



2025 INSC 515

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Crl.) No.520/2021

B.S YEDDIYURAPPA

Petitioner(s)

VERSUS

A ALAM PASHA & ORS.

Respondent(s)

WITH

SLP(Crl) No. 758/2021

SLP(Crl) No. 2318/2021

SLP(Crl) No. 2753/2021

SLP(Crl) No. 3372/2021

SLP(Crl) No. 9361/2021

SLP(Crl) No. 8675/2022

SLP(Crl) No. 5333-5347/2016

O R D E R

1. We heard these matters at length across several dates and concluded the hearing on 04.04.2025 framing, *inter alia*, the following questions for our consideration:

- I. What are the relevant considerations as contemplated by Section 17A of the Prevention of Corruption Act, 1988 (for short, "the PC Act") which the appropriate authority or government is expected to look into before the grant of approval for initiation of any enquiry, inquiry, or investigation by the police?
- II. Whether the considerations which weigh with the appropriate authority or government while granting approval under Section 17A of the PC Act are fundamentally so different from the one that a Magistrate is ordinarily expected to apply while passing an order under Section 156(3) of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") so as to preclude the Magistrate from fulfilling the object underlying Section 17A of the PC Act? In other words, whether the considerations under Section 17A of the PC Act are of such a nature that they are necessarily beyond the ambit or scope of consideration by a Magistrate while directing an investigation

under Section 156(3) of the Cr.P.C.?

- III. As a natural corollary of the aforesaid, could it be said that once a Magistrate has applied his mind under Section 156(3) of the Cr.P.C., the requirement of a prior approval under Section 17A of the PC Act is meaningless, redundant and no longer necessary? Could it be said that a police officer, despite a direction under Section 156(3) by a Magistrate, would remain inhibited from conducting any enquiry, inquiry, or investigation without prior approval as required by Section 17A? If yes, how does the standard of application of mind by the appropriate authority differ from that of the Magistrate?
- IV. In case of a private complaint, whether Section 19 of the PC Act, more particularly parts (i) and (ii) of the First Proviso therein contemplates that sanction would be required only after the Magistrate first completes the stage of examining the complainant and / or causing a magisterial inquiry wherever necessary in terms of Section(s) 200 and 202 of the Cr.P.C. respectively? In other words, whether the three conditions envisaged under the First Proviso, namely that a complaint has been filed as per Part (i) and that the court has not only not dismissed such complaint but also explicitly directed the obtainment of sanction as per Part (ii), necessarily implies that it is open for the Magistrate to proceed in terms of Chapter XV more particularly under Section(s) 200, 202 and 203 even without the grant of sanction under Section 19 of the PC Act? If so, whether such an interpretation is limited only for the purpose of "cognizance" under Section 19 of the PC Act?
- V. Whether, Part (ii) of the First Proviso to Section 19 of the PC Act, more particularly the expression "the court has not dismissed the complaint under section 203" necessarily envisages that the Magistrate ought to have first considered the statements of the complainant and the witnesses(s) and / or of any magisterial inquiry in terms of Section(s) 200 and 202 of the Cr.P.C.? In other words, could it be said that the Magistrate takes cognizance only after

deciding not to dismiss the complaint under Section 203 especially in light of the decision in Legal Remembrancer v. Abani Kumar Banerji, reported in 1950 SCC OnLine Cal 49, which observed thus:

"9. I have for myself no hesitation in feeling that there is nothing which would justify our referring the matter to the Full Bench. As I read s. 190 of the Code of Criminal Procedure and the subsequent sections, it seems to me to be clear that a magistrate is not bound to take cognizance of an offence, merely because a petition of complaint is filed before him. Mr. Mukherji's argument is that a magistrate cannot possibly take any action with regard to a petition of complaint, without applying his mind to it, and taking cognizance of the offence mentioned in the complaint necessarily takes place, when the magistrate's mind is applied to the petition. Consequently Mr. Mukherji argues, whenever a magistrate takes the action, say, of issuing search warrant or asking the police to enquire and to investigate, he has taken cognizance of the case. In my judgment, this is putting a wrong connotation on the words "taking cognizance". What is "taking cognizance" has not been defined in the Code of Criminal Procedure, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any magistrate has taken cognizance of any offence under s. 190(1)(a) of the Code of Criminal Procedure, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter,—proceeding under s. 200, and thereafter sending it for enquiry and report under s. 202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under s. 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. My conclusion, therefore, is that the learned magistrate is wrong in thinking that the Chief Presidency Magistrate was bound to

take cognizance of the case as soon as the petition of complaint was filed." (Emphasis supplied)

