Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1257 OF 2011
(Arising out of SLP (Crl.) No. 7384 of 2010)

Abhay Singh Chautala … Appellant

Versus

C.B.I. … Respondent

WITH

CRIMINAL APPEAL NO. 1258 OF 2011
(Arising out of SLP (Crl.) No. 7428 of 2010)

Ajay Singh Chautala … Appellant

Versus

C.B.I. … Respondent

J U D G M E N T

V.S. SIRPURKAR, J.

1. This judgment will dispose of two Special Leave Petitions, they being SLP (Crl.) No. 7384 of 2010 and SLP (Crl.) No. 7428 of 2010. While Abhay Singh Chautala is the petitioner in the first Special Leave Petition, the second one has been filed by Shri Ajay Singh Chautala. The question involved is identical in both the SLPs and hence they are being disposed of by a common judgment.

2. Leave granted in both the Special Leave Petitions.

3. Whether the sanction under Section 19 of The Prevention of Corruption Act (hereinafter called "the Act" for short) was necessary against both the appellants and, therefore, whether the trial which is in progress against both of them, a valid trial, is common question. This question was raised before the

Special Judge, CBI before whom the appellants are being tried for the offences under Sections 13(1) (e) and 13(2) of the Prevention of Corruption Act read with Section 109 of Indian Penal Code in separate trials.

4. Separate charge sheets were filed against both the appellants for the aforementioned offences by the CBI. It was alleged that both the accused while working as the Members of Legislative Assembly had accumulated wealth disproportionate to their known sources of income. The charges were filed on the basis of the investigations conducted by the CBI. This was necessitated on account of this Court's order in Writ Petition (Crl.) No.93 of 2003 directing the CBI to investigate the JBT Teachers Recruitment Scam. The offences were registered on 24.5.2004. The CBI conducted searches and seized incriminating documents which revealed that Shri Om Prakash Chautala and his family had acquired movable and immovable properties valued at Rs.1,467 crores. On this basis a Notification came to be issued on 22.2.2006 under Sections 5 and 6 of the DSPE Act with the consent of the Government of Haryana extending powers and jurisdiction under the DSPE Act to the State of Haryana for investigation of allegations regarding accumulation of disproportionate assets by Shri Om Prakash Chautala and his family members under the Prevention of Corruption Act. A regular First Information Report then came to be registered against Shri Om Prakash Chautala who is the father of both the appellants. It is found that in the check period of 7.6.2000 to 8.3.2005, appellant Abhay Singh Chautala had amassed wealth worth Rs.1,19,69,82,619/- which was 522.79 % of appellant Abhay Singh Chautala's known sources of income. During the check period, Shri

Abhay Singh Chautala was the Member of the Legislative Assembly Haryana, Rori Constituency. Similarly, in case of Ajay Singh Chautala, his check period was taken as 24.5.1993 to 31.5.2006 during which he held the following offices:-

1.	2.3.90 to 15.12.92	**MLA Vidhan Sabha, Rajasthan**
2.	28.12.93 to 31.11.98	**MLA Vidhan Sabha, Rajasthan**
3.	10.10.99 to 6.2.2004	**Member of Parliament, Lok Sabha from Bhiwani Constituency**
4.	2.8.2004 to 03.11.09	**Member of Parliament, Rajya Sabha**

He was later on elected as MLA from Dabwali constituency, Haryana in November, 2009. It was found that he had accumulated wealth worth Rs.27,74,74,260/- which was 339.26 % of his known sources of income. It was on this basis that the charge sheet came to be filed.

5. Admittedly, there is no sanction to prosecute under Section 19 of the Act against both the appellants.

6. An objection regarding the absence of sanction was raised before the Special Judge, who in the common order dated 2.2.2010, held that the allegations in the charge sheet did not contain the allegation that the appellants had abused their current office as member of Legislative Assembly and, therefore, no sanction was necessary.

7. This order was challenged by way of a petition under Section 482 Cr.P.C. before the High Court. The High Court dismissed the said petition by the order dated 8.7.2010.

8. The learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants, urged that on the day when the charges were framed or on any date when the cognizance was taken, both the appellants were admittedly public servants and, therefore, under the plain language of Section 19 (1) of the Act, the Court could not have taken cognizance unless there was a sanction. The learned senior counsel analyzed the whole Section closely and urged that in the absence of a sanction, the cognizance of the offences under the Prevention of Corruption Act could not have been taken. In this behalf, learned senior counsel further urged that the judgment of this Court in ***Prakash Singh Badal v. State of Punjab [2007 (1) SCC 1]*** as also the relied on judgment in ***RS Nayak v. A R. Antulay [1984 (2) SCC 183]*** were not correct and required reconsideration and urged for a reference to a Larger Bench.

9. Against these two judgments as also the judgments in ***Balakrishnan Ravi Menon v. Union of India [2007 (1) SCC 45], K. Karunakaran v. State of Kerala [2007 (1) SCC 59]*** and ***Habibullah Khan v. State of Orissa & Anr. [1995 (2) SCC 437]***, this Court had clearly laid down the law and had held that where the public servant had abused the office which he held in the check period but had ceased to hold "that office" or was holding a different office then a sanction would not be necessary. The learned Solicitor General appearing for the respondent urged that the law on the question of sanction was clear and the whole controversy was set at rest in ***AR Antulay's case (cited supra)*** which was followed throughout till date. The Solicitor General urged that the said position in law should not be disturbed in view of the principle of *staire decicis*.

