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THE ROLE OF THE JUDICIARY IN COMABTING THE CORRUPTION IN INDIA

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Abstract :

This article mainly deals with the structure and functioning of role of the judiciary in in combating the corruption in India through judicial activism with all 3 constitutional agencies (Parliamentary, Judiciary & Administrative). The main purpose of this article is to highlight impact of corruption from Socio Economical perspective in India and the role of anti-corruption agencies in the prevention and control of corruption in India.

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General: Judicial precedent or case law consists of law found in the judicial decisions. A judicial precedent is the principle law on which a judicial decision is based. It is the ratio-decidendi otherwise known as the reason for the decision. It is not everything said by a judge in the course of his judgment that constituents a precedent, only the pronouncement on the law in relation to the material facts before the judge constitutes a precedent. The doctrine of judicial precedent as a common law doctrine applies to only those Courts which are empowered to administer adjective common law of which forms part the doctrine.

Customary Courts, Sharia Courts of Appeal and area Courts are not empowered to apply the adjective common law. Therefore, the common law doctrine does not apply to them nor does any legislation provide for a precedent system in customary Courts. As a common rule under the doctrine of 'stare decisis' a Court is bound to follow the decisions of a higher Court in the hierarchy. A lower Court doesn't follow a decision of a higher Court which has been over-ruled.

Furthermore, a lower Court is not bound by a decision of a higher Court where that decision is in conflict with a decision of another Court which is above such higher court in the hierarchy. In principle, a lower Court is entitled to choose which of the two conflicting decisions of a higher Court of equal standing it would follow. It should be noted that a binding precedent may be abolished by the legislation.

The Indian Constitution has led to a democratic, republic and a trinity of instrumentalities to enforce its paramount provisions without fear or favour, affection or ill-will. When the executive echelons exceed their power as inscribed and circumscribed in the 'suprema lex', are subject to scan, scrutiny and correction by the higher judiciary. The legislature has vast law-making powers and is functionally competent to perform an inquest into the administration. But, when it transgresses its constitutional bounds, the court can quash its action by writs, or command fresh operation by means of appropriate directions.

The dishonest practices indulged in by the public men and bureaucrats have already been criminalized. The drawback in the Indian Penal Code 1860 (IPC) in the matter of offences dealing with bribery and accepting of illegal gratifications by public servants have been sought to be remedied by passing specific legislation, "The Prevention of Corruption Act 1988 (PCA)". State legislatures have also taken steps to supplement corruption control. Even the National Police Commission 1977 has acknowledged partiality, corruption and failure to register cognizable offences in the police departments. A major amount of the cases, which go without prosecution, are corruption cases. The only organization now seeking to intervene in the field is Judiciary. Actually, the higher judiciary through its judicial activism tried to fill in the gaps created by the executive including the prosecuting and the investigating agencies and competent higher sanctioning authorities. The authority has tried to fill up some of the lacunae created by the legislature because of its passive or lethargic response to the problem of corruption[1].

Judicial Activism: The State bodies, provided under the constitution, namely the Legislature, the Executive and the Judiciary, to run the affairs of the country are complementary to each other. The Constitution framer had envisaged a clear distribution of powers and functions for these three organs. The passing of laws is the exclusive domain of the Legislature at the Union level as well as the State level, while the Executive – the most important, the powerful one, is entrusted with the duty to implement the legislation. To administer justice in accordance with the law of the land, to adjudicate the constitutional validity of the law enacted by the Legislature is the role of the Judiciary[2].

The judiciary is the only organ which could not be controlled by politicians. It is this faith among the public that gave momentum to judicial activism. In order to protect the constitutional guarantees and the democratic principles the Judiciary felt that it is necessary that the 'hands off'

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[1]G. Sadasivan Nair, "Judicial Activism No Panacea for Prevention of Corruption" Coachin University Law Review P. 375 (1997).Last Visited on 25.05.2022.https://journals.pen2print.org/index.php/ijr/article/download/11841/11176

[2]P.S. Seema, "Eradication of Political Corruption – An Evaluation of the Legislative and Judicial Efforts" The Academy Law Review p.189 (1999).

doctrine adopted by the Judiciary in the year 1980 has to undergo change and during the ninetiesunderwent a drastic change[3].

The Vohra Committee is of the firm belief that crime exists in politics and exposed the nexus between the criminal world with the politicians which now poses a serious threat even to our national security. Crimes and Criminal law are shaped by criminal policy which in turn is a part of wider political policy. The entire criminal law, evidence, penal policy and the wide range of other activities covered in the administration of the criminal justice system are administered by the power yielders to safeguard their own security and comfort. This ensures them the monopolized use of State force to repress and suppress those activities which they regard as potential threats to their security and comfort[4].

Under these circumstances, it is highly necessary that an independent organization keeps under check the other two branches of the Government. This necessitated judicial activism to take a sweeping change from its earlier position. This change is reflected in many decisions[5].

Judiciary on public servant:

Chief Ministers and Ministers: In the case of M.Karunanidhi[6]v Union of India the Supreme Court had an occasion to decide whether a Chief Minister or a Minister is a public servant within the meaning of Section 21(12) of the Indian Penal Code. The appellant, M. Karunanidhi was a former Chief Minister of Tamil Nadu. On 15.6.1976, a D.O. letter was written by the Chief Secretary to the Government of Tamil Nadu to the Deputy Inspector General of Police, Central Bureau of Investigation 1963 (CBI), requesting him to make a detailed investigation into certain allegations against the appellant and others who were alleged to have abused their official position in the matter of purchase of wheat from Punjab. A first information report was accordingly recorded and sanction under Section 197 of the Code of Criminal Procedure was granted by the Governor of Tamil Nadu for the prosecution of the appellant under Sections 161, 468 and 471 of the Indian Penal Code and Section 5(2) read with Section 5(1) (d) of the Prevention of Corruption Act, 1947. The application for discharge filed before the Special Judge and the High Court having been rejected, the matter ultimately reached the Supreme Court and there, holding the Chief Minister as a public servant, Fazal Ali, J. observed:

Three facts, therefore, have been proved beyond doubt, namely:

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[3]Supra n.3.
[4]Supra n.3 at 190.
[5]Ibid.
[6]AIR 1979 SC 898. Last Visited on 26.05.2022.https://thelawbrigade.com/constitutional-law/case-comment-m-karunanidhi-v-union-of-india-1979/

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- That the minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional function.
- That the Chief Minister or a minister gets a salary for the public work done or the public duty performed by him.
- That the said salary is paid to the Chief Minister or the Minister from the Government funds.

The Chief Minister is in the pay of the Government and is, therefore, a public servant within the meaning of Section 21(12) of the Indian Penal Code 1860[7].

