr.Nazrul Islam*** (supra) and ***Muhammed V.A.*** (supra), both, the Calcutta High Court as well as Kerala High Court have no doubt applied the law in ***Aiyappa*** (supra) but in light of the reasoning assigned in the present matter, this Court is of the view that the judgment in ***Dr.Nazrul Islam*** (supra) and ***Muhammed V.A.*** (supra) do not take

[28] 2016 SCC OnLine Kar 3565.

note of the terms of the order of reference. Even otherwise, the Courts do not take note of the law laid down in ***R.R.Chari*** (supra) and accordingly, the views of other High Courts are to be differed with.

In fact, the Kerala High Court though refers to ***R.R.Chari*** (supra), does not specifically advert to the position of law laid down in ***R.R.Chari*** (supra), which is impermissible, as the judgment in ***R.R.Chari*** (supra) is that of a larger Bench.

III(B). WHETHER REQUIREMENT OF PREVIOUS APPROVAL FROM THE REQUISITE AUTHORITY BEFORE CONDUCTING ANY ENQUIRY, INQUIRY OR INVESTIGATION INTO AN OFFENCE UNDER SECTION 17A OF P.C. ACT, WOULD ACT AS A BAR ON THE SPECIAL JUDGE FOR PASSING AN ORDER UNDER SECTION 156(3) OF CR.P.C. VIS-À-VIS THE PUBLIC SERVANTS, i.e. ACCUSED NOS.1, 6 AND 7?

34. The Accused Nos. 1, 6 and 7 have contended that the bar under Section 17A of P.C. Act for conducting investigation, enquiry or inquiry would result in an embargo upon the Special Judge in proceeding to pass an order under Section 156(3) of Cr.P.C. and accordingly, seek to support the impugned order on such ground as well, though the Special Judge has not adverted to such issue.

35. Section 17A of the P.C. Act reads as hereunder:-

> ***"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—***
>
> *No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant*

in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

36. A bare perusal of Section 17A of P.C. Act would indicate the following:-

i. The bar for enquiry, inquiry or investigation into an offence under the P.C. Act is on the Police Officer.

ii. The offence must be relatable to *"any recommendation made or decision taken by such public servant in discharge of his official functions or duties."*

37. The bar for enquiry, inquiry or investigation is only a fetter on the power of the Police Authorities and wherever the Court itself is in *seisin* of a Private Complaint and proceeds to order for investigation by the Authorities pursuant to order under Section 156(3) of Cr.P.C., such bar under Section 17A of the P.C. Act would not be an embargo on the Court's

power. Accordingly, the bar under Section 17A of P.C. Act would kick in only post registration of FIR when Police are required to commence investigation.

38. In the present case, the private Complainant is before the Court and not before the Police Authorities. When the Special Judge has already entertained the opinion at para-18 of the impugned order that there are "some material to refer the complaint for investigation", there is no reason for bar under Section 17A of P.C. Act to prohibit the Court from referring the matter for investigation. Upon such direction and order, if passed under Section 156(3) of Cr.P.C., the Police Authorities are obligated to register FIR which is the commencing point of investigation.

39. Once FIR is registered, the Police Authorities however cannot move forward for conducting enquiry, inquiry or investigation without

previous approval as mandated under Section 17A of P.C. Act.

An important aspect that requires to be noticed is that Section 17A of P.C. Act comes into play as an embargo on the Police Authorities only where the alleged offence is *relatable to any recommendation made or decision taken by the public servant in discharge of his official functions or duties.*

40. In the present case, the relevant facts to determine as to whether the alleged offence is relatable to recommendation made or decision taken in discharge of official functions or duties are to be seen by the Special Judge to whom the Court proposes to remand the matter.

41. Hence, the impugned order cannot be supported by the contention that lack of approval under Section 17A of P.C. Act would also prohibit the

Special Judge from passing order under Section 156(3) of Cr.P.C.

42. It is however clarified that once FIR is registered and the Police Authorities entertain any doubt as to the bar of 17A of P.C. Act to commence investigation, it is always open to the Investigating Authorities to obtain clarification from the Special Judge in that regard.

43. It is also clarified that, if the Special Judge upon remand decides to proceed as regards the Private Complaint under Chapter XV of Cr.P.C., the bar under Section 17A being a bar only on the Police Authorities will not operate.

III(C). WHETHER IN THE ABSENCE OF ANY RESPONSE FROM THE COMPETENT AUTHORITY REGARDING GRANT OF SANCTION SOUGHT AGAINST ACCUSED NOS. 6 AND 7 OUGHT THE SPECIAL JUDGE HAVE PROCEEDED ON THE PREMISE OF DEEMED SANCTION AS CONTENDED?

