THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL PETITION NO.6942 OF 2023

ORDER:-

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC'), is filed seeking to quash FIR in crime No.29 of 2021 of C.I.D. P.S., A.P., Amaravathi, Mangalagiri, against the petitioner, who is arrayed as accused No.37, and the consequential order of remand dated 10.09.2023, and the Order in Crl.M.P.No.1096 of 2023, dated 10.09.2023, passed by the learned Special Judge for SPE & ACB Cases-cum-III Additional District Judge, Vijayawada in the aforesaid crime.

2. Based on a report lodged by the Chairman of the Andhra Pradesh State Skill Development Corporation (for short, 'APSSDC'), the aforesaid crime was registered by the CID. The allegations, in brief, are as follows.

APSSDC was incorporated by virtue of G.O.Ms.No.47 (HE) (EC.A2) Department, dated

13.12.2014. SIEMENS offers training programme in collaboration with various State Governments. APSSDC deputed a team to visit SIEMENS Centres of Excellence, which were already established in Gujarat, and to submit a report. During negotiations, State Government agreed to establish SIEMENS Centre of Excellence, Technical Skill Development Institutions and Skill Development Centres in different clusters. Six clusters were formed at the inception at a cost of Rs.546,84,18,908/-, with SIEMENS and Design Tech providing a grant-in-aid of 90% i.e. Rs.491,84,18,908/- and the Government's share thereof 10% Rs.55,00,00,000/-, and a Memorandum of Agreement (MoA) was entered into, between the APSSDC and SIEMENS, pursuant to G.O.Ms.no.4, dated 30.06.2017 of Skill Development Enterpreneurship and Innovation (Skills) Department. Tax investigation by the Additional Director General, GST, Intelligence, Pune in respect of claims of availing of CENVAT credit by M/s. Design Tech Systems Private Limited and M/s. Skillar Enterprises

India Private Limited led to unearthing a huge financial scam involving crores of rupees by M/s. SIEMENS Industry Software India Private Limited and M/s. Design Tech Systems Private Limited, and the funds relate to the APSSDC.

As per the Memorandum of Agreement, Design Tech has to provide training software development including various sub-modules designed for high end software for advance manufacturing CAD/CAM. It does not contemplate sub-contract. However, SIEMENS and Design Tech sub-contracted a large part of its work to M/s. Skiller Enterprises Private Limited, New Delhi with self centric Solomnon's Wisdom. It is the claim of Design Tech that Skiller Enterprises Private Limited provided training software development including various sub-modules designed for high end software for advance manufacturing of CAD/CAM, and royalty and subscription were paid to Skillar as they developed the software. M/s. Skiller directly supplied the same to the Skill Development Centers in Andhra Pradesh.

When the tax authorities confronted Skillar, it claimed that no technical work was sub-contracted and the training software development including various sub-modules provided are technical material and royalty and subscription were wrongly mentioned in invoices. A.D.G.G.I., Pune concluded that both service provider and service receiver took contradictory stands regarding the nature of service, and in depth scrutiny into the records by A.D.G.G.I. revealed that training development software including various sub-modules shown as supplied by Skillar to Design Tech were purchased by Skillar from various companies. The said companies are shell/defunct companies and they were issuing invoices without providing any services and they formed into a cartel for siphoning public funds tuning to Crores of rupees. The Managing Director of M/s. Design Tech admitted before the Assistant Director General that he had no evidence to show that services were received from these companies. After surfacing financial irregularities, directions were given to the Corporation to conduct

Forensic Audit and to furnish a copy of the report for taking further action. Accordingly, work order was assigned to M/s. Sharat and Associates, Chartered Accountants, Forensic Audit Firm. The firm conducted enquiry and submitted its report pointing out the flaws in policies, flaws in systems and utilization of funds and analysis of various spending practices and to find out irregularities, misstatements, governance procedures, internal policies evaluation for the financial years 2014-15 to 2018-19. M/s. SIEMENS and Design Tech had to oversee the work of the clusters and their maintenance. However, both of them swindled crores of rupees in dubious manner. Basing on the complaint, CID registered the aforesaid crime on 09.12.2021.

3. Petitioner herein is arrayed as A.37 in the said crime. As per the remand report, allegations against the petitioner are as follows.

(a) Vendors M/s. Designtech and M/s.SISW approached the petitioner through an intermediary who

was a TDP leader Mr. Illendula Ramesh and submitted proposal for setting up of Centres of Excellence for skill development, and as a part of conspiracy to misappropriate the money from public exchequer, the petitioner orchestrated the incorporation of the APSSDC on 10.09.2014, bypassing the Council of Ministers and appointed handpicked people and henchmen as MD & CEO and Director of APSSDC, by deviating the Rules. Without making any market survey or without following other cannons of financial propriety, petitioner and A.38 gave concurrence to the project, and they gave a false projection before the Council of Ministers that the estimated cost of the project would be Rs.3,281.00 crores (approx.) of which the technology partners would meet 90% of the cost of the project as grant-in-aid and the State Government had to invest only towards 10% of the cost of the project, and a draft of MoU/Tripartite agreement, which was in contravention of the letter and spirit of G.O.Ms.No.4, mentioning only that the Government would release Rs.371.00 crores as a grant

for M/s. SISW and M/s. Design Tech to set up the Skill Development Institutions, was approved by them.

(b) It is further alleged that after the MoU was signed, entire amount of Rs.371.00 crores was released in advance by the State Finance Department and the APSSDC to M/s. Designtech, even before sites were selected for setting up of Skill Development Centres and without obtaining any performance guarantee or bank guarantee, and despite objections taken by Smt. K.Suneetha, Secretary to Finance Department that release of the amount is not appropriate for the various reasons pointed out, amounts were released based on the Order of the Chief Secretary and the petitioner. Through M/s. Designtech, an amount of Rs.279.00 crores were siphoned off, through shell companies, fake invoices, layered transmission of money and hawala transactions of cash.

(c) It is alleged that the accused conspired with merchants M/s. Design Tech and its Managing Director and the Managing Director of another merchant M/s.

SIEMENS, Pune, and the said entities/persons, having entrusted with obligations imposed in GO Ms.No.4 and the tripartite agreement, were entrusted with property being money of the State amounting to Rs.371.00 crores with clear cut direction of law as contained in the said G.O., in any event as contained in the tripartite agreement, have to perform the obligations of supplying hardware and software as enumerated in the agreement, but they committed criminal breach of trust with the active conspiracy by the petitioner by not performing the same in accordance with GO Ms.No.4 and the tripartite agreement, and by over-ruling the objections raised by the concerned Finance Department not to release the amount and indulged in the acts of siphoning off the entrusted government money, thereby liable under Section 409 and 120B IPC. Because of connivance of the petitioner and A.38, monitoring committees as envisaged under the G.O. were not established to oversee setting up of the Skill Development Centres.