Extensive arguments were presented by both the parties requiring us now to consider the question.

Section 19 runs as under:-

"19. Previous sanction necessary for prosecution.

(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) In the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) In the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) In the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

(a) No finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required

under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;

(b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation: For the purposes of this Section, -

(a) Error includes competency of the authority to grant sanction;

(b) A sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

10. Shri Mukul Rohtagi and Shri U.U. Lalit, learned senior counsel appearing on behalf of the appellants, firstly pointed out that the plain meaning of Section 19(1) of the Act is that when any public servant is tried for the offences under the Act, a sanction is a must. The learned senior counsel were at pains to point out that in the absence of a sanction, no cognizance can be taken against the public

servant under Sections 7, 10, 11, 13 and 15 of the Act and thus, a sanction is a must. The learned senior counsel relied on the decision in ***Abdul Wahab Ansari Vs. State of Bihar [2000 (8) SCC 500]***, more particularly, paragraph 7, as also the decision in ***Baij Nath Prasad Tripathi Vs. State of Bhopal [1957 (1) SCR 650]***. The plain language of Section 19(1) cannot be disputed. The learned senior counsel argued that Section 19(1) of the Act creates a complete embargo against taking cognizance of the offences mentioned in that Section against the accused who is a public servant. The learned senior counsel also argued that it is only when the question arises as to which authority should grant a sanction that the sub-Section (2) will have to be taken recourse to. However, where there is no duty of any such nature, the Court will be duty bound to ask for the sanction before it takes cognizance of the offences mentioned under this Section.

11. As against this, Shri Gopal Subramanium, learned Solicitor General, pointed out the decision in ***RS Nayak v. A R. Antulay (cited supra)*** and the subsequent decisions in ***Balakrishnan Ravi Menon v. Union of India (cited supra), K. Karunakaran v. State of Kerala (cited supra)***, ***Habibullah Khan v. State of Orissa & Anr. (cited supra)*** and lastly, in ***Prakash Singh Badal v. State of Punjab (cited supra)***.

12. Shri Mukul Rohtagi and Shri U.U. Lalit, learned senior counsel appearing on behalf of the appellants, have no quarrel with the proposition that in all the above cases, it is specifically held that where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction.

13. To get over this obvious difficulty, the learned senior counsel appearing on behalf of the appellants contended that the basic decision in ***RS Nayak v. A R. Antulay (cited supra)*** was not correctly decided, inasmuch as the decision did not consider the plain language of the Section which is clear and without any ambiguity. The learned senior counsel contended that where the language is clear and admits of no ambiguity, the Court cannot reject the plain meaning emanating out of the provision. Further, the learned senior counsel pointed out that even in the judgments following the judgment in ***RS Nayak v. A R. Antulay (cited supra)*** upto the judgment in the case of ***Prakash Singh Badal v. State of Punjab (cited supra)*** and even thereafter, the learned Judges have not considered the plain meaning and on that count, those judgments also do not present correct law and require reconsideration. Another substantial challenge to the judgment in ***RS Nayak v. A R. Antulay (cited supra)*** is on account of the fact that the law declared to the above effect in ***RS Nayak v. A R. Antulay (cited supra)*** was *obiter dictum*, inasmuch as it was not necessary for the Court to decide the question, more particularly, decided by the Courts in paragraphs 23 to 26. The learned senior counsel pointed out that, firstly, the Court in ***RS Nayak v. A R. Antulay (cited supra)***, came to the conclusion that Shri Antulay who was a Member of the Legislative Assembly, was not a public servant. It is contended that once that finding was arrived at, there was no question of further deciding as to whether, the accused being a public servant in a different capacity, the law required that there had to be a sanction before the Court could take the cognizance. Learned senior counsel further argued that where the Court makes

an observation which is either not necessary for the decision of the court or does not relate to the material facts in issue, such observation must be held as *obiter dictum*. In support of this proposition, the learned senior counsel relied on the decision in ***Director of Settlement, State of A.P. Vs. M.R. Apparao [2002 (4) SCC 638] (Paragraph 7), State of Haryana Vs. Ranbir @ Rana [2006 (5) SCC 167], Division Controller, KSRTC Vs. Mahadeva Shetty & Anr. [2003(7) SCC 197] (Paragraph 23), H.H. Maharajadhiraja Mahdav Rao Jiwaji Rao Scindia Bahadur Vs. Union of India [AIR 1971 SC 530] (Paragraph 325 onwards), State of Orissa Vs. Sudhansu Sekhar Misra [AIR 1968 SC 647]*** [in which the celebrated decision in *Quinn Vs. Leathem 1901 AC 495*] was relied on and ***ADM Jabalpur etc. Vs. Shivkant Shukla [1976 (2) SCC 521]*** etc. The learned senior counsel also argued that the whole class of public servant would be deprived of the protection if the decision in ***RS Nayak v. A R. Antulay (cited supra)*** is followed. For this purpose, learned senior counsel argued that in such case, public servants would be exposed to frivolous prosecutions which would have disastrous effects on their service careers, though they are required to be insulated against such false, frivolous and motivated complaints of wrong doing. It is then argued that the decision in ***K. Veeraswami Vs. Union of India [1991 (3) SCC 655]*** has in fact removed the very foundation of the decision in ***RS Nayak v. A. R. Antulay (cited supra)*** in respect of the sanction. It is also argued that, in effect, the decision in ***RS Nayak v. A R. Antulay (cited supra)*** has added further proviso to the effect *"provided that nothing in this sub-Section shall apply to a case where at the time of cognizance, the public servant is*

