IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CRIMINAL PETITION No.3341 OF 2020

% Delivered on: 12-04-2022

Between:

Dr. Pilli Sambasiva Rao .. Petitioner

Vs.

$ The State of Telangana, through Inspector
Of Police, ACB, Warangal Range, Warangal. .. Respondent

! For Petitioner : Mr. D. Prakash Reddy,
Learned Senior Counsel
representing Mr.Ch. Siddhartha Sarma

^ For Respondent : Mr. T.L. Nayan Kumar,
Standing Counsel - cum -
Special P.P. for TS ACB

< Gist :

> Head Note :

? Cases Referred :

1. (1984) 2 SCC 184
2. (2015) 14 SCC 186
3. (2003) 9 SCC 504
4. (2002) 10 SCC 688
5. (2011) 11 SCC 259
6. (2020) 7 SCC 695
7. Crl.P. No.9044 of 2018, decided on 16.11.2018
8. W.P No.29176 of 2019, decided on 20.12.2019
9. 2018 SCC OnLine Hyd 403
10. 2020 (2) SCC 338
11. 1992 CriLJ 1860
12. 1993 CriLJ 1151
13. 1998 CriLJ 3012
14. 1994 Supp. (2) SCC 116
15. (2014)11SCC388
16. (2016) 9 SCC 598
17. (1994) 4 SCC 602
18. 2021(2)RCR(Criminal)692
19. 2020 SCC OnLine Del 599
20. 2021 SCC OnLine Ker 5113
21. (2019) 19 SCC 87
22. (1992) Supp. 1 SCC 335

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.3341 OF 2020

ORDER:

The present criminal petition is filed seeking to call for the records pertaining and in connection with C.C. No. 39 of 2019 pending on the file of I Additional Special Judge for SPE and ACB Cases cum V ACJ Court, City Civil Court, Hyderabad and quash the same.

2. Heard Mr. D. Prakash Reddy, learned Senior Counsel representing Mr. Ch. Siddhartha Sarma, learned counsel for the petitioner and Mr. T.L. Nayan Kumar, learned Standing Counsel - cum - Special Public Prosecutor for TS ACB appearing on behalf of respondent.

3. **Facts of the Case**

i) The Petitioner herein joined the Government service as a Civil Assistant Surgeon on 03.03.1986. He was subsequently promoted as Deputy Civil Surgeon in 2006 and in 2008 was promoted as a Civil Surgeon. In November 2011 he was appointed

as the District Medical and Health Officer, Warangal District. The Petitioner retired from the service on 30.04.2015.

ii) According to the Respondent, credible information was received by ACB, Warangal regarding disproportionate assets known to the sources of income of the Petitioner. Therefore, a case in Crime No. 5/ACB-WRL/2015 was registered on 11.03.2015 for offences committed under Section 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter 'the Act, 1988'). Subsequently, the Petitioner was arrested on 12.03.2015.

iii) Investigation, searches and seizures were conducted and alleged incriminating documents were seized. The authorities allege that the income of the accused was computed as Rs.3,70,82,122/- and his expenditure was computed as Rs. 5,00,03,103/-. Further, it is alleged that the Petitioner was in possession of assets valued at Rs. 2,42,56,271/-. Therefore, according to the prosecution, the Petitioner was found in possession of disproportionate assets to the tune of Rs. 3,71,77,252/-.

iv) Based on the investigation and the material seized, a charge sheet was filed and cognizance was taken by the Special Court on 19.08.2019. The same came to be numbered as C.C. No. 39 of 2019.

v) The Act, 1988 was amended by the enactment of The Prevention of Corruption (Amendment Act), 2018 (hereinafter 'the Amendment Act, 2018). It is the contention of the Petitioner that the provisions of the Amendment Act, 2018 are applicable to him and the procedure prescribed under the Amendment Act, 2018 was not followed. Therefore, the Petitioner seeks quashing of C.C. No. 39 of 2019 in the present case.