(d) It is further alleged that all checks and balance such as valuation of the project by a third party (Central Institute of Tool Design) and maintenance of an Asset Register through a competent agency were compromised to hide the wrong doings of the accused, and the note files pertaining to the project were removed from the Secretariat by the accused soon after Central Tax Agencies started unearthing this network of misappropriation of funds.

(e) The statements of witnesses and the note files pertaining to the relevant G.Os. disclose that petitioner, being a public servant during 2015-2019, abused his position as public servant, obtained pecuniary advantage to M/s. Designtech (A.4) which in turn parked the money in other shell companies such as PVSP/Skillar, ACI, Inweb and Patrick Info., etc.

(f) It is further alleged that on the instructions of the petitioner, A.1 coordinated and colluded with A.2, A.6 to A.10 and got prepared cost estimation of Siemens Project through the Siemens team led by A.6 without any

base, supported bills, quotations, reasonable explanation of the cost, detailed project report, etc. and submitted the same as a draft resolution of table item on 15.02.2015 i.e. one day before the cabinet meeting held on 16.02.2015, and the Cabinet headed by petitioner, approved the Skill Development Project as a special item, without verifying the authenticity, basis for cost estimation of the project, without getting third party evaluation, without doing assessment and without following tender process. On 04.03.2015, on the representation of A.1, AP Cabinet headed by the petitioner approved to sanction a budget of Rs.370.78 crores towards 10% contribution of the Government.

(g) It is further alleged that the petitioner, with a criminal intention to create green channel, to avoid intervention and supervision of Principal Secretary, Higher Education Department on the Siemens project, brought APSSDC under SDE&I Department and got direct access to the files relating to the project through A.3. The petitioner, through A.38 and other accused,

fraudulently, falsely projected total project cost as Rs.3281.00 crores (excluding taxes) without there being any basis or assessment, and got issued G.O.Ms.No.4, and he abetted, allowed, cooperated and coordinated A.3 and got the agreement executed with the technology partners by the APSSDC through A.1 intentionally omitting the important aspects viz. 90% contribution of the technology partners and bank guarantee clauses in the MoU and done official favour to get wrongful gain to the technology partners and gave scope to them to avoid their 90% contribution and to cause wrongful loss to government funds and did not insist on 90% contribution of the technology partners and did not ask/ verify the contribution by the technology partners to do official favour to them. The petitioner, without taking into consideration of the adverse remarks of the officials of finance department noted on the abrupt release of government funds, instructed the officials of the finance department through the then Chief Secretary to release funds immediately without taking 90% contribution from

the technology partners as grant-in-aid and got approved the budget of Rs.371.00 crores.

(h) It is further alleged that on 14.05.2018, a complaint from the DGGSTI Office, Pune was sent to ACB and disclosed all the details of routing of APSSDC funds to shell companies through fake invoices without providing services to APSSDC by M/s. Design Tech and others, and though a regular enquiry was ordered by ACB, but not done anything during tenure of the petitioner as Chief Minister, and with a criminal intention, no steps were taken to stop misappropriation of APSSDC funds in the Siemens Project. The petitioner, through A.1, caused disappearance of evidence i.e. original note file relating to GO Ms.No.4, dated 30.06.2016 through A.3, who was in possession of the file, only to escape liability of commission of the offence and destroy the crucial evidence connected to the case.

(i) It is alleged that the petitioner committed the offences alleged with prior conspiracy with A.38, A.1, A.2

and other accused; led the Cabinet, approved the cost estimation of the project received through A.1 without any assessment, verification, proper DPR and evaluation; approved release of government contribution of Rs.370.00 crores to M/s. Design Tech through his cabinet and allotted the Siemens project on nomination basis and without any tender process; being public servant, conspired, colluded with A.38 and others, with a criminal intention, released government funds without verifying the contribution of technology partners, allowed the other accused to do fraudulent and illegal acts, committed misappropriation of government funds to a tune of Rs.279.00 crores, which were entrusted to them or under their control, by corrupt and illegal methods; abused his official position, fraudulently committed criminal breach of trust and with a common intention, caused wrongful loss to the government exchequer; through A.1, allowed other accused and others to divert APSSDC funds by using fake invoices as genuine one for the purpose of cheating through shell, defunct

companies without providing materials/services to the APSSDC-Siemens project by M/s. Design Tech, by conspiring, colluding and intentionally co-operating in commission of the offence with several acts by the Directors of companies and private persons concerned, and intentionally did not verify about 90% contribution by the technology providers to do favour to the accused, and hence liable to be punished for the offences punishable under Sections 166, 167, 418, 420, 465, 468, 471, 477A, 409, 201, 109 read with 120B read with 34 of the Indian Penal Code, 1860 (for short, 'IPC') and 12, 13 (2) read with 13 (1) (c) & (d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act').

4. Heard the learned senior counsel Sri Harish Salve and Sri Siddharth Luthra appearing on behalf of Sri Ginjupalli Subba Rao, learned counsel for the petitioner and Sri Mukul Rohatgi and Sri Ranjit Kumar, learned senior counsel appearing on behalf of respondent-CID

and Sri Ponnavolu Sudhakar Reddy, learned Additional Advocate General.

5. The learned senior counsel Sri Harish Salve appearing on behalf of the petitioner submitted that the FIR was registered on 09.12.2021 whereas the petitioner is added as A.37 in the said case on 07.09.2023. Amongst other grounds raised in the petition, the learned senior counsel contended Section 17A of the PC Act has not been complied with. According to the learned senior counsel, no permission as contemplated under the said provision, has been obtained from the competent authority. It is his further submission that implication of the petitioner in the present case is nothing but a 'regime revenge investigation'. He further contended that instrumentality of the State is being weaponised for using the force of criminal law and it is a clear abuse of process of law.

The learned senior counsel further submitted that even if the entire accusations are accepted as true, no

prima facie case for the aforesaid offences that are alleged as against the petitioner.

In support of his contentions, he placed reliance on a decision in *Yeshwant Sinha v. CBI*[1]*;* and *Arnab Manoranjan Goswami v. State of Maharashtra & others*[2] and in *State of Punjab v. Davinder Pal Singh Bhullar & others*[3].

6. The learned senior counsel Sri Siddharth Luthra supplemented the arguments of the learned senior counsel Sri Harish Salve. He lucidly explained Section 17A of the PC Act and stated that the aforesaid Section renders a candid clarification that no police officer should conduct an enquiry or inquiry or investigation in any offence alleged to have been committed by a public servant under the PC Act, without the prior approval, if the alleged offences relate to any recommendations made or decision taken by public servant in discharge of official functions or duties. He placed reliance on the

[1] (2020) 2 SCC 338
[2] (2021) 2 SCC 427
[3] (2011) 14 SCC 770

decision of the Karnataka High Court dated 04.07.2023 in Criminal Petition No.531 of 2022, wherein the Karnataka High Court relied on the decision of the Hon'ble Apex Court in *Yeshwant Sinha's* case. He also relied on the following decisions.