44. It is the assertion of the Complainant that as against Accused No.7, the request for sanction was made on 20.11.2020 as per Document No.19 to the Chief Secretary, Government of Karnataka and as regards Accused No. 6, similar requisition was made to the Hon'ble Speaker of Karnataka Legislative Assembly on 25.11.2020. Till filing of the complaint on 02.06.2021, no reply having been received on the same, it is the contention of the Complainant that the concept of deemed sanction is to be applied by relying on the observations made in ***Subramanian Swamy*** *(*supra).

45. It has been contended by the Complainant that absence of any decision on the requisition of sanction as against Accused No. 7 (Dr. G.C. Prakash, IAS) and Accused No. 6 (Chairman BDA / M.L.A.), despite lapse of sufficient time, ought to be construed as deemed sanction in light of the observations made

in ***Subramanian Swamy*** (supra). It has been contended that the absence of decision within three months from the date of receipt of request for grant of sanction ought to result in deemed sanction.

46. It must be noted that the aspect of deemed sanction is a concept referred to in ***Subramanian Swamy*** (supra) at para-81 as follows:-

> *"81. In my view, Parliament should consider the constitutional imperative of Article 14 enshrining the Rule of Law wherein "due process of law" has been read into by introducing a time-limit in Section 19 of the PC Act, 1988 for its working in a reasonable manner.* ***Parliament may, in my opinion, consider the following guidelines:***
>
> *(a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.*

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.

(c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit.

(emphasis supplied)

47. The 2018 Amendment to Section 19 of P.C. Act provides for processing of request for sanction as follows:-

> "*Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:*
>
> *Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:*
>
> *Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary."*

48. It is apparent that despite the observations of the Apex Court as regards proposed guidelines including deemed sanction under para-81(c) of

Subramanian Swamy (supra), the Parliament has only incorporated the duty to consider as **"....endeavour to convey the decision on such proposal within a period of three months from date of its receipt."**

49. Further, wherever legal consultation is required for reasons to be recorded in writing, the time could be extended by a further period of one month. No further consequence of not taking a decision on the request for sanction is provided for under the statutory scheme. Accordingly, the question of deemed sanction as asserted with respect to Accused Nos. 6 and 7 does not arise.

50. As regards the contention that the sanction giving Authorities often sit upon such requests endlessly prejudicing a fair trial, it must be noted that the observations of Apex Court in ***Subramanian***

Swamy (supra) would indicate that undue delay in taking a decision would be contrary to Article 14 of the Constitution of India. The observation at paras-75 to 79 would be of relevance and are extracted hereinbelow:-

> *"75. Therefore, in every case where an application is made to an appropriate authority for grant of prosecution in connection with an offence under the PC 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.

76. The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of the Rule of Law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecutions 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 the factual position in this (sic case) but the general demoralising effect of such a popular perception is profound and pernicious.

77. 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 PC 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.

78. There are instances where as a result of delayed grant of sanction prosecutions under the PC Act against a public servant has been quashed. See Mahendra Lal Das v. State of Bihar [(2002) 1 SCC 149 : 2002 SCC (Cri) 110] wherein this Court quashed the prosecution as the sanctioning authority granted sanction after 13 years. Similarly, in Santosh De v. Archna Guha [1994 Supp (3) SCC 735 : 1995 SCC (Cri) 194] this Court quashed prosecution in a case where grant of sanction was unduly delayed. There are several such cases. The aforesaid instances show a blatant subversion of the Rule of Law. Thus, in many cases public servants whose sanction

proposals are pending before the authorities for long periods of time are being allowed to escape criminal prosecution.

79. Article 14 must be construed as a guarantee against uncanalised and arbitrary power. Therefore, the absence of any time-limit in granting sanction in Section 19 of the PC Act is not in consonance with the requirement of the due process of law which has been read into our Constitution by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248] .

51. In the event of decision not being taken within a reasonable period of time, the only remedy open would be to obtain appropriate direction in exercise of writ jurisdiction. Needless to state that where the request for sanction is pending consideration, the proceedings before the Special Court is to be kept in abeyance.

52. Accordingly, the contention that the Special Court ought to have continued the proceedings against Accused Nos.6 and 7 on the premise of deemed sanction, cannot be accepted.

53. Further, in light of the discussion at para-61.3 infra, the Complainant could not have approached the Authorities on his own seeking for sanction in light of stipulation under Section 19 of the P.C. Act. Accordingly, the question of deemed sanction even otherwise does not arise in the present case.