4. **Contentions of the Petitioner**

i) The Amendment Act, 2018 came into force from 26.07.2018. In the present case, charge sheet was filed and cognizance was taken on 19.08.2019. Therefore, the Amendment Act, 2018 being in force should have been followed by the Special Court.

ii) Section 19 of the Amendment Act, 2018 applies retrospectively. Section 19 of the Amendment Act, 2018 mandates that prior sanction from the Government is required even in cases of retired public servants.

iii) Though the Petitioner retired from service on 30.04.2015, sanction from the Government should have been obtained in terms of Section 19 of the Amendment Act, 2018.

iv) The Special Court could not have taken cognizance as no sanction was obtained in terms of the amended Section 19 which was in force during the filing of the charge sheet.

v) Relying on **Padmakar v. Abdul Rehman Antulay**[1], it was contended that the relevant date for examining existence of valid sanction is the date of taking cognizance.

vi) In the absence of a valid sanction under Section 19 of the Act, 1988, no cognizance can be taken and proceedings shall be quashed. Reliance was placed on **Nanjappa v. State of Karnataka**[2], **P.A. Mohan Das v. State of Kerala**[3], **Manoranjan**

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1. (1984) 2 SCC 184
2. (2015) 14 SCC 186

Prasad Choudhary v. State of Bihar[4], **Asmathunnisa v. State of Andhra Pradesh**[5] and **D. Devaraja v. Owais Sabeer Hussain**[6].

vii) The Special Judge, while taking cognizance, failed to record his satisfaction that the allegations would constitute an offence under Section 13(2) r/w Section 13(1)(e) of the Act, 1988.

viii) The Special Judge mechanically took cognizance of the offences as the cognizance order is silent regarding perusal of the material on record and formation of opinion.

5. **Contentions of the Respondent**

i) The Amendment Act, 2018 including the amended Section 19 applies prospectively and no sanction is needed to initiate prosecution if the accused public servant had already retired. Reliance was placed on **Katti Nagaseshanna v. State of Andhra Pradesh**[7], **T.N. Bettaswamaiah v. State of Karnataka**[8],

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3. (2003) 9 SCC 504
4. (2002) 10 SCC 688
5. (2011) 11 SCC 259
6. (2020) 7 SCC 695
7. Crl.P. No.9044 of 2018, decided on 16.11.2018
8. W.P No.29176 of 2019, decided on 20.12.2019

V.D. Rajagopal v. State of Telangana[9] and **Yashwant Sinha v. Central Bureau of Investigation**[10].

ii) Relying on Section 30(2) of the Act, 1988 and Section 6 of the General Clauses Act, 1897 it was contended that the Amendment Act, 2018 is not applicable to an offence committed before the Amendment Act, 2018 came into force. In this regard, reliance was placed on **Asaram v. State of Maharashtra**[11], **Mahesh Chandra v. State of Uttar Pradesh**[12], **Nar Bahadur Bhandari v. State of Sikkim**[13] and **Kazi Lhendup Dorji v. Central Bureau of Investigation**[14].

6. **<u>Findings of the Court</u>**

i) From the facts of the case, it is clear that the main contention of the Petitioner is that the Special Court could not have taken cognizance of the offences, in the absence of sanction as required under the amended Section 19. On the other hand, the Respondent contended that the amended Section 19 mandating

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[9]. 2018 SCC OnLine Hyd 403
[10]. 2020 (2) SCC 338
[11]. 1992 CriLJ 1860
[12]. 1993 CriLJ 1151
[13]. 1998 CriLJ 3012
[14]. 1994 Supp. (2) SCC 116

prior sanction even in cases of retired employees is not applicable retrospectively. Therefore, the question before this Court is whether Section 19 of the Amendment Act, 2018 applies retrospectively or prospectively.

ii) Before deciding the issue at hand, it is apposite to refer and compare the unamended Section 19 of the Act, 1988 and the amended Section 19 of the Amendment Act, 2018.