(a) In Ms. Mayawati v. Union of India & others[4];

(b) In *Yogesh Nayyar and another v. State of Madhya Pradesh*[5]*;*

(c) Order dated 04.07.2023 passed by the Karnataka High Court in Criminal Petition No.531 of 2022.

7. On the other hand, the learned senior counsel Sri Mukul Rohatgi appearing for respondent-CID contends that the impugned proceedings cannot be quashed since investigation is at nascent stage. The learned senior counsel contended that a huge scam has been unearthed and FIR was registered on 09.12.2021, and during the course of investigation, petitioner has been added as

[4] (2012) 8 SCC 106
[5] 2023 SCC OnLine MP 2049

A.37 on 07.09.2023. Pursuant to the arrest of the petitioner on 09.09.2023, the present Criminal Petition came to be filed on 12.09.2023.

The learned senior counsel contended that Section 17A of the PC Act is not a bar for the police to conduct investigation for the reason that the petitioner herein, being the Head of the Executive Government, was involved in a calculated and deliberate scam, by virtue of which about Rs.370.00 crores of public money of state exchequer has been misappropriated.

The learned senior counsel relied on decisions in *Gogineni Ramanjaneyulu v. State of Andhra Pradesh*[6], *State of Rajasthan v. Tejmal Choudhary*[7], *State of Telangana v. Managipet @ Mangipet Sarveshwar Reddy,*[8] and *Dr. A.Ganapathi v. State* [9](Madras High Court).

The learned senior counsel further contends that there is no need for prior sanction as contemplated under Section 17A of the PC Act for investigation of the

[6] 2023 SCC OnLine AP 467
[7] 2021 SCC OnLine SC 3477
[8] (2019) 19 SCC 87
[9] 2022 SCC OnLine Mad 5378

offences occurred prior to 26.07.2018. The learned senior counsel also relied on a decision in *Shambhu Nath Mishra v. State of Uttar Pradesh*[10] and in *State of Uttar Pradesh v. Paras Nath Singh*[11].

Placing reliance on the decisions in *Neeharika Infrastructure Private Limited v. State of Maharashtra & others*[12] and *State v. M.Maridoss and another*[13], the learned senior counsel contended that reliability or genuineness of the allegations cannot be debated at nascent stage. The learned senior counsel contends that it is not permissible to test the veracity of the statements or scrutinize the voluminous material filed by the petitioner to quash the proceedings, and there are serious allegations as against the petitioner.

8. The learned senior counsel Sri Ranjit Kumar supplemented the arguments submitted by the learned senior counsel Sri Mukul Mukul Rohatgi. The learned

[10] (1997) 5 SCC 326
[11] (2009) 6 SCC 372
[12] 2021 SCC OnLine SC 315
[13] (2023) 4 SCC 338

senior counsel Ranjit Kumar has taken this Court to various documents to show that the entire transactions are not transparent. He further submitted that there is any amount of variance as per the contents mentioned in the MoA and the G.O. No.4, which has been issued subsequently. He relied upon the following judgments.

(a) In *P.V.Jagannath Rao & others v. State of Orissa & others*[14];

(b) In *Krishna Ballabh Sahay & others v. Commission of Inquiry & others*[15];

(c) In *Ramveer Upadhyay & another v. State of U.P. & another*[16];

(d) in *State of Chattisgarh v. Aman Kumar Singh*[17];

(e) in *Jitendra Kumar v. State of Orissa*[18].

9. On the other hand, learned Additional Advocate General Sri Ponnavolu Sudhakar Reddy submits that

[14] AIR 1969 SC 215
[15] AIR 1969 SC 258
[16] 2022 SCC OnLine SC 484
[17] (2023) 6 SCC 559
[18] (2008) 2 SCC 161.

with regard to the allegations of corruption against the officials of APSSDC, the Director General of Anti Corruption Bureau, A.P., Vijayawada, vide Memorandum vide Rc.No.10/RE-CIU/2018, dated 05.06.2018, directed to conduct a regular enquiry into the contents of letter of petition and submit a RE report, by referring to a letter of CBI vide letter No.122 2017(CE-117/2017) CBI/Pune/ 3865, dated 27.10.2017 in the reference therein. According to the learned Additional Advocate General, an enquiry has commenced much prior to the insertion of Section 17A of the PC Act. According to him, in such circumstances, there is no bar on the police to conduct investigation. According to him, any statute that has been incorporated would be prospective in nature. He relied on a Kerala High Court decision in *Shankara Bhat v. State of Kerala*[19].

The learned Additional Advocate General submits that the aforesaid decision was carried to the Hon'ble Supreme Court of India by way of Special Leave to

[19] 2021 SCC OnLine Ker 3427

Appeal (Crl.) No.9341 of 2021, and the same was dismissed by the Hon'ble Supreme Court of India.

10. Section 17A of the PC Act reads as follows:

> "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. "

The abovesaid provision was introduced by means of an Amendment by Act 16 of 2018 with effect from 26.07.2018.

11. The object of the Act is to protect honest public servants from facing enquiry or litigations, where they carry on, to take strenuous efforts in implementation of the schemes and proceed with undaunted decisions.

12. A plain reading of the aforesaid provision goes to show that a police officer is prohibited from conducting enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under the said Act without the previous approval of the competent authority. It is further stated that the bar applies only when the offence alleged committed by the public servant relates to any recommendation made or decision taken by such public servant in discharge of his official functions or duties. The competent authority to grant previous approval is the Central Government, in case of an employee in connection with the affairs of the Union, or the State Government, in case of an employee in connection with the affairs of the State. Previous sanction envisaged under Section 17A of the Act does not apply to 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.

13. Learned senior counsel appearing on behalf of the petitioner, by relying the decision in *Yeshwant Sinha v. CBI* (1 supra), contended that the observations made therein by a Full Bench of the Hon'ble Apex Court gave a *quietus* as to application of Section 17A of the PC Act. The Hon'ble Apex Court held in paragraph Nos.117 to 119 of the said judgment as under:

> **"117.** In terms of Section 17-A, no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions *without previous approval*, inter alia, of the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (*c*), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent CBI, is done after Section 17-A was inserted. The complaint is dated 4-10-2018. Para 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paras 6 and 7 of the complaint are relevant in the context of Section 17-A, which read as follows:
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> "6. We are also aware that recently, Section 17-A of the Act has been brought in by way of an amendment to introduce the requirement of prior

permission of the Government for investigation or inquiry under the Prevention of Corruption Act.