III(D). WHETHER THE SPECIAL JUDGE HAS ERRED IN DISMISSING THE COMPLAINT IN ITS ENTIRETY EVEN AS AGAINST THE ACCUSED OTHER THAN PUBLIC SERVANTS, VIZ., ACCUSED NOS. 2, 3, 4, 5, 8 AND 9 ONLY ON THE GROUND OF REJECTION OF SANCTION AGAINST ACCUSED NO.1 AND ABSENCE OF SANCTION FOR PROSECUTION OF ACCUSED NOS.6 AND 7?

54. It is the contention of the Complainant that the dismissal of complaint for lack of sanction against Accused No.1 should not have any consequence as regards the complaint against Accused Nos.2, 3, 4, 5, 8 and 9, who are non-public servants who are alleged to have committed offences under Sections 7, 8, 9 and 10 of the P.C. Act.

55. It must be noted that the Apex Court in **State through Central Bureau of Investigation, New Delhi** v. **Jitender Kumar Singh**[29] ['Jitender Kumar Singh'] in the discussion from para-26 onwards has opined that the offences under Sections 8, 9, 12 of P.C. Act can be committed by a public servant or by a private person or by combination of both.

56. It is further observed that the proceedings under the P.C. Act even against a private person involved in an offence under the P.C. Act is required to

[29] (2014) 11 SCC 724.

be tried only by a Special Court and by no other Court. It is further pointed out that the existence of public servant for facing the trial before the Special Court is not *sine qua non* and even in absence of public servant, the private persons can be tried for the offences under the P.C. Act as well as non-P.C. Act offences. The relevant observations at paras-29 and 30 of ***Jitender Kumar Singh*** (supra) is as below:-

> *"29. It is thus clear that an offence under the PC Act can be committed by either a public servant or a private person or a combination of both and in view of the mandate of Section 4(1) of the PC Act, read with Section 3(1) thereof, such offences can be tried only by a Special Judge. For example:*
>
> *(i) A private person offering a bribe to a public servant commits an offence under Section 12 of the Act. This offence can be tried only by the Special Judge, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused in that case.*

(ii) A private person can be the only accused person in an offence under Section 8 or Section 9 of the said Act. And it is not necessary that a public servant should also be specifically named as an accused in the same case. Notwithstanding the fact that a private person is the only accused in an offence under Section 8 or Section 9, it can be tried only by a Special Judge.

30. Thus, the scheme of the PC Act makes it quite clear that even a private person who is involved in an offence mentioned in Section 3(1) of the PC Act, is required to be tried only by a Special Judge, and by no other court. Moreover, it is not necessary that in every offence under the PC Act, a public servant must necessarily be an accused. In other words, the existence of a public servant for facing the trial before the Special Court is not a must and even in his absence, private persons can be tried for PC as well as non-PC offences, depending upon the facts of the case. We, therefore, make it clear that it is not the law that only along with the junction of a public servant in the array of parties, can the Special Judge proceed against private persons who have committed offences punishable under the PC Act."

57. In the present case, considering that the allegation made in the complaint is also as regards the offences under Sections 8, 9 and 10 of P.C. Act (see prayer of PCR No.40/2021), the dismissal of complaint against the public servants ought not to have resulted in closure of complaint as against non-public servants accused.

58. Accordingly, in light of the discussion holding that order under Section 156(3) of Cr.P.C. could be passed without previous sanction under Section 19 of P.C. Act, even if cognizance is not taken against a public servant, i.e. Accused Nos. 6 and 7 due to lack of sanction or even where sanction is rejected as regards Accused No.1, there is no embargo on the Special Court to take cognizance and continue the proceedings as against non-public servants accused as regards the offences alleged to

have been committed by them under the provisions of the P.C. Act. and IPC.

IV. OTHER ASPECTS:-

59. IN RE. XYZ V. STATE OF MADHYA PRADESH AND ANOTHER[30]:-

59.1. Before concluding, it would be appropriate to observe regarding the course of action that the Special Judge may choose to adopt when he intends to proceed further from the stage of presentation of Private Complaint before him as is being ordered.

59.2. In the present case, the offences being cognizable and the Police Authorities having failed to take action regarding the offences, the complainant has approached the Court by way of a Private Complaint requesting registration of FIR against the Accused and to proceed further to investigate.

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[30] 2022 SCC OnLine SC 1002.

Accordingly, the complainant's grievance as also regarding non-registration of FIR is sought to be redressed by calling upon the Court to order for registration of FIR on the basis of the Private Complaint. In such a scenario, the appropriate course of action wherein once the Special Judge is of the view that cognizable offences are made out, would be to pass order under Section 156(3) of Cr.P.C. rather than following the procedure under Chapter XV of Cr.P.C. Though Section 156(3) of Cr.P.C. uses the word "may", which would imply that the Magistrate has discretion to order for investigation, such power must be exercised judiciously and where the Magistrate finds the commission of a cognizable offence which would indicate the need for Police investigation, Magistrate ought to exercise jurisdiction under Section 156(3) of Cr.P.C. to direct the Police to investigate.