holding a different post with a different removing authority from the one in which the offence is alleged to have been committed". It is argued that such an addition would be clearly impermissible as it would negate the very foundation of criminal law which requires a strict interpretation in favour of the accused and not an interpretation which results into deprivation of the accused of his statutory rights. The decision in ***S.A. Venkataraman Vs. State [AIR 1958 SC 107]*** is also very heavily relied upon, more particularly, the observations in paragraphs 14 and 16 thereof.

14. It will be, therefore, our task to see as to whether the judgment in ***A. R. Antulay's*** **case (cited supra)** and the law decided therein, particularly in paragraphs 24, 25 and 26 is obiter. Paragraphs 24, 25 and 26 are as under:

> "24. Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to use. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned Counsel that a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as

contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was- in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. Ode can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant/while abusing one office which he may have ceased to hold. Such an interpretation in contrary to all canons of construction and leads to an absurd and product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rougue's charter. (See Davis & Sons Ltd. v. Atkins [1977] ICR 662

25. Support was sought to be drawn for the submission from the decision of the Andhra Pradesh High Court in Air Commodore Kailash Chand v. The State (S.P.E. Hyderabad) (1973) 2 AWR 263 and the affirmance of that decision by this Court in The State (S.P.E. Hyderabad) v. Air Commodore Kailash Chand : 1980CriLJ393 . In that case accused Kailash Chand was, a member of the Indian Air Force having entered the service on 17th November 1941. He retired from the service on 15th June , 1965, but was re-employed

for a period of 2 years with effect from 16th June, 1965. On 7th September, 1966, the respondent was transferred to the Regular Air Force Reserve with effect from June 16, 1965 to June 15, 1970 i.e. for a period of 5 years. On 13th March, 1968, the re-employment given to the respondent ceased and his service was terminated with effect from April 1, 1968. A charge-sheet was submitted against him for having committed an offence under Section 5(2) of the Prevention of Corruption Act, 1947 during the period March 29, 1965 to March 16, 1967. A contention was raised on behalf of the accused that the court could not take cognizance of the offence in the absence of a valid sanction of the authority competent to remove him from the office held by him as a public servant. The learned special Judge negatived the contention. In the revision petition filed by the accused in the High Court, the learned Single Judge held that on the date of taking cognizance of the offence, the accused was a member of the Regular Air Force Reserve set up under the Reserve and Auxiliary Air Force, 1952 and the rules made there under. Accordingly, it was held that a sanction to prosecute him was necessary and in the absence of which the court could not the cognizance of the offences and the prosecution was quashed. In the appeal by certificate, this Court upheld the decision of the High Court. This Court held following the decision in S.A. Venkataraman's case that if the public servant had ceased to be a public servant at the time of taking cognizance of the offence, Section 6 is not attracted. Thereafter the court proceeded to examine whether the accused was a public servant on the date when the court took cognizance of the offence and concluded that once the accused was transferred to the Auxiliary Air Force, he retained his character as a public servant because he was required to undergo training and to be called up for service as and when required. The court further held that as such the accused was a public servant as an active member of the Indian Air Force and a sanction to prosecute him under Section 6 was necessary. This decision is of no assistance for the obvious reason that nowhere it was contended before the court, which office was alleged to have been abused by the accused and whether the two offices were separate and distinct. It is not made clear

whether the accused continued to hold the office which was alleged to have been abused or misused even at the time of taking cognizance of the offence. But that could not be so because the service of the accused was terminated on April 1, 1968 while the cognizance was sought to be taken in June, 1969. Indisputably, the accused had ceased to hold that office as public servant which he was alleged to have misused or abused. The court was however, not invited to consider the contention canvassed before us: Nor was the court informed specifically whether the subsequent office held by the accused in that case was the same from which his service was terminated meaning thereby he was re-employed to the same office. The decision appears to proceed on the facts of the case. We would however, like to make it abundantly clear that if the two decisions purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decisions in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Section 6.

26. Therefore, upon a true construction of Section 6, it is implicit therein that Sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive and for which a prosecution is intended to be launched against him."

15. It is clear from these paragraphs that the law laid down in ***Air Commodore Kailash Chand v. The State (S.P.E. Hyderabad) [(1973) 2 AWR***

263] was taken into consideration. The Court has also quoted ***S.A. Venkataraman's case (cited supra)*** and the decision in ***Kailash Chand's case (cited supra)*** was distinguished by holding thus:

> "This decision is of no assistance for the obvious reason that nowhere it was contended before the court, which office was alleged to have been abused by the accused and whether the two offices were separate and distinct. It is not made clear whether the accused continued to hold the office which was alleged to have been abused or misused even at the time of taking cognizance of the offence. But that could not be so because the service of the accused was terminated on April 1, 1968 while the cognizance was sought to be taken in June, 1969. Indisputably, the accused had ceased to hold that office as public servant which he was alleged to have misused or abused. The court was however, not invited to consider the contention canvassed before us: Nor was the court informed specifically whether the subsequent office held by the accused in that case was the same from which his service was terminated meaning thereby he was re-employed to the same office. The decision appears to proceed on the facts of the case."