7. We are also aware that this will place you in the peculiar situation, of having to ask the accused himself, for permission to investigate a case against him. We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the Government under Section 17-A of the Prevention of Corruption Act for investigating this offence and under which, "*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*"."

118. Therefore, the petitioners have filed the complaint fully knowing that Section 17-A constituted a bar to any inquiry or enquiry or investigation unless there was previous approval. In fact, a request is made to at least take the first step of seeking permission under Section 17-A of the 2018 Act. Writ Petition (Criminal) No. 298 of 2018 was filed on 24-10-2018 and the complaint is based on non-registration of the FIR. There is no challenge to Section 17-A. Under the law, as it stood, both on the date of filing the petition and even as of today, Section 17-A continues to be on the statute book and it constitutes a bar to any inquiry or enquiry or investigation. The petitioners themselves, in the complaint, request to seek approval in terms of Section 17-A but when it comes to the relief sought in the writ petition, there was no relief claimed in this behalf.

119. Even proceeding on the basis that on petitioners' complaint, an FIR must be registered as it purports to disclose cognizable offences and the Court must so direct, will it not be a futile exercise having regard to Section 17-A. I am, therefore, of the view that though otherwise the petitioners in Writ Petition (Criminal) No. 298 of 2018 may have made

> out a case, having regard to the law actually laid down in *Lalita Kumari* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , and more importantly, Section 17-A of the Prevention of Corruption Act, in a review petition, the petitioners cannot succeed. However, it is *my view* that the judgment sought to be reviewed, would not stand in the way of the first respondent in Writ Petition (Criminal) No. 298 of 2018 from taking action on Ext. P-1, complaint in accordance with law and subject to first respondent obtaining previous approval under Section 17-A of the Prevention of Corruption Act."

14. In *Yogesh Nayyar and another v. State of Madhya Pradesh* (5 supra), it is held thus: (paragraphs 6, 6.1, 6.2 and 9)

> **"6.** A bare perusal of Section 17-A reveals that prior to insertion of said provision in PC Act, the only provision giving protection of prior sanction to prosecution was Section 19 which is applicable at the stage of taking cognizance of offence, but not from any prior date. On 26.07.2018, the Prevention of Corruption Act, 1988 (Amended Act, 2018) under went wide spread amendments including the insertion of Section 17-A which gave an added umbrella of protection to the public servant at the stage of enquiry/inquiry/investigation. The police officer was prohibited from conducting enquiry/inquiry/investigation into any offence alleged under the PC Act when allegations related to

recommendation made or decision taken are as follows:

6.1 In the instant case, learned counsel for prosecution does not dispute that the allegations relate to decision taken or/and recommendation made by petitioners in their capacity as Assistant Engineer and Sub-Engineer. Thus, by the very nature of allegation, the bar contained in Section 17-A gets attracted.

6.2 The prohibition for a police officer is to conduct inquiry or investigation. An investigation is conducted only after an FIR is lodged and since in the instant case, the FIR was lodged on 10.12.2018 which was after Section 17-A of Prevention of Corruption Act, 1988 (Amended Act, 2018) came on the statute book w.e.f. 26.07.2018, police was prohibited from conducting investigation pursuant to the impugned FIR, in the absence of any previous approval of authority competent to remove the petitioners from office at the time when offence was alleged to have been committed.

9. Therefore, the investigation conducted pursuant to impugned FIR stands vitiated on the anvil of Section 17-A of PC Act."

15. Section 17A of the PC Act has been inserted in the Prevention of Corruption Act, 1988 by means of

Prevention of Corruption (Amendment) Act 16 of 2018, which came into force on 26.07.2018. The same cannot have any application unless (i) the Amending Act itself specifies that it will have retrospective effect; or (ii) the Amending Act is exclusively a procedural law which is ordinarily retrospective in operation. It is apparent that the Amending Act does not specify that it has retrospective effect. Hence, it can only have prospective operation. If such is the case, Section 17A of the PC Act cannot be applied in the case of any offence committed prior to 26.07.2018. Admittedly, in the present case on hand, the accusations as against the petitioner and others relate to 2015 to 2018. The parties are ordinarily governed by the law which was prevailing at the time of commission of the offence. All the offences such as Sections 7, 7A, 8, 9, 10, 12, 13, 14 and 15 of the Amendment Act, 16 of 2018 are new offences different from the previous offences.

It is a cardinal principle of construction that every statute is prospective, unless it is expressly or

by necessary implication made to have retrospective operation. There is a presumption against retrospectivity. An express provision should ordinarily be made to make a statute retrospective. The presumption against retrospectivity may also be rebutted by necessary implication as held by this Court in *Akram Ansariv. Chief Election Officer* reported in (2008) 2 SCC 95, which has been referred to and relied upon by the Kerala High Court in its judgment in *K.R.Ramesh v. Central Bureau of Investigation* reported in 2020 SCC OnLine Ker 2529. The device of a legal fiction can also be used to introduce retrospective operation. Generally, it is considered that every statute dealing with substantive rights is *prima facie* prospective unless it is expressly or by necessary implication made retrospective.

In *T.N.Bettaswamaiah v. State of Karnataka* being W.P.No.29176/2019 (GM-RES), decided on 20.12.2019, which is reported in 2019 SCC OnLine Kar 3564, the Karnataka High Court referred to the judgment of this Court in *Hitendra Vishnu Thakur v. State of Maharashtra* reported in (1994) 4 SCC 602, and rightly held:

> "21... But in *Hitendra Vishnu Thakur v. State of Maharashtra,* (1994) 4 SCC 602, it is held that a

> statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided either expressly or by necessary implication. A careful reading of both Section 17A as also Section 19 do not contain any express provision to show that they are retrospective in nature nor it is so discernable by implication.
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> 22. In *Dr.Subramanian Swamy v. Dr.Manmohan Singh,* (2012)3 SCC 64, it is held that any anti-corruption law has to be interpreted in such a fashion as to strengthen fight against corruption and where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption than the one which seeks to perpetuate it."

9. Reference may also be made to the judgment of this Court in *GJ Raja v. Tejraj Surana* reported in (2019) 19 SCC 469, cited by Mr.Saurav Roy, learned counsel appearing on behalf of the appellant, where this Court followed the judgment of this court in *Hitendra Vishnu Thakur* (supra) and held that a statute which affect substantive rights is presumed to be prospective in operation unless made retrospective and unless textually impossible a statute which merely affects procedure is presumed to be retrospective. However, a statute which not

only changes the procedure but also creates new rights or liabilities is to be construed to be prospective in operation, unless otherwise provided either expressly or by necessary implication.