59.3. The observations made by the Apex Court in **XYZ** v. **State of Madhya Pradesh and Others** (supra) at paras-22 to 24 are as follows:-

> *"22. In the present case, the narration of facts makes it clear that upon the invocation of the jurisdiction of the Magistrate under Section 156(3) of CrPC, the JMFC came to the conclusion that serious allegations had been levelled against the accused by the appellant and, that, from a perusal of the documents in this regard, the statements of the complainant were satisfactory. After taking note of the fact that the police had at an earlier stage reported that the occurrence of an incident or offence was not found, the JMFC opined that, from the facts which were set out by the complainant in the complaint, prima facie, the occurrence of an offence was shown.*
>
> *23. It is true that the use of the word "may" implies that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a*

complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning. An important fact to take note of, which ought to have been, but has not been considered by either the Trial Court or the High Court, is that the appellant had sought the production of DVRs containing the audio-video recording of the CCTV footage of the then Vice-Chancellor's (i.e., the second respondent) chamber. As a matter of fact, the Institute itself had addressed communications to the second respondent directing the production of the recordings, noting that these recordings had been handed over on his oral direction by the then Registrar of the Institute as he was the Vice-Chancellor. Due to the lack of response despite multiple attempts, the Institute had even filed a complaint with PS Gole Ka Mandir on 29 October 2021 for registering an FIR against the second respondent for theft of the DVRs.

24. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged

on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation."

60. OFFENCES UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002

60.1. The Special Judge in the impugned order has referred to the offences under the provisions of PMLA. It must be noted that the question of proceeding as regards to the offences under the PMLA would not arise as the Special Court is debarred from

taking cognizance of any offence under Section 4 except upon a complaint made by officers mentioned under Section 45 of PMLA.

60.2. Accordingly, the Special Judge cannot direct proceedings for the offences under PMLA and liberty is reserved to the Complainant to initiate appropriate proceedings as per permissible procedure in accordance with law.

61. **REJECTION OF SANCTION AS REGARDS ACCUSED NO.1**

61.1. It is noticed that the Complainant has approached the Governor and sought for sanction for prosecution as regards Accused No.1, who was the Chief Minister at the relevant point of time.

61.2. It is noticed that sanction for prosecution has been rejected on 24.06.2021 and the same has been communicated to the Complainant.

61.3. It must be noted that in terms of Section 19 of the P.C. Act, no request can be made for sanction by a person other than *"Police Officer or an Officer of an Investigation Agency or other law enforcement authorities, ..."*, which is however subject to the further rider that such person other than the Police Officer may be called upon to obtain sanction from the appropriate Authority by the Court where complaint filed by him has not been dismissed under Section 203 of Cr.P.C. and the Court intends to continue proceedings against the Accused (this would arise where the Magistrate decides to follow the procedure under Chapter XV of Cr.P.C. as regards to the Private Complaint).

61.4. In light of the above, the Complainant approaching the Governor for sanction is of no legal significance, as he was not competent to seek for sanction.

61.5. Accordingly, the rejection of such request is liable to be ignored, as such request was not made either by the Police Officer or an Officer of Investigation Agency or other law enforcement Authorities; nor pursuant to the order of Court as contemplated under First Proviso to Section 19 of the P.C. Act.

61.6. Thus, the rejection of sanction for prosecution would not come in the way of continuance of proceedings against Accused No.1 upon restoration of the complaint. Sanction as regards Accused No.1 would be an aspect for consideration at the appropriate stage as per law as has been made out in terms of the discussion above.

62. In the result, the following:-

ORDER

62.1. Accordingly, the petition is allowed in part. The impugned order dated 08.07.2021 is set aside and the complaint, i.e. P.C.R. No.40/2021 stands restored to the file of LXXXI Addl. City Civil and Sessions Judge, Bengaluru (CCH-82). The Special Court may proceed from the stage post presentation of the Private Complaint, keeping in mind the above discussion.

62.2. The Court places on record its appreciation for the assistance by the learned Advocates appearing on both sides, including that of learned Senior Counsel Sri C.V.Nagesh appearing on behalf of respondent Nos.1 and 2. The Court also records its appreciation for the painstaking effort of Amicus Curiae Sri Venkatesh S. Arbatti.

Sd/-
JUDGE

VGR