16. The propositions argued by the learned Solicitor General have, therefore, been totally accepted. However, that does not solve the question. The question is whether these propositions amount to obiter. The learned senior counsel for the appellants insists that it was not at all necessary for the Court to make these observations as the Court had answered the question whether A.R. Antulay in his capacity as an MLA, was a public servant, in negative. The learned senior counsel argued that once it was found that Antulay in his capacity as an MLA, was not a public servant, it was not at all necessary for the Court to go further and probe a further question as to whether a public servant who has abused a particular office ceased to hold that office and held some other office on the date

of cognizance would still require sanction for his prosecution for the offence under the Act. The argument is extremely attractive on the face of it because indeed in ***Antulay's case (cited supra)*** such a finding that Shri Antulay in his capacity is an MLA was not a public servant was unequivocally given. However, we do not agree to the proposition that the Court could not have gone further and recorded its finding in paragraphs 23 to 26 as they did. It is necessary firstly to note paragraph 15 which gives a clear cut idea as to what was the exact controversy therein and how the rival parties addressed Courts on various questions. Paragraph 15 is as under:-

> "15. The appellant, the original complainant, contends that the learned special Judge was in error in holding that M.L.A. is a public servant within the meaning of the expression under Section 21(12)(a). The second submission was that if the first question is answered in the affirmative, it would be necessary to examine whether a sanction as contemplated by Section 6 is necessary. If the answer to the second question is in the affirmative it. would be necessary to identify the sanctioning authority. The broad sweep of the argument was that the complainant in his complaint has alleged that the accused abused his office of Chief Minister and not his office, if any, as M.L.A. and therefore, even if on the date of taking cognizance of the offence the accused was M.L.A, nonetheless no sanction to prosecute him is necessary as envisaged by Section 6 of the 1947 Act. It was urged that as the allegation against the accused in the complaint is that he abused or misused his office as Chief Minister and as by the time the complaint was filed and cognizance was taken, he had ceased to hold the office of the Chief Minister no sanction under Section 6 was necessary to prosecute him for the offences alleged to have been committed by him when the accused was admittedly a public servant in his capacity as Chief Minister." (Emphasis supplied).

Therefore, it will be clear that the complainant's main argument was the abuse of the office of Chief Minister which the accused ceased to hold and hence no sanction was necessary. In that the complainant proceeded on the premise that the accused as the MLA was a public servant.

17. In paragraph 16 the contention of the accused is noted which suggests that he was a public servant within the contemplation of clauses (3) and (7) of Section 21 of IPC as also under section 21 (12) (a). In fact it was the argument of accused by way of the next claim that if the accused holds plurality of offices each of which confers the status of a public servant and even if it is alleged that he has abused or misused one office as a public servant notwithstanding the fact that there was no allegation of the abuse or misuse of other office held as public servant, the sanction of each authority competent to remove him from each of the offices would be a *sine qua non* under Section 6 before a valid prosecution can be launched against the accused. Therefore, the question of accused being a public servant was inextricably mixed with the question of the office which accused was alleged to have misused. There was no dichotomy between the two questions. Strangely enough, the accused claimed to be a public servant, unlike the present case and it was on that premise that the accused had raised a question that there would have to be the sanction qua each office that he continued to hold on the date when the cognizance was taken. In the present case, it is not disputed that the accused was a public servant. Undoubtedly they were public servants. By the subsequent judgment in ***P.V. Narsimha Rao Vs. State [1998 (4) SCC 626]*** it has been clearly held now that the Members of

Legislative Assembly and the Members of Parliament are public servants. Therefore, the question which was addressed in that case by the accused claiming himself to be a public servant is an identical question which fell for consideration before the High Court as also before us. In paragraph 17, the Court formulated the questions to be decided precisely on the basis of the contention raised by the accused in that case. Following were those questions :

> "(a) What is the relevant date with reference to which a valid sanction is a pre-requisite for the prosecution of a public servant for offences enumerated in Section 6 of the 1947 Act?
>
> (b) If the accused holds plurality of offices occupying each of which makes him a public servant, is sanction of each one of the competent authorities entitled to remove him from each one of the offices held by him necessary and if anyone of the competent authorities fails or declines to grant sanction, is the Court precluded or prohibited from taking cognizance of the offence with which the public servant is charged?
>
> (c) Is it implicit in Section 6 of the 1947 Act that sanction of that competent authority alone is necessary, which is entitled to remove the public servant from the office which is alleged to have been abused for misused for corrupt motives?
>
> (d) Is M.L.A. a public servant within the meaning of the expression in Section 21(12)(a) IPC?
>
> (e) Is M.L.A. a public servant within the meaning of the expression, in Section 21(3) and Section 21(7) IPC?
>
> (f) Is sanction as contemplated by Section 6 of the 1947 Act necessary for prosecution of M.L.A.?
>
> (g) If the answer to (f) is in the affirmative, which is the Sanctioning Authority competent to remove M.L.A. from the office of Member of the Legislative Assembly?"