Member of Parliament (MP's) &Member of the Legislative Assembly (M.L.A's)

Another category of persons who should be brought within the purview of section 21 of the Indian Penal Code, 1860 (IPC) is Members of Legislative Assemblies and Members of Parliament. In A.R. Antulay v R.S. Nayak and others[8], the apex court had an opportunity to decide whether an Member of the Legislative Assembly (MLA) is a public servant under the Prevention of Corruption Act, 1947 or not. The complainant moved the Governor of Maharashtra on September 1, 1981, requesting grant sanction to prosecute the accused for various offences before the Chief Metropolitan Magistrate who held that without a valid sanction from the Governor the offences under Sections 161 and 165 of the Indian Penal Code 1860 (IPC) and Section 5 of the Prevention of Corruption Act 1988 (PCA) are not maintainable. This was challenged in appeal in the High Court of Bombay[9].

Meanwhile, responding to an identical complaint filed by one Shri. P.B. Savanth, against the accused in the High Court of Bombay, the court by a far-reaching speaking order granted rule nisi and as a continuation to this decision, the Chief Minister on the same day tendered his resignation and he ceased to hold the office of Chief Minister with effect from January 20, 1982. In the wake of the judgment of the Supreme Court, rejecting the application for special leave, the Governor of Maharashtra granted the sanction to prosecute the accused. Then, the complainant filed a fresh complaint in the Court of Special Judge, Bombay, which reached the Additional Special Judge. The accused moved an application to discharge inter alia on the ground that the charge was groundless and that even though the accused had ceased to be the Chief Minister on the date of taking cognizance of the offences, he was a sitting member of the Maharashtra Legislative Assembly and the sanction granted by the Governor would not be valid in this behalf. The Additional Special Judge

[7]Ibid.
[8]1984 SC 684.Last Visited on 27.05.2022.https://indiankanoon.org/doc/1398781/
[9]M. Karunanidhi v. Union of India, AIR 1979 SC 898. https://vulj.vupune.ac.in/archives/11.pdfLast Visited on 27.05.2022.

upheld the contention of the accused and discharged him. The matter ultimately reached the Supreme Court[10].

The Supreme Court while answering the question of whether an Member of the Legislative Assembly (MLA) is a 'public servant' referred to the Santhanam Committee Report and opined that the Committee did not recommend that the proposed amendment to Section 21 of the Indian Penal Code 1860 (IPC) should comprehend an Member of the Legislative Assembly (MLA). Though, there was a proposal to include ministers and deputy ministers in the category of a public servant, no attempt were made to bring in an Member of the Legislative Assembly (MLA) within the conspectus of clauses in Section 21 so as to make him a public servant[11].

Desai, J. held: "The expression 'Government and Legislature', two separate entities, are sought to be included in the expression 'state' and the expression 'Government' in Clause 12(a) of Section 21clearly denotes the executive and not the legislature. Member of the Legislative Assembly (MLA) is certainly not in the pay of the executive. Therefore, the conclusion is inescapable that even though Member of the Legislative Assembly (MLA) receives pay and allowances, he cannot be said to be in the pay of the Government, i.e., the executive. This conclusion would also govern the third part of Clause 12(a) i.e., 'remunerated by fees for theperformance of any public duty by the Government'. In other words, Member of the Legislative Assembly (MLA) is not remunerated by fees paid by the Government, i.e., the executive.[12]"

Supreme Court held that the requirement of sanction under sec. 19 of the Act is mandatory. When there is no sanction the Magistrate cannot order an investigation against Public Servant under section 156(3) of Cr.P.C..[13]

In the case of L.K. Advani v Central Bureau of Investigation 1963 (CBI)[14], it is held by the Delhi High Court that a Member of Parliament is a public servant, under section2(c)(viii) of the Act.

In Habibulla Khan v State of Orissa[15], the Orissa High Court has held that an Member of the Legislative Assembly (MLA) would come within the definition of public servant under section 2(c) of the Act. He is not the type of public servant for whose prosecution under the Act, previous sanction as required by Section 19 is necessary.

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[10] P.S. Seema, "Eradication of Political Corruption – An Evaluation of the Legislative and Judicial Efforts" The Academy Law Review p. 388 (1999).

[11] Ibid.

[12] R. S. Nayak v. A.R. Antulay, AIR 1984 SC 684. Last Visited on 28.05.2022. https://jajharkhand.in/wp/wp-content/judicial_updates_files/07_Criminal_Law/10_framing_of_charge/R._S._Nayak_vs_A._R._Antulay_on_16_February,_1984.PDF

[13] Anil Kumar and Others v. M.K. Aiyappa and another AIR SC 2014. Last Visited on 29.05.2022. https://main.sci.gov.in/pdf/SupremeCourtReport/2013_v9_piv.pdf

[14] 1997 Cr.LJ 2559: (1997) 4 Crimes 1(Del). Last Visited on 30.05.2022.https://indiankanoon.org/doc/111334/

[15] 1993 Cr.LJ 3604. Last Visited on 30.05.2022.https://indiankanoon.org/doc/199699/

The court held that the requirement of sanction is not unconstitutional. The object is to protect a public servant against mala-fide prosecution[16].

Municipal Councilor:

In Ramesh Balakrishna Kulkarni v State of Maharashtra 1985[17], the Court held, following its decision in Antulay's case, that a Municipal Councilor was not a public servant, and during the course of the judgment, it's noticed: "in view of the decision, therefore, we need not go for other authorities on the content. We are of the opinion that the concept of a public servant is quite different from that of a Municipal Councilor. A public servant is an authority who must be appointed by the Government or a semi-government body and should be in the pay or salary of the same. Secondly, as a public servant, he should discharge his duties in accordance with the rules and regulations made by the government. On the other hand, a Municipal Councilor does not owe his appointment to any Government or authority. Such a person is elected by the people and functions undeterred by the commands or edicts of a government authority. The mere fact that the Municipal Commissioner gets allowance by way of honorarium does not convert his status into that of a public servant.[18]"

Cooperative Society:

Relying upon Ramesh Kulkarni v State of Maharashtra, the Supreme Court held that the Chairman and Members of the Managing Committee of a Cooperative Society under the Maharashtra Co-operative Societies Act, 1960 cannot be held to be a "public servant" within the meaning of Section 2 of the Prevention of Corruption Act, 1947 by virtue of the provisions of Section 161 of Maharashtra Act of 1960 read with Section 21 IPC[19].

The Cooperative Society contemplated in Section 2(c) (ix) should be one which is receiving or which has received any financial aid from any Government (Central or State) any corporation, authority or Government Company. If there is no such financial aid, then the President, Secretary or other office-bearer of a registered co-operative society though engaged in agriculture, industry, trade or banking, will not be a public servant[20].