Section 19 before the 2018 amendment.	Section 19 after the 2018 amendment
"**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 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]-- **(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**	**19. Previous sanction necessary for prosecution.-** (1) No court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-- **(a) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence 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**

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 (2 of 1974),-- (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 or irregularity in, the sanction required under sub-section (1), unless in the opinion	**Government;** **(b) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence 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. Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless-- (i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and (ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and

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 any 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	directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding: Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant: Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt: Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month: Provided also that the Central Government may, for the purpose of sanction for

instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."	prosecution of a public servant, prescribe such guidelines as it considers necessary. **Explanation.--For the purposes of subsection (1), the expression "public servant" includes such person--** **(a) who has ceased to hold the office during which the offence is alleged to have been committed; or** (b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed." (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 (2 of 1974),-

	(a) no finding, sentence or order passed by a special Judge shall be reserved or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or 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 any 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.

iii) A bare perusal of Section 19(1)(a)& (b) before the amendment indicates that prior sanction is required if the person is employed with the Central or State Government. On the other hand, the amended Section 19(1)(a) & (b) and its explanation provides that sanction is required to a person who is employed and also a person who was employed with the Central of State Government during the commission of the alleged offence. In other words, pre-amended Section 19 applied only to employees in service and post-amended Section 19 to employees in service as well as employees who were in service when the alleged offence was committed.

iv) It is relevant to note that the object behind Section 19 of the Act, 1988 is to prevent false and malicious prosecutions against public servants. The Supreme Court in **State of Bihar v. Rajmangal Ram**[15] has briefly explained the object behind Section 19 as follows:

> "5. The object behind the requirement of grant of sanction to prosecute a public servant need not detain the court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute a honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test, therefore, always is--whether the act complained of has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bonafide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. However, realising that the dividing line between

[15]. (2014)11SCC388

> an act in the discharge of official duty and an act that is not, may, at times, get blurred thereby enabling certain unjustified claims to be raised also on behalf of the public servant so as to derive undue advantage of the requirement of sanction, specific provisions have been incorporated in Section 19(3) of the Prevention of Corruption Act as well as in Section 465 of the Code of Criminal Procedure which, inter alia, make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent court unless in the opinion of the court a failure of justice has been occasioned. This is how the balance is sought to be struck."

v) It is also relevant to note that the Supreme Court, interpreting the unamended Section 19 has held that no sanction for initiating prosecution is required if on the date of taking cognizance the accused ceases to hold the office/or be in service.

vi) In **L. Narayana Swamy v. State of Karnataka**[16], the Supreme Court referring to its previous decisions held as follows:

> "21. It clearly follows from the reading of the judgments in *Abhay Singh Chautala* [*Abhay Singh Chautala* v. *CBI*, (2011) 7 SCC 141 : (2011) 3 SCC (Cri) 1 : (2011) 2 SCC (L&S) 735] and *Parkash Singh Badal* [*Parkash Singh*

[16]. (2016) 9 SCC 598

Badal v. *State of Punjab*, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] that if the public servant had abused entirely different office or offices than the one which he was holding on the date when cognizance was taken, there was no necessity of sanction under Section 19 of the PC Act. ***It is also made clear that where the public servant had abused the office which he held in the check-up period, but had ceased to hold "that office" or was holding a different office, then sanction would not be necessary.*** Likewise, 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. However, one discerning factor which is to be noted is that in both these cases the accused persons were public servants in the capacity of Member of Legislative Assembly by virtue of political office. They were not public servants as government employees. However, a detailed discussion contained in these judgments would indicate that the principle laid down therein would encompass and cover the cases of all public servants, including government employees who may otherwise be having constitutional protection under the provisions of Articles 309 and 311 of the Constitution.

22. To illustrate, we may quote the following passage from the judgment of this Court in *R.S. Nayak* v. *A.R. Antulay* [*R.S. Nayak* v. *A.R. Antulay*, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] , which is reproduced along with

other paragraphs from the judgment in *Parkash Singh Badal* [*Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] : (*Parkash Singh Badal case* [*Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] , SCC pp. 18-20, para 16)