18. It will be seen from the nature of the questions that the whole controversy was covered by those questions particularly, the question raised in (b), (c), (d) and (e) were nothing but the result of the contentions raised by the parties which directly fell for consideration.

19. The Court answered the first question that the relevant date of sanction would be the date on which the cognizance was taken of the offence. Since in paragraph 23 to 26 the Court found that the accused in that case did not continue to hold the office that he had allegedly abused on the date of cognizance, there was no necessity of granting any sanction. The Court held so in paragraph 27 in the most unequivocal terms. The Court goes on to record "*therefore, it is crystal clear that the complaint filed against the accused charged him with criminal abuse or misuse of only his office as Chief Minister. By the time, the court was called upon to take cognizance of the offences, so alleged in the complaint, the accused had ceased to hold the office of the Chief Minister. On this short ground, it can be held that no sanction to prosecute him was necessary as former Chief Minister of Maharashtra State. The appeal can succeed on this short ground."* (Emphasis supplied).

20. However, subsequently, the question whether an MLA was a public servant was also canvassed at length. The Court then went on to examine the question in further paragraphs and came to the conclusion that MLA was not a public servant which law was, of course thereafter, upset in ***Narsimha Rao's case (cited supra).*** It cannot be said that the question decided by the Court regarding the abuse of a particular office and the effects of the accused not

continuing with that office or holding an altogether different office was obiter. In fact it is on that very basis that the judgment of ***A.R.Antulay (cited supra)*** proceeded. The question of MLA not being a public servant was decided as a subsidiary question.

21. This finding of ours is buttressed by the decision reported in ***Balakrishnan Ravi Menon v. Union of India (cited supra)*** which decision came almost immediately after ***Prakash Singh Badal v. State of Punjab (cited supra)*** case. Whether the finding given in the judgment of ***Antulay's case (cited supra)*** was obiter was the question that directly fell for consideration in that case. This Court quoted paragraph 24 of the judgment in ***Antulay's case (cited supra)*** so also some portion of paragraph 25. It is on the basis of these two paragraphs that the Court unequivocally rejected the contention that the finding given in ***Antulay's case (cited supra)*** regarding the abuse of office of Chief Minister was obiter. Therefore, it would not be possible for us to hold that the finding given in ***Antualy's case (cited supra)*** was an obiter. We must point out at this juncture that in ***Antulay's case (cited supra)*** the Court first went on to decide the basic question that if the accused did not continue with the office that he had allegedly abused on the day cognizance was taken, then there was no requirement of sanction.

22. This finding was given as the complainant in that case had canvassed in the backdrop of the judgment of the trial Court discharging the accused holding him to be a public servant. The trial Court had held that in the absence of such sanction, the accused was entitled to be discharged. The complainant filed a writ

petition against this order. This court had permitted to file a criminal revision against the order of learned Special Judge perhaps being of the opinion that the writ petition did not lie and ultimately this Court transferred the criminal revision against the trial Court's judgment here. The complainant, therefore, had specifically and basically raised the point that since the accused had ceased to hold the office of Chief Minister on the date of cognizance, there was no question of any sanction and that was the main issue which was decided in ***Antulay's case (cited supra)*** as the basic issue by way of question No.(b)

23. We, therefore, do not think the finding given in ***Antulay's case (cited supra)*** was in any manner obiter and requires reconsideration. Learned Senior Counsel relied on the decision in ***Marta Silva & Ors. Vs. Piedade Cardazo & Ors. [AIR 1969 Goa 94], State of A.P. Vs. M.R. Apparao (cited supra], State of Haryana Vs. Ranbir alias Rana (cited supra], Division Controller, KSRTC Vs. Mahadeva Shetty & Anr. (cited supra), H.H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur Vs. Union of India (cited supra), State of Orissa Vs. Sudhansu Sekhar Misra (cited supra)*** and lastly ***ADM, Jabalpur etc. Vs. Shivkant Shukla (cited supra]*** and contended that the principles of *obiter dicta* in the aforementioned decisions would apply to ***Antulay's case (cited supra)*** also. We have already shown that the principles regarding the abuse of a particular office, decided in ***Antulay's case (cited supra)***, could not be termed as *Obiter dicta*. We have nothing to say about the principles in the aforementioned decisions. However, in the circumstances, which we have shown above, all these cases would be of no help to the appellants herein,

particularly in the light of our conclusion that the principles arrived at in ***Antulay's case (cited supra)*** could not be termed as *obiter dicta*. We, therefore, reject the argument on that count.

24. There is one more reason, though not a major one, for not disturbing the law settled in ***Antulay's case (cited supra)***. That decision has stood the test of time for last over 25 years and it is trite that going as per the maxim *stare decisis et non quieta movere*, it would be better to stand by that decision and not to disturb what is settled. This rule of interpretation was approved of by Lord Coke who suggested – "*those things which have been so often adjudged ought to rest in peace*". This Court in ***Shanker Raju Vs. Union of India [2011 (2) SCC 132]***, confirmed this view while relying on the decision in ***Tiverton Estates Ltd. Vs. Wearwell Ltd. [1974 (1) WLR 176]*** and more particularly, the observations of Scarman, L.J., while not agreeing with the view of Lord Denning, M.R. about desirability of not accepting previous decisions. The observations are to the following effect:-

> "….. I decline to accept his lead only because I think it damaging to the law to the long term – though it would undoubtedly do justice in the present case. To some it will appear that justice is being denied by a timid, conservative adherence to judicial precedent. They would be wrong. Consistency is necessary to certainty – one of the great objectives of law."