- VI. Whether it could be said that the First Proviso to Section 19 of the PC Act is detached from the substantive part contained in sub-section (1) of the said provision?
- VII. Whether the requirements introduced by Section 17A and the amended Section 19 of the PC Act could be said to be retrospectively applicable? Since the aforesaid procedural changes were brought in tandem with the substantive changes in the very offences itself as provided under Section(s) 7, 11, 13 and 15 respectively of the PC Act by way of the 2018 Amendment Act, whether the same necessarily implies that the introduction of Section 17A as-well as the amendment of Section 19 were not merely procedural but also substantive in nature, and thus, only ought to be applicable prospectively? In other words, whether the conspectus of amendments to the PC Act, i.e., Section(s) 7, 11, 13, 15, 17A and 19 respectively is so intrinsically intertwined with each other in such a manner that they can neither survive without each other nor can they be read in isolation from one another and thus can only be regarded as nothing but substantive in nature?

Notwithstanding the fact that the changes brought about by Section 17A and the amended Section 19 of the PC Act are substantive in nature and not merely procedural, could it be said that the said provisions would nevertheless have a retrospective effect by virtue of the said provisions either being clarificatory and explanatory in nature or having the effect of providing certain safeguards and benefits to the accused persons under the PC Act that ought to enure to the benefit of an accused retrospectively?"

2. The context in which the aforesaid issues arise would be clear from what is narrated below.
3. On 26.04.2012, the first respondent filed a complaint

against the petitioner and others (who were Government Servants) alleging commission of offences, inter alia, punishable under section 13 (1)(c) read with section 13 (2) of the Prevention of Corruption Act, 1988¹.

4. At the time of commission of the alleged offences, the petitioner was Chief Minister, Karnataka, which office he held from 30.05.2008 to 31.07.2011. By an order dated 21.05.2012, passed under section 156 (3) of Code of Criminal Procedure, 1973², the complaint was referred to Lokayukta police for investigation. Pursuant thereto, FIR was registered alleging commission of offences under the Indian Penal Code, 1860 (for short IPC) and the PC Act.

5. Pursuant to the investigation, a final report was submitted, and cognizance was taken on 24.06.2013. Aggrieved therewith, the petitioner invoked the jurisdiction of the High Court under section 482 of the CrPC for quashing the aforementioned FIR and consequential proceedings by placing reliance on a decision of this Court in "*Anil Kumar vs. M.K. Aiyappa*"³, wherein it was held that "once it was noticed that there was no previous sanction, the

¹ PC Act

² CrPC

³ (2013) 10 SCC 705

Magistrate cannot order investigation against the public servant while invoking powers under section 156 (3) of CrPC".

6. The High Court by its order dated 11.10.2013 allowed the 482 CrPC petition and quashed the FIR as well as the subsequent proceedings in absence of sanction by relying upon the decision of this Court in Aiyappa (supra) .

7. The order dated 11.10.2013 attained finality. However, on 12.12.2013, the first respondent filed another complaint making almost identical allegations by adding that the accused have ceased to hold office therefore sanction to prosecute them under section 19 of the PC Act is not required.

8. On 26.08.2016, the trial court dismissed the second complaint, inter alia, on the ground that there was no sanction.

9. Aggrieved by dismissal of the second complaint, the first respondent filed a 482 petition before the High Court, which came to be allowed by the impugned order dated 05.01.2021.

10. While allowing the 482 petition the High Court, inter alia, directed that the PCR No.32/2014 shall stand restored to the file and shall proceed against the accused, except accused no.3 in respect of whom the sanction was denied, in accordance with law.

11. Aggrieved by the aforesaid order of the High Court, this petition has been filed. Briefly put, submissions on behalf of petitioner, inter alia, are: (a) second complaint is not maintainable; (b) sanction is required in view of amended Section 19 and newly inserted Section 17-A of the PC Act; (c) Aiyappa's (supra) judgment is a good law unless set aside by a larger Bench where the reference is pending, therefore, High Court was not justified in interfering with the order rejecting the complaint.

12. Elaborating upon the aforesaid submissions, on behalf of the petitioner it was argued that the allegations in the complaint if are taken at their face value would relate to a decision taken by a public servant in discharge of his official functions or duties and therefore, the bar on investigation as put by section 17 A of the PC Act, inserted by Act 16 of 2018, with effect from 26.07.2018, would apply even if we assume that while passing order under Section 156(3) the Magistrate does not take cognizance. But so long Aiyappa's judgment stands, bar of section 19 of PC Act as well as section 197 of CrPC would apply.