Educational Institutions:

In Ajay Hasia[21], the court was concerned with the Regional Engineering College, Srinagar, Jammu and Kashmir. "A typical case of an educational institution in whatever manner established and receiving financial assistance from the Central or State Government or Local or other authority is the Regional Engineering College, Srinagar in the state of Jammu and Kashmir. It is one of the 15

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[16]Manzoor Ali Khan v. UOI AIR SC 2014. https://indiankanoon.org/doc/186113805/Last Visited on 30.05.2022.
[17]AIR 1985 SC 1655: (1985) 3 SCC 606. https://main.sci.gov.in/jonew/judis/9234.pdfLast Visited on 30.05.2022.
[18]Ibid
[19]Supra n.22 at 93.
[20]Ibid
[21]AIR 1981 SC 487: (1981) 1 SCC 722. https://main.sci.gov.in/judgment/judis/4414.pdfLast Visited on 01.06.2022

engineering colleges in the country sponsored by the Government of India. The registered society under the Jammu and Kashmir Registration of Societies Act, 1898 carries out its administration and management. The Supreme Court has held that this society is an instrumentality of the State and the Central Government and it is an authority within the meaning of Article 12.

In B.S. Minhas v Indian Statistical Institute[22] (ISIA), the institution concerned was the Indian Statistical Institute (ISI) established under the Indian Statistical Institute Act, 1959. The Supreme Court held that the Institute came within the purview of Article 12 of the Constitution, being an Authority within the meaning of that Article. The institute is registered under the Societies Registration Act, 1860 and governed by the Indian Statistical Institute Act, 1959[23].

Role of Judiciary in Investigation:

Preliminary inquiry before First Information Report (FIR), an important decision that preliminary enquiry was necessary before lodging a First Information Report (FIR) was given by the Supreme Court in P. Sirajuddin v Government of Madras & Others[24]. In this case Sirajuddin was a Chief Engineer of Highways and Rural Works. Before his retirement, there were certain allegations against him and after a preliminary enquiry; a fully-fledged investigation was ordered[25]. The Supreme Court observed:

"As per the bench, the procedure adopted against the appellant before laying the First Information Report (FIR), though not in terms forbidden by law, was as unprecedented and outrageous as to shock one's sense of justice and fair play. No doubt when allegations of the dishonesty of a person of appellant rank were brought to the notice of the Chief Minister, it was his duty to direct an inquiry into the matter. Chief Minster in our view pursued the right course. The High Court was not pressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of a person who was going to benefit by the retirement of the appellant and was also said to be in relation of the Chief Minister. The High Court correctly stated that the relationship between the said person and the ChiefMinister, if any, was so distant that he could not have possibly influenced him and we are of the identical perspective.[26]"

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[22]AIR 1984 SC 363 https://main.sci.gov.in/jonew/judis/9692.pdf : 1984 SCC 26. https://main.sci.gov.in/judgment/judis/9643.pdfLast Visited on 01.06.2022.

[23]Ibid; See also Supra n.22 at 101.

[24]AIR 1971 SC 520: 91970) 1 SCC 595: 1971 Cr.L.J.523. https://main.sci.gov.in/jonew/judis/1465.pdf&https://indiankanoon.org/doc/1147392/Last Visited on 02.06.2022.

[25]A.S. Ramachandra Rao, "Commentary on Prevention of Corruption Act" p. 501 (2004).Last Visited on03.06.2022.https://www.amazon.in/Commentary-Prevention-Corruption-Act-Treatise/dp/9350350580?tag=admitad00151-21&ascsubtag=da8b9dcadd2b612c5cb4676d765f80c9

[26]Ibid

In Shashikant v Central Bureau of Investigation (CBI)[27], the Supreme Court held that the Central Bureau of Investigation 1963 (CBI)is empowered to conduct a preliminary inquiry according to the procedure laid down in the Central Bureau of Investigation 1963 (CBI) manual and particularly on the receipt of an anonymous complaint preliminary enquiry can be conducted without registering the First Information Report (FIR).

- **Grant of Permission to Investigate:**
  - In Ram Singh C Sharma v State of Madhya Pradesh[28], it was held that admittedly in the instant case, even in the absence of the authority of the Superintendent of Police, the investigating officer was in law authorized to investigate the offence falling under section 13 of the Prevention of Corruption Act, 1988 with the exception of one under sub-section 1 (c) thereof. After registration of the First Information Report (FIR), the Superintendent of Police is shown to be aware and conscious of the allegations against them and pending investigation, the reasons for entrustment of investigation to the Inspector can be discerned from the order itself. The appellant State is, therefore, justified in submitting that the SP has applied his mind and directed the order authorizing the investigation by an Inspector under the peculiar circumstances of the case[29].
  - In the case of Union of India v. Mahesh Chandra Sharma[30], the Court held that "if an officer below the rank of a Deputy Superintendent seeks permission to investigate, the Magistrate should not give the permission 'unless' it is proved to his satisfaction that the Deputy Superintendent is unable to take up and conduct the investigation. But, it has been emphasized that there is no warrant for the proposition that he can give permission to any officer of lower rank only, if, it is proved to his satisfaction that the Deputy Superintendent of Police is unable to undertake the investigation.[31]"
  - In the case of M.B. Tharda v Gujarat[32], the High Court has expressed the opinion that "the Magistrate when he considers the question of granting permission to investigate has to be satisfied that a prima facie case exists and there are circumstances which would justify him to

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[27]2006(8) Supreme 564

[28](2000) 5 SCC88: 2000 SCC (Cri) 866: 2000 Cr;LJ 1401. https://indiankanoon.org/doc/501550/Last Visited on 03.06.2022.

[29]Ibid; See also Nani Gopal Mitra v,. State of Bihar, AIR 1970 SC 1636. https://indiankanoon.org/doc/154623/Last Visited on 03.06.2022.

[30]Union of India v. Mahesh Chandra Sharma, AIR 1957 MB 43: 1957 MPLJ 206.Last Visited on 03.06.2022. https://indiankanoon.org/doc/1047308/?type=print

[31]Ibid; See also Hira Lal v. State of Haryana AIR 1971 SC 356. https://indiankanoon.org/doc/694234/Last Visited on 03.06.2022.

[32]AIR 1969 GUJ 362: 1969 Cr.LJ 1503: 1969 GUJ LR 1027. https://indiankanoon.org/doc/874391/Last Visited on 03.06.2022.

grant permission to an officer below the designated rank. The provisions of this section enable either an officer of designated rank to investigate the offence or an officer below the designated rank to investigate provided he obtains prior permission of the Magistrate to do so."