The Court also referred to the following other cases:-

Waman Rao Vs. Union of India [1981 (2) SCC 362], Manganese Ore (India) Ltd. Vs. CST [1976 (4) SCC 124], Ganga Sugar Corpn. Vs. State of U.P. [1980 (1) SCC 223], Union of India Vs.

Raguhbir Singh [1989 (2) SCC 754], Krishena Kumar Vs. Union of India [1990 (4) SCC 207], Union of India Vs. Paras Laminates (P) Ltd. [1990(4) SCC 453] and lastly, ***Hari Singh Vs. State of Haryana [1993 (3) SCC 114]***.

We respectfully agree with the law laid down in ***Shanker Raju Vs. Union of India (cited supra)*** and acting on that decision, desist from disturbing the settled law in ***Antulay's case (cited supra)***. We have in the earlier part of the judgment, pointed out as to how the decision in ***Antulay's case (cited supra)*** has been followed right up to the decision in ***Prakash Singh Badal v. State of Punjab (cited supra)*** and even thereafter.

25. This leaves us with the other contention raised by learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants. The learned senior counsel contended that the decision in ***Antulay's case (cited supra)*** is hit by the doctrine of *per incuriam*. The learned senior counsel heavily relied on the decision in ***Punjab Land Development Reclamation Corporation Ltd. Vs. Presiding Officer [1990 (3) SCC 682]*** and ***Nirmal Jeet Kaur Vs. State of M.P. [2004 (7) SCC 558]*** to explain the doctrine of *per incuriam*. We have absolutely no quarrel with the principles laid down in those two cases. However, we feel that the resultant argument on the part of the learned senior counsel is not correct. In support of their argument, the learned senior counsel contended that in ***Antulay's case (cited supra)***, Section 6(2) of the Act, as it therein existed, was ignored. In short, the argument was that Section 6(2) which is parimateria with Section 19(2) of the Act provides that in case of doubt as to

which authority should give the sanction, the time when the offence is alleged to have been committed is relevant. The argument further goes on to suggest that if that is so, then the Act expressly contemplates that a public servant may be holding office in a different capacity from the one that he was holding when the offence is alleged to have been committed at the time when cognizance is taken so as to cause doubt about the sanctioning authority. Thus, there would be necessity of a sanction on the date of cognizance and, therefore, in ignoring this aspect, the decision in ***Antulay's case (cited supra)*** has suffered an illegality. Same is the argument in the present case.

26. This argument is basically incorrect. In ***Antulay's case (cited supra)***, it is not as if Section 6(2) of the Act as it then existed, was ignored or was not referred to, but the Constitution Bench had very specifically made a reference to and had interpreted Section 6 as a whole. Therefore, it cannot be said that the Constitution Bench had totally ignored the provisions of Section 6 and more particularly, Section 6(2). Once the Court had held that if the public servant had abused a particular office and was not holding that office on the date of taking cognizance, there would be no necessity to obtain sanction. It was obvious that it was not necessary for the Court to go up to Section 6(2) as in that case, there would be no question of doubt about the sanctioning authority. In our opinion also, Section 6(2) of the Act, which is parimateria to Section 19(2), does not contemplate a situation as is tried to be argued by the learned senior counsel. We do not agree with the proposition that the Act **expressly contemplates that a public servant may be holding office in a different capacity from the one**

that he was holding when the offence is alleged to have been committed at the time when cognizance is taken. That is not, in our opinion, the eventuality contemplated in Section 6(2) or Section 19(2), as the case may be. In ***Antulay's case (cited supra)***, the Court went on to hold that where a public servant holds a different capacity altogether from the one which he is alleged to have abused, there would be no necessity of sanction at all. This view was taken on the specific interpretation of Section 6 generally and more particularly, Section 6(1)(c), which is parimateria to Section 19(1)(c) of the Act. Once it was held that there was no necessity of sanction at all, there would be no question of there being any doubt arising about the sanctioning authority. The doubt expressed in Section 19(2), in our opinion, is not a pointer to suggest that a public servant may have abused any particular office, but when he occupies any other office subsequently, then the sanction is a must. That will be the incorrect reading of the Section. The Section simply contemplates a situation where there is a genuine doubt as to whether sanctioning authority should be the Central Government or the State Government or any authority competent to remove him. The words in Section 19(2) are to be read in conjunction with Sections 19(1)(a), 19(1)(b) and 19(1)(c). These clauses only fix the sanctioning authority to be the authority which is capable of "removing a public servant". Therefore, in our opinion, the argument based on the language of Section 6(2) or as the case may be, Section 19(2), is not correct. This eventuality has been considered, though not directly, in paragraph 24 in the judgment in ***Antulay's case (cited supra)***, in the following manner:-

> "24 ….An illustration was posed to the learned Counsel that a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was- in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant/while abusing one office which he may have ceased to hold. Such an interpretation in contrary to all canons of construction and leads to an absurd and product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rougue's charter".