(See *State of Rajasthan v. Tejmal Choudhary)*

16. In *Pilli Sambasiva Rao v. State of Telangana,* the Telangana High Court held that the Prevention of Corruption (Amendment) Act 16 of 2018, including amended Section 19 of the PC Act, 1988, does not apply retrospectively. There is no duty cast upon the authorities to obtain sanction to prosecute an employee not in service for prosecution for the offences under the PC Act, 1988 which were committed before the coming into force of 2018 Amended Act. It is pertinent to mention here that in the case on hand, a regular enquiry was already ordered on 05.06.2018 with regard to the allegations of corruption against the officials of APSSDC, by the Director General of Anti Corruption Bureau, A.P., Vijayawada, by referring to a letter of CBI vide letter No.122 2017(CE-117/2017) CBI/Pune/ 3865, dated

27.10.2017 in the reference therein, which is much prior to insertion of the aforesaid provision.

Accepting bribe or making attempt to obtain bribe cannot be considered as an act done by the petitioners in discharge of their official functions or duties. Though the offence allegedly committed by the petitioners was in relation to appointment of staff in the Bank, accepting bribe or making demand for bribe for such appointment, cannot be considered as an act which is directly related to any decision or recommendation made by the petitioners in discharge of their official duties or functions. The act, which constitutes the offence under the Act, which was allegedly committed by the petitioners, had no reasonable connection with their official functions or duties. Therefore, Section 17A of the Act has no application to the facts of the case.

The discussion above leads to the following conclusions. The bar under Section 17A of the Act with regard to conducting enquiry/investigation operates against the police officer or the investigating agency concerned and it does not create any fetter on the power of a constitutional court to order preliminary enquiry or investigation into an offence under the Act. Once a constitutional court examines and satisfies itself about the

necessity or desirability of an enquiry or investigation into an offence under the Act and passes an order to conduct enquiry or investigation, the police officer concerned is not obliged to obtain previous approval of the competent authority, as envisaged under Section 17A of the Act, to conduct such enquiry or investigation.

(See Venugopal V. & others v. State of Kerala)

17. Viewed from any angle, Section 17A of the PC Act would not be applicable to all the cases which occurred before 26.07.2018. Section 17A will be attracted only if the offence is allegedly committed only by a public servant in discharge of his official duties. This means that if the acts constituting the offence do not relate to any recommendation made or decision taken by a public servant, Section 17A is not applicable. If the recommendation made or decision taken by the public servant is not in discharge of his official functions or duties, even then, the aforesaid provision is not attracted. The reason for bringing forth the bill leading to Amendment Act 16 of 2018, it has been stated that

Section 6A of the Delhi Special Police Establishment Act, 1946 contains a protection for prior approval of the Central Government in respect of officers working at policy making levels in the Central Government before any inquiry or investigation is conducted against them by the Delhi Special Police Establishment. The basic principle behind the protection under Section 19 of the Prevention of Corruption Act, 1988 and Section 6A of the Delhi Special Police Establishment Act, 1946 being the same viz. protection of honest civil servants from harassment by way of investigation or prosecution for things done in *bona fide* performance of public duty, it is felt that the protection under both these provisions should be available to public servants even after they cease to be public servants or after they cease to hold sensitive policy level position as the case may be. Therefore, Section 6A of the Delhi Special Police Establishment Act, 1946 was amended extending the protection of prior approval of the Central Government before conducting any inquiry or investigation in respect

of the offences under the Prevention of Corruption Act, 1988 by the civil servants holding such senior policy level positions even after they cease to hold such positions due to reversion, retirement or other reasons. In *Dr.Subramanian Swamy v. Director, CBI* reported in AIR 2014 SC 2140, a five Judge Bench of the Hon'ble Apex Court struck down Section 6 A (1) of the Delhi Special Police Establishment Act, 1946 as being violative of Article 14 of the Constitution of India. Now, it has to be seen as to whether Section 17A of the PC Act (which is specter of the exterminated Section 6A) will survive the test of speedy trial emanating from Article 21 of the Constitution of India. The above objective of the Parliament in extending protection in the form of previous approval of the Government to honest officers at the decision making level even before the commencement of investigation, has been imbibed by Courts while attempting to resolve disputes regarding the applicability of Section 17A of the PC Act.

> The object of Section 17A of the Act is to protect public servants from malicious, vexatious and baseless prosecution. It cannot be construed as a protective shield for corrupt public servants. A public servant cannot be left to be under constant apprehension that *bona fide* decisions taken by him would be open to enquiry, inquiry or investigation on the basis of frivolous and false complaints made against him. If every decision taken by a public servant is viewed with suspicion, the public administration will come to a grinding halt at the persons responsible for taking decisions would lose their enthusiasm. Section 17A of the At intends to avoid such a situation."
>
> (See Jayaprakash, J. v. State of Kerala)

18. Learned senior counsel appearing on behalf of CID Sri Mukul Rohatgi made a scathing attack stating that any accusations of creating or fabricating false records and misappropriation of public funds in furtherance of discharge of the official duties of a public servant, the protection under Section 17A of the Act would not be applicable. He placed reliance on the judgment in

Shambhoo Nath Misra v. State of U.P. & others[20], wherein the Hon'ble Apex Court held thus: (paragraphs 4 and 5).

> **"4.** Section 197(1) postulates that "when any person who is … a public servant not removable from his office, save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction" of the appropriate Government/authority. The essential requirement postulated for the sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of the performance of his official duties. If the act/omission is integral to the performance of public duty, the public servant is entitled to the protection under Section 197(1) of CrPC. Without the previous sanction, the complaint/charge against him for the alleged offence cannot be proceeded with in the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of the sanction by competent authority or appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The

[20] (1997) 5 SCC 326

> Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a finding that the crime and the official duty are not integrally connected.
>
> **5.** The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained."

When the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund, etc., it cannot be said that he acted in discharge of his official duties because it is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund,

etc.. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction.

By virtue of the aforesaid rulings, the legislative intent in its enactment of Section 17A of the PC Act is only protect public servants in *bona fide* discharge of official functions or duties. However, when the act of the public servant is *ex facie* criminal or constitutes an offence, prior approval would not be necessary.