- In the case of P.V. Narayana v State of Andhra Pradesh[33], the Supreme Court has cautioned that the grant of permission to investigate under section 17 is not a mere mechanical act and the Magistrate ought to satisfy himself as to why Deputy Superintendents of Police are not available for doing an investigation on their own. It would be against the spirit of the section to grant automatic permission to an officer below the rank of a Deputy Superintendent of Police.[34]

- Competent Investigating Officer

- The Supreme Court in the case of Muni Lal v Delhi Administration[35]has held that it is not necessary that every one of the steps in the investigation has to be done by the Deputy Superintendent of Police in person or that he cannot take the assistance of his deputies, or that he is bound to go through each and every one of the steps in every case. That being the case, where certain statements of witnesses had been recorded by a Sub-Inspector of Police but according to the Deputy Superintendent of Police, they were written down by the sub-inspector on his dictation and under his supervision.[36]
- In the case of Kanhaiya Lal v State of Uttar Pradesh[37], the court held that "the investigation conducted by an officer below the rank of a Deputy Superintendent of Police would be vitiated only, if, it could be shown that the irregularity had prejudiced the accused and had resulted in a miscarriage of justice. Merely because there was some irregularity in the investigation, or that the investigating officer had some animus against the accused, that the investigation was being supervised by a person, who was interested, cannot by itself lead to an inference that the accused has necessarily been denied a fair trial. Before an accused can

[33]State of Andhra Pradesh v. P.V. Narayana, AIR 1971 SC 811. https://main.sci.gov.in/jonew/judis/7143.pdfLast Visited on 04.06.2022.

[34]Gulab Singh v. State, AIR 1962 Bom 263:(1962) Cr.LJ 598. https://indiankanoon.org/doc/313967/Last Visited on 04.06.2022.

[35]1971 SC 1525: 1971 2 SCC 48: 1971 CriLJ 1153. https://indiankanoon.org/doc/589459/Last Visited on 06.06.2022

[36]Ibid; See also Moogappa v. State of Mysore, AIR 1961 Mys 44 and Supra n.22 p.498. Last Visited on 07.06.2022.https://indiankanoon.org/doc/589459/

[37]State of U.P. v. Kanhaiya Lal, 1976 CrLJ 1230 (All). https://indiankanoon.org/doc/1746827/Last Visited on 09.06.2022.

in such circumstances claim that he has been prejudiced, he has to indicate precisely the manner in which a fair trial has been prejudiced.[38]"

- The case of Debendra Singh v State of Assam[39] held that the trap was laid and seizure was made by an officer not authorized to investigate. However, the investigation was taken over the very next day by an officer properly authorized. No objection was taken in the trial court, nor, any prejudice was caused to the accused. The trial was not vitiated[40].
- In the case of Ismail Ibrahim Sayed v State of Goa[41], the court held that where an investigation into an offence was carried out by an inspector was challenged on technical points before the trial Judge, who ordered re-investigation by a Deputy Superintendent of Police and accordingly Deputy Superintendent of Police made a fresh panchanama after examining the panch witnesses, it was held that a seizure once made cannot be redone because the seized property is already in possession of the police and that the subsequent investigation by Deputy Superintendent of Police, amounted to farce only[42].
- Quashing of F.I.R.The Supreme Court in the case of R.P. Kapoor v State of Punjab[43] summarized some categories of cases where inherent power can and should be exercised, to quash the proceedings, namely:

  Where, the allegations in the First Information Report (FIR) or complaint accepted in their entirety do not constitute the offence alleged;

  Where, the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.[44]"

  The Supreme Court in the case of Bhajan Lal v State of Haryana[45], "the scope of exercise of power under Section 482 of the Code of Criminal Procedure and categories of cases where the High Court may exercise its powers under it relating to cognizable offences to prevent abuse of process of any court and to secure the ends of justice, were laid down. A note of caution was, however, added that the power should be exercised sparingly and that too in the

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[38] Ibid; See also K.B. Mulla v. State of Karnataka, 1977 Cr.LJ 925 (Kar). https://indiankanoon.org/doc/976584/Last Visited on 10.06.2022

[39] Debendra Singh v. State of Assam, 1983 Cr.LJ NOC 159(Goa).

[40] Ibid; See also Nanak Chand v. State of H.P., 1974 Cr.LJ 660(SC).https://indiankanoon.org/doc/672281/Last Visited on 11.06.2022.

[41] Ismail Ibrahim Sayed Vs. State, 1975 Cr.LJ 1335 (Goa).Last Visited on 12.06.2022.https://www.casemine.com/judgement/in/581180d82713e179479d5d36

[42] Supra n.26 p.1149.

[43] AIR 1960 SC 866.https://indiankanoon.org/doc/1033301/Last Visited on 12.06.2022.

[44] Ibid; See also Adarsh Kumar Batra v. State of Punjab, 1999 Cr.LJ 118.Last Visited on13.06.2022. https://indiankanoon.org/doc/1120770/

[45] State of Haryana v. Bhajan Lal, 1992 Cr.LJ 527(SC).https://indiankanoon.org/doc/1033637/Last Visited on 13.06.2022.

rarest of rare cases. The illustrative categories indicated by the Supreme Court[46]are as follows:”

Where the allegations made in the First Information Report (FIR) or the complaints, even if, they are taken at their face value in their entirety, don’t prima facie constitute any offence or make out a case against the accused.

If there are any allegations in the First Information Report (FIR) and other materials, it will not reveal a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

Where the incontrovertible allegations made in the First Information Report (FIR) or complaint and the evidence collected in support of the same, and will not reveal the commission of any offence and make out a case against the accused.

The allegations in the First Information Report (FIR) will exclude cognizable offences and include only a non-cognizable offence, as per Section 155(2) of the Code no investigation is permitted by a police officer without an order of a Magistrate.

The allegations or complaints made in the First Information Report (FIR) are so absurd and dubious that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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

Where a criminal proceeding is manifestly attended with ‘malafide’ and or where the proceedings are maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge.

- In State of Tamil Nadu v J. Jayalalitha[47], a charge sheet was filed against the former Chief Minister of Tamil Nadu Ms. J. Jayalalitha and ten others for offences under Section 120-B read with Section 409 Indian Penal Code1860 (IPC) and Section 13(2) of the Prevention of Corruption Act, 1988 (PCA), on the allegation that all the accused and certain foreign coal suppliers had entered into a criminal conspiracy to import coal for Tamil Nadu Electricity Board at a lower price and thereby obtain huge pecuniary advantages to themselves by causing heavy and wrongful loss to the State to the tune of about 6.5 crores of rupees. The

[46]Supra n.26 at 1009.
[47]Tamil Nadu v. J. Jayalalitha, 2000(3) Supreme 768: (2000) 5 SCC 440: AIR 2000 SC 1589.Last Visited on 14.06.2022.https://indiankanoon.org/doc/72606/

allegation was that a decision was taken to import two million metric tons of coal from foreign countries for three thermal power stations in Tamil Nadu and that such a decision was taken pursuant to a criminal conspiracy hatched by the accused for obtaining a huge pecuniary advantage. Tenders were invited from foreign suppliers. The company based in Singapore made an offer to supply six lakhs MTs of coal at the rate of 35.24 US dollars however, the same was rejected. But, the electricity board, later on, fixed the coal at 40.20 US dollars per metric tons and three Indonesian bidders were promoted to supply coal at that price. Subsequently, the Singapore Company was asked to supply coal at the increased price of Rs.40.20 US dollars per metric ton. A perusal of the relevant file showed that the concerned Secretary to the Government raised a strong objection against the proposal to import coal at such a high price. It was also found that some crucial sheets in the current file, which contained the objections of the Secretary, were removed and such sheets were later added after obtaining approval from the Chief Minister. The Special Judge after considering the records of the case felt that the materials were insufficient to frame a charge against Ms. J. Jailalitha and against another accused that was her Former Cabinet Colleague and discharged them and framed charges against the remaining nine accused.