(emphasis supplied)

27. It is in the light of this that the Court did not have to specify as to under what circumstances would a duty arise for locating the authority to give sanction. The doubt could arise in more manners than one and in more situations than one, but to base the interpretation of Section 19(1) of the Act on the basis of Section 19(2) would be putting the cart before the horse. The two Sections

would have to be interpreted in a rational manner. Once the interpretation is that the prosecution of a public servant holding a different capacity than the one which he is alleged to have abused, there is no question of going to Section 6(2) / 19(2) at all in which case there will be no question of any doubt. It will be seen that this interpretation of Section 6(1) or, as the case may be, Section 19(1), is on the basis of the expression "office" in three sub-clauses of Section 6(1), or the case may be, Section 19(1). For all these reasons, therefore, we are not persuaded to accept the contention that ***Antulay's case (cited supra)*** was decided *per incuriam* of Section 6(2). In our opinion, the decision in ***K. Veeraswami Vs. Union of India (cited supra)*** or, as the case may be, ***P.V. Narsimha Rao's case (cited supra)*** are not apposite nor do they support the contention raised by the learned senior counsel as regards ***Antulay's case (cited supra)*** being *per incuriam* of Section 6(2).

28. The learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants, in support of their argument that ***Antulay's case (cited supra)*** require reconsideration, urged that that interpretation deprives the entire class of public servants covered by the clear words of Section 6(1)/19(1) of a valuable protection. It was further urged that such interpretation would have a disastrous effect on the careers of the public servants and the object of law to insulate a public servant from false, frivolous, malicious and motivated complaints of wrong doing would be defeated. It was also urged that such interpretation would amount to re-writing of Section 19(1) and as if a proviso would be added to Section 19(1) to the following effect:-

> "Provided that nothing in this sub-Section shall apply to a case where at the time of cognizance, the public servant is holding a different post with a different removing authority from the one in which the offence is alleged to have been committed.

Lastly, it was urged that such an interpretation would negate the very foundation of criminal law, which requires a strict interpretation in favour of the accused. Most of these questions are already answered, firstly, in ***Antulay's case (cited supra)*** and secondly, in ***Prakash Singh Badal v. State of Punjab (cited supra)***. Therefore, we need not dilate on them. We specifically reject these arguments on the basis of ***Antulay's case (cited supra)*** itself which has been relied upon in ***Prakash Singh Badal v. State of Punjab (cited supra)***. The argument regarding the addition of the proviso must also fall as the language of the suggested proviso contemplates a different "post" and not the "office", which are entirely different concepts. That is apart from the fact that the interpretation regarding the abuse of a particular office and there being a direct relationship between a public servant and the office that he has abused, has already been approved of in ***Antulay's case (cited supra)*** and the other cases following ***Antulay's case (cited supra)*** including ***Prakash Singh Badal v. State of Punjab (cited supra)***. We, therefore, reject all these arguments.

29. It was also urged that a literal interpretation is a must, particularly, to sub-Section (1) of Section 19. That argument also must fall as sub-Section (1) of Section 19 has to be read with in tune with and in light of sub-Sections (a), (b) and (c) thereof. We, therefore, reject the theory of *litera regis* while interpreting Section 19(1). On the same lines, we reject the argument based on the word "is" in sub-Sections (a), (b) and (c). It is true that the Section operates *in praesenti*;

however, the Section contemplates a person who continues to be a public servant on the date of taking cognizance. However, as per the interpretation, it excludes a person who has abused some other office than the one which he is holding on the date of taking cognizance, by necessary implication. Once that is clear, the necessity of the literal interpretation would not be there in the present case. Therefore, while we agree with the principles laid down in ***Robert Wigram Crawford Vs. Richard Spooner [4 MIA 179]***, ***Re Bedia Vs. Genreal Accident, Fir and Life Assurance Corporation Ltd. [1948 (2) All ER 995]*** and ***Bourne (Inspector of Taxes) Vs. Norwich Crematorium Ltd. [1967 (2) All ER 576]***, we specifically hold that giving the literal interpretation to the Section would lead to absurdity and some unwanted results, as had already been pointed out in ***Antulay's case (cited supra)*** (see the emphasis supplied to para 24 of **Antulay's judgment).**

30. Another novel argument was advanced basing on the language of Sections 19(1) and (2). It was pointed out that two different terms were used in the whole Section, one term being "public servant" and the other being "a person". It was, therefore, urged that since the two different terms were used by the Legislature, they could not connote the same meaning and they had to be read differently. The precise argument was that the term "public servant" in relation to the commission of an offence connotes the time period of the past whereas the term "a person" in relation to the sanction connotes the time period of the present. Therefore, it was urged that since the two terms are not synonymous and convey different meanings in respect of time/status of the

office, the term "public servant" should mean the "past office" while "person" should mean the "present status/present office". While we do agree that the different terms used in one provision would have to be given different meaning, we do not accept the argument that by accepting the interpretation of Section 19(1) in ***Antulay's case***, the two terms referred to above get the same meaning. We also do not see how this argument helps the present accused. The term "public servant" is used in Section 19(1) as Sections 7, 10, 1 and 13 which are essentially the offences to be committed by public servants only. Section 15 is the attempt by a public servant to commit offence referred to in Section 13(1)(c) or 13(1)(d). Section 19(1) speaks about the cognizance of an offence committed by a public servant. It is not a cognizance of the public servant. The Court takes cognizance of the offence, and not the accused, meaning, the Court decides to consider the fact of somebody having committed that offence. In case of this Act, such accused is only a public servant. Then comes the next stage that such cognizance cannot be taken unless there is a previous sanction given. The sanction is in respect of the accused who essentially is a public servant. The use of the term "a person" in sub-Sections (a), (b) and (c) only denotes an "accused". An "accused" means who is employed either with the State Government or with the Central Government or in case of any other person, who is a public servant but not employed with either the State Government or the Central Government. It is only "a person" who is employed or it is only "a person" who is prosecuted. His capacity as a "public servant" may be different but he is essentially "a person" – an accused person, because the Section operates essentially qua an accused