19. In *State of UP v. Paras Singh* (2009) 6 SCC 372, the question that arose was whether sanction was required for prosecution of a public servant charged with Sections 409 and 468 IPC. It was held that the use of expression 'official duty' implies that act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duties. There must be a reasonable connection between the act and the discharge of the official duty. The act must bear such relation to duty that the accused

could lay a reasonable claim but not a pretended or fanciful claim that he did it in the course of performance of his duty. In the aforesaid decision, there is a clear division between those acts which constitute an offence and those acts though done while discharging the official duties of the public servant, do not *ipso facto* constitute an act done or purported to be done in discharge of his official duties, as contemplated under Section 197 (1) CrPC. The law laid down seems to be consistent that if a criminal offence is committed by a public servant, which is unconnected with his duty, sanction under Section 197 CrPC was not required, since it undoubtedly does not form part of his official duty or purported to be done, in discharge of his official duty. No doubt, Section 197 CrPC and Section 17A of the PC Act operate in two different fields and in distinct situations. Apparently, it has nothing in common at all. However, consistent principle laid down by the decisions referred to supra, in relation to any offence committed by a public servant while 'acting or purporting to act in discharge of

his official duty' can be profitably adverted to answer the legal issue involved in relation to Section 17A of the PC Act. The decisions referred to, supra are based on the principle that the commission of crimes by a public servant which had no connection with his official duty, cannot be considered as one within the scope of Section 197 CrPC. Extending the principle to Section 17A of the PC Act, it can be said that offences like misappropriation, falsification of accounts, cheating, criminal breach of trust, receiving bribes, etc. are beyond the scope of the provision.

The Law Commission of India in its 254th report had referred to the scope of section 17A(1) of the Prevention of Corruption Amendment Bill dated 2013. After referring to the proposed Section 17 A(1), the Law Commission in Chapter VII, at para 7.1.2., opined that the proposed section 17A(1) introduced a limited requirement of previous approval to prosecute persons, who are or were alleged to have been public servants at the time of the alleged offence. It was held that this was in line with the

provisions of Section 197 Cr.P.C. and the scheme of Section 14 of the Lokpal Act. It was opined that the proviso to proposed to section 17 A(1) was similar to Clause 2 of the repealed section 6A of the Delhi Special Police Establishment Act, 1946, which provided that in certain factual scenario, no sanction previous approval would be necessary. However, the proviso to the proposed section 17A(1) was narrower than section 6A of the Delhi Special Police Establishment Act, requiring that even if a person is caught on the spot while accepting illegal gratification., it would have to be shown by the prosecution that it was intended that such acceptance was consequential to a relevant public function or activity being performed.

In the proviso to the proposed section 17A(1), it was provided that the taking of bribe must have been with the intention that a relevant public function or activities shall be performed improperly, either by himself or by another public servant. It was held by the law commission that the above provision imposed a duty on

the prosecution not only to show that the bribe or illegal remuneration/consideration was obtained, that it was in consequence of a relevant pubic function or that duty shall be performed improperly, either by himself or any public servant. Hence, it was suggested that the above part in the proviso shall be omitted. Except that, no other suggestion was made by the Law Commission, in relation to Section 17A. The above report does not throw any light as to the scope and ambit of Section 17A of PC Act, except that it was in line with Section 197 Cr.P.C.

20. Prior approval under Section 17A was required only where the alleged offence was relatable to "any recommendation made or decision taken by the public servant". This seems to be the heart and soul of the above section. It is clear that the Parliament has consciously used the above words. If the intention of the Parliament was to impose a pre-condition that every enquiry, inquiry or investigation into every allegation of offence against a public servant required prior sanction, the words "where the alleged offence is relatable to any

recommendation made or decision taken by the public servant" ought not have been there. If the above words are omitted, it would have meant that no police officer shall conduct any enquiry or inqury or investigation into any offence alleged to have been committed by a public servant under this Act in discharge of his official function or duties without the previous approval of the competent authority. By virtue of the above, it is clear that the intention of the Parliament was not to insist for previous approval in relation to enquiry, inquiry or investigation only in relation to every offence committed by the public servant.

21. The Delhi High Court in *Devendra Kumar* v. *CBI* (W.P. (Criminal) No. 3247/2018 and connected matters), dealt with the scope of Section of the 17A PC Act. The complainant alleged that he was being harassed by the investigating officer and that the investigation officer demanded huge amount from him for not charging a case against him. On the question whether the

prosecution of the police officer required sanction, it was held by the Delhi High Court that the alleged promise to the complainant to ultimately give him relief cannot be said to be one done in discharge of the official function or duties of the public servant. It was held that the bar to enquiry or inquiry or investigation under Section 17A of the PC Act is apropos such alleged offence as may be relatable to any recommendation made or decision taken by a public servant in discharge of his official function or duties. In the present case, there was no recommendation or decision on record by public servant in discharge of his official functions. It was only such acts done in discharge of the official functions that would have become the subject matter for seeking approval of the employer. It was held that a public servant cannot possibly be left to be under constant apprehension that bona fide decisions taken by him would be open to enquiry, inquiry or investigation on the complaint of a stranger. Section 17A, as it reads, and the legislative intent can only be to protect a public servant in the *bona*

fide discharge of official functions or duties. However, when the act of a public servant is *ex facie* criminal or constitutes an offence, prior approval of the Government would not be necessary, it was held.

22. Section 17A of the PC Act cannot be made applicable in those cases where the act of the public servant that amounts to an offence appears on the face of it lacking in good faith. Issuing public building license and no objection certificates cannot be said to be acts done in good faith. Where the performance of public function is grossly improper, the safe conclusion at least at the initial stage can be that it was in anticipation for in consequence of accepting an undue advantage from the beneficiary. Use or utilization of public funds by a public servant under the colour of authority but really for his own benefit cannot be considered as an act done in discharge of his official functions or duties. Such an act is not entitled to get the protection under Section 17A of the Act.

23. Tested on the touchstone of the principles mentioned above, the decision taken or recommendation made by petitioner to grant sanction for payment of money on the basis of the documents and committing misappropriation of amount cannot be considered as acts done by him in discharge of his official duties or functions. Therefore, no prior approval from the competent authority was necessary for investigation into the offences alleged.

24. It is pertinent to mention here that a preliminary enquiry is mandatory before registering an FIR as laid down in *Lalita Kumari v. Government of U.P.*[21] The issue before the Hon'ble Apex Court was whether a police officer is bound to register FIR upon receiving an information relating to commission of a cognizable offence under Section 154 CrPC or whether the police officer has power to conduct a preliminary enquiry in order to test veracity of such information, before

[21] (2014) 1 SCC (Cri.) 524

registration of FIR. It is answered by the Hon'ble Apex Court in the aforesaid decision that a police officer need not conduct a preliminary enquiry and he can register an FIR when once information discloses commission of a cognizable offence. However, the Hon'ble Apex Court is cognizant of the possible misuse of power in criminal law resulting in registration of frivolous FIR, thereby the Hon'ble Apex Court formulated certain exceptions to the general rule.

Exceptions

> **"115.** Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.
>
> **117.** In the context of offences relating to corruption, this Court in *P. Sirajuddin* [*P. Sirajuddin* v. *State of Madras*, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] expressed the need for a preliminary inquiry before proceeding against public servants.
>
> **119.** Therefore, in view of various counterclaims regarding registration or non-registration, what is

> necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

The conclusions that were formulated in the said judgment are as under:

> "120. In view of the aforesaid discussion, we hold:
>
> 120.1: The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> 120.2 : If the information received does not disclose a cognizable offence, but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not;

> ..
>
> 120.5: The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
>
> 12.06: As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made as under:
> (a) Matrimonial disputes/family disputes.
> (b) Commercial offences;
> (c) Medical negligence cases;
> (d) Corruption cases;
> (e) cases where there is abnormal delay/laches in initiating criminal prosecution,..”