13. Elaborating further on the bar of section 19 of the PC Act, it was argued that pursuant to the amendment brought to section 19 by Act 16 of 2018, if the commission of offence relates to the period while

such person was in service, the protection of section 19 would be available regardless of his continuance in service.

13. In addition to above, it was argued that insofar as the offences under the IPC are concerned, the requirement of sanction under section 197 of the CrPC is required, even though the accused is no longer in office.

14. It was also argued that on the question as to whether the protection of section 17 A would be available in respect of offences committed prior to the date of its insertion in the statute book, there is a split verdict of this Court, and the matter has been referred to a larger bench in "*Nara Chandrababu Naidu vs. State of Andhra Pradesh and Another*⁴".

15. Besides above, on behalf of the petitioner, it was argued that though correctness of the decision in Aiyappa's case has been doubted and referred to a larger bench of this court in "*Manju Surana vs. Sunil Arora & Ors.*⁵", the decision of the larger bench is yet to come.

16. Per contra, on behalf of the respondents, it was submitted, inter alia, that Aiyappa's decision is in the teeth of a three-Judge bench decision of this Court in

⁴ (2024) SCC OnLine SC 47

⁵ (2018) 5 SCC 557

"*R.R. Chari vs. State of Uttar Pradesh*⁶" as also the settled position that while exercising power under section 156 (3) of CrPC, the concerned Magistrate does not take cognizance of the offences, therefore no sanction is required at that stage.

17. Insofar as bar on investigation placed by section 17 A is concerned, the submission on behalf of respondents is two-fold. First, it does not proscribe a court from directing investigation in exercise of its powers under the CrPC; and second, it would not apply to Court directed investigation.

18. With regard to the maintainability of the second complaint, the respondents have relied on a number of decisions to contend that where the first complaint is rejected on technical grounds without touching upon the merits, a second complaint would be maintainable.

19. In the context of the aforesaid submissions, we had reserved the matter for judgment while framing the aforesaid questions for consideration.

20. However, while preparing the judgment, on the issue relating to applicability of Aiyappa's decision we came across an order of this court dated 16.04.2024 passed by a coordinate bench of this Court in SLP (Cr1) Nos.3567-3568/2017 "*Shamin Khan vs. Debashish*

⁶ AIR 1951 SC 207; 1951 SCC Online SC 22

Chakrabarty & Ors.", which reads as under:

"Heard learned counsel on both sides. Upon hearing the learned counsel and on perusing the materials on record, we find that the question which was already referred to a larger Bench, as per the judgment in "Manju Surana vs. Sunil Arora & Ors." (2018) 5 SCC 557, is involved in this case as well.

The question referred under the judgment in Manju Surana's case (supra) is whether, while directing an investigation in terms of provisions under Section 156(3) of the CrPC, the Magistrate is applying his mind. In other words, whether the Magistrate takes 'cognizance at that stage'.

We are of the considered view that scanning of the provisions under Sections 156(3), 173(2), 190, 200, 202, 203 and 204 of the CrPC would, prima facie, reveal that while directing for an investigation and forwarding the complaint therefor, the Magistrate is not actually taking cognizance. However, since the said question is referred as per the above judgment, judicial discipline and propriety dissuade us from proceeding further with the case and hence, we order to tag the captioned matters also along with the matter(s) already referred. Ordered accordingly.

The judgment in Manju Surana (supra) would reveal that the matters were referred to larger Bench on 27.3.2018. Considering the fact that question involved is a matter of relevance and such issues arises frequently for consideration before Courts, we are of the considered view that an earlier decision on the question referred is solicited.

Registry is directed to place these matters before the Hon'ble the Chief Justice of India for appropriate orders."

(Emphasis supplied)

20. As for maintaining judicial discipline a coordinate bench of this Court has refrained from proceeding further in deciding the underlying issue⁷, which is under reference to a larger bench, we deem it appropriate to tag these petitions with the referred

⁷ Whether the bar of Section 19 of the PC Act would be applicable on exercise of power under Section 156 (3) of CrPC.

matter "Manju Surana vs. Sunil Arora & Ors." (supra).

21. The registry is directed to place these matters before the Hon'ble Chief Justice of India for appropriate orders.

.....J.
[J.B. PARDIWALA]

.....J.
[MANOJ MISRA]

NEW DELHI;
April 21, 2025