The State of Tamil Nadu challenged the order of discharge by the Special Judge before the High Court of Madras in revision, but the High Court did not interfere with the order. The State Government preferred an appeal to the Supreme Court against the order of the High Court. The Supreme Court observed that at the stage of framing charges, the exercise should be confined to the consideration of the police report and the documents to decide whether the allegations against the accused are groundless or whether there are grounds for presuming that the accused has committed the offences. A perusal of the current file did not disclose that the objections raised by the departmental secretary were not in the file when the Chief Minister scrutinized it and she came to know of the prompt warnings of the secretary and despite them, she accorded green signal to import the coal and until the respondent affords satisfactory explanation, the court can presume that she was aware of the serious consequences of the deal and the state exchequer and at the stage of framing of the charges, the court can presume that there are reasonable grounds to believe that she was involved in the conspiracy. The Supreme Court further held that it is not the stage for weighing the pros and cons of all the implications of the materials not for shifting the materials presented by the prosecution. For the reasons stated above, the Supreme Court set

aside the orders of the trial court and the High Court, and allowed the appeal filed by the state[48].

- The Supreme Court in Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v State of Andhra Pradesh[49] has held as follows:

  "Power of the police to conduct further investigation, after laying final report is recognized under Section 173 (8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this court in Ram Lal Narang v State of Delhi Administration's case[50]. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation[51].

- In the case of P.A. Vijayan v State of Karnataka[52], "the accused, an Excise Inspector, was charged for an offence under section 13 (i) (e) of the Prevention of Corruption Act 1988 on the allegation that he had amassed wealth disproportionate to his known sources of income but there was a delay of about six years five months in the submission of charge-sheet and no material was placed before the court showing that delay on part of Investigating Officer was on account of the collection of any bulky evidence in support of the charge against the accused the criminal proceedings were quashed by the High Court on account of the abnormal delay in filing of the charge-sheet.[53]"

- In the case of Ajit Pramod Kumar Jogi v State of Chhattisgarh[54], a criminal case was registered by the Anti-corruption Bureau against the Ex-Chief Minister of the State of Chhattisgarh and others for the commission of offences under Section 7, 12, 13 (d), 13 (2) and 15 of the Prevention of Corruption Act, 1988 and under Section 120-B read with Section 34 of Indian Penal Code (IPC), on the allegations that Shri Ajit Jogi while functioning as acting Chief Minister (after the elections for the Legislature Assembly were held and results were declared) entered into a criminal conspiracy with his son and a Member of Parliament to split the newly elected MLAs of Bhartiya Janata Party by giving them a bribe of Rs.45 lakhs. Thereafter, the investigation was transferred to Central Bureau of Investigation 1963 (CBI) and a consent notification was issued by the Government of Chhattisgarh. Thereupon,

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[48] Supra n.26 at 1019.
[49] AIR 1999 SC 2332. https://indiankanoon.org/doc/1308855/Last Visited on 15.06.2022.
[50] Ram Lal Narang v. State (Delhi Admn.), AIR 1979 SC 1791. https://indiankanoon.org/doc/889775/Last Visited on 15.06.2022.
[51] Ibid.
[52] 2002 Cr.LJ 535 (Karn). https://indiankanoon.org/doc/1938674/Last Visited on 16.06.2022.
[53] Ibid; See also Supra n.26 at 1027.
[54] 2004 (2) Crimes 69 (Chhattisgarh).https://indiankanoon.org/doc/98393012/Last Visited on 16.06.2022.

a petition was filed before the High Court requesting to quash the First Information Report on the ground that it did not disclose prima facie the offences mentioned in the First Investigation Report (FIR). After hearing elaborate arguments on both sides and discussing several decisions on this aspect the High Court found that the First Investigation Report (FIR) prima facie disclosed reasons to suspect the commission of cognizable offences by the accused and dismissed the petition[55].

- In the case of Premananda Panda v State of Orissa[56], "the accused who was facing prosecution for an offence under Section 13 (1) (e) of the Prevention of Corruption Act, filed an application under Section 482 of Cr.P.C. to quash the order of the Special Judge directing attachment of the fixed deposits to the tune of Rs.36, 00,000/- and making it as 1st charge in favour of the Income Tax Department for the realization of the earlier tax dues. He filed the application on the ground that the Income Tax Department had already assessed his assets and an appeal is pending before the Income Tax Appellate Tribunal challenging the assessments and as such the fixed deposit cannot be attached." The High Court did not accept his contention and held as follows:

  The order of attachment shall continue until reconsideration of the matter by the court below in accordance with law and on due consideration of contention of the petitioner vis-à-vis the Income Tax Department, in as much as Section 226(4) of the Income Tax Act authorizes and empowers the court to make such an order. Nonetheless, such an order cannot be passed as a matter of routine. The relevant facts which are required to be considered are, inter-alia, the liability of the petitioner and the extent of addition of the properties standing in the name of other relatives which have been attached. If such properties have been noted in the charge sheet calculating it towards the disproportionate assets of the accused, then that has to be accordingly accepted and not otherwise. Similarly, if, the assessment made by the Income Tax Department is solely on the basis of the investigation made by the Vigilance Department, then there may be an order for attachment but without creating a charge unless the charge (offence) against the petitioner is proved. All such facts and circumstances are relevant to be considered while considering an application under Section 226(4) of the Income Tax Act. That having not been done by a learned Vigilance Judge, therefore, while maintaining the order of attachment, this court directs the court below, to a fresh consideration of the application by providing an opportunity of hearing to all the parties.[57]"

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[55]Ibid; See also Supra n.26 at 1031.
[56]2004 Cr.LJ 3642 (Orissa).https://indiankanoon.org/doc/1500501/Last Visited on 20.06.2022.
[57]Supra n.26 at 1032.