25. It is held in *State of Telangana v. Managipet @ Mangipet Sarveshwar Reddy,*[22] that in the first information report given to police in connection with a corruption case, in case if there are clear allegations of a cognizable offence are made under the PC Act have not been committed. In such a situation, it is stated that even preliminary enquiry is unnecessary’. In those cases, where an FIR was registered without a police officer conducting a preliminary enquiry, it is held that FIR is not liable to be quashed. It has been observed

[22] (2019) 19 SCC 87

that in the present case, the FIR itself shows that the information collected is in respect of a disproportionate assets of accused officer; the purpose of preliminary enquiry is to screen wholly frivolous and motivated complaints in furtherance of acting fairly and objectively; herein, relevant information was available with the informant in respect of *prima facie* allegations disclosing a cognizable offence; therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him, and it cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted.

26. In *Central Bureau of Investigation and another v. Thommandru Hannah Vijayalakshmi alias T.H.Vijayalakshmi and another*[23], a Full Bench of the Hon'ble Apex Court held thus: (paragraph 37)

[23] 2021 SCC OnLine SC 923

> **"37.** The precedents of this Court and the provisions of the CBI Manual make it abundantly clear that a Preliminary Enquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in *Lalita Kumari* (supra) holds that if the information received discloses the commission of a cognizable offence at the outset, no Preliminary Enquiry would be required. It also clarified that the scope of a Preliminary Enquiry is not to check the veracity of the information received, but only to scrutinize whether it discloses the commission of a cognizable offence. Similarly, para 9.1 of the CBI Manual notes that a Preliminary Enquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. Even when a Preliminary Enquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the commission of a cognizable offence. A similar conclusion has been reached by a two Judge Bench in *Managipet* (supra) as well. Hence, the proposition that a Preliminary Enquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in *Lalita Kumari* (supra) but would also tear apart the framework created by the CBI Manual."

In the aforementioned decision, the Hon'ble Apex Court was dealing with the provisions under Section 6 of the Delhi Special Police Establishment Act, 1946. In the aforesaid decision, it is categorically stated that the provisions are abundantly clear that a preliminary

enquiry is not mandatory in all cases which involve allegations of corruption, and the decision of the Constitution Bench in *Lalita Kumari's* case holds that if the information received discloses commission of a cognizable offence at the outset, no preliminary enquiry would be required. It is also clarified that scope of a preliminary enquiry is not to check the veracity of the information received, but only to scrutinize whether it discloses commission of a cognizable offence or not.

It is further held that the accused has no right to demand a preliminary enquiry and the question whether such enquiry is required or not, will depend on facts and circumstances of each case. It is further observed that a 'preliminary enquiry' cannot be said to be an added requirement before registration of an FIR even in corruption cases and that if the information received discloses commission of a cognizable offence, police officer can directly register a case without conducting a preliminary enquiry.

27. In similarly placed factual situation, this Court in *Kinjaapu Atchannaidu v. State of A.P.*[24], held as under: (paragraphs 41, 42 and 50)

> **"41.** One of the learned Judges of then High Court of Andhra Pradesh at Hyderabad in Crl.P. No. 9144 of 2018 dated 16.11.2018 observed that amended provisions of Section 19 of the Prevention of Corruption Act are prospective in operation without retroactive application. It was followed in a later order of this Court in Crl.P. No. 4775 of 2019, dated 23.01.2020 among others.
>
> **42.** In Station House Officer, CBI/ACB/ Bangalore v. B.A. Srinivasan (17 referred to supra) the effect of Section 197 Cr.P.C. is considered observing that the acts complained of to attract Section 197 Cr.P.C. should be integrally connected to the official duties and functions of a public servant and if the office became merely a cloak to indulge in activities resulting in unlawful gain to the beneficiaries, it would not offer any protection. It is further observed that protection under Section 19 of the Prevention of Corruption Act (before amendment) similarly did not offer any protection to the retired public servant. Effort of learned Advocate General in placing reliance on this ruling is to draw a parallel between Section 197 Cr.P.C. and Section 17-A of the Prevention of Corruption Act.
>
> 50. Contentions are advanced on behalf of both the parties as to whether there was any preliminary enquiry before registering FIR in this case. On behalf of the petitioner, contents of the counters filed by the respondent agency in the trial Court as

[24] 2020 SCC OnLine AP 533

> well as in this Court are referred to, in this context. On behalf of the respondent, the contention is that there was a vigilance enquiry preceding issuance of authorization under Section 17A of the Prevention of Corruption Act registration of FIR and that it is not in any manner affected. When the instances pointed out in this case attract cognizable offences leading to registration of FIR, as observed in *Lalita Kumari* case, registration in terms of Section 154 Cr.P.C. of FIR is imminent. Even otherwise, prima facie consideration of the material makes out that there was a prior effort in this respect, in the nature of vigilance enquiry basing on which, the complaint was presented, on which FIR was registered."

28. Apparently, on the factual aspect of record, the offences that are alleged would attract cognizable offence leading to registration of the FIR as observed in *Lalita Kumari's* case (supra). Registration in terms of Section 154 CrPC is imminent. On a reading of the material on record goes to show that much earlier, there was an enquiry prior to insertion of Section 17A of the PC Act, basing on which a complaint was presented on which the subject FIR has been registered. It should be borne in mind that where instances representing serious economical offences, the approach has to be different, more particularly when the investigation is at nascent

stage. It is pertinent to mention here that the object of the Act has to be taken into consideration.

29. The allegations, in brief, as against the petitioner are that he is alleged to have conspired with the other accused to misappropriate funds from the public exchequer. For a project, which could be executed at a cost of only Rs.110.00 to Rs.130.00 crores, a false façade was created that it is worth Rs.3,300.00 crores. A work order of Rs.371.00 crores was given on nomination basis. Of this, at least Rs.241.00 crores was misappropriated. The petitioner, A.6 and others, conspired together and got the APSSDC incorporated without the due approval of the Council of Ministers. The petitioner is alleged to have obtained the approval of the Council of Ministers for release of Rs.371.00 crores (10% of the cost of the project) by projecting to them that Siemens and Designtech would implement a training project valued at Rs.3,300.00 crores and that 90% of the cost of the project would be borne by the technology partners. It is

alleged that, the Resolution, by the Council of Ministers and G.O.Ms.No.4, explicitly mentioned that 90% contribution was a grant-in-aid from the technology partners (money investment), but, within a few weeks, A.6, the then M.D. of Siemens, started referring to it as grant-in-kind and urged the petitioner and the Principal Finance Secretary to release the money pertaining to 10% share of the Government. G.O.Ms.No.4 mentions the terms on the same lines, as the above approval of the Council of Ministers (90% and 10% share in between the technology partners and the Government of Andhra Pradesh). The draft of MoA which was approved on the same note file, deliberately left out these terms and conditions.