person. It is not a "public servant" who is employed; it is essentially "a person" and after being employed, he becomes a "public servant" because of his position. It is, therefore, that the term "a person" is used in clauses (a), (b) and (c). The key words in these three clauses are "*not removable from his office save by or with the sanction of ….*". It will be again seen that the offences under Sections 7, 10, 11 and 13 are essentially committed by those persons who are "public servants". Again, when it comes to the removal, it is not a removal of his role as a "public servant", it is removal of "a person" himself who is acting as a "public servant". Once the Section is read in this manner, then there is no question of assigning the same meaning to two different terms in the Section. We reject this argument.

31. Another novel argument was raised on the basis of the definition of "public servant" as given in Section 2(c) of the Act. The argument is based more particularly on clause 2(c)(vi) which provides that an arbitrator, on account of his position as such, is public servant. The argument is that some persons, as contemplated in Sections 2(c)(vii), (viii), (ix) and (x), may adorn the character of a public servant only for a limited time and if after renouncing that character of a public servant on account of lapse of time or non-continuation of their office they are to be tried for the abuse on their part of the offices that they held, then it would be a very hazardous situation. We do not think so. If the person concerned at the time when he is to be tried is not a public servant, then there will be no necessity of a sanction at all. Section 19(1) is very clear on that issue. We do not see how it will cause any hazardous situation. Similarly, it is tried to

be argued that a Vice-Chancellor who is a public servant and is given a temporary assignment of checking the papers or conducting examination or being invigilator by virtue of which he is a public servant in an entirely different capacity as from that of a Professor or a Vice-Chancellor, commits an offence in the temporary capacity, then he would not be entitled to the protection and that will be causing violence to such public servant and, therefore, such could not have been the intention of the Legislature. We feel that the example is wholly irrelevant in the light of the clearest possible dictum in ***Antulay's case (cited supra)*** and in ***Prakash Singh Badal v. State of Punjab (cited supra)***. If the concerned person continues to be a Vice-Chancellor and if he has abused his office as Vice-Chancellor, there would be no doubt that his prosecution would require a sanction. So, it will be a question of examining as to whether such person has abused his position as a Vice-Chancellor and whether he continues to be a Vice-Chancellor on the date of taking of the cognizance. If, however, he has not abused his position as Vice-Chancellor but has committed some other offence which could be covered by the sub-Sections of Section 19, then there would be no necessity of any sanction.

32. Same argument was tried to be raised on the question of plurality of the offices held by the public servant and the doubt arising as to who would be the sanctioning authority in such case. In the earlier part of the judgment, we have already explained the concept of doubt which is contemplated in the Act, more particularly in Section 19(2). The law is very clear in that respect. The concept of 'doubt' or 'plurality of office' cannot be used to arrive at a conclusion that on

that basis, the interpretation of Section 19(1) would be different from that given in ***Antulay's case (cited supra)*** or ***Prakash Singh Badal v. State of Punjab (cited supra)***. We have already explained the situation that merely because a concept of doubt is contemplated in Section 19(2), it cannot mean that the public servant who has abused some other office than the one he is holding could not be tried without a sanction. The learned senior counsel tried to support their argument on the basis of the theory of "legal fiction". We do not see as to how the theory of "legal fiction" can work in this case. It may be that the appellants in this case held more than one offices during the check period which they are alleged to have abused; however, there will be no question of any doubt if on the date when the cognizance is taken, they are not continuing to hold that very office. The relevant time, as held in ***S.A. Venkataraman Vs. State (cited supra)***, is the date on which the cognizance is taken. If on that date, the appellant is not a public servant, there will be no question of any sanction. If he continues to be a public servant but in a different capacity or holding a different office than the one which is alleged to have been abused, still there will be no question of sanction and in that case, there will also be no question of any doubt arising because the doubt can arise only when the sanction is necessary. In case of the present appellants, there was no question of there being any doubt because basically there was no question of the appellants' getting any protection by a sanction.

33. We do not, therefore, agree with learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants, that the decision in

Antulay's case (cited supra) and the subsequent decisions require any reconsideration for the reasons argued before us. Even on merits, there is no necessity of reconsidering the relevant ratio laid down in ***Antulay's case (cited supra)***.

34. Thus, we are of the clear view that the High Court was absolutely right in relying on the decision in ***Prakash Singh Badal v. State of Punjab (cited supra)*** to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19 of the Act as held in ***K. Karunakaran v. State of Kerala (cited supra)*** and the later decision in ***Prakash Singh Badal v. State of Punjab (cited supra)***. The appeals are without any merit and are dismissed.

…….J.
[V.S. Sirpurkar]

……..….J.
[T.S. THAKUR]

New Delhi;
July 4, 2011.