- In Alexander v State of Kerala[58], a retired Director General of Police, Kerala, was prosecuted for being in possession of assets disproportionate to his known sources of income. The discharge petition was filed by him before the trial court requesting to consider twelve documents relating to the income of his wife from her inherited properties which amounted to Rs.78,43,720.50 which were attached to the charge sheet but the Court dismissed the same. Thereupon, he filed a petition in the High Court under Section 482 Cr.P.C. The High Court held that while framing charges, Court should be careful and consider whether the documents and evidence collected by Investigating Officer, prima facie, constitute an offence. Separate income of wife and children derived from properties given by in-laws of an officer cannot be taken as income of the officer concerned without considering those documents and the trial court failed to consider the effect of twelve documents relied upon by the prosecution in the police report. The High Court directed the Special Court to reconsider the application for discharge under Section 227 Cr.P.C. afresh and only, if, he cannot be discharged, charges need to be framed[59].

- **Recipient of Bribe:** In the case of Parkash Singh Badal v State of Punjab[60], the appellant Shri Sukhbir Singh Badal had taken the stand that he being a Member of Parliament, is a public servant and cannot be charged with offences under Sections 8 and 9 of the Prevention of Corruptions Act 1988. The Contention was that Sections 8, 9, 12, 14 and 24 of the Act are applicable to private persons and not to public servants. The opening word of Sections 8 and 9 is 'whosoever' as held by the Supreme Court. The expression is very wide and would also cover public servants accepting gratification or reward for inducing any other public servant by corrupt or illegal means. Restricting the operation of the expression by curtailing the ambit of Sections 8 and 9 and confining it to private persons would not reflect the actual legislative intention.[61]"
- **Testimony of Bribe Giver:** In the case of Gulam Mahmood v State of [62], the Supreme Court held that in a trial under Section 5 (1) (d) read with Section 5 (2), though the bribe giver is a competent witness to speak of the facts which are alleged to be constituting the offence, as a rule of caution, it would be unsafe to convict the accused relying on his testimony alone. Where the bribe giver had been paying a bribe to the accused voluntarily on several occasions, in such a case the nature of his evidence would be that of an accomplice, and without

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[58]2006(2) Crimes 636(Ker).
[59]Supra n.84.
[60](2007) 1 SCC 1: IV (2006) CCR 335(SC). https://indiankanoon.org/doc/1634320/Last Visited on 21.06.2022.
[61]Supra n.26 at 686.
[62]AIR 1980 SC 1558; see also Panalal Damodar Rathi v. State of Maharastra, AIR 1979 SC 1191.Last Visited on 25.06.2022.https://indiankanoon.org/doc/1873733/

corroboration thereof by material particulars, cannot become the basis of a finding that the accused had demanded the money. This being a crucial aspect to constitute the offence under Section 5 (1) (d) the evidence of bribe giver cannot be relied upon without corroboration[63].

- **Anthracene Powder Test:**
  - In the case of Ram Singh Badarsingh v State of[64], the court held that where in the case of bribery the police resorted to the technique of anthracene powder and ultraviolet rays for proving that the accused had received the currency notes containing the powder applied on it, by the presence of the powder on the hands or shirt of the accused, the prosecution must lead evidence by way of expert evidence or books of science to prove the sure method of detection of anthracene powder, the nature of the test to be applied, the nature of the result to be expected and whether a layman can detect anthracene powder when such a test is applied. The prosecution must also prove that if, the test leads to a positive result and it conclusively proves the presence of anthracene powder and nothing else[65].
  - In the case of Ambalal Motibhai Patel v State of Gujarat[66], "the court held that where the investigating agency has used the technique of anthracene powder with ultraviolet rays for detection of bribery in order to enable a court to draw the inference that what was found on a person was anthracene powder the prosecution must establish that the tests for the detection of anthracene powder had been properly made and had yielded positive results. The two tests required to be satisfied by the prosecution to prove the presence of anthracene powder are (1) that no powder was detected with the naked eye, and that when ultraviolet light was focused, there was the emission of light blue fluorescent light. If evidence proved right for both these tests, then it would be right to conclude that anthracene powder was present. It is, therefore, essential for the prosecution to prove that there was light blue emission of light under the influence of ultraviolet light. It is not sufficient for the prosecution to prove that under the ultraviolet light, witnesses saw stains of white powder or even that under the ultraviolet light they saw some sparkling or some shimmering.[67]"

- **Phenolphthalein – Sodium Carbonate Test:**

  The test is based on the fact that phenolphthalein is colourless in acid and deep purple and neutral medium in alkali medium. Phenolphthalein is a coal tar product and it is available in the form of a light powder. The currency notes or other articles intended for the purpose of

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[63]Supra n.26 at 605.
[64]AIR 1960 GUJ 7: 1960 (2) Cr.LJ 1207.https://indiankanoon.org/doc/723233/Last Visited on 27.06.2022.
[65]Ibid; See also Supra n.26 at 1489.
[66]AIR 1961 GUJ 1: 1961(1) Cr.LJ 50.https://indiankanoon.org/doc/807518/Last Visited on 28.06.2022.
[67]Supra n.111.

bribes are coated with phenolphthalein powder to form a thin layer and it is hardly visible to the naked eye. When the currency note or other articles dusted with phenolphthalein powder are touched by a person his hands will invariably collect a few particles of the powder. When those hands are dipped into a solution of sodium carbonate, the solution turns to purple or pink colour[68].

This method is being commonly used over a number of years by the Investigating Agencies for providing conclusive proof of the fact that an accused person has come in contact with the bribe amount or article of bribe in question.

- Prosecution of public servants by others in Kartogen Kemiochforvalltning A.B.[69], "the petitioners M/s. A.B. Bofors, S.P. Hinduja, G.P. Hinduja and P.P. Hinduja challenged before the Delhi High Court the order of the Special Judge framing charges against them under Section 120-B, 161, 165-A, 420, 465 IPC and Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 for having entered into a criminal conspiracy with the public servants late Shri Rajiv Gandhi and Shri S.K. Bhatnagar and Shri Win Chadha, Ottavio Quattrochi and Bofors President Matin Ardbo to cheat the Government of India in regard to the supply of guns for the Indian Army. The High court after having elaborate arguments on both sides, held as follows.[70]"

- **Under section 161 of Indian Penal Code 1860 (IPC) prosecution of the public servants as regards the prosecution of the public servants is concerned, the court made the following observations:**

"As per Section 161 the element of illegal gratification according to the prosecution case itself utterly wanting in as much as that there is no evidence about the official report by the Army that the Bofors was managed, manipulated or procured through corrupt or illegal means. Since the best judge of the weapons to be purchased by the Government is the Army or its Committee of Technical Experts, the Government had no business or role to overrule that decision. The price negotiating committee had a limited role in negotiating the price, acting on the premise of the Army report presented on 17th February 1986, the Swedish Bofors has a clear edge over the French Sofma. The Chief of the Army Staff finally approved the report that was submitted by the Deputy Chief of the Army Staff.[71]"