The MoA was drafted on the lines of a work order as it were a project of Rs.371.00 crores, being given to Siemens and Designtech on 'nomination basis. The co-accused screened this note file. It was possible for the investigating agency to reconstruct the sequence through

other connected note files. The entire amount of Rs.371.00 crores was released in advance.

The central agencies such as D.G.G. S.T.I., Income Tax Department, the internal investigation done by Global Compliance Team of the Siemens and the Forensic Audit conducted by the APSSDC, detected subsequently that about Rs.241.00 crores were misappropriated by using network of shell companies and bogus invoices. The Income Tax Department had issued a notice under Section 160 CrPC to one Pendyala Srinivas, who worked as Personal Secretary to the petitioner, but the said person absconded to U.S.A. The management of Siemens India had conveyed that A.6 is no longer associated with them. It is further admitted by them that they did not have any scheme contributing 90% of the cost of the project as grant-in-aid.

30. A perusal of the record goes to show that an Audit was conducted. Basing on the conclusions arrived at, in

the Audit report, there is diversion of funds to a tune of Rs.241,78,61,508/- + payment made to M/s. ACI through various shell companies.

31. The learned senior counsel Sri Harish Salve appearing for the petitioner in his reply reiterated his contention with regard to bar under Section 17A of the PC Act and submitted that on a perusal of the entire material on record goes to show that no offences are made out as against the petitioner. According to the learned senior counsel, no steps were taken to assess the misappropriation of the APSSDC funds in the Siemens Project. According to him, though a regular enquiry was ordered by the ACB, nothing has been elicited during the tenure of the petitioner as Chief Minister. He further submits that there was a project sanction in which CITD and six clusters have been established and they were in operation. He further submits that the petitioner is a former Chief Minister, aged 73 years, and the question of petitioner fleeing away does not arise.

32. The learned senior counsel Sri Siddharth Luthra appearing on behalf of the petitioner, supplementing further, submitted that this Court granted bail to a co-accused in the subject crime. He relied upon certain observations made by this Court in the said Order. This Court is of the opinion that parameters for consideration do differ in case of a bail application to that of a petition filed under Section 482 CrPC to quash the FIR.

33. At this stage, the learned senior counsel Sri Mukul Rohatgi appearing for respondent-CID submits that the petitioner has been shown as A.37 on 09.09.2023 and on 12.09.2023 the present petition has been filed to quash the FIR. Investigation in so far as petitioner is concerned, it is at nascent stage, and at this stage, this Court should not interfere with the proceedings in a petition under Section 482 CrPC. The learned senior counsel placed reliance on the decision in *Neeharika Infrastructure Private Limited v. State of Maharashtra & others* (12 supra), wherein it is held thus: (paragraph 80)

"Conclusions:

80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr. P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an

appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR..”

34. The learned senior counsel also relied on a decision in *State v. M.Maridoss and another* (13 supra), wherein, in similar circumstances, without giving any reasonable time for the investigating agency to investigate into the allegations in the FIR, the High Court quashed the proceedings. In the aforesaid case, FIR was lodged on

09.12.2021, quash petition was filed on 10.12.2021 and the High Court quashed it on 14.12.2021. He submits that in the present case, the petitioner has been shown as A.37 on 07.09.2023, he was arrested on 09.09.2023, sent to judicial custody on 10.09.2023 and the quash petition was filed on 12.09.2023. The Hon'ble Apex Court held in *State v. M.Maridoss and another* (13 supra), as under: (paragraphs 8 to 12).

> **"8.** Even otherwise, it is a settled position of law that while exercising powers under Section 482CrPC, the High Court is not required to conduct the mini trial. What is required to be considered at that stage is the nature of accusations and allegations in the FIR and whether the averments/allegations in the FIR prima facie disclose the commission of the cognizable offence or not.
>
> **9.** Under the circumstances, the impugned judgment and order passed by the High Court, which is just contrary to the decision of this Court in *Neeharika Infrastructure* [*Neeharika Infrastructure (P) Ltd.* v. *State of Maharashtra*, (2021) 19 SCC 401 : 2021 SCC OnLine SC 315] and the other decisions on the point, is unsustainable.
>
> **10.** It is also required to be noticed that in the present case without giving any reasonable time to the investigating agency to investigate the allegations in the FIR, the High Court has, in haste, quashed the criminal proceedings. The FIR came to be lodged on 9-12-2021, immediately, on the very next date, the quashing petition was filed and within

> a period of four days i.e. 14-12-2021, the impugned judgment and order [*M. Maridoss* v. *State*, 2021 SCC OnLine Mad 13703] has been passed and the criminal proceedings are quashed.
>
> **11.** As per the settled position of law, it is the right conferred upon the investigating agency to conduct the investigation and reasonable time should be given to the investigating agency to conduct the investigation unless it is found that the allegations in the FIR do not disclose any cognizable offence at all or the complaint is barred by any law.
>
> **12.** Under the circumstances also, the impugned judgment and order [*M. Maridoss* v. *State*, 2021 SCC OnLine Mad 13703] passed by the High Court quashing and setting aside the criminal proceedings deserves to be quashed and set aside."

35. Since *Bhajanlal's* case to *Neeharika Infrastructure Private Limited v. State of Maharashtra & others,* the Hon'ble Supreme Court laid down parameters for exercise of jurisdiction under Section 482 CrPC. In the light of the discussion as above, this Court is of the view that none of the parameters laid down by the Hon'ble Supreme Court for interference by this Court at this stage has been made out.

36. Amidst the aforesaid rival submissions of both the senior counsel, this Court is of the opinion that in

respect of the disputed questions of fact, a mini trial cannot be conducted by this Court in a petition filed under Section 482 CrPC. The investigating agency, pursuant to the registration of the crime in the year 2021, examined as many as more than 140 witnesses and collected documents to the tune of more than 4000. Profligacy is such an esoteric subject, where investigation has to be carried with utmost proficiency by the professionals. At this stage, where the investigation is on fulcrum of attaining finalty, this Court is not inclined to interfere with the impugned proceedings.

37. The Criminal Petition is devoid of merit and is, accordingly, dismissed, and the consequential reliefs sought are dismissed.

Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

JUSTICE K. SREENIVASA REDDY

22.09.2023.
DRK

THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL PETITION NO.6942 OF 2023

22.09.2023

DRK