"*16. '23.* Offences prescribed in Sections 161, 164 and 165 IPC and Section 5 of the 1947 Act have an intimate and inseparable relation with the office of a public servant. A public servant occupies office which renders him a public servant and occupying the office carries with it the powers conferred on the office. Power generally is not conferred on an individual person. In a society governed by rule of law power is conferred on office or acquired by statutory status and the individual occupying the office or on whom status is conferred enjoys the power of office or power flowing from the status. The holder of the office alone would have opportunity to abuse or misuse the office. These sections codify a well-recognised truism that power has the tendency to corrupt. It is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This interrelation and interdependence between individual and the office he holds is substantial and not severable. Each of the three clauses of sub-section (1) of Section 6 uses the expression "office" and the power to grant sanction is conferred on the authority competent to remove the public

servant from his office and Section 6 requires a sanction before taking cognizance of offences committed by public servant. The offence would be committed by the public servant by misusing or abusing the power of office and it is from that office, the authority must be competent to remove him so as to be entitled to grant sanction. The removal would bring about cessation of interrelation between the office and abuse by the holder of the office. The link between power with opportunity to abuse and the holder of office would be severed by removal from office. Therefore, when a public servant is accused of an offence of taking gratification other than legal remuneration for doing or forbearing to do an official act (Section 161 IPC) or as a public servant abets offences punishable under Sections 161 and 163 (Section 164 IPC) or as public servant obtains a valuable thing without consideration from person concerned in any proceeding or business transacted by such public servant (Section 165 IPC) or commits criminal misconduct as defined in Section 5 of the 1947 Act, it is implicit in the various offences that the public servant has misused or abused the power of office held by him as public servant. The expression “office” in the three sub-clauses of Section 6(1) would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. This interrelation between

the office and its abuse if severed would render Section 6 devoid of any meaning. And this interrelation clearly provides a clue to the understanding of the provision in Section 6 providing for sanction by a competent authority who would be able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider. By a catena of decisions, it has been held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants. (See *Mohd. Iqbal Ahmed* v. *State of A.P.* [*Mohd. Iqbal Ahmed* v. *State of A.P.*, (1979) 4 SCC 172 : 1979 SCC (Cri) 926]) The legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that that authority

alone would be able, when facts and evidence are placed before him, to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the legislature clearly provided that that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office.' (*R.S. Nayak case* [*R.S. Nayak* v. *A.R. Antulay*, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] , SCC pp. 204-06, para 23)"

23. In the case of the present appellants, there was no question of the appellants' getting any protection by a

> sanction. The High Court was absolutely right in relying on the decision in *Parkash Singh Badal* [*Parkash Singh Badal* v. *State of Punjab*, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] 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 PC Act. ***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.*** 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."

vii) Now coming to the question whether Section 19 of the Amendment Act, 2018 is prospective or retrospective in nature, it is relevant to note that an amendment/new statute is generally prospective in nature, unless the legislature specifically states that such amendment will apply retrospectively. However, if the amendment or the statute is procedural in nature, the same will be applied retrospectively.

viii) The rule regarding retrospective application of procedural laws is not absolute. The Supreme Court has time and

again held that a procedural law will not apply retrospectively if such procedural law affects the already accrued rights, liabilities and interests of the parties. In other words, if the amended procedural law affects the substantive rights, obligations, liabilities, privileges, protections of the parties, the same will apply retrospectively.

ix) The Supreme Court summed up the principles regarding retrospective and prospective application of statutes in **Hitendra Vishnu Thakur v. State of Maharashtra**[17] as follows:

> **"26.** The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:
>
> ***(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary***

[17]. (1994) 4 SCC 602

intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(*ii*) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(*iii*) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) 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."

x) Now this Court has to determine whether Section 19 of the Amendment Act, 2018 applies retrospectively. It is to be noted that, though obtaining a sanction under Section 19 is a procedural requirement, it casts a duty/an obligation on the authorities to

obtain such sanction. As stated above, the object behind obtaining sanction is to protect the public servants from vexatious and malicious prosecution.

xi) The amended Section 19 extends the duty/obligation of obtaining such sanction and the protection of such sanction even to retired public servants. This creates a new obligation/duty on the authorities to obtain sanction in cases where the public servants are already retired. Therefore, Section 19 of the Amendment Act, 2018 cannot be applied prospectively.

xii) It is further relevant to note that a learned Single Judge of this Court expressed a similar view in **Katti Nagaseshanna** (Supra) and **V.D. Rajagopal** (Supra). In **Katti Nageshanna** (Supra), this Court held that Section 19 of the Amendment Act, 2018 will not apply retrospectively. The relevant paragraphs are extracted below:

> ***"The facts of the case are distinguishable as the petitioner claiming immunity from the prosecution on the ground of failure to obtain sanction for prosecuting him taking advantage of explanation by Act 16 of 2018, which came into force with effect from 26.07.2018, but such amendment created/imposed new obligation or duty***

on the prosecution to obtain sanction to prosecute even retired government servant. Earlier sanction is required only to prosecute the public servant, and when a person (1966) 1 All ER 524 (1894) 1 QB 725 MSM, J Crl. P 9044 2018 retired from service, no sanction is required. On account of change of law due to addition of explanation to Section 19 (1) of the P.C. Act, now sanction is required even to prosecute retired government servant. If this provision is given retrospective effect, all retired government servants, against whom prosecutions are pending will sneak out from the prosecutions, it is nothing but accommodating retired Government Servant to escape from pending prosecution under the P.C. Act irrespective of seriousness of offence. The intention of the legislature is to prevent bribery among the public servants, which is a serious threat to the society now and increasing day by day. ***Therefore, amendment to Section 19 (1) of the P.C. Act though deals with procedure, which cannot be given retrospective effect as it created or imposed new obligation or duty on the prosecution to obtain sanction after more than 7 years from the date of filing charge sheet and taking cognizance against the petitioner.*** Therefore, I find that such interpretation as sought for by the learned counsel for the petitioner is against the intendment of the Statute."

xiii) Similarly, this Court in **V.D. Rajagopal** (supra) has held as follows:

"78. Here, on account of amendment to Section 19(1) of the P.C. Act, new duty is cast upon the prosecution to obtain sanction to prosecute retired Government Servant and a disability attached to the prosecution to prosecute the petitioner, who has retired from service, such law has to be treated as prospective unless the legislative intention is clear to give enactment a retrospective effect. The amendment by Act 16 of 2018, which came into force with effect from 26.07.2018 would not give retrospective effect in clear terms. On account of judicial interpretation, the petitioner is claiming that he is entitled to the benefit of amended provision, but in view of new obligation or duty imposed by amended Act, for the acts done long ago, such amendment cannot be given retrospective effect and it has to be given prospective effect only, though, the amendment is declaratory/explanatory one.

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109. In the present facts of the case, the offence was allegedly committed in 2011 i.e. long prior to amendment of the P.C. Act. But because of the additions, the petitioner wanted to take advantage of situation in view of amendment of Section 19(1) of the P.C. Act and contending that in the absence of any sanction as required under Section 19(1) of the P.C. Act as amended by Act 16 of 2018, the prosecution shall not be continued against him. Directly, it amounts to setting clock back to the date prior to taking cognizance, but such procedure which creates or imposes new obligation or duty on either of the

parties to the criminal proceedings can be given retrospective effect is a question required to be considered by this Court.

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115. Turning to the facts of the present case, the respondent's contention is that on account of amendment by Act 16 of 2018, a new obligation or duty was imposed on the prosecution to obtain sanction even after retirement of the petitioner from service as a public servant. It is not the intention of the legislation to defeat all prosecutions pending against the retired Government servants. The Act itself is clear that it was not intended to defeat all pending prosecutions against retired Government servants on account of such imposition of new obligation or duty upon the prosecution.

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119. If such interpretation is given to sneak out the retired Government Servants on account of disability or duty imposed by amended provision on the prosecuting agency, it amounts to causing violence to the intendment of the legislature, if such is the situation, it will have devastating effect on the pending prosecutions throughout the country against the retired Government servants in view of amendment to explanation to Section 19(1) of the P.C. Act. Therefore, such amended provision which created or imposed new obligation on the prosecution to obtain

sanction to prosecute the retired Government Servant after taking cognizance or before taking cognizance, depending upon the stage of the proceedings, and the same cannot be given retrospective effect and it shall be given prospective effect in view of the law declared by the constitutional bench of the Apex Court in "*Commissioner of Income Tax (Central)-I, New Delhi* v. *Vatika Township Private Limited*" (referred supra).