Unless, there is a corrupt motive attributed towards the choice in favour of one gun or the other, even if, it is costlier price-wise but quality-wise equally good. Though Bofors had an

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[68]Supra n.26 p.1490.
[69]1 (2004) CCR 285 (SC). https://indiankanoon.org/docfragment/561739/?formInput=boforsLast Visited on 29.06.2022.
[70]Supra n.26 p.848.
[71]Supra n.115, para 97.

edge over Sofma because of its peculiar feature of 'shoot and scoot'. The offence under Section 161 Indian Penal Code 1860 (IPC) does not attract, and nowhere, the prosecution has levelled these allegations nor has produced any material in support of corrupt motives. Merely because Sofma's offer of reducing the price came immediately after the letter of intent had already been issued to Bofors, cannot lead to any inference that the decision in favour of the Bofors was with ulterior motives or by accepting a bribe, etc."

"It is not the case of Central Bureau of Investigation 1963 (CBI) that Bofors or Hindujas or Quattrochi or Chadha had accepted the bribe money on behalf of the public servants under the grab of 'commission' and that the bribe money allegedly paid by the Bofors was kept by Hindujas or others as custodians, until and unless, the money in the account of Hindujas and others is related to the bribe punishable under Section 161 read with Section 165-A, IPC, cannot stand or stick.[72]"

The charge for the offence under Section 161 i.e. against the public servant for having accepted the illegal gratification other than legal remuneration in awarding the contract does not arise out of any of the material or evidence collected by the Central Bureau of Investigation 1963 (CBI) nor was such a charge proposed by the Central Bureau of Investigation 1963 (CBI). This charge is the result of an imaginative, presumptive and conjectured conclusion by the learned Special Judge. So much so that while taking cognizance after perusing the entire charge sheet the learned Special Judge did not summon the petitioners for an offence under Section 161 read with Section 165-A of the Indian Penal Code 1860 (IPC). It is not the case of the Central Bureau of Investigation 1963 (CBI) that money received by the alleged agents has been passed on, either directly or indirectly to either Mr. Bhatnagar or Mr. Rajiv Gandhi.

Thus, even if, the prosecution case is assumed as correct and accepted as a whole, offences under Sections 161 or 165-A, IPC are not made out either against public servants or the petitioners.[73]"

"As regards the offence of criminal misconduct by abusing official positions to provide a pecuniary advantage to the petitioners punishable under Section 5(2) of the Prevention of Corruption Act, 1947 and conspiracy to cheat the Government by awarding the contract to Bofors is concerned. There is no evidence on record to suggest that either Rajiv Gandhi or Bhatnagar used any direct or indirect influence on anybody including the Technical Committee of Army Experts or on Negotiating Committee that comprised seven members or so and all

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[72]Supra n.115, para 98 and 99.
[73]Supra n.115, para 104 and 105.

were high officials of the Government of India for the award of the contract to Bofors or as to the price.

Rightly so and had it been so, then every public servant, whosoever was a member of the Technical as well as Price Negotiating Committee would have put themselves in the net of Central Bureau of Investigation 1963 (CBI) for prosecution along with the petitioners and public servants[74].

- **Sanction for Prosecution:**
  - In the case of P.V. Narasimha Rao v State of[75], it was held that "since there is no authority competent to grant sanction for the prosecution of a Member of Parliament under Section 19(1) of the Act of 1988, the Court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but before filing a charge sheet in respect of an offence punishable under Sections 7, 10, 11, 12 and 15 of the Act of 1988 against an M.P. in a criminal court and the prosecution again shall obtain the permission of the Chairman of the Rajya Sabha or Speaker of the Lok Sabha as the case may be.[76]"
  - In the case of Ram Swarup v State of [77], the court held that the sanctioning authority has an absolute discretion to grant or withhold sanction. Where the sanction does not mention the fact, nor it is proved by extraneous evidence that they were placed before the sanctioning authority, the sanction would be invalid and the trial court would not be a court of competent jurisdiction[78].
  - In the case of Jagdip v State of [79], it was held that the grant or refusal of sanction is purely an administrative function and it is important for the subjective satisfaction of the sanctioning authority that the sanctioning should be based on sufficient material and it should be considered by the court in a realistic and reasonable manner and courts ought not to be too technical and insist on mathematical accuracy and logical precision and over emphasize nice and subtle distinction in the forms of expression[80].
  - In the case of Lalu Prasad v State of [81], the court while affirming the legal position regarding the scope of Section 19 of the Prevention of Corruption Act, 1988 and Section 197 Cr.P.C.,

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[74]Supra n.26, p.849.
[75](CBI/SDE), (1998) 4 SCC 626 : 1998 SCC (Cri) 1108.https://indiankanoon.org/doc/45852197/Last Visited on 28.06.2022.
[76]Ibid; See also Supra n.21 at 571.
[77]1973 Cr.LJ 764.
[78]Ibid; See also State v. Hira Nand, AIR 1958 MP2.https://indiankanoon.org/doc/365101/Last Visited on 30.06.2022.
[79]1954 Raj LW 478.https://indiankanoon.org/doc/596224/Last Visited on 30.06.2022.
[80]Ibid; See also Kailash Chand v. State, 1973 Mad.LJ (Cr.) 660 and Supra n.22 at 572. Last Visited on 01.07.2022.https://www.casemine.com/judgement/in/5b25053e9eff4362926f7d03
[81](2007) 1 SCC 49. https://indiankanoon.org/doc/1278061/Last Visited on 01.07.2022.

the Supreme Court further held that for framing of charge, the court need not give reasons but in the case of an opinion on the basis of which an order of discharge is to be passed, reasons have to be recorded by the Court.

- In the case of Rajkumar Jain v State of [82], the Supreme Court held that from a plain reading of Section 6 (Section 19 of the Act of 1988), it is evidently clear that a court cannot take cognizance of the offences mentioned therein without the sanction of the appropriate authority. In enacting the above section the Legislature thought of providing reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations by vexatious and unnecessary prosecutions. When Central Bureau of Investigation 1963 (CBI) found that no case was made out against the respondent. They were under no obligation to place the materials collected during investigation before the sanctioning authority. To put it differently, if the Central Bureau of Investigation 1963 (CBI) had found on investigation that a prima facie case as made out against the respondent to place him on trial and accordingly prepared a 'charge sheet' against him, then only the question of obtaining the sanction of authority under Section 6(1) of the Act would have arisen for without that the court would not be competent to take cognizance of the charge-sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the Central Bureau of Investigation 1963 (CBI) was required to obtain sanction from the prosecuting authority before approaching the court for accepting the report under Section 172(2), Cr.P.C. for discharge of the respondent.[83]"
- In the case of M. Veeraiah Chowdary[84], the court held that when once the sanction order is issued by the Government under Section 19 of the Act and the court has taken cognizance of the offence, it is not open to the State Government to withdraw the sanction order. Section 321 Cr.P.C. provides for the withdrawal of prosecution by the Public Prosecutor with the consent of the court. The Court, while creating its consent, has to ensure that the Public Prosecutor has applied his mind independently and that he is acting in good faith[85].
- In the case of K. Karunakaran v State of [86], the question is whether it is necessary to obtain sanction for prosecution in a case where the public servant is no longer holding the same post or office during the currency of which the alleged offence was committed, the Supreme

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[82]State (through C.B.I.) v. Rajkumar Jain, III (1998) CCR 150(SC): AIR 1998 SC 2985. Last Visited on 03.07.2022.https://indiankanoon.org/doc/1191091/
[83]Ibid; See also Supra n.26 at 1455.
[84]M. Veeraiah Chowdary v. State of A.P, 2003 Cr.LJ 1896 (AP) : 2003(1) ALD (Crl.) 421 (AP). Last Visited on 04.07.2022. https://indiankanoon.org/doc/888877/
[85]Ibid.
[86]JT 2000 (3) SC 532. https://indiankanoon.org/doc/1587314/Last Visited on 05.07.2022.

Court referring to its earlier decision in Parkash Singh Badal's case (2007) held that there was no need for obtaining sanction for prosecution in such a case.

- In the case of Balakrishnan Ravi Menon v State of [87], the Supreme Court held that, at the relevant time when the charge sheet is filed, the petitioner was not holding the office in which he was alleged to have committed the offences though he was holding another office and, as such, there was no question of obtaining any sanction.

[87](2007) 1 SCC 45. https://www.casemine.com/judgement/in/56ea95ee607dba382a0794deLast Visited on 06.07.2022.

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UniqueCHAPTER 6 ROLE OF THE JUDICIARY IN COMBATING THE CORRUPTION IN INDIA 6/I/a.

UniqueGeneral: Judicial precedent or case law consists of law found in the judicial decisions.

UniqueA judicial precedent is the principle law on which a judicial decision is based.

UniqueIt is the ratio-decidendi otherwise known as the reason for the decision.

UniqueIt is not everything said by a judge in the course of his judgment that constituent....

UniqueThe doctrine of judicial precedent as a common law doctrine applies to only those C....

UniqueCustomary Courts, Sharia Courts of Appeal and area Courts are not empowered to appl....

UniqueTherefore, the common law doctrine does not apply to them nor does any legislation ....

UniqueAs a common rule under the doctrine of ‘stare decisis’ a Court is bound to follow t....

UniqueA lower Court doesn’t follow a decision of a higher Court which has been over-ruled.

UniqueFurthermore, a lower Court is not bound by a decision of a higher Court where that ....

UniqueIn principle, a lower Court is entitled to choose which of the two conflicting deci....

UniqueIt should be noted that a binding precedent may be abolished by the legislation.

UniqueThe Indian Constitution has led to a democratic, republic and a trinity of instrume....

UniqueWhen the executive echelons exceed their power as inscribed and circumscribed in th....

UniqueThe legislature has vast law-making powers and is functionally competent to perform....

UniqueBut, when it transgresses its constitutional bounds, the court can quash its action....

UniqueThe dishonest practices indulged in by the public men and bureaucrats have already ....

UniqueThe drawback in the Indian Penal Code 1860 (IPC) in the matter of offences dealing ....

UniqueState legislatures have also taken steps to supplement corruption control.

UniqueEven the National Police Commission 1977 has acknowledged partiality, corruption an....

UniqueA major amount of the cases, which go without prosecution, are corruption cases.

UniqueThe only organization now seeking to intervene in the field is Judiciary.

UniqueActually, the higher judiciary through its judicial activism tried to fill in the g....

UniqueThe authority has tried to fill up some of the lacunae created by the legislature b....

UniqueJudicial Activism: The State bodies, provided under the constitution, namely the Le....
UniqueThe Constitution framer had envisaged a clear distribution of powers and functions ....
UniqueThe passing of laws is the exclusive domain of the Legislature at the Union level a....
UniqueTo administer justice in accordance with the law of the land, to adjudicate the con....
UniqueThe judiciary is the only organ which could not be controlled by politicians.
UniqueIt is this faith among the public that gave momentum to judicial activism.
UniqueIn order to protect the constitutional guarantees and the democratic principles the....
UniqueThe Vohra Committee is of the firm belief that crime exists in politics and exposed....
UniqueCrimes and Criminal law are shaped by criminal policy which in turn is a part of wi....
UniqueThe entire criminal law, evidence, penal policy and the wide range of other activit....
UniqueThis ensures them the monopolized use of State force to repress and suppress those ....
UniqueUnder these circumstances, it is highly necessary that an independent organization ....
UniqueThis necessitated judicial activism to take a sweeping change from its earlier position.
UniqueThis change is reflected in many decisions . 6/I/c.
UniqueJudiciary on public servant: 6/I/c/i.
UniqueChief Ministers and Ministers: In the case of M.
UniqueKarunanidhi v Union of India the Supreme Court had an occasion to decide whether a ....
UniqueKarunanidhi was a former Chief Minister of Tamil Nadu. On 15.6.1976, a D. O.
Uniqueletter was written by the Chief Secretary to the Government of Tamil Nadu to the De....
UniqueA first information report was accordingly recorded and sanction under Section 197 ....
UniqueThe application for discharge filed before the Special Judge and the High Court hav....
Uniqueobserved: Three facts, therefore, have been proved beyond doubt, namely: • That the....
Unique• That the Chief Minister or a minister gets a salary for the public work done or t....
Unique• That the said salary is paid to the Chief Minister or the Minister from the Gover....
UniqueThe Chief Minister is in the pay of the Government and is, therefore, a public serv....
UniqueMember of Parliament (MP's) and Member of the Legislative Assembly (M. L.
UniqueA's) Another category of persons who should be brought within the purview of sectio....
UniqueNayak and others , the apex court had an opportunity to decide whether an Member of....
UniqueThe complainant moved the Governor of Maharashtra on September 1, 1981, requesting ....
UniqueThis was challenged in appeal in the High Court of Bombay .
UniqueMeanwhile, responding to an identical complaint filed by one Shri. P. B.
UniqueSavanth, against the accused in the High Court of Bombay, the court by a far-reachi....
UniqueIn the wake of the judgment of the Supreme Court, rejecting the application for spe....
UniqueThen, the complainant filed a fresh complaint in the Court of Special Judge, Bombay....
UniqueThe accused moved an application to discharge inter alia on the ground that the cha...