123. The facts of the case are distinguishable as the petitioner claiming immunity from the prosecution on the ground of failure to obtain sanction for prosecuting him taking advantage of explanation by Act 16 of 2018, which came into force with effect from 26.07.2018, but such amendment created/imposed new obligation or duty on the prosecution to obtain sanction to prosecute even retired government servant. Earlier sanction is required only to prosecute the public servant, and when a person retired from service, no sanction is required. On account of change of law due to addition of explanation to Section 19(1) of the P.C. Act, now sanction is required even to prosecute retired government servant. If this provision is given retrospective effect, all retired government servants, against whom prosecutions are pending will sneak out from the prosecutions, it is nothing but accommodating retired Government Servant to escape from pending prosecution under the P.C. Act irrespective of seriousness of offence. The intention of the legislature is to prevent

bribery among the public servants, which is a serious threat to the society now and increasing day by day. Therefore, amendment to Section 19(1) of the P.C. Act though deals with procedure, which cannot be given retrospective effect as it created or imposed new obligation or duty on the prosecution to obtain sanction after more than 7 years from the date of filing charge sheet and taking cognizance against the petitioner. Therefore, I find that such interpretation as sought for by the learned counsel for the petitioner is against the intendment of the Statute.

124. Coming to the present facts of the case, Section 19(1) of the P.C. Act relates to procedure to be followed for prosecuting a public servant. When such amendment imposes new obligation or creating disability, in the absence of any provision giving retrospective effect, the same cannot be given retrospective effect to defeat all pending prosecutions against the retired Government Servants. If such interpretation is given to explanation to Section 19(1) of P.C. Act by Act 16 of 2018, it will have devastating effect on the pending prosecutions and it amounts to paving path to the accused persons, who are retired public servants to sneak away from prosecutions though they committed serious offences, and such interpretation is against the intendment of the Act itself as observed in "*M. Narayanan Nambiar* v. *State of Kerala*" (referred supra). Therefore, it is difficult to accept the contention of the learned counsel for petitioner to give

> retrospective effect to the amended provision i.e. Section 19(1) of the P.C. Act, which permits the petitioner to escape from the prosecution. The point is held against the petitioner and in favour of the respondent."

xiv) The Karnataka High Court in **T.N. Bettaswamaiah** (Supra) has also held that Section 19 of the Amendment Act, 2018 is prospective in its application. The relevant paragraphs are extracted below:

> "21. In Kolhapur Cane Sugar, Supreme Court of India was considering the omission of Central Excise Rule 10 and 10A and simultaneous introduction of Rule 10 without any saving clause. It has been held that Section 6 of General Clauses Act is not applicable since it is not a repeal of a Central Act, but an omission. But in Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others (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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> XXX

23. In Monneth Ispat and Energy Limited., Vs. Union of India and others (2012) 11 SCC 1, approving Keshavan Madhava Menon Vs. State of Bombay AIR 1951 SC 128 Supreme Court of India has held ***Section 17A as prospective in nature. Common grounds have been urged to assail both Section 17A and Section 19 of PC Act. Therefore, Section 19 is also required to be held as 'Prospective'.*** *"*

xv) Similarly, the Delhi High Court in **Central Bureau of Investigation v. A. Raja**[18], referring to another decision in **Madhu Koda v. State**[19] held as follows:

"61. In view of the Hon'ble Apex Court decision in State of Telangana (supra) and decision of Coordinate Bench of this Court in Madhu Koda (Supra), this Court is of the opinion that amending Act does not apply to the offences which have already taken place under the PC Act, 1988 and moreover, Prevention of Corruption (Amendment) Act, 2018 does not reveal any intention of destroying the earlier provisions and there is no intention to obliterate the earlier law, therefore, this Court is of the opinion that there is no impediment in hearing the criminal leave to appeal, since the offences in question are alleged to have

[18]. 2021(2)RCR(Criminal)692
[19]. 2020 SCC OnLine Del 599

> ***been committed prior to the coming into force of Prevention of Corruption (Amendment) Act, 2018****."*

xvi) The Petitioner contended that judgment in **Katti Nagaseshanna** (Supra) does not apply to the facts of the present case as the charge sheet was filed after the Amendment Act, 2018 came into force. Therefore, sanction was to be obtained as the new law i.e., the 2018 amendment was already in force before cognizance was taken. This Court cannot accept the said contention of the Petitioner. It is relevant to note that a similar view was expressed by the Kerala High Court in **S.V. Kalesan v. State of Kerala**[20]. The relevant portion of the decision is extracted below:

> "26. The petitioner has retired from service in the year 2018. But it does not have any effect on Annexure-K order or Annexure-L FIR. In view of the amendment of Section 19(1) of the Act, which came into force on 26.07.2018, sanction envisaged thereunder is necessary in respect of a retired public servant also. ***True, the amendment will have only prospective application and it has no application to cases registered prior to the amendment and pending under various stages of investigation and to cases in which investigation has been completed and are pending***

[20]. 2021 SCC OnLine Ker 5113

trial (See Ramesh v. C.B.I. : 2020 (4) KHC 220). However, the date relevant for considering the necessity of sanction is the date on which cognizance is taken. In the present case, it would be the date on which an order under Section 156(3) of the Code is being passed by the Special Judge. Therefore, in the present case, inspite of the retirement of the petitioner from service, if the Special Judge has to pass a fresh order under Section 156(3) of the Code, sanction under Section 19 of the Act would be necessary.

27. In the light of the decision of the Supreme Court in Anil Kumar (supra), Annexure-K order passed by the learned Special Judge, directing registration of first information report against the petitioner, who was a public servant, is liable to be quashed in the absence of any sanction under Section 19(1) of the Act obtained and produced before the court*."*

xvii) However, this Court does not agree with the contention of the Petitioner that since 2018 amendment was in force when the charge sheet was filed sanction is necessary. This Court also disagrees with the decision of the Kerala High Court in **S.V. Kalesan** (Supra) in light of the decision of the Supreme Court in **State of Telangana v. Managipet[21].** In the said decision, the

[21]. (2019) 19 SCC 87

Supreme Court rejected the argument that 2018 amendment will apply if charge sheet was filed after the said amendment came into force. The relevant paragraph of the judgment is extracted below:

> ***"37. Mr Guru Krishna Kumar further refers to a Single Bench judgment of the Madras High Court in M. Soundararajan v. State [M. Soundararajan v. State, 2018 SCC OnLine Mad 13515] to contend that amended provisions of the Act as amended by Act 16 of 2018 would be applicable as the amending Act came into force before filing of the charge-sheet. We do not find any merit in the said argument.*** In the aforesaid case, the learned trial court applied amended provisions in the Act which came into force on 26-7-2018 and acquitted both the accused from charge under Section 13(1)(*d*) read with Section 13(2) of the Act. The High Court found that the order of the trial court to apply the amended provisions of the Act was not justified and remanded the matter back observing that the offences were committed prior to the amendments being carried out. In the present case, the FIR was registered on 9-11-2011 much before the Act was amended in the year 2018. Whether any offence has been committed or not has to be examined in the light of the provisions of the statute as it existed prior to the amendment carried out on 26-7-2018."

xviii) Therefore, in light of the aforesaid discussion, Section 19 of the Amendment Act, 2018 does not apply retrospectively. There is no duty cast upon the authorities to obtain sanction to prosecute employees not in service if the alleged offences under the Act, 1988 were committed before the enactment of the 2018 amendment.

xix) It also relevant to note that the Petitioner contended that the order dated 19.08.2019 taking cognizance of the offence is silent as to the perusal of material and forming of an opinion. This contention of the Petitioner cannot be accepted as the perusal of the order dated 19.08.2019 clearly records that the filed documents were checked and verified and it was noted that ingredients of Section 13(2) r/w Section 13(1)(e) of the Act, 1988 are made out to take cognizance.

7. **Conclusion**:

i) The allegations against the Petitioner, *prima facie*, do constitute an offence under Section 13(2) r/w Section 13(1)(e) of

the Act, 1988. None of the requirements of **Bhajan Lal v. State of Haryana**[22] for quashing criminal proceedings are satisfied.

ii) Therefore, in light of the aforesaid discussion, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

K. LAKSHMAN, J

12th April, 2022

Note: L.R. Copy to be marked
(B/O.) Mgr

[22]. (1992) Supp. 1 SCC 335